

**TRIANGLE INFORMATION MANAGEMENT
STANDARD TERMS AND CONDITIONS OF TRADE**

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INTRODUCTION

This booklet contains the Standard Terms and Conditions ('Terms and Conditions') upon which Triangle Information Management Limited conduct its business.

For the purposes of these Terms and Conditions reference to: 'Triangle' shall mean Triangle Information Management Limited (company reference number 01896503).

'the Customer' shall mean the party who wishes to contract with Triangle for the supply of goods and/or service, the contract for which shall be subject to these Terms and Conditions.

Given that the Triangle supplies software and services, there are various different sections to this booklet and the parts which apply to you will depend on the software and/or services that Triangle is providing to you.

The sections to this booklet are as follows:

1. Supply of Software
2. Provision of Professional Services
3. Provision of Help Desk and Telephone Support Services
4. General Provisions

These Terms and Conditions apply to the supply of all software and services by Triangle unless otherwise agreed by Triangle in writing.

Section 1 - SUPPLY OF SOFTWARE

1 Bespoke Software

- 1.1 In the event that the Customer wishes to engage Triangle to produce bespoke software for the Customer, the Customer will be required to enter into a Software Development Agreement which will be supplied by Triangle. Unless otherwise expressly agreed this will be on the basis of Triangle's Standard Software Development Agreement.

2 Triangle Software

- 2.1 Where Triangle is asked by the Customer to supply standard Triangle software, the Customer will be required to enter into a software licence which will be provided by Triangle and must be accepted by the Customer before the Customer becomes entitled to use the software. The licence will be on the basis set out in clause 6.2 of Section 2.

3 Other Software

- 3.1 Where Triangle is asked by the Customer to supply software which has been developed by a third party supplier, the terms and conditions upon which the Customer is permitted to use that third party software is a matter of the Sub licence agreement between Triangle and the Customer.

4 Customer Orders

- 4.1 An Order for software will not be binding on Triangle until Triangle has notified the Customer in writing that it has accepted the Customer's Order. Triangle reserves the right to require a written purchase order from the Customer.

5 The Price

- 5.1 The price payable for such software will be the price set out in the Order accepted by Triangle and includes delivery to the Customer's address as stated therein but excludes the installation of the software.

6 Warranty

- 6.1 Triangle gives no warranty in relation to software which is not Triangle software. Triangle does not make any warranty on behalf of the manufacturer of any third party software and, in particular, disclaims any implied warranty in respect of such third party software, including implied warranties or merchantability and fitness for purpose.
- 6.2 Triangle warrants that Triangle standard Software will comply with its specification.

7 Application of General Section

- 7.1 In addition to the Terms and Conditions set out in this section, the Terms and Conditions set out in Section 4 (General Terms and Conditions) also apply to the supply of software by Triangle. If the Order purports to replace or vary the whole or any part of these terms such variation or replacement shall not apply except to the extent expressly referred to in Triangle's Order Acceptance Form.
- 7.2 The customer agrees and warrants that its Order does not require Triangle to process any personal data under the Control of the Customer and that the Order does not make Triangle a processor or joint controller of any data of which the Customer is a controller or processor (whether alone or jointly with any other person).

Please refer to Section 4 which contains limitations on Triangle's liability and excludes any implied warranties.

Section 2 - PROVISION OF PROFESSIONAL SERVICES

This section sets out the particular Terms and Conditions which are applicable to the supply of Professional Services by Triangle .

1 Customer Request and Acceptance of Orders

- 1.1 If the Customer wishes to engage Triangle to provide professional services it must submit a request specifying the work to be undertaken and an estimate of the number of consultants required.
- 1.2 If Triangle accepts a Customer's request (including an Order sent in response to a proposal by Triangle), Triangle will send to the Customer a completed Order Acceptance Form which shall constitute an agreement between Triangle and the Customer pursuant to these Terms and Conditions.
- 1.3 For significant projects:
 - 1.3.1 a Project Definition Workshop ('PDW') will be held, from which a Project Definition Report ('PDR') (alternatively called Statement of Work ('SOW')) will be prepared detailing the resources required and timetables which will support the Customer's request. Triangle shall be entitled to charge the Customer at its standard rates for all work associated with the PDW and preparation of the PDR; and thereafter
 - 1.3.2 the Customer will be required to enter into a written Professional Services Agreement ('PSA') supplied by Triangle.

