

TERMS AND CONDITIONS OF SALE (ed. 09/2016)

**Hermitage Distribution Ltd,
doing business as “Hermitage Solutions (UK)”**

1. Terms and Conditions

1.1 The terms and conditions ("**Terms and Conditions**") set out below govern all of the supply of Products and Services from Hermitage Distribution Limited (Company number: 9490604), doing business as "Hermitage Solutions (UK)" ("**Hermitage Solutions (UK)**") to the reseller or the customer (as the case may be) as specified in the Order Confirmation (as defined below) ("**you**", "**your**"). They will replace all earlier Hermitage Solutions (UK) Ltd terms and conditions, and any conditions contained in any document used by you and purporting to have contractual effect. Your acceptance of any Products from Hermitage Solutions (UK) indicates your acceptance of these Terms and Conditions.

1.2 Definitions

In these conditions, "**Software**" includes all relevant documentation, manuals, printed and written matter as supplied to you from time to time; "**Supplier(s)**" means Hermitage Solutions (UK)'s suppliers; "**Order Confirmation**" means Hermitage Solutions (UK)'s confirmation of your order in respect of the Products; "**Products**" means computer hardware, peripherals, accessories, Software and other goods or services ("**Services**") of any kind which are supplied by Hermitage Solutions (UK).

1.3 Your terms and conditions are not acknowledged even if Hermitage Solutions (UK) has not expressly objected to these. By placing an order at Hermitage Solutions (UK) for any product or service you expressly accept these Terms and Conditions and are waiving your right to rely on any other terms or conditions (including, for the avoidance of doubt, your standard terms and conditions). Any deviations, supplements and / or additional agreements to these Terms and Conditions always require an express written agreement with Hermitage Solutions (UK) to become effective. Any other conditions not included in these Terms and Conditions are only binding if Hermitage Solutions (UK) has acknowledged them in writing, in which case Hermitage Solutions (UK)'s Terms and Conditions apply to complement such conditions and if there are any inconsistencies between such conditions and these Terms and Conditions, then these Terms and Conditions shall prevail to the extent of such inconsistencies.

1.4 All orders, contracts and any specific assurances from Hermitage

Solutions (UK) require written confirmation by Hermitage Solutions (UK). Also, the waiver of the written form can only be made under a written agreement and no failure or delay by Hermitage Solutions (UK) to exercise any right or remedy provided under these Terms and Conditions or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

2. Prices and Quotations

2.1 The price of the Products shall be the price set out in the Order Confirmation.

2.2 Prices and pricelists may be amended by Hermitage Solutions (UK) without notice to you prior to Hermitage Solutions (UK) sending you the Order Confirmation. After Hermitage Solutions (UK) sends you the Order Confirmation the provisions of paragraph 2.6 below shall apply.

2.3 The only prices binding on Hermitage Solutions (UK) and you are the prices displayed in the Order Confirmation for each order by you.

2.4 Prices are exclusive of VAT or other applicable sales taxes, and you shall, on receipt of a valid VAT / sales tax invoice from Hermitage Solutions (UK), pay to Hermitage Solutions (UK) such additional amounts in respect of VAT / sales tax as are chargeable on the supply of the Products.

2.5 A commercial packaging of the Products supplied by Hermitage Solutions (UK) to you is included in the prices set out in the Order Confirmation. Other ancillary services or costs, including (without limitation) in relation to freight, toll, insurance, environmental, handling and transportation charges will be invoiced to you separately.

2.6 Hermitage Solutions (UK) reserves the right to increase the price from that set out in the Order Confirmation at its discretion if, after confirming the order, cost increases occur, including (without limitation) as a result of agreed changes in the specifications between Hermitage Solutions (UK) and you, or changes in any taxes, duties or levies charged on or in relation to price increases by Suppliers or exchange rate fluctuations.

3. Contract of Sale

3.1 Any information provided by Hermitage Solutions (UK) to you or any representative of you from time to time in promotional materials and / or on-line shall be construed at law as an invitation to treat only, and shall be non-binding on Hermitage Solutions (UK). Such information may be valid only for a limited time. In no way shall such information be construed as an offer to conclude a contract of sale / purchase agreement.

