

du360 Limited Terms and Conditions
November 2014

1. Definitions and Interpretation

1.1 In these Terms, unless the context otherwise requires, the following expressions have the following meanings:

“Business Day”	means, any day (other than Saturday or Sunday) on which ordinary banks are open for their full range of normal business in the UK;
“Commencement Date”	means, in relation to either Party, information which is disclosed to that Party by the other Party pursuant to or in connection with these Terms (whether orally or in writing or any other medium, and whether or not the information is expressly stated to be confidential or marked as such);
“Confidential Information”	means, in relation to either Party, information which is disclosed to that Party by the other Party pursuant to or in connection with these Terms (whether orally or in writing or any other medium, and whether or not the information is expressly stated to be confidential or marked as such);
“Contract”	means the contract for the purchase and sale of the Goods and supply of the Services under these Terms and Conditions;
“Fees”	means the fees payable by the Client to du360 in consideration of the Services as fully described in the quotation supplied.
“Software”	means the computer software operating on the Equipment in relation to which du360 is to provide the Services as detailed in any quotation and accompanying Scope of Works
“Contract Price”	means the price stated in the Contract payable for the Goods and Services;
“Customer”	means the person who accepts a quotation or offer of du360 for the sale of the Goods and supply of the Services, or whose order for the Goods and Services is accepted by du360;
“Delivery Date”	means the date on which the Goods and Squoervices are to be delivered as stipulated in the Customer’s order and accepted by du360;
“Goods”	means the goods (including any instalment of the goods or any parts for them) which du360 is to supply in accordance with these Terms and Conditions;
“Month”	means a calendar month;
“Services”	means the Services to be provided to the Customer as set out in the quotation and accompanying Scope of Works

- 1.2 Unless the context otherwise requires, each reference in these Terms and Conditions to:
- 1.2.1 “writing”, and any cognate expression, includes a reference to any communication effected by electronic or facsimile transmission or similar means;
 - 1.2.2 a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time;
 - 1.2.3 “these Terms and Conditions” is a reference to these Terms and Conditions and any Schedules as amended or supplemented at the relevant time;
 - 1.2.4 a Schedule is a schedule to these Terms and Conditions; and
 - 1.2.5 a Clause or paragraph is a reference to a Clause of these Terms and Conditions (other than the Schedules) or a paragraph of the relevant Schedule.
 - 1.2.6 a “Party” or the “Parties” refer to the parties to these Terms and Conditions.
 - 1.2.7 The headings used in these Terms and Conditions are for convenience only and shall have no effect upon the interpretation of these Terms and Conditions.
 - 1.2.8 Words imparting the singular number shall include the plural and vice versa.
 - 1.2.9 References to any gender shall include the other gender.
 - 1.2.10 References to persons shall include corporations.

2. **Basis of Sale and Service**

- 2.1 Du360’s employees or agents are not authorised to make any representations concerning the Goods or Services unless confirmed by du360 in writing. In entering into the Contract the Customer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed.
- 2.2 No variation to these Terms and Conditions shall be binding unless agreed in writing between the authorised representatives of the Customer and du360.
- 2.3 Sales literature, price lists and other documents issued by du360 in relation to the Goods and Services are subject to alteration without notice and do not constitute offers to sell the Goods which are capable of acceptance. No contract for the sale of the Goods and Services shall be binding on du360 unless du360 has issued a quotation which is expressed to be an offer to sell the Goods and Services or has accepted an order placed by the Customer by whichever is the earlier of:
 - 2.3.1 du360’s written acceptance;
 - 2.3.2 delivery of the Goods;
 - 2.3.3 provision of the Services; or
 - 2.3.4 du360’s invoice.
- 2.4 Any typographical, clerical or other accidental errors or omissions in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by du360 shall be subject to correction without any liability on the part of du360.

3. The Goods

- 3.1 No order submitted by the Customer shall be deemed to be accepted by du360 unless and until confirmed in writing by du360's authorised representative.
- 3.2 The specification for the Goods shall be that set out in du360's sales documentation unless varied expressly in the Customer's order (if such variation(s) is/are accepted by du360). The Goods will only be supplied in the minimum units thereof stated in du360's price list or in multiples of those units. Orders received for quantities other than these will be adjusted accordingly
- 3.3 Illustrations, photographs or descriptions whether in catalogues, brochures, price lists or other documents issued by du360 are intended as a guide only and shall not be binding on du360.
- 3.4 Du360 reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable safety or other statutory or regulatory requirements or, where the Goods are to be supplied to the Customer's specification, which do not materially affect their quality or performance.
- 3.5 No order which has been accepted by du360 may be cancelled by the Customer except with the Terms in writing of du360 on the terms that the Customer shall indemnify du360 in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by du360 as a result of such cancellation.

