

CATI Software

Direct Sale Terms and Conditions

THESE TERMS AND CONDITIONS ONLY APPLY IF YOU HAVE PURCHASED THE CATI SOFTWARE DIRECTLY FROM MOD:US SYSTEMS LIMITED TRADING AS 'CATI'

BETWEEN:

- (1) **The Client; and**
- (2) **Mod:us Systems Limited (trading as, and hereinafter referred to as, 'CATI').**

BACKGROUND

Please refer to the defined terms set out within clause 1 below.

The Client and CATI have entered into contract on the terms and conditions below for the sale and purchase of the CATI Software (the Agreement).

IN CONSIDERATION OF the matters described above and of the mutual benefits and obligations set forth in this Agreement the receipt and sufficiency of which consideration is hereby acknowledge, the Client and CATI (individually the "**Party**" and collectively the "**Parties**" to this Agreement) agree as follows:

1. Definitions

- 1.1 **Applicable Data Protection Laws:** means: (a) to the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of personal data; and (b) to the extent the EU GDPR applies, the law of the European Union or any member state of the European Union to which the Supplier is subject, which relates to the protection of personal data.
- 1.2 **Authorised Users:** those employees, agents and independent contractors of the Client who are authorised by the Client to use the CATI Software, as further described in Supplemental Condition 2.3 below.
- 1.3 **CATI Software:** The CATI Software as a Service as described in the Proposal.
- 1.4 **CATI Commencement Date:** As stated in the Proposal.
- 1.5 **Charges:** As stated in the Proposal or as otherwise stated within the CATI Software from time to time.
- 1.6 **Confidential Information:** any information, however conveyed or presented, that relates to the business, affairs, operations, customers, processes, budgets, pricing policies, product information, strategies, developments, trade secrets, know-how, personnel and suppliers of the disclosing party, together with all information derived by the receiving party from any such information and any other information clearly designated by a party as being confidential to it (whether or not it is marked "confidential"), or

which ought reasonably be considered to be confidential.

- 1.7 **EU GDPR:** the General Data Protection Regulation ((EU) 2016/679).
- 1.8 **Legislation:** the laws of England and Wales and any other laws or regulations, regulatory policies, guidelines or industry codes which apply to the provision of the CATI Software.
- 1.9 **Proposal:** Where applicable, the document provided by CATI to the Client that sets out the technical specification, functionality and commercial terms relating to the CATI Software.
- 1.10 **UK GDPR:** The meaning given to it in the Data Protection Act 2018.
- 1.11 **Licence Subscription:** the subscription purchased by the Client as stated in the Proposal, which entitles Authorised Users to access and use the CATI Software, in accordance with the terms of this Agreement and, where applicable, the Proposal.
- 1.12 **Virus:** any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

2. Provision of CATI Software as a Service

- 2.1 The following terms and conditions shall apply to the provision of the CATI Software as set out in the Proposal.
- 2.2 The terms and conditions of the Proposal shall prevail in the event of any conflict or inconsistency arising between them and the terms and conditions of this Agreement.
- 2.3 The Client agrees that its subscription to the CATI Software is a non-exclusive, non-transferable right, without the right to grant sublicences, to permit the Authorised Users to use the CATI Software for the period stated within the Proposal only, solely for the Client's internal business operations.
- 2.4 Where the Client wishes to purchase additional Licence Subscriptions in addition to those

originally agreed in the Proposal, any such increase in Licence Subscriptions shall be subject to the prior written consent of CATI and may result in an increase in the Charges payable by the Client for use of the CATI Software.

- 2.5 CATI warrants that the CATI Software will be performed substantially in accordance with the Proposal and the terms and conditions set out within this Agreement, and with reasonable skill and care.
- 2.6 CATI's warranty in clause 2.5 above shall not apply to the extent of any non-conformance which is caused by use of the CATI Software contrary to CATI's instructions, or modification or alteration of the CATI Software by any party other than CATI or CATI's duly authorised contractors or agents. If the CATI Software does not conform with the foregoing warranty, CATI will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Client with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes CATI's sole and exclusive remedy for any breach of the warranty set out in clause 2.5.
- 2.7 CATI does not warrant that:
- 2.7.1.1 Client's use of CATI Software will be uninterrupted or error-free; or
 - 2.7.1.2 that the CATI Software and/or the information obtained by the Client through the CATI Software will meet the Client's requirements; or
 - 2.7.1.3 the CATI Software will be free from Vulnerabilities or Viruses.
- 2.8 CATI shall have no responsibility or liability for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Client acknowledges that the CATI Software may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