3.2 A contract is only concluded with a written – i.e. by letter or e-mail - Order Confirmation sent by Hermitage Solutions (UK) to you.

3.3 Content and scope of Products to be delivered by Hermitage Solutions (UK) are determined in the Order Confirmation sent to you by Hermitage Solutions (UK). Hermitage Solutions (UK) is not obliged to provide any installation, configuration and data back-up services unless the rendering of such services is agreed in writing between Hermitage Solutions (UK) and you.

3.4 Hermitage Solutions UK or its Suppliers reserve the right to change the Products (including, without limitation, the description of the Products), at its/their discretion, especially in the course of product improvements / developments, provided that this does not detrimentally affect the performance of the Products as agreed between Hermitage Solutions (UK) and you.

4. Payment

4.1 Hermitage Solutions (UK) may invoice you for the Products (including, without limitation and for the avoidance of doubt, for any Software) at any time upon or after sending you the Order Confirmation.

4.2 Unless Hermitage Solutions (UK) has agreed to extend credit to you, you must pay Hermitage Solutions (UK) in cash, by bank transfer into Hermitage Solutions (UK)'s bank account as Hermitage Solutions (UK) will notify to you in writing (including, without limitation, by email) or by credit card, as soon as reasonably practicable after Hermitage Solutions (UK) has sent you the Order Confirmation and, in any event, in advance of the Products being delivered to you.

4.3 Where Hermitage Solutions (UK) has agreed in writing to extend credit to you, you must pay in full within 30 days of delivery of the Products to you. Your payment is made only when funds have fully cleared through the banking system into Hermitage

Solutions (UK)'s bank account.

- 4.4 You agree to pay for the Products in full and cleared funds without deduction or set-off and to pay VAT pursuant to paragraph 2.4 and to pay any other government duties, levies and/or taxes in respect of the Products.
- 4.5 If payment is not made in full by the due date pursuant to either paragraph 4.2 and/or paragraph 4.3, Hermitage Solutions (UK) is entitled to charge you interest on the unpaid overdue balance at the rate of 3% per annum above the current overdraft rate charged by Hermitage Solutions (UK)'s bankers, compounding monthly on the unpaid balance owing on the first day of each month until payment in full is received by Hermitage Solutions (UK), and Hermitage Solutions (UK) may charge you costs incurred (including collection costs and legal costs on a solicitor-client basis) and suspend delivery of further Products or performance of further services until the account is paid. Hermitage Solutions (UK)'s right to claim further damages remains unaffected by this paragraph.
- 4.6 Hermitage Solutions (UK) is entitled to offset payments against the oldest debt first, even if any terms and conditions that you may have in place from time to time state otherwise. In case costs are already incurred due to being in default and interest on late payments apply, Hermitage Solutions (UK) is entitled to offset payments first against such cost, followed by interest incurred and only last against the principal debt.
- 4.7 Subject to the remainder of this paragraph 4.7, you are only entitled to offset your claims against Hermitage Solutions (UK)'s liabilities if your claims against Hermitage Solutions (UK) are undisputed or recognised by a court of competent jurisdiction. If any Product that you have ordered is faulty, and Hermitage Solutions (UK) agree in writing that there is such a fault, then you may withhold payment in respect of the invoice in relation to that particular Product only, and only to the extent that such a fault remains unresolved and/or unremedied by Hermitage Solutions (UK).
- 4.8 Hermitage Solutions (UK) has sole discretion to determine the amount of credit it will extend to you at any time.
- 4.9 Notwithstanding paragraphs 4.2 and 4.3 above, all payments shall immediately become due by you to Hermitage Solutions (UK) if Hermitage Solutions (UK) reasonably

believes that the information which you have given Hermitage Solutions (UK) in your application for credit is incorrect or no longer correct and you have failed to give Hermitage Solutions (UK) correct information satisfactory to Hermitage Solutions (UK) within 5 days of Hermitage Solutions (UK)'s request, if you become subject to any of the events listed in paragraph 12.2 or if you fail to comply with any of the provisions of these Terms and Conditions.