4. The Services

- 4.1 With effect from the Commencement Date du360 shall, in consideration of the price being paid in accordance with Clauses 6 and 7 will provide the Services expressly identified in the quotation and accompanying Scope of Works.
- 4.2 Du360 will use reasonable care and skill to perform the Services identified in the quotation and accompanying Scope of Works.
- 4.3 Du360 shall use reasonable endeavours to complete its obligations under the Contract, but time will not be of the essence in the performance of such obligations.

5. DAY RATES

- 5.1 Du360 may undertake Consultancy services on a per day basis.
- 5.2 Du360's standard working day is seven hours. Standard operating hours are 9am to 5pm, Monday to Friday, with an hour break for lunch. Working outside these hours will attract additional charges as laid out in our pricing table.
- 5.3 Travel time to customer site may be included as part of the Du360 standard working day.
- 5.4 Work contracted on a per day basis is undertaken against a Scope of Works which will be agreed and signed by the customer at the time of the order. This Scope of Works will detail the tasks to be performed and the sign off criteria by which completion can be determined.
- 5.5 Where Du360 is contracted on a per day basis, rates are per day or part thereof.
- 5.6 Work is deemed to be finished either at the end of the seven hour working day,

or when the list of tasks to be performed is completed, whichever is the earlier, as directed by the Scope of Works document.

- 5.7 The above conditions are applicable whether working is carried out on customer site or from a remote location.

6. Price

- 6.1 The price of the Goods and Services shall be the price listed in du360's quotation current at the date of acceptance of the Customer's order or such other price as may be agreed in writing by du360 and the Customer.
- 6.2 Where du360 has quoted a price for the Goods other than in accordance with du360's published price list the price quoted shall be valid for 30 days only or such lesser time as du360 may specify.
- 6.3 Du360 reserves the right, by giving written notice to the Customer at any time before delivery or provision, to increase the price of the Goods and/or Services to reflect any increase in the cost to du360 which is due to any factor beyond the control of du360 (including, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods and services which are requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give du360 adequate information or instructions.
- 6.4 Except as otherwise stated under the terms of any quotation or in any price list of du360, and unless otherwise agreed in writing between the Customer and du360, all prices are exclusive of du360's charges for packaging and transport.
- 6.5 The price is exclusive of any applicable value added tax, excise, sales taxes or levies of a similar nature which are imposed or charged by any competent fiscal authority in respect of the Goods and Services, which the Customer shall be additionally liable to pay to du360.

7. Payment

- 7.1 Subject to any special terms agreed in writing between the Customer and du360, du360 shall invoice the Customer for the price of the Goods and Services on or at any time after delivery of the Goods and/or the Provision of the Services (as applicable), unless, in the case of Goods, the Goods are to be collected by the Customer or the Customer wrongfully fails to take delivery of the Goods, in which event du360 shall be entitled to invoice the Customer for the price at any time after du360 has notified the Customer that the Goods are ready for collection or (as the case may be) du360 has tendered delivery of the Goods.
- 7.2 The Customer shall pay the price of the Goods (less any discount or credit allowed by du360, but without any other deduction, credit or set off) within 30 Calendar Days of the date of du360's invoice or otherwise in accordance with such credit terms as may have been agreed in writing between the Customer and du360 in respect of the Contract. Payment shall be made on the due date notwithstanding that delivery or provision may not have taken place and/or that the property in the Goods has not passed to the Customer. The time for the

payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.

- 7.3 All payments shall be made to du360 Limited as indicated on the form of acceptance or invoice issued by du360.
- 7.4 Du360 is not obliged to accept orders from any customer or buyer who has not supplied du360 with references satisfactory to du360. If at any time du360 is not satisfied as to the creditworthiness of the Customer it may give notice in writing to the Customer that no further credit will be allowed to the Customer in which event no further goods or services will be delivered or provided to the Customer other than against cash payment and notwithstanding sub-Clause 7.2 of these conditions, all amounts owing by the Customer to du360 shall be immediately payable in cash.