3. Duration of the provision of the CATI Software as a Service

- 3.1 The provision of the CATI Software shall commence on the date(s) specified in the Proposal, and shall continue for the duration stated in the Proposal, or in the absence of a duration being stated in the Proposal, a default period of 12 months ('the Initial Term').
- 3.2 After expiry of the Initial Term, the provision of the CATI Software shall continue on a rolling basis terminable by either party on 90 days written notice.

4. Modification of Agreement

- 4.1 Any amendment or modification of this Agreement and/or the Proposal, or any additional obligation assumed by either Party in connection

with this Agreement and/or the Proposal, will only be binding if evidenced in writing, and either:

- 4.1.1 signed by each party; or
- 4.1.2 in relation to any online purchases made by a Client in relation to the CATI Software, where an automated receipt has been issued or otherwise made available to the Client by CATI.

5. Payment

- 5.1 The Client shall pay to CATI the Charges accordance with the following requirements:
- 5.1.1 Where the Client has been issued by CATI with an invoice for the use of the CATI Software, the invoice will be due for payment immediately with payment to be made by electronic bank transfer to the bank account stated on the invoice;
 - 5.1.2 Where the Client has agreed an annual payment plan with CATI for the use of the CATI Software, payment shall be made by the Client in accordance with the requirements stated within the Proposal or by default by 1/12th of the annual Charges being paid in monthly direct debit payments (and Client agrees to provide a valid direct debit mandate in relation to the same), with each monthly payment to be taken on the 1st day of the month to which the monthly payment relates; or
 - 5.1.3 Where the Client makes any online purchases of or in relation to the CATI Software, such payments must be made in advance by credit or debit card via our third-party payment platform provider. Where Client makes online purchases by this method, the Client's credit or debit card details will be processed by CATI's third-party payment platform provider and in accordance with their terms of use made available at the time of the purchase and in accordance with the Payment Card Industry Data Security Standard (PCI DSS) when handling your credit card data.
- 5.2 All sums payable are exclusive of VAT or any other applicable tax or duty payable upon such sums, which will be added if appropriate at the rate prevailing at the relevant tax point.
- 5.3 If the Client fails to pay any sum due in respect of the Charges, CATI will be entitled forthwith to suspend provision of the Services until such time as all outstanding payments have been made and without prejudice to any other rights or remedies CATI may have under this Agreement.
- 5.4 During the period of any suspension pursuant to Clause 5.3, the Charges will continue to accrue and be due to CATI as if the Services had not been suspended.
- 5.5 If the cost to CATI in providing the Services, increases:

5.5.1 in order to comply with any Legislation or part of any Legislation enacted or coming into force after the Effective Date or with any change to existing Legislation including, but not limited to, any changes in laws, regulations and administrative decisions applicable to the Services or changes of taxes imposed which relate to the provision of the Services; or

5.5.2 as a result of any change in site procedures, policies and regulations in respect of the Relevant Premises,

CATI shall have the right to adjust the Charges to reflect such increased cost. The Parties shall use reasonable endeavours to minimise, to the extent practicable and permissible, any such increase.

6. Penalties for Late Payment

CATI reserves the right to charge statutory interest on any late payments.

7. Client Data and Uploads

7.1 The onus rests with the Client to ensure that the correct Client data is provided and uploaded to the CATI Software.

7.2 CATI does not accept any liability for errors and omissions by the Client when uploading Client data to the CATI Software.

7.3 The Client and Authorised Users shall be responsible for all content uploaded to the CATI Software, which shall comply with any terms of use and content standards notified by CATI from time to time.

8. Limitation of Liability

8.1 The following provisions set out the Parties entire liability (including any liability for the acts or omissions of their respective employees, agents or sub-contractors) to each other in respect of:

8.1.1 any breach of their respective obligations under this Agreement; and

8.1.2 any representation, statement or tortious act or omission, including negligence, or otherwise arising under or in connection with this Agreement.