5. Project Specific Provisions

- 5.1 Subject to approval by the relevant Supplier(s), Hermitage Solutions (UK) may from time to time offer special quotes and/or prices to you for a specific project with you, with you (where you are a reseller) in turn then agreeing to supply any Products under the project to named end customers (this is subject to the Supplier clearly identifying the scope of the project from the outset and clearly naming all end customers (or naming you as the end customer, where you are a customer and not a reseller)). Any such discounted prices will be set out in the Order Confirmation and, for the avoidance of doubt, shall be subject to the terms set out in paragraph 2.
- 5.2 You undertake to (a) comply with all terms in regards to the specific project (including, without limitation, these Terms and Conditions and the Order Confirmation) and, in particular, keep all related end customer documents such as delivery notes and invoices available for a minimum period of 12 months after receipt of such information from the end customer (or keep such information about yourself for a minimum period of 12 months where you are the end customer) and to submit these on request of Hermitage Solutions (UK) and/or the Supplier to Hermitage Solutions (UK) and/or the Supplier (as the case may be), (b) (where you are a reseller) sell only to the authorised end customer, as provided by the Supplier at the start of the project, and (c) not to exceed the maximum retail price agreed for the Products in relation to the specific project.
- 5.3 Where approval from the Supplier has not been or cannot be obtained or where you breach any terms and conditions that the Supplier has in place from time to time, Hermitage Solutions (UK) has the right, at its sole discretion and without prejudice to its right to further claims, to charge you for the difference between the special price

confirmed for the specific project and the regular purchase price of the Products invoiced.

6. Delivery

- 6.1 Hermitage Solutions (UK) will use reasonable endeavours to ensure that delivery of Products and performance of Services is on time, however, delivery dates and deadlines are always subject to change and are given as guidelines only, without being binding on Hermitage Solutions (UK).
- 6.2 Partial deliveries of Products by Hermitage Solutions (UK) are allowed and can be invoiced separately to you.
- 6.3 For the avoidance of doubt, time shall not be of the essence in relation to any estimated delivery dates given by Hermitage Solutions (UK) to you.
- 6.4 Delivery and performance dates shall be reasonably extended for the benefit of Hermitage Solutions (UK) in case of disturbances due to force majeure and other reasons beyond the reasonable control of Hermitage Solutions (UK), including (without limitation) disruptions in the delivery by Suppliers, strikes, lockouts, operational disruptions or inclement weather. Hermitage Solutions (UK) reserves the right to and you are entitled to withdraw from the contract if delivery delay caused by such events lasts for longer than six weeks.
- 6.5 Hermitage Solutions (UK) will not be liable to you for any loss or damage arising in any way from any delay in delivery or performance.
- 6.6 You are responsible for insurance and risk in the Products from the time they are handed to the carrier to when they are received by you from the carrier, or from when they are collected by you or your agent and/or other authorised representative from Hermitage Solutions (UK)'s premises (as notified to you in writing prior to your collection of the Products). For the avoidance of doubt, where the Products are collected by you from Hermitage Solutions (UK)'s premises, delivery is deemed to take place from your collection of the Products, and if the Products are being delivered to you by a carrier then delivery shall take place from when the Products are handed by Hermitage Solutions (UK) to the carrier for transportation to you at a location as agreed in writing between Hermitage Solutions (UK) and you prior to delivery.
- 6.7 You agree to pay and/or reimburse (as the case may be) Hermitage

Solutions (UK) for all delivery costs.

6.8 Where you ask Hermitage Solutions (UK) to deliver goods directly to another person and that person takes possession of the goods for you as your agent and/or authorised representative, you are nevertheless still directly responsible to Hermitage Solutions (UK) under these Terms and Conditions.

6.9 The risk of damage or loss of the Product (other than Software) shall be transferred from Hermitage Solutions (UK) to you at the time the Product is handed over to the carrier in preparation for transportation of the Product to you.

6.10 The delivery of Software shall be deemed to have taken place upon Hermitage Solutions (UK) sending you a license key in order to download and/or use the Software (any Software will include the Suppliers' terms and conditions of use and you will be deemed to accept any such terms and conditions of use upon your use of the Software).