8. **Delivery and Performance**

- 8.1 Delivery of the Goods shall be made by du360 delivering the Goods to the place in the United Kingdom specified in the quotation or, if no place of delivery is so specified, by the Customer collecting the Goods at du360's premises at any time after du360 has notified the Customer that the Goods are ready for collection.
- 8.2 The Delivery Date is approximate only and time for delivery shall not be of the essence unless previously agreed by du360 in writing. The Goods may be delivered by du360 in advance of the Delivery Date upon giving reasonable notice to the Customer.
- 8.3 If the Customer fails to take delivery of the Goods or any part of them on the Delivery Date and/or fails to provide any instructions, documents, licences, consents or authorisations required to enable the Goods to be delivered on that date, du360 shall be entitled upon giving written notice to the Customer to store or arrange for the storage of the Goods and then notwithstanding the provisions of sub-Clause 10.1 risk in the Goods shall pass to the Customer, delivery shall be deemed to have taken place and the Customer shall pay to du360 all costs and expenses including storage and insurance charges arising from such failure.
- 8.4 With effect from the Commencement Date du360 shall, in consideration of the price being paid in accordance with these Terms and Conditions and the quotation provide the Services expressly identified in the quotation.

9. **Non-Delivery of Goods and Services**

- 9.1 If du360 fails to deliver the Goods or provide the Services or any of them on the Delivery Date (or Commencement Date, as appropriate) other than for reasons outside du360's reasonable control or the Customer's or its carrier's fault:
 - 9.1.1 if du360 delivers the Goods and/or provides the Services at any time thereafter du360 shall have no liability in respect of such late delivery; or
 - 9.1.2 if the Customer gives written notice to du360 within 30 Business Days after the Delivery Date (or Commencement Date, as appropriate) and du360 fails to deliver the Goods and/or Services within 30 Business Days after receiving such notice the Customer may cancel the order and du360's liability shall be limited to the excess (if any) of the cost to the Customer (in the cheapest available market) of similar goods or services

to those not delivered or provided over the price of the Goods or Services not delivered or provided.

10. Risk and Retention of Title

- 10.1 Risk of damage to or loss of the Goods shall pass to the Customer at:
 - 10.1.1 in the case of Goods to be delivered at du360's premises, the time when du360 notifies the Customer that the Goods are available for collection;
 - 10.1.2 in the case of Goods to be delivered otherwise than at du360's premises, the time of delivery or, if the Customer wrongfully fails to take delivery of the Goods, the time when du360 has tendered delivery of the Goods; or
 - 10.1.3 in the case of Goods being installed by du360, the time that du360 notifies the Customer that the installation is complete.
- 10.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Terms and Conditions, legal and beneficial title to the Goods shall not pass to the Customer until du360 has received in cash or cleared funds payment in full of the price of the Goods.
- 10.3 Sub-Clause 10.2 notwithstanding, legal and beneficial title of the Goods shall not pass to the Customer until du360 has received in cash or cleared funds payment in full of the price of the Goods and any other goods supplied by du360 and the Customer has repaid all moneys owed to du360, regardless of how such indebtedness arose.
- 10.4 Until payment has been made to du360 in accordance with these Conditions and title in the Goods has passed to the Customer, the Customer shall be in possession of the Goods as bailee for du360 and the Customer shall store the Goods separately and in an appropriate environment, shall ensure that they are identifiable as being supplied by du360 and shall insure the Goods against all reasonable risks.
- 10.5 The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of du360, but if the Customer does so all money owing by the Customer to du360 shall (without prejudice to any other right or remedy of du360) forthwith become due and payable.
- 10.6 Du360 reserves the right to repossess any Goods in which du360 retains title without notice. The Customer irrevocably authorises du360 to enter the Customer's premises during normal business hours for the purpose of repossessing the Goods in which du360 retains title and inspecting the Goods to ensure compliance with the storage and identification requirements of sub-Clause 10.4.
- 10.7 The Customer's right to possession of the Goods in which du360 maintains legal and beneficial title shall terminate if:
 - 10.7.1 the Customer commits or permits any material breach of his obligations under these Terms and Conditions;
 - 10.7.2 the Customer enters into a voluntary arrangement under Parts I or VIII of the Insolvency Act 1986, the Insolvent Partnerships Order 1994 (as amended), or any other scheme or arrangement is made with his creditors;

10.7.3 the Customer is or becomes the subject of a bankruptcy order or takes advantage of any other statutory provision for the relief of insolvent debtors;

10.7.4 the Customer convenes any meeting of its creditors, enters into voluntary or compulsory liquidation, has a receiver, manager, administrator or administrative receiver appointed in respect of its assets or undertaking or any part thereof, any documents are filed with the court for the appointment of an administrator in respect of the Customer, notice of intention to appoint an administrator is given by the Customer or any of its directors or by a qualifying floating charge-holder (as defined in paragraph 14 of Schedule B1 of the Insolvency Act 1986), a resolution is passed or petition presented to any court for the winding up of the Customer or for the granting of an administration order in respect of the Customer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer.