8.2 CATI's liability shall be restricted to direct damages only and CATI's liability shall be limited to (i) One million pounds (£1,000,000.00) or (ii) an amount equal to the annual Charges paid by the Client for the CATI Software, whichever amount is lower.

8.3 Under no circumstances will CATI be liable for any indirect, consequential or unforeseeable damage or loss arising from this Agreement.

8.4 CATI shall not be held liable under any circumstances for any damage or loss sustained on account of the Client's failure to perform one of its obligations or the improper use of the Software.

8.5 In any event, the Client shall be barred from bringing an action for damages under this Agreement twelve (12) months after the damage or loss first occurs.

8.6 Each Party acknowledges that it considers the provisions of Clause 8 to be reasonable, taking account of the other terms of this Agreement and its ability to insure against the losses which might arise from a breach of this Agreement.

8.7 The provisions of this Clause 8 shall survive the expiry or termination of this Agreement.

9. Insurance

9.1 CATI will maintain in force, at its own cost, insurances in accordance with Legislation and such insurances as it deems appropriate and adequate, having regard to its obligations and liabilities under this Agreement.

9.2 The Client will maintain in force, at its own cost, insurances in accordance with Legislation and such insurances as it deems appropriate and adequate, having regard to its obligations and liabilities under this Agreement.

9.3 Each Party shall provide evidence that the insurances required by Clause 9 are in place, whenever reasonably requested in writing to do so by the other parties hereto.

10. Force Majeure

10.1 CATI shall not be liable for any failure or delay in fulfilling the terms and conditions stated within the this Agreement and/or the Proposal due to fire, strike, war, civil unrest, terrorist action, governments' regulations, act of nature or other causes which is unavoidable and/or beyond its reasonable control.

10.2 This provision shall not be construed as relieving either party from its obligation to pay any sum due to the other party.

10.3 For the avoidance of doubt, the list of force majeure events stated within the above clause 10.2 is not exhaustive.

11. Assignment

11.1 CATI may assign, novate, subcontract or otherwise transfer its rights and obligations under this Agreement and/or the Proposal, and the Client hereby consents to the same.

11.2 The Client may not assign, novate, or otherwise transfer its rights and/or obligations under this Agreement and/or the Proposal without the prior written consent of CATI.

12. Ownership of Intellectual Property

12.1 Client agrees that all intellectual property and related material that is developed or produced in relation to the CATI Software, either under the Proposal, this Agreement, or otherwise, shall be owned by CATI, its licensors or successors in title.

12.2 Title, copyright, intellectual property rights and distribution rights of the Intellectual Property

remain with CATI, its licensors or successors in title.

12.3 The Client will own and retain all rights to their data.

13. Restrictions on Use of CATI Software

13.1 The Client shall not:

13.1.1 except as may be allowed by any Legislation which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under this agreement:

13.1.1.1 attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the CATI Software in any form or media or by any means; or

13.1.1.2 attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the CATI Software; or

13.1.1.3 access all or any part of the CATI Software in order to build a product or service which competes with the CATI Software; or

13.1.1.4 use the CATI Software to provide services to third parties; or

13.1.1.5 license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the CATI Software available to any third party except the Authorised Users; or

13.1.1.6 attempt to obtain, or assist third parties in obtaining, access to the CATI Software, other than as permitted under the terms of this Agreement and/or the Proposal; or

13.1.1.7 introduce or permit the introduction of, any Virus into the Client's network and information systems.

13.2 The Client shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the CATI Software and, in the event of any such unauthorised access or use, promptly notify CATI.

13.3 Unless expressly agreed otherwise, the rights provided under this Agreement and the Proposal are granted to the Client only, and shall not be considered granted to any subsidiary or holding company of the Client.

14. Data Protection

14.1 The parties agree that they will comply with all applicable requirements of Applicable Data Protection Laws.

14.2 The Client hereby agrees that:

14.2.1 prior to it transferring or uploading any Personal Data (within the meaning of Applicable Data Protection Laws) to the

CATI Software, it will notify CATI in advance, in order that the parties are able to agree a data sharing agreement that ensures that any such Personal Data that is transferred or uploaded to the CATI Software will be protected in accordance with Applicable Data Protection Laws; and

14.2.2 in the event that the Client transfers or uploads any Personal Data (within the meaning of Applicable Data Protection Laws) to the CATI Software, without having first notified CATI, or having agreed the terms of a data sharing agreement with CATI, Client will as a minimum have obtained the consent of all Data Subjects (within the meaning of Applicable Data Protection Laws) to allow for such Personal Data to be controlled and/or processed (as the case may be) by CATI, and any CATI's subcontractors (including hosting providers) where applicable.