7. Retention of Title

7.1 Hermitage Solutions retains property, title and ownership to all Products supplied to you, whether in their original form or incorporated in or attached to another product, until receipt of full payment in cleared funds by Hermitage Solutions (UK) from you of the price for the Products and all related amounts owed, including (without limitation) future receivables and/or any amounts owed by you to Hermitage Solutions (UK) pursuant to paragraph 2.5.

7.2 (This paragraph 7.2 only applies where you are a reseller. For the avoidance of doubt, where you are an end customer, you will not be permitted to resell the Products). You may resell the Products in the ordinary course of business even if title to the Products has not passed to you. You must assign all future claims arising from the distribution and/or sale of such Products to Hermitage Solutions (UK) until full payment of all outstanding amounts for the relevant Products has been received from you by Hermitage Solutions (UK). You are authorised to collect any claim from the distribution and/or sale of any such Products even after assignment. Hermitage Solutions (UK)'s right to collect the claim itself remains unaffected. If any of the aforementioned is the case you are obliged to disclose to Hermitage Solutions (UK), at Hermitage

Solutions (UK)'s request, the names and addresses of your customers to which you sold the Products as well as the nature and scope of your existing claims against these customers. A copy of all related documents must be handed by you to Hermitage Solutions (UK) and you must also notify the purchasers of the assigned Products of Hermitage Solutions (UK)'s right to claim any outstanding amounts from such purchasers.

7.3 You must not pledge or transfer ownership of Products where title has not fully passed to you pursuant to paragraph 7.1. If you become subject to any of the events listed in paragraph 12.2, you will inform all relevant parties about Hermitage Solutions (UK)'s ownership in such Products and notify Hermitage Solutions (UK) immediately in writing.

7.4 Where Hermitage Solutions (UK) reasonably believes you are or will be in breach of any part of paragraphs 4 and/or 7 of these Terms and Conditions, Hermitage Solutions (UK) or Hermitage Solutions (UK)'s agent may without notice enter any premises under your control to remove any Products which are the property of Hermitage Solutions (UK), whether or not those Products are installed in or attached to any other goods, and without prejudice to any other of Hermitage Solutions (UK)'s rights. You shall indemnify Hermitage Solutions (UK) against all losses, costs and/or claims in respect of Hermitage Solutions (UK)'s exercise of Hermitage Solutions (UK)'s rights under this paragraph 7.

7.5 You are obliged to treat the Products for which title has not passed pursuant to paragraph 7.1 with all reasonable care, in particular you are obliged to insure them (with a reputable insurer) at your own expense against fire, water and theft at replacement value. Products delivered for testing and demonstration purposes shall remain the property of Hermitage Solutions (UK). You are obliged to handle the Products with proper care and store them in a manner to enable them to be identified and cross referenced to particular invoices provided to you by Hermitage Solutions (UK). You are allowed to use such Products only within the terms agreed.

7.6 Quotations, system analysis, project documents, drawings, samples, drafts and other documents of Hermitage Solutions (UK) provided to you before a contract is concluded, may not be copied, used by you nor otherwise disclosed to any third party.

8. Your Obligations and Responsibilities

8.1 It is your sole responsibility to ensure that you are clear as to the functionality, design and/or other features of the requested Products, and (where you are a reseller) it is your sole responsibility to meet any needs or requirements of your end customers in respect of the Products. For the avoidance of doubt (subject to paragraph 10.1) Hermitage Solutions (UK) shall have no liability in respect of any one or more of these matters.

8.2 You must check the Products (or, in the case of Software, test the relevant Software to ensure that it is working) immediately upon receipt for completeness, compliance with the delivery documents and defectiveness. If no written complaint within seven (7) days from the delivery date has been made by you, the Products are considered as irrevocably accepted by you, unless it concerns a defect which was not detectable at the time of first inspection by you.

8.3 If the delivered Products show visible damages or missing parts, then you must record them on the notice of receipt of the transport company in writing upon delivery. The note must clearly state the damage or the shortfall.