2 Project

- 2.1 Work on the Project will begin on the date specified in the Order Acceptance Form or PSA and will continue as specified. Whilst Triangle will use all reasonable endeavours to complete the Project by any target date specified on the Order Acceptance Form or PSA, time shall not be of the essence. Work will be conducted at the location specified in the Order Acceptance Form or PSA.

3 Charges

- 3.1 The Customer will pay Triangle the charges specified in the Order Acceptance Form or PSA (where applicable calculated by reference to the daily rate specified, in which case a working day shall comprise 7.5 hours). Overtime rates will apply for services provided in excess of 7.5 hours per working day at:
 - 3.1.1 1.5 times normal hourly rate for services carried out on working days in excess of 7.5 hours;
 - 3.1.2 1.5 times normal hourly rate for services carried out on Saturdays; and
 - 3.1.3 2 times normal hourly rates for work carried out on Sundays and Bank or Public holidays.
- 3.2 In addition to the charges payable pursuant to clause 3.1 the Customer will reimburse Triangle reasonable accommodation, subsistence and travel expenses incurred in the performance of the Project unless specified otherwise.
- 3.3 Triangle will render an invoice in respect of charges and expenses at the end of the Project provided that if the Project lasts or is anticipated to last for more than 30 days Triangle will render an invoice at the end of each calendar month.
- 3.4 The Customer acknowledges that in order for Triangle to be able to fulfil its obligations Triangle will use reasonable endeavours to allocate certain staff to be available on certain dates (having regard, when feasible, to the preferences of the Customer to the Services being delivered by a specific member or members of staff) and that for the Customer to cancel, postpone or in any way fail to make it possible or practicable for Triangle to perform any of its services on such dates will result in loss to Triangle. Accordingly Triangle reserves the right to invoice the Customer for cancellation or postponement charges in the event that the Customer fails to make available to Triangle, at a time previously notified to the Customer, documentation, information, personnel and/or facilities for the purposes of fulfilment Triangle's fulfilment of its obligations. Charges to be levied by Triangle pursuant to this clause 3.4 will be calculated as a percentage of the value of the services and staff allocated as follows:

Up To 2 days Notice	Up to 5 but more than 2 days notice	Up to 10 days but more than 5 days notice
100%	75%	50%

4 Customer's Obligations

- 4.1 The Customer shall:
 - 4.1.1 provide Triangle with such information and documentation as Triangle might reasonably require to complete the Project and any failure by the Customer to provide material information or documentation shall be regarded as a breach of a fundamental condition of the Contract between the Customer and Triangle;
 - 4.1.2 ensure that its employees cooperate with Triangle in connection with the Project;
 - 4.1.3 in the event that Triangle is required to use and/or modify any software owned by or licensed to the Customer as part of the Project, ensure that all necessary consents, permissions and licenses to such use and/or modification have been obtained.
 - 4.1.4 be responsible for backing-up all data and software before any Project begins and during the course of a Project and Triangle shall not be responsible for any loss of software or data;
 - 4.1.5 provide a safe working environment for any Triangle employees or agents who are engaged in the Project at the Customer's premises.
- 4.2 It is acknowledged by the Customer that where the Project includes the provision of advice by Triangle on suitable hardware and/or software to meet the requirements of the Customer, it is critical that Triangle be provided with comprehensive and accurate information by the Customer or its agents. Triangle shall not be responsible for any delay in completion of the Project or defect in the advice provided by Triangle which results from a delay in supply of, or inaccurate provision of, information by the Customer.