11. Assignment

11.1 Du360 may assign the Contract or any part of it to any person, firm or company without the prior consent of the Customer.

11.2 The Customer shall not be entitled to assign the Contract or any part of it without the prior written consent of du360.

12. Defective Goods

12.1 If on delivery any of the Goods are defective in any material respect and either the Customer lawfully refuses delivery of the defective Goods or, if they are signed for on delivery as "condition and contents unknown" the Customer gives written notice of such defect to du360 within 5 Business Days of such delivery, du360 shall at its option:

12.1.1 replace the defective Goods within 30 Business Days of receiving the Customer's notice; or

12.1.2 refund to the Customer the price for those Goods (or parts thereof, as appropriate) which are defective; but du360 shall have no further liability to the Customer in respect thereof and the Customer may not reject the Goods if delivery is not refused or notice given by the Customer as set out above.

No Goods may be returned to du360 without the prior Terms in writing of du360.

Subject thereto any Goods returned which du360 is satisfied were supplied subject to defects of quality or condition which would not be apparent on inspection shall either be replaced free of charge or, at du360's sole discretion du360 shall refund or credit to the Customer the price of such defective Goods but du360 shall have no further liability to the Customer.

12.2 Du360 shall be under no liability in respect of any defect arising from fair wear and tear, or any wilful damage, negligence, subjection to normal conditions, failure to follow du360's instructions (whether given orally or in writing), misuse or alteration of the Goods without du360's prior approval, or any other act or omission on the part of the Customer, its employees or agents or any third party.

12.3 Goods, other than defective Goods returned under sub-Clauses 12.1 or 12.2, returned by the Customer and accepted by du360 may be credited to the Customer at du360's sole discretion and without any obligation on the part of

du360.

- 12.4 Subject as expressly provided in these Terms and Conditions, and except where the Goods are sold under a consumer sale, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 12.5 The Customer shall be responsible for ensuring that, except to the extent that instructions as to the use or sale of the Goods are contained in the packaging or labelling of the Goods, any use or sale of the Goods by the Customer is in compliance with all applicable statutory requirements and that handling and sale of the Goods by the Customer is carried out in accordance with directions given by du360 or any competent governmental or regulatory authority and the Customer will indemnify du360 against any liability loss or damage which du360 might suffer as a result of the Customer's failure to comply with this condition.

13. **Customer's Default**

- 13.1 If the Customer fails to make any payment on the due date then, without prejudice to any other right or remedy available to du360, du360 shall be entitled to:
 - 13.1.1 cancel the order or suspend any further deliveries or provision of Goods and Services to the Customer;
 - 13.1.2 appropriate any payment made by the Customer to such of the Goods and/or Services (or the goods and/or services supplied under any other contract between the Customer and du360) as du360 may think fit (notwithstanding any purported appropriation by the Customer); and
 - 13.1.3 charge the Customer interest (both before and after any judgement) on the amount unpaid, at the rate of 2% per annum above HSBC PLC base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).
- 13.2 This condition applies if:
 - 13.2.1 the Customer fails to perform or observe any of its obligations hereunder or is otherwise in breach of the Contract;
 - 13.2.2 the Customer becomes subject to an administration order or enters into a voluntary arrangement under Parts I or VIII of the Insolvency Act 1986 or the Insolvent Partnerships Order 1994 (as amended) or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation;
 - 13.2.3 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Customer;
 - 13.2.4 the Customer ceases, or threatens to cease, to carry on business; or
 - 13.2.5 du360 reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly.
- 13.3 If sub-Clause 13.2 applies then, without prejudice to any other right or remedy available to du360, du360 shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Customer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous Terms or arrangement to the contrary.

14. **Du360's Obligations - Services**

- 14.1 Du360 shall use reasonable endeavours to provide the Services in accordance with the quotation and accompanying Scope of Works in all material respects.
- 14.2 Du360 shall provide the Services with reasonable skill and care.
- 14.3 Du360 shall use reasonable endeavours to meet deadlines agreed from time to time with the Client, but any such dates shall be estimates only. Time for performance shall not be of the essence of these Terms.
- 14.4 Du360 shall use reasonable endeavours to act in accordance with all reasonable instructions given to it by the Client provided such instructions are compatible with the agreed Scope of Works.
- 14.5 Du360 shall be responsible for ensuring that it complies with all statutes, regulations, byelaws, standards, codes of conduct and any other rules relevant to the provision of the Services.

