



Cistermiser

OUR WORLD IS WATER

SOFTWARE AS A SERVICE TERMS AND CONDITIONS ("the Terms and Conditions") BACKGROUND

- (A) Cistermiser provides a solution to customers for the measurement of water temperature on a remote access basis via a software platform called LinkThru for use as part of the customer's systems and procedures for the control of legionella bacteria in water.
- (B) The Customer wishes to purchase and use Cistermiser's LinkThru service in its business operations.
- (C) Cistermiser has agreed to provide and the Customer has agreed to take and pay for Cistermiser's LinkThru service subject to the terms and conditions of this agreement.

AGREED TERMS

1. INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply in this agreement:

Affiliates:	as regards each Party, its ultimate holding company and each of its ultimate holding company's other subsidiaries from time to time;
Applicable Law:	all laws, regulations, directives, statutes, subordinate legislation, common law and civil codes of any jurisdiction together with all codes of practice having force of law, statutory guidance, regulatory policy or guidance and industry codes of practice;
Authorised Users:	those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Services and the Documentation;
Business Day:	a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;
Cistermiser:	means Cistermiser Limited incorporated and registered in England and Wales with company number 01455630 whose registered address is at Unit 1 Woodley Park Estate, 59-69 Reading Road, Woodley, Reading, Berkshire, RG5 3AN;
Confidential Information:	as defined in Clause 10.1.1, subject to Clause 10.2;
Contract:	means together these Terms and Conditions and the Term Sheet;
Customer:	means the customer named in the Term Sheet;
Customer Data:	the data inputted into the information fields by the Customer, Authorised Users, or Cistermiser or Cistermiser's service provider on the Customer's behalf and the data collected from the Hardware;
Data Protection Law:	means the Data Protection Act 1998, the EU General Data Protection Regulation 2016/679 and any other applicable legislation in force from time to time which implements EU data protection directives and regulations (or replaces such directives and regulations) and



LinkThru

MONITORING TECHNOLOGY

all other applicable laws and regulations in any jurisdiction relating to the processing of personal data and privacy including, where applicable, the guidance and codes of practice issued by the Information Commissioner or any other regulator with responsibility for regulating the protection of data and data privacy in the UK;

Delivery Address:	means the address stated in the Term Sheet to which the Hardware will be delivered;
Delivery Date:	the date for delivery of the Hardware set out in the Term Sheet;
Documentation:	the document made available to the Customer by Cistermiser online via www.cistermiser.co.uk or such other web address notified by Cistermiser to the Customer from time to time which sets out a description of the Services and the user instructions for the Services including the Quick Start Guide;
Effective Date:	the date of this agreement;
Fees:	means together the Hardware Fee and the Subscription Fee payable by the Customer to Cistermiser;
Fee Payment Option:	means the option setting out the payment terms for the Fee as indicated on the Term Sheet;
Hardware:	means the sensor and transmittal devices that are used to measure the water temperature and to transmit the measured data via the Network Provider to provide the Services under this agreement as more particularly described in Schedule 1 in the quantity set out in the Term Sheet;
Hardware Fee:	means the fee for the purchase of the Hardware set out in the Term Sheet;
Hardware Specification:	means the specification set out in Schedule 1 describing the functionality of the Hardware;
Healthy Water:	means the water systems that conform to the HSE's Approved Code of Practice and guidance on regulations Legionnaires disease: the control of legionella bacteria in water systems (L8) dated 2013 as updated from time to time;
Network Provider:	SIGFOX or such other alternative network provider of the Services as appointed by Cistermiser;
Normal Business Hours:	8.30 am to 5.30 pm local UK time, each Business Day;
Quick Start Guide:	means the guide provided to the Customer which provides instructions for the Customer to follow on how to install the Hardware;
Services:	the subscription services provided by Cistermiser to the Customer under this agreement which uses the Hardware and third party software applications to provide measurement of water temperature on a remote basis and provide data to the Customer as more particularly described in the Services Specification;
Services Specification:	means the specification set out in Schedule 1 setting out the functionality of the Services;
Set Up Obligations:	means the actions and steps that the Customer needs to take in accordance with the Quick Start