5 Triangle's Obligations

- 5.1 Triangle shall ensure that the Triangle staff engaged on the Project are suitably experienced and have the necessary expertise to complete the Project.
- 5.2 Triangle warrants that it will use reasonable care and skill in conducting the Project.
- 5.3 Triangle does not warrant the performance or functionality of packaged solutions where one or more of the elements of such solution (including, but not limited to, operating environment, hardware not built by Triangle, third party software or peripherals) are outside the control of or have not been supplied by Triangle and Triangle excludes all liability for any lack of performance or functionality because of the failure (whether in whole or in part) of such elements.

6 Intellectual Property Rights

- 6.1 Unless expressly agreed otherwise in writing all copyright and other intellectual property rights in any software or other material produced by Triangle in completing the Project will be and remain the exclusive property of Triangle.
- 6.2 The Customer will be deemed to have been granted a non-exclusive perpetual non-assignable licence to use the software created for the purposes of the contract on its delivery provided that all monies due under the agreement for provision of professional services and payable by the Customer have been received by Triangle.

7 Reporting and Review Procedure

- 7.1 During the course of carrying out the Project Triangle will report to the Customer at the intervals specified in the Order Acceptance Form or PSA setting out the progress made and the time devoted to the Project during the relevant period.
- 7.2 For all projects which have undergone a PDW a final review by the parties will be held of the deliverables under the PDR and a Completion Certificate will be issued by Triangle for signature by the Customer.
- 7.3 Forthwith upon issue of the Completion Certificate the Customer shall have a period of 5 working days in which to advise Triangle of any deficiencies of the deliverables measured against the PDR. Such report must be made to the Triangle Helpdesk by email or telephone call for support action to be taken free of charge by Triangle in respect of such deficiencies reported within the stated 5 day period.
- 7.4 Triangle reserve the right to charge the Customer at prevailing standard rates for any services requested to be carried out by the Customer pursuant to clause 7.3 which arises out of anything other than a defect of the deliverables within the control of Triangle measured against the PDR.

8 Indemnity

The Customer agrees to protect, indemnify and defend Triangle at the Customer's expense from and against any and all claims of infringement of copyright and other intellectual property rights resulting from the modification or development of any of the Customer's software (or software that the Customer requested Triangle to work on or within its Order) as a part of the Project.

9 Application of General Section

In addition to the Terms and Conditions set out in this section, the Terms and Conditions set out in Section 4 (General Terms) also apply to the provision of professional services by Triangle.

Please refer to Section 8 which contains limitations on Triangle's liability and excludes any implied warranties.

Section 3 - PROVISION OF HELP DESK AND TELEPHONE SUPPORT SERVICES

Triangle operates a first level support help desk service. This section sets out the particular Terms and Conditions which are applicable to the provision of help desk and telephone support services.

1 IBM Support Agreements

- 1.1 When a customer pays for IBM Support & Subscription on licenses purchased from Triangle through a sublicense agreement the customer will automatically get first level support from Triangle. First level support is provided by Triangle is to answer questions pertinent to the installation of the IBM Software at the customer premises and Triangle will use its experience of the installation and its knowledge of the software to provide support. Any support request that cannot be answered by Triangle will be forwarded to IBM for their input.
- 1.2 Support calls placed on IBM will be monitored by Triangle and the customer kept informed as to the progress.

2 Support Options Available

Calls can be logged in the following ways:

- 2.1. Via the normal Triangle telephone number (01256 860050) OR
- 2.2 Electronically via email to support (support@trianglei-bpm.com.com) OR
- 2.3 During out of office hours using the telephone number 0845 519 3501 subject to an out of office support agreement having be agreed.