8.4 In case Services have to be provided within your business environment and/or your premises, you must ensure that such services can be provided properly (including, without limitation, that the relevant area is clear and safe for any installations required in respect of the Services). If this is not the case and for this reason the Services cannot be provided as expected, you shall bear sole responsibility. You will support Hermitage Solutions (UK) by ensuring, using your best endeavours and at your own expense, that the agreed Services can be provided by Hermitage Solutions (UK) and provide Hermitage Solutions (UK) with all information and documents necessary for the provision of the relevant Services. Should you not comply with your obligations under this paragraph 8.4, Hermitage Solutions (UK) is not obliged to perform the relevant Services.

8.5 If you are in default of any of your obligations under these Terms and Conditions or you provide any relevant information or carry out any action as required under these Terms and Conditions, then you are obliged to indemnify Hermitage Solutions (UK) for any costs, losses and/or expenses

incurred by Hermitage Solutions (UK) due to any default, delay or omission on your part.

9. Warranties

9.1 Hermitage Solutions (UK) does not manufacture any of the Products and therefore, to the fullest extent permitted by law (and subject always to paragraph 10.1), all warranties, conditions and other terms in respect of quality, defects in design, workmanship, conformity with description and/or fitness for purpose are excluded and Hermitage Solutions (UK) makes no representations in respect of the same. Instead, Hermitage Solutions (UK) will use reasonable endeavours to pass on the benefit of any warranties of any Supplier in respect of the Products onto you, and you and your customers shall use any Software in accordance with the terms of any end user licence agreements that any Supplier may have in place from time to time.

9.2 Upon receipt of written notice from you as to defects in quality, workmanship or otherwise in respect of the Products, Hermitage Solutions (UK) shall use its reasonable endeavours to contact the Supplier(s) of the relevant Products and provide them with reasonable details of the relevant defect for them to respond to you directly. For the avoidance of doubt, Hermitage Solutions (UK) shall not be liable or responsible for any response (or failure to respond) on the part of any such Supplier.

9.3 Hermitage Solutions (UK)'s obligations under paragraph 9.2 do not apply where the relevant Products have been altered, modified and/or otherwise changed by you and / or a third party without the prior written consent of Hermitage Solutions (UK), where you have not used the Products in accordance with either Hermitage Solutions (UK)'s or the Supplier's instructions, where the issue with the Products is caused by fair wear and tear, where you have used parts and/or accessories with the Products that have not been approved by Hermitage Solutions (UK) and/or the Supplier, and/or where Hermitage Solutions (UK) has had to alter the Products pursuant to paragraph 3.4. In addition, Hermitage Solutions (UK)'s obligations do not apply to Software that is not used by you and / or a third party in the agreed system environment (as Hermitage Solutions (UK) may notify you in writing from time to time).

9.4 You undertake that you shall not bring any warranty claims against

Hermitage Solutions (UK) directly (as you acknowledge that Hermitage Solutions (UK) does not manufacture any of the Products) whether in relation to defects in the Products or otherwise.

9.5 You acknowledge that Hermitage Solutions (UK) has no control over the actions of the Supplier in relation to any defective Products; therefore, you undertake that you will not bring any claim against Hermitage Solutions (UK) for any failures or inaction on the part of any Supplier to repair and/or replace any such Products.

9.6 Furthermore, you acknowledge that in any case a defect is existent only when it is notified in detail immediately after discovery by you in writing to Hermitage Solutions (UK) and comprises a relevant and reproducible error. Any warranty by the Supplier is excluded for defects which are caused by:

- a) insufficient maintenance of the Products by you;
- b) failure to observe the operating or installation instructions in relation to Product;
- c) inappropriate use of the Products;
- d) use of non-approved parts and accessories;
- e) common wearing of any Product;
- f) improper handling or transportation of the any Product;
- g) modifications or repair attempts in relation to any Product; and / or
- h) external influences, in particular, force majeure (e.g. failure of the power supply or the air-conditioning, natural hazards) and other reasons for which neither Hermitage Solutions (UK) nor manufacturer / supplier are responsible for.