	Guide to order to set up the Hardware to enable Cistermiser to deliver the Services and for the Customer to receive the Services;		and Cistermiser reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any material that breaches the provisions of this clause.
Subscription Fee:	means the monthly fee payable for use of the Services as set out in the Term Sheet;	2.3	The Customer shall not:
Support Services Policy:	Cistermiser's policy for providing support in relation to the Services as made available at www.cistermiser.co.uk or such other website address as may be notified to the Customer from time to time;	2.3.1	except as may be allowed by any Applicable Law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under this agreement:
Term:	means the period of this Agreement as set out on the Term Sheet;	(a)	attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of any software licensed as part of the Services in any form or media or by any means; or
Term Sheet:	means the contract terms to which these Terms and Conditions are attached which together form the Contract;	(b)	attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the any software licensed as part of the Services; or
Virus:	anything 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 (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;	2.3.2	access all or any part of the Services and Documentation in order to build a product or service which competes with the Services and/or the Documentation; or
Warranty Period:	means the period of 3 years from the Effective Date.	2.3.3	use the Services and/or Documentation to provide services to third parties; or
		2.3.4	subject to Clause 22.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party except the Authorised Users, or
		2.3.5	attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this Clause 2.
1.1	In this Agreement, unless otherwise specified, a reference to:	2.4	The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify Cistermiser.
1.1.1	the singular includes the plural and vice versa and any gender includes the others;	2.5	The rights provided under this Clause 2 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer.
1.1.2	a person includes natural persons, firms and companies;	3. HARDWARE	
1.1.3	Clause or Schedule is to a clause of, or Schedule to, this Agreement;	3.1	The Customer has agreed to purchase the quantity of Hardware set out in the Term Sheet.
1.1.4	this Agreement is to this agreement as varied from time to time;	3.2	Cistermiser shall deliver the Hardware to the Delivery Address on the Delivery Date. Delivery is completed when the Hardware arrives at the Delivery Address. The Delivery Date is approximate only and the time of delivery is not of the essence. Cistermiser shall not be liable for any delay in delivery of the Hardware that is caused by a Force Majeure Event or the Customer's failure to provide it with adequate delivery instructions.
1.1.5	legislation or Applicable Law is to that legislation or Applicable Law as amended, extended or re-enacted from time to time, including, as a result of the United Kingdom's withdrawal from the European Union by virtue of Article 50 of the Treaty of the European Union;	3.3	If the Customer fails to accept delivery of the Hardware, delivery shall be deemed to have been completed at 9am on the second Business Day after Cistermiser attempted to make delivery of the Hardware.
1.1.6	including, include, in particular or any similar terms shall be construed as illustrative only and shall not limit the sense of the words preceding those terms;	3.4	The risk in the Hardware shall pass to the Customer on completion of delivery.
1.1.7	months are calendar months ; and	3.5	Title to the Hardware shall not pass to the Customer until Cistermiser receives payment in full for the Hardware. Until title to the Hardware has passed to the Customer, the Customer shall store the Hardware in such a way that it remains readily identifiable as Cistermiser's property, not remove or deface or obscure any identifying mark on the Hardware, maintain the Hardware in satisfactory condition and keep it insured against all risks for its full price. In the event of termination of this agreement before title to the Hardware passes to the Customer, then without limiting any other right or remedy Cistermiser may have, Cistermiser may require the Customer to deliver up the Hardware and if it does not, Cistermiser may enter the premises of the Customer in order to recover them.
1.1.8	writing or written includes email but not faxes.	4. SERVICES	
1.2	An obligation of any Party to indemnify any person against a liability is to be construed as including an obligation to indemnify and hold harmless and keep that person indemnified on demand and in full from and against each liability incurred as a result of suffering, defending and settling a claim alleging that liability.	4.1	Cistermiser shall, during the Term, provide the Services and make available the Documentation to the Customer on and subject to the terms of this agreement subject to the Customer having carried out the Set-Up Obligations. In the event that the Set-Up Obligations are not carried out by the Customer then Cistermiser shall no liability to the Customer under the terms of this Agreement to provide the Services.
1.3	Headings are for convenience only and shall not affect the interpretation of this Agreement.	4.2	Cistermiser shall use commercially reasonable endeavours to provide at least a 95% availability of the Service, except for periods of maintenance which require the interruption of the Services as described below (" the Maintenance Events ") , Customer caused or third party caused outages or disruptions or outages or disruptions attributable in whole or in part to Force Majeure Events, none of which shall not count towards the availability measure set out above :
1.4	The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules.	4.2.1	planned maintenance which shall only be carried out outside Normal Business Days provided that Cistermiser may interrupt the Services to perform emergency maintenance during the daily window of 10.00pm to 2/00am UK time; and
1.5	If there is any conflict between the clauses and the Schedules, the clauses shall take precedence.	4.2.2	unscheduled maintenance performed outside Normal Business Hours, provided that Cistermiser has used reasonable endeavours to give the Customer at least 2 days advance notice; and
2. SERVICES SUBSCRIPTION		4.2.3	unavailability of the Service due to issues relating to the Network Provider.
2.1	Cistermiser hereby grants to the Customer a non-exclusive, non-transferable right, without the right to grant sub licences, to permit the Authorised Users to use the Services and the Documentation during the Term solely for the Customer's internal business operations.	4.3	Cistermiser will, as part of the Services and at no additional cost to the Customer, provide the Customer with Cistermiser's standard customer support services during Normal Business Hours in
2.2	The Customer shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that:		
2.2.1	is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;		
2.2.2	facilitates illegal activity;		
2.2.3	depicts sexually explicit images;		
2.2.4	promotes unlawful violence;		
2.2.5	is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or		
2.2.6	is otherwise illegal or causes damage or injury to any person or property;		