3 On-Site Support

- 3.1 In addition to the first level support set out above a Customer may request on-site support days. Under such an arrangement in the event that the Customer requires on-site support a Triangle consultant will be scheduled as soon as reasonably practicable to the Customer's site following a request for support.
- 3.2 The provision of services other than remote support services will be governed by the Terms and Conditions set out in Section 2 (Provision of Professional Services).
- 3.3 Triangle reserves the right to require that the Customer provide written confirmation of a request for on-site support signed by one of the authorised contacts specified in clause 5.1.1 below.

4 Help Desk

- 4.1 Telephone support will be provided by Triangle's Help Desk which Triangle undertakes will be open to the Customer between 9.00am and 5.30pm Monday to Friday (excluding public and bank holidays) which for the purposes of this Section 3 shall be working hours.
- 4.2 All calls to the Triangle Help Desk will be timed in, logged as appropriate, given a unique reference number and allocated a severity rating in accordance with the following:
Severity 1 a problem which renders a significant part of the Customer's business operations totally inoperative
Severity 2 a problem which renders a significant part of the Customer's business operations partially inoperative
Severity 3 any other problem
- 4.3 Once allocated a severity rating a call will be passed to the appropriate specialist within Triangle who will use all reasonable endeavours (time not being of the essence for the purpose of Triangle's obligations) to deal with the fault within the following response times:

	Severity 1	Severity 2	Severity 3
Initial Response	1 working hour	2 working hours	3 working hours
Progress Feedback	Every 4 working hours	Every working day	Every 3 working days

- 4.4 The Customer acknowledges that some faults will not be capable of resolution within the specified response times or through telephone support. In particular, some problems will be a result of matters beyond Triangle's control (including without limitation inherent defects in software and others will necessitate on-site help. In cases where a fault is not capable of resolution by telephone support Triangle will recommend the next course of action to the Customer and once such advice is given a call will be deemed to have been closed.
- 4.5 If Triangle requires further information from the Customer the Customer will be notified and the call will be flagged as pending and the response and progress feedback times shall be suspended until such information is received.
- 4.7 Triangle shall support versions of the Supported Software which are generally available from the software manufacturer and currently fully supported by them. Triangle shall be entitled to withdraw support of any item of Supported Software if that item becomes in the reasonable opinion of Triangle obsolete or if the manufacturer ceases to fully support that item.

5 Customer Responsibilities

- 5.1 To enable Triangle to provide the support service in an effective and cost efficient manner the Customer must do as follows:
 - 5.1.1 nominate in writing individuals within its organisation who are authorised to lodge support calls with Triangle;
 - 5.1.2 ensure that one of the authorised contacts lodges each support call with the Triangle Help Desk. (NB. This procedure is essential and a support call will not be accepted if this procedure is not followed);
 - 5.1.3 maintain the hardware which comprises the supported network in accordance with the manufacturers' recommendations;
 - 5.1.4 maintain the software not covered by this agreement in accordance with the manufacturers' recommendations;
 - 5.1.5 notify Triangle of any hardware or software changes to the network (including any additions to the network) which is supported under this agreement;
 - 5.1.6 provide a safe working environment for any Triangle employees or agents who are engaged in the provision of services at the Customer's premises;
 - 5.1.7 upgrade the supported software to the most recent version if requested to do so by Triangle
- 5.2 If the Customer fails to comply with clause 5.1 Triangle shall be entitled to suspend the provision of services under this agreement (and under any other agreement between the Customer and Triangle) and any refund of any charges in respect of any period of suspension shall be entirely at Triangle's discretion.
- 5.3 It is the Customer's responsibility to ensure that all data and software is backed up at all times. Triangle shall not be responsible for loss of data or software. Clause 7.2 of Section 1 is re-iterated.

