



TERMS & CONDITIONS

XARIOS

TECHNOLOGIES

TERMS AND CONDITIONS OF SUPPLY

These terms and condition of supply apply to any and all busy transactions where Xarios is supplying software applications, hardware, professional services or support services to the reseller.

In these terms and conditions Xarios Ltd will be identified as 'Xarios' and the business partner, reseller or distributor identified as the 'Reseller'.

The reseller, by signing the Xarios account application form, or by purchasing equipment, software or services from Xarios will be deemed to have accepted the terms and conditions of supply as set out below.

BACKGROUND

- (A) Xarios manufactures and supplies the Products and wishes to appoint the Reseller as its non-exclusive reseller to distribute the Products to End Users in the Territory (as defined below).
- (B) The Reseller agrees to distribute the Products it purchases from Xarios to End Users (as defined below) on and subject to the terms and conditions of this Agreement.

IT IS AGREED

1. Definitions and interpretation

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

Affiliate	In relation to either party, each and any subsidiary or holding company of that party and each and any subsidiary of a holding company of that party (as such terms are defined in the Companies Act 2006);
Agreement	These terms and conditions and any Order Confirmation;
Applicable Laws	The laws of England and Wales and the European Union and any other laws or regulations, regulatory policies, guidelines or industry codes which apply to the provision of the Deliverables or the Reseller Services or this Agreement, including any Relevant Requirements;
Business Day(s)	Any day that is not a Saturday, Sunday or public holiday in the UK;
Business Hour(s)	The hours between 9.00 am and 5.00 pm on Business Days;

Confidential Information	Any and all information (whether oral, written or in any other form) disclosed by one party to the other party or that is otherwise obtained by the receiving party under or in connection with this Agreement and that is marked as confidential, is confidential by its nature or relates to the business or affairs of the disclosing party;
Control	Has the meaning set out in section 1124 of the Corporation Tax Act 2010;
Deliverables	The Products and the Xarios Services to be provided by Xarios to the Reseller and/or End Users (as applicable) under this Agreement and any and all other software, documents, information, data, ideas, concepts, knowhow, techniques and other material, things or items otherwise provided by Xarios under the terms of this Agreement;
Discount	The applicable rate of discount.
DPA	The Data Protection Act 1998;
Effective Date	The date on which this Agreement has been signed by authorised representatives of both parties;
End User	A person to whom the Products, the End User Services and/or the Reseller Services are supplied by the Reseller;
End User Licence	A licence granted by Xarios to an End User in respect of Software, the terms of which are set out in the EULA;
End User Services	The services supplied by Xarios to End Users.
EULA	The end user licence agreement
Force Majeure Event	Any cause(s) or event(s) beyond the reasonable control of a party including but not limited to fires, natural disasters, extreme adverse weather conditions, strikes (excluding those of a party's own employees), insurrection or riots, embargoes, container shortages, wrecks or delays in transportation, inability to obtain supplies and raw materials and requirements or regulations of any civil or military authority;
Hardware	All or any part(s) of any hardware (including any associated Manuals) that may be supplied by Xarios to the Reseller and for sale by the Reseller to End Users under the terms of this Agreement;