accordance with Cistermiser's Support Services Policy in effect at the time that the Services are provided. Cistermiser may amend the Support Services Policy in its sole and absolute discretion from time to time.

5. CUSTOMER DATA

5.1 The Customer shall own all right, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data. The Customer hereby grants to Cistermiser an irrevocable, perpetual, non-exclusive licence to store, process, modify and use the Customer Data for the purposes of providing the Services and further to use Customer Data that does not comprise personal data as defined in Data Protection Law on a strictly anonymised and aggregated basis for its own business purposes and, such licence to include the right to sub-licence to any third party performing any part of the Services for and on behalf of Cistermiser.

5.2 Cistermiser shall follow its archiving procedures for Customer Data as set out in its Back-Up Policy available at www.cistermiser.co.uk, as such document may be amended by Cistermiser in its sole discretion from time to time. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for Cistermiser to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by Cistermiser in accordance with the archiving procedure described in its Back-Up Policy. Cistermiser shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by Cistermiser to perform services related to Customer Data maintenance and back-up).

5.3 Cistermiser shall, in providing the Services, comply with its Privacy and Security Policy relating to the privacy and security of the Customer Data available at www.cistermiser.co.uk or such other website address as may be notified to the Customer from time to time, as such document may be amended from time to time by Cistermiser in its sole discretion.

5.4 To the extent that Cistermiser collects Personal Data (as defined in Data Protection Law), when performing its obligations under this agreement, the parties record their intention that the Cistermiser shall be the Data Controller of such Personal Data.

5.5 Both Cistermiser and the Customer hereby undertake to comply with their respective obligations under the Data Protection Law as Data Controllers of any such Personal Data.

5.6 The Customer shall ensure that the relevant third parties of such Personal Data have been informed of, and have given their consent to Cistermiser's collection, use and processing of such Personal Data including the transfer to and processing by, sub processors appointed by Cistermiser, as required by Data Protection Law.

5.7 Cistermiser shall be permitted to delete all such Personal Data held by it promptly on termination of this agreement.

6. CISTERMISER'S OBLIGATIONS

6.1 Cistermiser warrants that the Services will be performed substantially in accordance with the Services Specification provided that no obligation is assumed in relation to compliance with changes to the codes of practice applicable in relation to Healthy Water made after the Effective Date.

6.2 The warranty at Clause 6.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to Cistermiser's instructions, or modification or alteration of the Services by any Party other than Cistermiser or Cistermiser's duly authorised contractors or agents. If the Services do not conform to the foregoing undertaking, Supplier will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in Clause 6.1. Notwithstanding the foregoing, Cistermiser:

6.2.1 does not warrant that the Customer's use of the Services will be uninterrupted or error-free; or that the Services, Documentation and/or the information obtained by the Customer through the Services will meet the Customer's requirements; and

6.2.2 is not responsible 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 services provided by the Network Provider, and the Customer acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

6.3 Cistermiser warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this agreement.

7. CUSTOMER'S OBLIGATIONS

7.1 The Customer shall:

7.1.1 provide Cistermiser with:

- (a) all necessary co-operation in relation to this Agreement; and
- (b) all necessary access to such information as may be required by Cistermiser; in order to provide the Services;

7.1.2 comply with all Applicable Laws with respect to its activities under this agreement;

7.1.3 carry out the Set-Up Obligations and carry out all other Customer responsibilities set out in this agreement in a timely and efficient manner;