6 Charges

- 6.1 The Customer will pay Triangle the annual fee specified in the Order Acceptance Form (in this Section referred to as "the Basic Annual Fee") for the provision of support to be invoiced as set out in the Order Acceptance Form.
- 6.2 If Triangle provides the Customer with services in addition to the level of support specified in the Help Desk and Support Agreement the Customer will pay Triangle for such services at Triangle's current rates (as varied from time to time) such sums to be invoiced on completion of the service. A Customer who has purchased a block of on-site support days in advance may use one or more of those days if onsite support is needed.
- 6.3 Triangle shall be entitled to increase the Basic Annual Fee by service of not less than two months' written notice to the Customer provided that the first such increase shall only be effective as from the first anniversary of the date on which the provision of support commenced.
- 6.4 If the Customer makes any changes to the network which is supported under this agreement Triangle shall be entitled to increase the Basic Annual Fee with effect from the date of such change.

7 Duration

The Help Desk and Support Agreement will be for an initial period of one year from the date specified on the Order Acceptance Form and it will continue thereafter until terminated by either party serving not less than one month's written notice such notice to terminate on an anniversary of the date on which the service commenced.

8 Application of General Section

In addition to the Terms and Conditions set out in this section, the Terms and Conditions set out in Section 4 (General Terms and Conditions) also apply to the help desk, telephone and on-site support services provided by Triangle.

Please refer to Section 8 which contains limitations on Triangle's liability and excludes any implied warranties.

Section 4 -GENERAL TERMS AND CONDITIONS

1 Definitions and Interpretation

In this document (unless the context requires otherwise): "**Customer**" means the person, firm or company forming a contract with Triangle under these Terms and Conditions of Trade; "Help Desk Support Agreement" means an Agreement under which Triangle provides help desk and telephone support; "IBM" means IBM United Kingdom Limited a company incorporated in England (Co. number 00741598) the registered office of which is at P.O. Box 41, North Harbour, Portsmouth, PO6 3AU, United Kingdom "IBM Software" means software which is licensed by IBM UK Limited "Order" means a request by the Customer for the supply of goods or services which is accepted by Triangle; "Order Acceptance Form" means written or other confirmation from Triangle accepting an Order from the Customer; "Third Party Software" means any software (including IBM Software) licensed by a third party "Terms and Conditions" means the Standard Terms and Conditions of Trade of Triangle Information Management Limited as set out in this document.

2 Payment Terms

- 2.1 All invoices issued by Triangle are payable within 30 days of the date of issue unless agreed otherwise in writing by Triangle.
- 2.2 If the Customer fails to pay an invoice or charges to Triangle by the due date and has not lodged a dispute in accordance with clause 2.3 below then without prejudice to its other rights under Triangle's Terms and Conditions Triangle shall be entitled:
 - 2.2.1 to charge interest on any outstanding sum at the rate of 3% per annum over bank base rate or the rate provided under the Late Payment of Commercial Debts (Interest) Act 1998 (whichever is the higher) from the date due to the date payment is received;
 - 2.2.2 to suspend the provision of all services and the supply of all software to the Customer; and
 - 2.2.3 to terminate some or all of any software licences granted to the Customer by Triangle.
- 2.3 The Customer shall provide written confirmation of any bona fide dispute or query relating to an invoice within seven days of receipt of the invoice and return any faulty items within 14 days of delivery. The Customer shall settle all non-disputed amounts on an invoice by the due date.
- 2.4 All prices stated in any documentation supplied by Triangle to Customer (including, but without limitation, estimates, quotations, proposals and reports) shall be subject to the prevailing rate of Value Added Tax from time to time.
- 2.5 For all goods or products ordered for which supply is made from outside of the United Kingdom, the price quoted by Triangle shall be subject to any increase incurred by Triangle by reason of a change in the exchange rate applicable for such goods or products between the date of quotation by Triangle and shipment to the Customer.