15. **Client's Obligations**

- 15.1 The Client shall:
 - 15.1.1 Allow du360 access to the Equipment and all relevant Software as reasonably required by du360 in the course of providing the Services;
 - 15.1.2 Throughout the period of the works the client shall afford to du360 or procure the affording to du360 of access to any site where access is required for the performance of the Services.
 - 15.1.3 The client accepts responsibility for ensuring that du360 is notified in writing of all special site conditions, including without prejudice to the generality of the foregoing, the existence and precise location of all physical security services, cables, and restricted access areas.
 - 15.1.4 The client shall also inform du360 in writing of any relevant operating procedures including any site safe operating procedures and any other regulations relevant to the carrying out of the Services.
 - 15.1.5 The client shall indemnify du360 against all costs, claims, demands and expenses arising as a result of any non-disclosure in this respect, including but not limited to indemnification against any action brought by the owner of the third-party equipment, property or otherwise.
 - 15.1.6 If the client discovers any conflict, defect or other fault in the information or designs provided by du360 pursuant to the Terms, he will advise du360 in writing of such defect, conflict or other fault and Du360 shall have the right to rectify the same or where necessary, to design the solution for rectification of any works carried out by others pursuant the conflicting, defective or in any other way faulty information or designs.
 - 15.1.7 Whilst du360 personnel are onsite at the client location, the client shall observe all relevant Health and Safety legislation as it pertains to Du360 personnel.
 - 15.1.8 Whilst du360 personnel are onsite at the client location, the client shall allow du360 personnel reasonable breaks throughout the work time elapsed.

- 15.1.9 Provide adequate working space and facilities for du360, its agents, subcontractors, consultants and employees as reasonably required by du360; and
- 15.1.10 Co-operate with du360 upon du360's reasonable request in the diagnosis of any defect or malfunction in the Equipment or Software.
- 15.2 The Client shall allow du360 the use of any Equipment that is reasonably necessary to enable du360 to provide the Services.
- 15.3 The Client shall make freely available to du360:
 - 15.3.1 any and all documentation associated with the Software;
 - 15.3.2 any and all documentation associated with the Equipment;
 - 15.3.3 original Software installation media;
 - 15.3.4 current data backups;
- 15.4 The Client shall use reasonable endeavours to provide all pertinent information to du360 that is necessary for du360's provision of the Services and shall use reasonable endeavours to ensure the accuracy and completeness of such information.
- 15.5 The Client may, from time to time, issue reasonable instructions to du360 in relation to the Services. Any such instructions must be compatible with the agreed Scope of Works.
- 15.6 In the event that du360 requires the decision, approval, consent or any other form of authorisation or communication from the Client in order to continue providing the Services (or any part thereof), the Client shall use reasonable endeavours to provide the same in a reasonable and timely manner.
- 15.7 The Client shall use reasonable endeavours to inform du360 of all health and safety rules and regulations that apply at its premises.
- 15.8 The Client shall obtain and maintain any and all necessary licences and consents necessary with respect to the Software and the Equipment.
- 15.9 The Client shall use reasonable endeavours to ensure that data backups are created regularly and in such a manner as to minimise any potential data loss.
- 15.10 During the course of the work, The Client shall not permit any changes or modifications to be made to the Software or the Equipment by any party other than those authorised by du360.

16. Insurance

- 16.1 Du360 shall have in place, in relation to the Services, public liability insurance with a minimum limit of indemnity of £1,000,000 in any one occurrence.
- 16.2 Du360 shall have in place, in relation to the Services, professional indemnity insurance with a minimum limit of indemnity of £1,000,000 in any one occurrence.
- 16.3 Du360 shall procure that any sub-contractors engaged by it to provide all or any part of the Services have in place a like policy with like terms and the same limit of indemnity in any one occurrence.