9.7 Where Hermitage Solutions (UK) and/or the Supplier replaces any faulty Product for you then you must, at your own cost, within 30 days after receipt of the replacement Product, send to Hermitage Solutions (UK) the faulty Product. In the case of Software, copies of Software may not be retained by you. Upon Hermitage Solutions (UK) and/or the Supplier receiving the faulty Product, if Hermitage Solutions (UK) and/or the Supplier (as the case may be) deem the Product not to be faulty, then Hermitage Solutions (UK) will be entitled to charge you for the replacement Products.

9.8 If you have made any warranty claims and no defect existed, you are liable for its claim and has to reimburse Hermitage Solutions (UK) for any costs incurred (whether in relation to contacting the Supplier or otherwise). Additionally Hermitage Solutions (UK) can claim reimbursement of

cost incurred on such claims made by you where you have not provided any evidence of any such defect.

9.9 The assignment of any claims by you under this paragraph 9 is not permitted, unless Hermitage Solutions (UK) expressly approves such assignment in writing.

10. Liabilities

10.1 Nothing in these Terms and Conditions shall limit or exclude Hermitage Solutions (UK)'s liability for:

- a) death or personal injury caused by Hermitage Solutions (UK)'s negligence, or the negligence of any of Hermitage Solutions (UK)'s employees, agents or subcontractors (as applicable);
- b) fraud or fraudulent misrepresentation;
- c) breach of the terms implied by section 12 of the Sale of Goods Act 1979;
- d) defective products under the Consumer Protection Act 1987; or
- e) any other matter in respect of which it would be unlawful for Hermitage Solutions (UK) to exclude or restrict liability.

10.2 Subject to paragraph 10.1:

- a) Hermitage Solutions (UK) shall under no circumstances whatever be liable to you, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with these Terms and Conditions and/or the Order Confirmation; and
- b) Hermitage Solutions (UK)'s total liability to you in respect of all other losses arising under or in connection with these Terms and Conditions and/or the Order Confirmation, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price of the Products and/or labour costs incurred in respect of any Services.

11. Data Protection Act

11.1 Orders are processed within the Hermitage Solutions group of companies with the help of automatic data processing. You hereby warrant that you have all necessary consents in place in order to allow Hermitage Solutions (UK) to process any Personal Data (as defined in the Data Protection Act 1998, as amended or re-enacted from time to time) which Hermitage Solutions (UK) has obtained in the course of its business with you (including without limitation under these Terms and Conditions) and particularly in the context of

contractual relations that are necessary for the correct processing of orders (including, without limitation, names, telephone numbers, email addresses and other identifiers). You further agree that Hermitage Solutions (UK) is allowed to use the data obtained from you during the course of business with you for the business purposes of Hermitage Solutions (UK) within Hermitage Solutions group of companies and, whenever required in the ordinary course of business, to pass these on to the Suppliers of the Products.

11.2 Hermitage Solutions (UK) reserves the right to request and collect data about you from commercial credit reporting agencies or credit insurers to obtain information regarding your creditworthiness and to report back data - in case of non-contractual settlement, e.g. filing of court order for undisputed claims, issued enforcement order or enforcement actions. The data will only be shared with members of the Hermitage Solutions group of companies if this is necessary to protect the legitimate interests of Hermitage Solutions (UK) and if your interests are not compromised. In any case Hermitage Solutions (UK) will comply with the relevant data protection laws.

11.3 For the avoidance of doubt and notwithstanding any other provisions contained within this paragraph 11, where there are inconsistencies between the contents of this paragraph 11 and the Data Protection Act 1998 (as amended and/or re-enacted from time to time) or any other related or relevant data protection legislation, then the provisions under the Data Protection Act 1998 (as amended and/or re-enacted from time to time) or any relevant data protection regulations shall always prevail to the extent of such inconsistencies.

12. Termination

12.1 If you become subject to any of the events listed in paragraph 12.2, Hermitage Solutions (UK) may terminate these Terms and Conditions and any contract Hermitage Solutions (UK) has in place with you from time to time with immediate effect by giving written notice to you.