3 Confidentiality

- 3.1 Triangle acknowledges that information disclosed to it by the Customer during the course of negotiations or the provision of services by Triangle may be confidential and accordingly Triangle undertakes that it will not disclose any information which is communicated to it by the Customer which is identified as confidential (unless it is already in the public domain) to any third party.
- 3.2 The Customer acknowledges that information disclosed to it by Triangle during the course of negotiations or the provision of services by Triangle may be confidential and accordingly undertakes that it will not disclose any information which is communicated to it by Triangle which is (subject to clause 3.3) identified as confidential (unless it is already in the public domain) to any third party.
- 3.3 For the avoidance of doubt under clause 3.2 any proposed equipment or software specification prepared by Triangle shall be automatically confidential unless expressly stated otherwise in writing by Triangle.
- 3.4 The obligations in clauses 3.1, 3.2 and 3.3 shall not apply to any information which:
 - 3.4.1 was known to the recipient (without obligation to keep the same confidential) at the date of its disclosure;
 - 3.4.2 is after the date of disclosure lawfully acquired by the recipient in good faith from an independent third party who is not subject to any obligation of confidentiality in respect of such information;

- 3.4.3 has been independently ascertained or created by the recipient without access to any or all of the confidential information; or
- 3.4.4 is required by law, judicial action, governmental department or agency or other regulatory authority to be disclosed.

4 Termination

- 4.1 Either party may forthwith terminate (confirmation of such termination to be notified in writing to the other party) without liability to the other any Agreement if any of the following events shall occur:
 - 4.1.1 if the other party is guilty of a serious breach of any term, condition or provision of the Terms and Conditions which, in the case of a breach capable of remedy, has not been remedied within 21 days of a written request so to do;
 - 4.1.2 if the other party, being a body corporate, shall present a petition or have a petition presented by a creditor for its winding up, or shall convene a meeting to pass a resolution for voluntary winding up, or shall enter into any liquidation (other than for the purposes of a bonafide reconstruction or amalgamation), or shall call a meeting of its creditors, or shall have a receiver of all or any of its undertakings or assets appointed;
 - 4.1.3 if the other party, being an individual or a partnership, shall commit any act of bankruptcy, shall have a liquidator or trustee or similar officer appointed over any of its assets, shall make or negotiate for any composition or arrangement or assignment for the benefit of its creditors or shall be dissolved (as a partnership); or
 - 4.1.4 if the other party shall be deemed by the relevant statutory provisions under the applicable law to be unable to pay its debts or shall cease to carry on business.
- 4.2 All rights and obligations of the parties shall cease to have effect immediately on termination of this agreement except that termination shall not effect:
 - 4.2.1 accrued rights and obligations of the parties at the date of termination; and
 - 4.2.2 the continued existence and validity of the rights and obligations of the parties under clauses 1 and 4 and any provisions of an Agreement necessary for the interpretation or enforcement.

5 Sub contractors

Triangle may engage the services of third parties to provide assistance in connection with the provision of services or the supply of hardware or software to the Customer.

6 Non Solicitation of Staff

- 6.1 The Customer acknowledges that the solicitation of the staff or sub-contractors engaged by Triangle in the provision of services to the Customer would cause Triangle to suffer a loss accordingly, the Customer undertakes that it shall not for the duration of any Agreement pursuant to the Terms and Conditions apply, and for a period of one year following the expiry or termination of any such Agreement (for whatever reason), employ or contract the services of any person who is or was employed or engaged by Triangle to provide services to the Customer under that Agreement (or under any other agreement between the Customer and Triangle).
- 6.2 The Customer acknowledges that the breach of clause 6.1 would cause Triangle significant loss and disruption and that by way of liquidated damages if the Customer breaches the obligation imposed by clauses 6.1 it will forthwith pay a sum equal to six months of the new salary of the relevant employee to Triangle (or the salary in the last 6 months of employment by Triangle whichever is the higher) and for this purpose salary shall include bonus and profit share and all other similar remuneration.

7 Limitation of Liability

- 7.1 Triangle accepts unlimited liability for death or personal injury to the extent that the same arises directly from the negligence of Triangle or its employees.
- 7.2 Triangle shall not be liable to the Customer for:
 - 7.2.1 any indirect loss or damage or special, incidental or consequential damages (including without limitation loss of profit) whether arising from any tortious act or omission, breach of contract or otherwise howsoever caused; nor
 - 7.2.2 for any loss of data or software resulting from any tortuous act or omission, breach of contract or otherwise.