17. Fees and Payment

- 17.1 In consideration of the Services, the Client shall pay the Fees to du360 in accordance with the provisions of Schedule 4 and this Clause 5.
- 17.2 Du360 shall invoice the Client for Fees due in accordance with the provisions of Schedule 4.
- 17.3 The Client shall pay the Fees due within 30 days of receipt of the relevant invoice from du360.
- 17.4 All payments to be made by the Client under these Terms shall be made in UK Sterling, in full and in cleared funds, to such bank in UK as du360 may from time to time nominate in writing.
- 17.5 Where any payment under these Terms falls due on a day that is not a Business Day, it may be made on the next following Business Day.
- 17.6 Without prejudice to sub-Clause 10.4.1 and any other rights or remedies open to it, if the Client fails to pay du360 within the period set out in sub-Clause 5.3:
 - 17.6.1 The Client shall pay interest on the overdue sum at the rate of 2% per annum above the base rate of HSBC PLC from time to time. Such interest shall accrue on a daily basis from the due date until payment is made in full to du360 of the overdue sum, whether before or after judgment. The Client shall pay the interest due together with the overdue sum.
 - 17.6.2 Du360 shall have the right to suspend the Services until payment of the overdue sum (together with any interest due) is made in full.
- 17.7 All sums due under these Terms shall be paid in full without any set-off, counterclaim, deduction or withholding (except such amount (if any) of tax that is to be deducted or withheld by law).

18. Cancellation or Postponement of Works

- 18.1 Du360 reserve the right to charge the Client for full or part payments in the case where services are postponed, cancelled or otherwise not able to be performed on the agreed dates. This includes, but is not limited to, On-Site consultancy work, Remote consultancy, Training services, pre-sales meetings, remote web presentation. The cancellations fees are detailed below.
 - 18.1.1 Work cancelled 1 working week (5 working days) or greater before start date – Zero fee
 - 18.1.2 Work cancelled 4 working days before the start date – 25% of total engagement fee
 - 18.1.3 Work cancelled 3 working days before the start date – 50% of total engagement fee
 - 18.1.4 Work cancelled 2 working days before the start date – 75% of total engagement fee
 - 18.1.5 Work cancelled 1 working day before the start date – 100% of the total engagement fee
 - 18.1.6 Work cancelled on the start date – 100% of the total engagement fee including travel costs.

18.1.7 Any non-refundable expenses (Hotels, train and flight costs or otherwise) will be charged at cost with receipts supplied where applicable

19. **Limitation of Liability**

- 19.1 Du360 will not by reason of any representation, implied warranty, condition or other term, or any duty at common law or under express terms of the Contract (or these Terms and Conditions), be liable for any loss of profit or any indirect, special or consequential loss, damage, costs, expenses or other claims (whether caused by du360's servants or agents or otherwise) which arise out of or in connection with the supply of the Goods and Services.
- 19.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.
- 19.3 The Customer shall indemnify du360 against all damages, costs, claims and expenses suffered by arising from loss or damage to any equipment (including that of third parties) caused by the Customer, its agents or employees.
- 19.4 Where the Customer consists of two or more persons such expression throughout shall mean and include such two or more persons and each or any of them. All obligations on the part of such a Customer shall be joint and several obligations of such persons.
- 19.5 Du360 shall not be liable to the Customer or be deemed to be in breach of these terms and conditions by reason of any delay in performing, or any failure to perform, any of du360's obligations if the delay or failure was due to any cause beyond du360's reasonable control.
- 19.6 Nothing in these Terms and Conditions excludes or limits the liability of du360:
- 19.6.1 for death or personal injury caused by du360's negligence;
- 19.6.2 for any matter which it would be illegal for du360 to exclude or attempt to exclude its liability; or
- 19.6.3** for fraud or fraudulent misrepresentation.
- 19.7 Subject to the remaining provisions of this Clause 19:
- 19.7.1 du360's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract Price; and
- 19.7.2 du360 shall not be liable to the Customer for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.
- 19.7.3 or any other liability which cannot be excluded by law.

20. **Confidentiality**

- 20.1 Each Party undertakes that, except as provided by sub-Clause 20.2 or as authorised in writing by the other Party, it shall, at all times during the continuance of these Terms and for 5 years after its termination:
- 20.1.1 keep confidential all Confidential Information;