12.2 For the purposes of paragraph 12.1, the relevant events are:

a) you suspend, or threaten to suspend, payment of your debts, or are unable to pay your debts as they fall due or admit inability to pay your debts, or (if you are a company or limited liability

partnership) are deemed unable to pay your debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) are deemed either unable to pay your debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) you have any partner to whom any of the foregoing apply;

b) you commence negotiations with all or any class of your creditors with a view to rescheduling any of your debts, or make a proposal for or enter into any compromise or arrangement with your creditors;

c) (if you are a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with your winding up;

d) (if you are a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over you;

e) (if you are a company) the holder of a qualifying floating charge over your assets has become entitled to appoint or has appointed an administrative receiver;

f) a person becomes entitled to appoint a receiver over your assets or a receiver is appointed over your assets;

g) (if you are an individual) you are the subject of a bankruptcy petition or order;

h) a creditor or encumbrancer of you attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of your assets and such attachment or process is not discharged within 14 days;

i) any event occurs, or proceeding is taken, with respect to you in any jurisdiction to which you are subject that has an effect equivalent or similar to any of the events mentioned in paragraph 12.2a) to paragraph 12.2j) (inclusive);

k) you suspend, threaten to suspend, cease or threaten to cease to carry on all or a substantial part of your business;

l) your financial position deteriorates to such an extent that in Hermitage Solutions (UK)'s opinion your capability to adequately fulfil your obligations under these Terms and Conditions and/or any contract that is in place between you and Hermitage Solutions (UK) from time to time has been placed in jeopardy; and

m) (being an individual) you die or, by reason of illness or incapacity (whether mental or physical), are incapable of managing your own affairs or becomes a patient under any mental health legislation.

12.3 Without limiting Hermitage Solutions (UK)'s other rights or remedies, Hermitage Solutions (UK) may suspend provision of the Products (whether pursuant to these Terms and Conditions or otherwise) if you become subject to any of the events listed in paragraph 12.2a) to paragraph 12.2l), or Hermitage Solutions (UK) reasonably believes that you are about to become subject to any of them, or you fail to pay any amount due under these Terms and Conditions on the due date for payment.

12.4 Notwithstanding any other provisions in this paragraph 12, Hermitage Solutions (UK) may terminate these Terms and Conditions and any other contractual arrangements Hermitage Solutions (UK) may have in place with you from time to time with you without cause by giving you one week's notice (whether oral or in writing).

12.5 On termination of these Terms and Conditions for any reason you shall immediately pay Hermitage Solutions (UK) all of Hermitage Solutions (UK)'s outstanding unpaid invoices and interest.

12.6 Termination of these Terms and Conditions, however arising, shall not affect any of the parties' rights, remedies, obligations and liabilities that have accrued as at termination.

12.7 Paragraphs which expressly or by implication survive termination of these Terms and Conditions (if any) shall continue in full force and effect.

13. Intellectual Property

13.1 All intellectual property in relation to the Products shall remain the property of Hermitage Solutions (UK) or any Supplier entitled to it (for the avoidance of doubt, in practice, virtually all the intellectual property rights in respect of the Products shall be owned by the Supplier), and neither Hermitage Solutions (UK) nor any of Hermitage Solutions (UK)'s Suppliers transfer any right, title or interest in any intellectual property to you.

13.2 You are not permitted to alter any Software, copy it, adapt it for use on non-compatible hardware or edit it in any other way, and you shall indemnify Hermitage Solutions (UK) against any costs, expenses and/or other losses incurred in respect of any breach by you of this paragraph

13.2 and/or of any other provisions in this paragraph 13 generally.