- 7.3 Subject to clause 7.4 below (and save as otherwise excluded) Triangle accepts responsibility for direct loss suffered by the Customer as a result of Triangle's negligence or breach of contract as follows:
- 7.3.1 in a case in which the loss results from negligence or breach of contract in connection with the supply of software, Triangle accepts liability for direct loss suffered by the Customer limited to the higher of £100,000 (one hundred thousand pounds) and 100% of the total purchase price of the software (excluding VAT) supplied under the Order in connection with which the liability arose;
- 7.3.2 in a case in which the loss results from negligence or breach of contract in connection with the provision of professional services, Triangle accepts liability for direct loss suffered by the Customer limited to the higher of £50,000 (fifty thousand pounds) and 100% of the charges paid by the Customer (excluding VAT) for the Project in connection with which the liability arose;
- 7.3.3 in a case in which the Customer suffers a loss as a result of negligence or breach of contract in connection with a Help Desk and Telephone Support Agreement Triangle accepts liability for direct loss suffered by the Customer limited to the higher of £50,000 (fifty thousand pounds) and 100% of the then current annual fee paid under the Help desk Support Agreement in connection with which the liability arose;
- 7.4 Triangle will have no liability to the Customer in respect of any direct loss unless the Customer informs Triangle of any breach of contract or negligence ("Default")
- 7.4.1 as soon as reasonably practicable after it first becomes aware of it; and
- 7.4.2 allows Triangle a reasonable opportunity to correct the Default; and
- 7.4.3 takes all reasonable steps to mitigate the loss suffered as a result of the Default.
- 7.5 Except in the case of the Default arising under clause 7.1 Triangle shall have no liability to the Customer in respect of any Event of Default unless the Customer shall have served notice of the same upon Triangle within 1 year of the date it became aware of the circumstances giving rise to the Event of Default or the date when it ought reasonably to have become so aware.
- 7.6 Nothing in this clause 7 shall confer any right or remedy upon the Customer to which it would not otherwise be legally entitled.
- 7.7 In the event that any of the limitations of liability or exclusions of liability contained in the Terms and Conditions are found to be unenforceable by any competent court the maximum liability of Triangle for the loss which would otherwise have been limited or excluded shall be £500,000 (five hundred thousand pounds sterling).

8 Warranties

- 8.1 Triangle does not warrant the functionality, performance or suitability for purpose of packaged solutions where one or more of the elements of such solution (including, but not limited to, operating environment, hardware not built by Triangle, Third Party Software or peripherals) which are outside the control of or have not been supplied by Triangle and Triangle excludes all liability for any lack of performance, function or suitability caused by the failure (whether in whole or in part) by such elements.
- 8.2 Save as expressly stated Triangle hereby excludes so far as permitted by law all implied conditions and warranties Including (without limitation) any implied warranty of satisfactory quality or fitness for purpose of any goods supplied.

9 Force Majeure

Triangle shall be under no liability to the Customer in respect of anything which, apart from this provision, may constitute breach of contract arising by reason of *force majeure*, namely, circumstances beyond the control of Triangle which shall include (but shall not be limited to) acts of God, perils of the sea or air, fire, flood, drought, explosion, sabotage, accident, embargo, riot, civil commotion, including acts of local government and parliamentary authority; inability to supply the software, materials, breakdown of equipment and labour disputes of whatever nature and for whatever cause arising including (but without prejudice to the generality of the foregoing) work to rule, overtime bars, strikes and lockouts and whether between either of the parties hereto and any or all of its employees and/or any other employer and any or all of its employees and/or between any two or more groups of employees (and whether of either of the parties hereto or any other

employer). Time shall not be of the essence of any aspects of the Services unless expressly agreed in Triangle's Order Acceptance Form.