15. Confidentiality

15.1 Confidential information refers to any data or information relating to the Client, which would reasonably be considered private or proprietary to the Client and that is not generally known and where the release of the Confidential Information could reasonably be expected to cause harm to the Client.

15.2 CATI agrees that they will not disclose, divulge, reveal, report or use, for any purpose, any Confidential Information which CATI has obtained, except as authorised by the Client or as required by law. The obligation of confidentiality will apply during the term of this Agreement.

15.3 All written and oral information and material disclosed or provided by the Client to CATI under this Agreement is Confidential Information regardless of whether it was provided before or after the date of this Agreement.

15.4 The provisions of this Clause shall survive the expire or termination of this Agreement.

16. Termination

16.1 Without prejudice to any or rights or remedies that the Parties may have under this Agreement or at law, either Party may terminate this Agreement forthwith:

16.1.1 the other Party is insolvent (within the meaning of the Insolvency Act 1986); or

16.1.2 the other Party is in material breach of any of its obligations under this Agreement and either the breach is not capable of remedy or it is capable of remedy but has not been remedied within fourteen (14) days of a notice from the non-defaulting Party requiring the breached to be remedied.

16.2 Notwithstanding the provisions of Clause 16.1 above, CATI may terminate this Agreement forthwith if the Client fails to pay any amount due under this Agreement by its final date for payment and the amount remains outstanding not less than seven (7) days after being notified by CATI in writing to make such payment.

16.3 On termination of this Agreement for any reason:

16.3.1 all licences granted under this agreement shall immediately terminate, and unless expressly agreed by CATI, the Client shall immediately cease all use of the CATI Software;

16.3.2 the Client shall return and make no further use of any equipment, property, and other items (and all copies of them) belonging to CATI;

16.3.3 CATI may destroy or otherwise dispose of any of the Client Data in its possession unless CATI receives, no later than 3 years after the effective date of the termination of this Agreement, a written request for the delivery to the Client of the then most recent back-up of the Client Data. The Supplier shall use reasonable commercial endeavours to deliver the back-up to the Client within 30 days of its receipt of such a written request, provided that the Client has, at that time, paid all Charges outstanding at and resulting from termination (whether or not due at the date of termination). The Client shall pay all reasonable expenses incurred by CATI in returning or disposing of Client Data; and

16.3.4 any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination shall not be affected or prejudiced.

17. Dispute Resolution

17.1 All disputes between the Parties arising out of or relating to this Agreement will be referred within seven (7) days of the dispute arising to the Client's Representative and CATI's Representative. Both representatives will take such reasonable steps to resolve the dispute and they consider appropriate.

17.2 If the dispute cannot be resolved by the above representatives within fourteen (14) days of notification of the dispute, the dispute will be referred to the Client's Director of Estate (or Similar) and the CATI's relevant Managing Director.

18. No Partnership

Nothing stated in this Agreement or in the Proposal will create or be deemed to create, a partnership or joint venture or relationship of employer and employee or principal and agent between the parties and no employee of CATI will be deemed to be or have become an employee of the Client.

19. Severability

In the event that any of the provisions of this Agreement are held to be invalid or unenforceable in whole or in part, all other provisions will nevertheless continue to be valid and enforceable with the invalid or unenforceable parts severed from the remainder of this Agreement.

20. Notice

All notice, requests, demands or other communications required or permitted by the terms of this Agreement will be given in writing.

21. Third Party Rights

The Parties do not intend that any term of this Agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person other than the Parties.

22. Governing Law and Jurisdiction

22.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and interpreted in accordance with the laws of England.

22.2 The Parties irrevocably agree that the courts of England and Wales have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with this Variation Agreement or its subject matter or formation (including non-contractual disputes or claims).

23. Title / Headings

Headings are inserted for the convenience of the Parties only and are not to be considered when interpreting this Agreement.