- 20.1.2 not disclose any Confidential Information to any other party;
 - 20.1.3 not use any Confidential Information for any purpose other than as contemplated by and subject to the terms of these Terms;
 - 20.1.4 not make any copies of, record in any way or part with possession of any Confidential Information; and
 - 20.1.5 ensure that none of its directors, officers, employees, agents, sub-contractors or advisers does any act which, if done by that Party, would be a breach of the provisions of sub-Clauses 20.1.1 to 20.1.4 above.
- 20.2 Either Party may:
- 20.2.1 disclose any Confidential Information to:
 - 20.2.1.1 any sub-contractor or supplier of that Party;
 - 20.2.1.2 any governmental or other authority or regulatory body;
or
 - 20.2.1.3 any employee or officer of that Party or of any of the aforementioned persons, parties or bodies;
 - 20.2.2 to such extent only as is necessary for the purposes contemplated by these Terms (including, but not limited to, the provision of the Services), or as required by law. In each case that Party shall first inform the person, party or body in question that the Confidential Information is confidential and (except where the disclosure is to any such body under sub-Clause 20.2.1.2 or any employee or officer of any such body) obtaining and submitting to the other Party a written confidentiality undertaking from the party in question. Such undertaking should be as nearly as practicable in the terms of this Clause 20, to keep the Confidential Information confidential and to use it only for the purposes for which the disclosure is made; and
 - 20.2.3 use any Confidential Information for any purpose, or disclose it to any other person, to the extent only that it is at the date of these Terms, or at any time after that date becomes, public knowledge through no fault of that Party. In making such use or disclosure, that Party must not disclose any part of the Confidential Information which is not public knowledge.
- 20.3 The provisions of this Clause 20 shall continue in force in accordance with their terms, notwithstanding the termination of these Terms for any reason.

21. **Assignment and Sub-Contracting**

- 21.1 Subject to sub-Clause 21.2, these Terms is personal to the Parties. Neither Party may assign, mortgage, charge (otherwise than by floating charge) or sub-licence any of its rights hereunder without the written consent of the other Party, such consent not to be unreasonably withheld.
- 21.2 Du360 shall be entitled to perform any of the obligations undertaken by it through any other member of its group or through suitably qualified and skilled sub-contractors. Any act or omission of such other member or sub-contractor shall, for the purposes of these Terms, be deemed to be an act or omission of du360.

22. Force Majeure

- 22.1 No Party to these Terms shall be liable for any failure or delay in performing their obligations where such failure or delay results from any cause that is beyond the reasonable control of that Party. Such causes include, but are not limited to: power failure, internet service provider failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is beyond the control of the Party in question.
- 22.2 In the event that a Party to these Terms cannot perform their obligations hereunder as a result of force majeure for a continuous period of 60, the other Party may at its discretion terminate these Terms by written notice at the end of that period. In the event of such termination, the Parties shall agree upon a fair and reasonable payment for all Services provided up to the date of termination. Such payment shall take into account any prior contractual commitments entered into in reliance on the performance of these Terms.

23. Term and Termination

- 23.1 Either Party may terminate these Terms by giving to the other not less than 30 days written notice, to expire on or at any time after 90 days.
- 23.2 Either Party may immediately terminate these Terms by giving written notice to the other Party if:
- 23.2.1 any sum owing to that Party by the other Party under any of the provisions of these Terms is not paid within 30 Business Days of the due date for payment;
- 23.2.2 the other Party commits any other breach of any of the provisions of these Terms and, if the breach is capable of remedy, fails to remedy it within 30 Business Days after being given written notice giving full particulars of the breach and requiring it to be remedied;
- 23.2.3 an encumbrancer takes possession, or where the other Party is a company, a receiver is appointed, of any of the property or assets of that other Party;
- 23.2.4 the other Party makes any voluntary arrangement with its creditors or, being a company, becomes subject to an administration order (within the meaning of the Insolvency Act 1986);
- 23.2.5 the other Party, being an individual or firm, has a bankruptcy order made against it or, being a company, goes into liquidation (except for the purposes of bona fide amalgamation or re-construction and in such a manner that the company resulting therefrom effectively agrees to be bound by or assume the obligations imposed on that other Party under these Terms);
- 23.2.6 anything analogous to any of the foregoing under the law of any jurisdiction occurs in relation to the other Party;
- 23.2.7 that other Party ceases, or threatens to cease, to carry on business; or
- 23.2.8 control of that other Party is acquired by any person or connected persons not having control of that other Party on the date of these Terms. For the purposes of this Clause 10, "control" and "connected persons" shall have the meanings ascribed thereto by Sections 1124 and 1122 respectively of the Corporation Tax Act 2010.

- 23.3 For the purposes of sub-Clause 10.4.2, a breach shall be considered capable of remedy if the Party in breach can comply with the provision in question in all respects.
- 23.4 The rights to terminate these Terms given by this Clause 10 shall not prejudice any other right or remedy of either Party in respect of the breach concerned (if any) or any other breach.