7.1.4 obtain and shall maintain all necessary licences, consents, and permissions necessary for Cistermiser, its contractors and agents to perform their obligations under this Agreement, including without limitation the Services;

7.1.5 ensure that its network and systems comply with the relevant specifications provided by Cistermiser from time to time; and

7.1.6 be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to Cistermiser's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

7.2 Customer acknowledges and accepts that it is fully responsible for the water safety at its premises and that the Hardware and the Services provided by Cistermiser are provided to the Customer solely as a tool to assist the Customer in complying with its obligations in relation to Healthy Water and Applicable Laws and is to be used alongside the Customer's risk assessment procedures and as such Cistermiser shall have no liability for any outbreak of legionella or a failure to adequately identify an outbreak of the disease.

8. FEES AND PAYMENT

8.1 The Fees payable by the Customer for the provision of the Services and purchase of the Hardware are set out in the Term Sheet and shall be payable in accordance with the fee Payment Option and this clause 9.

8.2 The Customer shall pay each invoice in accordance with the Terms Sheet.

8.3 If Cistermiser has not received payment in accordance with the Terms Sheet, and without prejudice to any other rights and remedies of Cistermiser:

8.3.1 Cistermiser may, without liability to the Customer, disable the Customer's password, account and access to all or part of the Services and Cistermiser shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and

8.3.2 interest shall accrue on a daily basis on such due amounts at an annual rate equal to 3 (three) % over the then current base lending rate of Santander UK plc from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.

8.4 All amounts and fees stated or referred to in this agreement:

8.4.1 shall be payable in pounds sterling;

8.4.2 are non-cancellable and non-refundable;

8.4.3 are exclusive of value added tax, which shall be added to Cistermiser's invoice(s) at the appropriate rate.

9. PROPRIETARY RIGHTS

9.1 The Customer acknowledges and agrees that Cistermiser and/or its licensors own all intellectual property rights in the Services and the Documentation. Except as expressly stated herein, this agreement does not grant the Customer any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licences in respect of the Services or the Documentation.

9.2 Cistermiser confirms that it has all the rights in relation to the Services and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this agreement.

10. CONFIDENTIALITY

10.1 In this Agreement

10.1.1 subject to clause 10.2 Confidential Information means all information relating to or connected with this Agreement or relating to a Party or its Affiliates (**Disclosing Party**) or its or their activities, in each case which is from time to time, or has been (whether before or after the Commencement Date) received or obtained by, or made available to, the other Party or any of its Related Persons (**the Recipient Party**) (whether in writing, in disk or electronic form or any other form or medium in which such information may be recorded or kept, orally, pursuant to visits to premises or which can be obtained by examination, testing, visual inspection or analysis of any hardware or other item or component part) including information of whatever nature concerning the business, goods, products, know-how or Personal Data of a Party or its Affiliates, analyses and other material prepared by the Recipient Party which contain, reflect or are otherwise generated from the information described in this clause 10.1.1 and any information which is expressly indicated to be confidential, is imparted to the Recipient Party in circumstances importing an obligation of confidence or which could reasonably be regarded as confidential; and