10 Waiver

Failure or neglect by Triangle to enforce at any time any of the provisions hereof shall not be construed nor shall be deemed to be a waiver of Triangle's rights hereunder nor in any way affect the validity of the whole or any part of a contract nor prejudice Triangle's rights to take subsequent action.

11 Headings

The headings of the Terms and Conditions are inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of any of the Terms and Conditions.

12 Severability

If any provision of an Agreement made pursuant to the Terms and Conditions shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect the other provisions of such Agreement and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect. The parties hereby agree to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible the economic, legal and commercial objectives of the invalid or unenforceable provision.

13 Notices

All communications relating to an Agreement pursuant to the Terms and Conditions shall be in writing and delivered by hand or sent by post or email with delivery receipt to the party concerned at the relevant address shown in the relevant Order Acceptance Form, Agreement or such other address as such party may from time to time have communicated to the other in writing in accordance with this clause. Any such communication shall take effect if delivered, upon delivery; if posted, upon the earlier of delivery and, if sent by first class registered post, 10 am on the second working day after posting; if sent by email on transmission of the delivery receipt email back to the sender.

14 Law

The parties hereby agree that the contract concluded between them and constituted on these Terms and Conditions shall be construed in accordance with English Law and the parties hereby agree that they shall submit to the non-exclusive jurisdiction of the Courts of England and Wales.

15 Conflict

In the event of conflict between the content of an Order Acceptance Form and the Terms and Conditions the former will prevail. To the extent that an Order purports to exclude, modify or replace these conditions whether in whole or part, that exclusion modification or replacement shall have no effect except to the extent expressly agreed in Triangle's Order Acceptance Form.

16 Dispute Resolution

- 16.1 In the event of a dispute in connection with the supply of software or services by Triangle the parties will use their reasonable endeavours to negotiate to reach a settlement.
- 16.2 If a settlement cannot be achieved within 14 days of the dispute first arising then the dispute shall, if both parties agree, be referred for final settlement to an independent expert nominated jointly by the parties or (failing such nomination within 14 days after either party's request to the other therefore) nominated at the request of either party by the President of the British Computer Society (the Chartered Institute for I.T).
- 16.3 An expert appointed pursuant to clause 19.2 shall be deemed to act as an expert and not as an arbitrator and his decision shall (in the absence of clerical or manifest error) be final and binding on the parties and his fees for so acting shall be borne by the parties in equal shares unless he determines that the conduct of either party is such that such party should bear a greater proportion of or all such fees.
- 16.4 Any reference to arbitration under this clause shall be deemed to be a reference to arbitration within the meaning of the Arbitration Act 1996 (as amended).

17 General

- 17.1 No addition to or modification to an Order Acceptance Form, the Terms and Conditions or any Agreement made between the parties will be binding on the parties unless made in writing and signed by a duly authorised representative of The parties.
- 17.2 Save as expressly stated the rights and obligations of the parties under any agreement to which these Terms and Conditions apply shall not be assignable.
- 17.3 In the event that Triangle suffers loss as a result of the Customer's breach of contract or any tortuous act or omission, in addition to all other rights Triangle may have hereunder or in law, the Customer shall also pay Triangle all reasonable expenses incurred by Triangle in connection with the enforcement of any of Triangle's rights hereunder, including its legal costs.
- 17.4 Triangle reserves the right to supply improved or modified items of Software to those specified in an Order without notice provided that such improvement or modification does not adversely affect the performance of the relevant item.
- 17.5 Triangle reserves the right to vary or amend the Terms and Conditions at any time upon prior written notice to the Customer of one calendar month.
- 17.6 In accordance with clause 1(2)(a) of the Contracts (Rights of Third Parties) Act, the parties intend that no term of any agreement to which these Terms and Conditions shall apply shall be enforceable by someone who is not a party to such agreement.
- 17.1 Nothing in this agreement requires Triangle to control, process or access any personal data of which the Customer is a controller or processor. This agreement shall not constitute Triangle as the controller or processor (whether jointly or otherwise) of any such personal data.