24. Effects of Termination

Upon the termination of these Terms for any reason:

- 24.1 any sum owing by either Party to the other under any of the provisions of these Terms shall become immediately due and payable;
- 24.2 all Clauses which, either expressly or by their nature, relate to the period after the expiry or termination of these Terms shall remain in full force and effect;
- 24.3 termination shall not affect or prejudice any right to damages or other remedy which the terminating Party may have in respect of the event giving rise to the termination or any other right to damages or other remedy which any Party may have in respect of any breach of these Terms which existed at or before the date of termination;
- 24.4 subject as provided in this Clause 11 and except in respect of any accrued rights neither Party shall be under any further obligation to the other; and
- 24.5 each Party shall (except to the extent referred to in Clause 7) immediately cease to use, either directly or indirectly, any Confidential Information, and shall immediately return to the other Party any documents in its possession or control which contain or record any Confidential Information.

25. No Waiver

No failure or delay by either Party in exercising any of its rights under these Terms shall be deemed to be a waiver of that right, and no waiver by either Party of a breach of any provision of these Terms shall be deemed to be a waiver of any subsequent breach of the same or any other provision.

26. Further Assurance

Each Party shall execute and do all such further deeds, documents and things as may be necessary to carry the provisions of these Terms into full force and effect.

27. Costs

Subject to any provisions to the contrary each Party to these Terms shall pay its own costs of and incidental to the negotiation, preparation, execution and carrying into effect of these Terms.

28. Set-Off

Neither Party shall be entitled to set-off any sums in any manner from payments due or sums received in respect of any claim under these Terms or any other Terms at any time.

29. **Relationship of the Parties**

Nothing in these Terms shall constitute or be deemed to constitute a partnership, joint venture, agency or other fiduciary relationship between the Parties other than the contractual relationship expressly provided for in these Terms.

30. **Non-Solicitation**

30.1 Neither Party shall, for the term of these Terms and for a period of 1 year after its termination or expiry, employ or contract the services of any person who is or was employed or otherwise engaged by the other Party at any time in relation to these Terms without the express written consent of that Party.

30.2 Neither Party shall, for the term of these Terms and for a period of 1 year after its termination or expiry, solicit or entice away from the other Party any customer or client where any such solicitation or enticement would cause damage to the business of that Party without the express written consent of that Party.

31. **Third Party Rights**

31.1 No part of these Terms is intended to confer rights on any third parties and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply to these Terms.

31.2 Subject to this Clause 18 these Terms shall continue and be binding on the transferee, successors and assigns of either Party as required.

32. **Notices**

32.1 All notices under these Terms shall be in writing and be deemed duly given if signed by, or on behalf of, a duly authorised officer of the Party giving the notice.

32.2 Notices shall be deemed to have been duly given:

32.2.1 when delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient; or

32.2.2 when sent, if transmitted by facsimile or e-mail and a successful transmission report or return receipt is generated; or

32.2.3 on the fifth business day following mailing, if mailed by national ordinary mail, postage prepaid; or

32.2.4 on the tenth business day following mailing, if mailed by airmail, postage prepaid. In each case notices shall be addressed to the most recent address, e-mail address, or facsimile number notified to the other Party.

33. **Entire Terms**

33.1 These Terms contains the entire Terms between the Parties with respect to its subject matter and may not be modified except by an instrument in writing signed by the duly authorised representatives of the Parties.

33.2 Each Party acknowledges that, in entering into these Terms, it does not rely on any representation, warranty or other provision except as expressly provided in these Terms, and all conditions, warranties or other terms implied by statute or

common law are excluded to the fullest extent permitted by law.

34. Counterparts

These Terms may be entered into in any number of counterparts and by the Parties to it on separate counterparts each of which when so executed and delivered shall be an original, but all the counterparts together shall constitute one and the same instrument.

35. Severance

In the event that one or more of the provisions of these Terms is found to be unlawful, invalid or otherwise unenforceable, that / those provision(s) shall be deemed severed from the remainder of these Terms. The remainder of these Terms shall be valid and enforceable.

36. Law and Jurisdiction

36.1 These Terms (including any non-contractual matters and obligations arising therefrom or associated therewith) shall be governed by, and construed in accordance with, the laws of England and Wales.

36.2 Subject to the provisions of Clause 23, any dispute, controversy, proceedings or claim between the Parties relating to these Terms (including any non-contractual matters and obligations arising therefrom or associated therewith) shall fall within the jurisdiction of the courts of England and Wales.