- 10.1.2 **Related Persons** means a Party's Affiliates, employees, officers, shareholders, representatives, agents, consultants, suppliers and advisers.
- 10.2 The Disclosing Party's Confidential Information shall not be deemed to include information that:
- 10.2.1 is or becomes publicly known other than through any act or omission of the Recipient Party;
- 10.2.2 was in the Recipient Party's lawful possession before the disclosure;
- 10.2.3 is lawfully disclosed to the Recipient Party by a third party without restriction on disclosure; or
- 10.2.4 is independently developed by the Recipient Party, which independent development can be shown by written evidence.
- 10.3 Subject to Clause 10.4, each Party shall hold the other's Confidential Information in confidence and not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this Agreement.
- 10.4 Each Party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement.
- 10.5 A Party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by Applicable Law, law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other Party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this Clause 10, it takes into account the reasonable requests of the other Party in relation to the content of such disclosure.
- 10.6 Neither Party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.
- 10.7 The Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitute the Cistermiser's Confidential Information.
- 10.8 Neither Party shall make, or permit any person to make, any public announcement concerning this Agreement without the prior written consent of the other Party (such consent not to be unreasonably withheld or delayed), except as required by Applicable Law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.
- 10.9 The above provisions of this Clause 10 shall survive termination of this agreement, however arising.
- 11. WARRANTIES**
- 11.1 In relation to the Hardware excluding any consumables supplied with the Hardware including without limitation batteries (for which no warranty is given by Cistermiser) Cistermiser warrants that that for the Warranty Period the Hardware shall conform in all material respects to the Hardware Specification and be of satisfactory quality within the meaning of the Sale of Goods Act 1979.
- 11.2 Subject always to clause 12.3, if the Customer gives notice in writing to Cistermiser during the Warranty Period that the Hardware does not comply with the warranty in clause 12.1, and returns the Hardware to Cistermiser in accordance with Cistermiser's returns policy notified to the Customer from time to time, Cistermiser shall repair or replace the Hardware at its sole discretion and deliver such replacement Hardware to the Customer to enable the Customer to carry out its set Up Obligations.
- 11.3 Cistermiser shall not be liable for the Hardware's failure to comply with the warranty in clause 12.1 in the event of the Customer making any further use of the Hardware after giving notice under clause 12.2, the defect arising because the Customer failed to follow Cistermiser's Quick Start Guide or any oral or written instructions as to the commissioning, installation, use or maintenance of the Hardware, the Customer alters or repairs the Hardware without the written consent of Cistermiser or the defect arises as a result of fair wear and tear, wilful damage, negligence or abnormal working conditions.
- 11.4 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from this agreement.
- 11.5 If any replacement Hardware is supplied to the Customer in accordance with clause 12.2 above, the warranty given by Cistermiser in clause 12.1 shall apply for the balance of the Warranty Period only in relation to the replacement Hardware.
- 12. INDEMNITY**
- 12.1 Subject always to clause 14.3.1, the Customer shall defend, indemnify and hold harmless Cistermiser against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Services and/or Documentation, provided that:
- 12.1.1 the Customer is given prompt notice of any such claim;
- 12.1.2 Cistermiser provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
- 12.1.3 the Customer is given sole authority to defend or settle the claim.
- 12.2 Subject always to clause 14.3.1, Cistermiser shall defend the Customer against any claim that the Services or the Documentation infringes any United Kingdom patent effective as of the Effective Date, copyright, trademark, database right or right of confidentiality, and shall settle any action or claim bought against the Customer provided that:
- 12.2.1 Cistermiser is given prompt notice in writing of any such claim (actual or threatened);
- 12.2.2 the Customer does not make any admission as to the liability or compromise or agree to any settlement of any claim without the prior written consent of Cistermiser
- 12.2.3 the Customer provides reasonable co-operation to Cistermiser in the defence and settlement of such claim, at Cistermiser's expense; and
- 12.2.4 Cistermiser is given sole authority to defend or settle the claim.
- 12.3 In the defence or settlement of any claim, Cistermiser may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this agreement on [2] (two) Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.
- 12.4 In no event shall Cistermiser, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:
- 12.4.1 a modification of the Services or Documentation by anyone other than Cistermiser; or
- 12.4.2 the Customer's use of the Services or Documentation in a manner contrary to the instructions given to the Customer by Cistermiser; or
- 12.4.3 the Customer's use of the Services or Documentation after notice of the alleged or actual infringement from Cistermiser or any appropriate authority.
- 12.5 The foregoing states the Customer's sole and exclusive rights and remedies, and Cistermiser's (including Cistermiser's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.
- 13. LIMITATION OF LIABILITY**
- 13.1 Except as expressly and specifically provided in this agreement:
- 13.1.1 the Customer assumes sole responsibility for results obtained from the use of the Services and the Documentation by the Customer, and for conclusions drawn from such use. Cistermiser shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Cistermiser by the Customer in connection with the Services, or any actions taken by Cistermiser at the Customer's direction;
- 13.1.2 all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this agreement.
- 13.2 Nothing in this agreement excludes the liability of either party:
- 13.2.1 for death or personal injury caused by its negligence; or
- 13.2.2 for fraud or fraudulent misrepresentation;
- 13.2.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979;
- 13.2.4 any matter in respect of which it would be unlawful for either party to exclude or restrict.
- 13.3 Subject to Clause 13.1 and Clause 13.2:
- 13.3.1 Neither party shall be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, turnover, business or opportunity, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this agreement; and
- 13.3.2 Each party's total aggregate liability in, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this agreement shall be limited to the total Fees paid during the 12 (twelve) months immediately preceding the date on which the claim arose or if the breach arises in the first twelve months of the Term the Fees that are paid and due to be paid in the initial 12 month period.
- 14. TERM AND TERMINATION**
- 14.1 This agreement shall, unless otherwise terminated as provided in this Clause 14, commence on the Effective Date and shall continue for the Term.
- 14.2 Without affecting any other right or remedy available to it, either Party may terminate this agreement with immediate effect by giving written notice to the other Party if:
- 14.2.1 the other Party fails to pay any amount due under this agreement on the due date for payment and remains in default not less than [28] days after being notified in writing to make such payment;
- 14.2.2 the other Party commits a material breach of any other term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;