13.3 The use of each Product (whether software or hardware) is subject to the relevant licence terms and conditions of the relevant Supplier. You

- undertake to comply with those licence terms and conditions and (where you are a reseller) to pass on a corresponding obligation to your customers. You must (where you are a reseller) report any breaches to Hermitage Solutions (UK) by a customer of any such obligations without delay. In addition, you undertake to comply with the general terms and conditions of each relevant Supplier, especially its marketing and sales obligations with special attention to the valid national and international export and compliance regulations including (without limitation) anti-corruption provisions.
- 13.4 You agree to dispatch the Products only under the trade marks under which they are supplied by Hermitage Solutions (UK), and under no circumstances shall apply any other trademarks to any Product which is not a trade mark supplied by Hermitage Solutions (UK). Any notes on the Products in regards to copyright, trademark or other intellectual property rights may not be removed, altered, concealed or made otherwise invisible by you. You are authorised only with prior written consent of Hermitage Solutions (UK) to translate supplied documentations for any commercial purpose.
- 13.5 You will inform Hermitage Solutions (UK) immediately if a third party raises any claims of infringement of any intellectual property rights (whether in relation to infringement of trade marks, copyright or otherwise) against you as a result of the use and/or sale of the Products and/or Services delivered. You will not acknowledge the alleged infringement of intellectual property rights and shall leave any dispute, including any extrajudicial settlement either to Hermitage Solutions (UK) or conduct any action in consultation with Hermitage Solutions (UK) or Hermitage Solutions (UK)'s Suppliers.
- 14. Export / Import**
- 14.1 All contractual Products and technical expertise are delivered by Hermitage Solutions (UK) in compliance with the currently valid Export Control Act 2002 and/or EC Dual- Use Regulation and the US export regulations, and shall be used and remain in the country agreed with you according to your sales order information. If you intend to re-export any Products, you must comply with US, European and UK export regulations.
- 14.2 If you intend to export products supplied by Hermitage Solutions (UK), you are required to enquire about the rules and regulations currently in force (including without limitation the Department for Business, Innovation and Skills, the US Department of Commerce and Office of Export Administration, Washington, DC 20230). Regardless of whether you indicate the final destination of the contractual Products supplied, it is your responsibility to obtain necessary approval of the relevant foreign trade authorities before exporting such Products. Hermitage Solutions (UK) has no obligation to provide any such information to you.
- 14.3 Any delivery of Products by you to a third party, with or without the knowledge of Hermitage Solutions (UK), requires the simultaneous transfer of the export license conditions. You are liable to the full extent of non-compliance with the relevant provisions and/or regulations.
- 14.4 Without prior administrative approval, you – and (where you are a reseller) your customers – are not allowed to deliver the supplied products directly or indirectly to any country subject to US embargo, or to natural or legal persons of these countries as well as to natural or legal persons on US, European or national ban lists (e.g.: "entity list", "Denied Persons List", "Designated Nationals and Blocked Persons SPECIFICALLY"). It is prohibited to supply Products to natural or legal persons who are in any way connected to the support, development, production or use of chemical, biological or nuclear weapons of mass destruction.
- 15. Purchase Tax / Import Turnover Tax**
- 15.1 If you have headquarters outside the United Kingdom, you must comply with the provisions of purchase tax and/or import turnover tax rules of the relevant Economic Area when purchasing the Products, in particular you must disclose the sales tax identification number as well as any other information necessary. You must indemnify Hermitage Solutions (UK) against any costs, expenses or other losses suffered or incurred by Hermitage Solutions (UK) pursuant to or as a result of your non-compliance with this paragraph 15.1.
- 16. General**
- 16.1 Hermitage Solutions (UK) reserves the right to alter these Terms and Conditions at its sole discretion from time to time by giving you written notice of the same.
- 16.2 You may not assign any rights or obligations under these Terms and Conditions.
- 16.3 If any provision or part-provision of these Terms and Conditions is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this paragraph shall not affect the validity and enforceability of the rest of these Terms and Conditions.
- 16.4 Any notice required or permitted to be given by either party to the other under these Terms and Conditions shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified, pursuant to this provision to the party giving the notice.
- 16.5 No waiver by Hermitage Solutions (UK) of any breach of these Terms and Conditions by you shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 16.6 These Terms and Conditions are governed by the laws of England and any dispute under it shall be subject to the exclusive jurisdiction of the courts of England. The Vienna UN Convention (UNCITRAL) on the International Sale of Goods is excluded.
- 16.7 No party shall have any rights to enforce the terms contained within these Terms and Conditions other than you or Hermitage Solutions (UK).