- 14.2.3 the other Party repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;
- 14.2.4 the other Party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- 14.2.5 the other Party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other Party with one or more other companies or the solvent reconstruction of that other Party;
- 14.2.6 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other Party other than for the sole purpose of a scheme for a solvent amalgamation of that other Party with one or more other companies or the solvent reconstruction of that other Party;
- 14.2.7 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 the other Party;
- 14.2.8 the holder of a qualifying floating charge over the assets of that other Party has become entitled to appoint or has appointed an administrative receiver;
- 14.2.9 a person becomes entitled to appoint a receiver over the assets of the other Party or a receiver is appointed over the assets of the other Party;
- 14.2.10 a creditor or encumbrancer of the other Party 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 the other Party's assets and such attachment or process is not discharged within 14 days;
- 14.2.11 any event occurs, or proceeding is taken, with respect to the other Party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Clause 14.2.4 to Clause 14.2.10 (inclusive); or
- 14.2.12 the other Party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.
- 14.3 On termination of this agreement for any reason:
- 14.3.1 all licences granted under this agreement shall immediately terminate and the Customer shall immediately cease all use of the Services and/or the Documentation;
- 14.3.2 each Party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other Party;
- 14.3.3 Cistermiser may destroy or otherwise dispose of any of the Customer Data in its possession unless Cistermiser receives, no later than ten days after the effective date of the termination of this agreement, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. Cistermiser shall use reasonable commercial endeavours to deliver the back-up to the Customer within 30 days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by Cistermiser in returning or disposing of Customer Data; and
- 14.3.4 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.
- 15. FORCE MAJEURE**
- 15.1 Cistermiser shall have no liability to the Customer under this agreement if it is prevented from or delayed in performing its obligations under this agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of Cistermiser or any other Party), failure of a utility service or transport or telecommunications network including without limitation the Network Provider, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that the Customer is notified of such an event and its expected duration. If the Force Majeure Event continues for a period of 3 (three) months then Cistermiser may terminate this agreement without any liability to the Customer.
- 16. CONFLICT**
- 16.1 If there is an inconsistency between any of the provisions in the main body of this agreement and the Schedules, the provisions in the main body of this agreement shall prevail.
- 17. VARIATION**
- 17.1 No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 18. WAIVER**
- 18.1 No failure or delay by a Party to exercise any right or remedy provided under this agreement 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.
- 19. RIGHTS AND REMEDIES**
- 19.1 Except as expressly provided in this agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.
- 20. SEVERANCE**
- 20.1 If any provision (or part of a provision) of this agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.
- 20.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.
- 21. ENTIRE AGREEMENT**
- 21.1 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 21.2 Each Party acknowledges that in entering into this agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement.
- 21.3 Each Party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.
- 21.4 Nothing in this clause shall limit or exclude any liability for fraud.
- 22. ASSIGNMENT**
- 22.1 The Customer shall not, without the prior written consent of Cistermiser, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.
- 22.2 Cistermiser may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.
- 23. NO PARTNERSHIP OR AGENCY**
- 23.1 Nothing in this agreement is intended to or shall operate to create a partnership between the parties, or authorise either Party to act as agent for the other, and neither Party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).
- 24. THIRD PARTY RIGHTS**
- 24.1 This agreement does not confer any rights on any person or Party (other than the parties to this agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 25. NOTICES**
- 25.1 Any notice required to be given under this agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other Party at its address set out in the Term Sheet, or such other address as may have been notified by that Party for such purposes or by email to the address stated in the Term Sheet.
- 25.2 A notice delivered by hand or recorded delivery shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the next Business Day following delivery). A correctly addressed notice sent by pre-paid first-class post shall be deemed delivered at 9am on the third Business day after the date of posting. A notice sent by email shall be deemed to have been received at the time of transmission provided that no bounce back or error message is received.
- 26. GOVERNING LAW**
- 26.1 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 construed in accordance with the law of England and Wales.
- 27. JURISDICTION**
- 27.1 Each Party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

Schedule 1

Specifications

1. **HARDWARE**
2. **SERVICES**