Intellectual Property Rights	All intellectual property rights of any kind subsisting anywhere in the world whether or not registered and all applications, renewals and extensions of the same and whenever arising, registered or applied to be registered including, without limitation, copyright, moral rights, database right, design right, semiconductor topography rights, domain name rights, patents, trademarks, service marks, trade names and other rights in goodwill, rights in know-how, trade secrets and other confidential information;
Manuals	The user manuals, help files, release notes and other documentation published by Xarios that are made available to the Reseller in connection with the Products;
Minimum Term	The period of one year from the Effective Date;
Order	An order for Deliverables placed by the Reseller with Xarios during the Term in accordance with the terms of this Agreement;
Order Confirmation	Has the meaning set out in clause 3.4;
Order Form	A written Order for Deliverables sent by the Reseller to Xarios stating as a minimum: Purchase order reference; Deliverable name(s), code number(s) and quantity required; unit Price; Total Price excluding VAT; total Price including VAT; the delivery address; the preferred date for delivery (if any);
Price List	Xarios' standard price list for the Deliverables as published from time to time, all prices being exclusive of VAT unless expressly stated otherwise;
Price	Has the meaning set out in clause 5.1;
Products	The Software (and any End User Licence of the same), the Hardware, the Extended Warranty, the Software Assurance and the End User Services;
Records	Complete and accurate details relating to all Products sold by and all Reseller Services provided by the Reseller to End Users including those relating to: <ul style="list-style-type: none"> a) the identity and contact details of End Users; b) the Products purchased by each End User; and c) any complaints made by End Users in connection with the Products;
Releases	Any Software release by Xarios which modifies, revises or alters any of the Software and adds features, functionality or enhancements to such Software.
Relevant Requirements	Has the meaning set out in clause 12.1;
Relevant Terms	Has the meaning set out in clause 12.3;

Reseller Services	Software Assurance and End User Services;
Reseller Support Services	Support services supplied by Xarios to the Reseller;
SA Subscribers	End Users to whom the Reseller has agreed to provide Software Assurance;
Sell Off Period	Has the meaning set out in clause 18.3.2;
Services	The Xarios Services and the Reseller Services;
Site	The site for delivery of any Deliverables as set out in an Order;
Software	The Xarios software products (including any Updates, Releases and any associated Manuals) that may be supplied by Xarios to the Reseller and supplied by the Reseller to End Users under the terms of this Agreement;
Software Assurance	The software assurance services that may be supplied by Xarios to the Reseller and sold by the Reseller to End Users under the terms of this Agreement;
Supported Version	Any version of software that Xarios maintains on a list of supported versions available to the Reseller from time to time and if not referred to on that list, the current major release and the prior major release. (for the avoidance of doubt the first digit in a version number constitutes the major release version i.e. Version 1.6 is major release 1 or Version 3.1 is major release 3)
System	A telephone system in respect of which the Deliverables will be provided;
Term	The term of this Agreement as set out in clause 17.1;
Territory	The geographically defined area in which the reseller operates.
Third Party EULA	Any end user licence agreement relating to any third party software provided by Xarios to the Reseller which is brought to the attention of the Reseller;
Trademarks	The trademarks, trade names, brands and logos of Xarios together with any further trademarks, trade names, brands or logos which Xarios may permit or procure permission for the Reseller to use; "
Updates	Any Software release by Xarios that fixes existing problems with Software and / or constitutes a patch, bug, fix or maintenance release for Software.
Warranty Period	13 months from the date of supply to the Reseller or in the case where Xarios install the product, from the date of installation;
Xarios Services	The End User Services and the Reseller Support Services.

- 1.2** Clause and paragraph headings shall not affect the interpretation of this Agreement.
- 1.3** References to clauses are to the clauses of this Agreement.
- 1.4** A reference to a person shall, unless the context otherwise requires, include individuals, partnerships, companies and all other legal persons.
- 1.5** A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6** Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.
- 1.7** Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.8** A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.9** A reference to writing or written includes faxes and emails.
- 1.10** The words "include", "includes", "including" and "included" will be construed without limitation unless inconsistent with the context.
- 1.11** Any reference to any of the parties hereunder includes their successors in title and assigns.

2. Appointment

- 2.1** Xarios hereby nominates the Reseller on a non-exclusive basis to market and sell the Products to End Users in the Territory during the Term under the terms of this Agreement.
- 2.2** The Reseller shall not sell any of the Products through a sales agent or to a subdistributor or reseller without the express written permission of Xarios. Where Xarios agrees to any such appointment, the Reseller shall ensure that it enters into a written contract with such sales agent, sub-distributor or reseller on terms which provide at least the same level of protection to Xarios as set out in this Agreement.
- 2.3** The Reseller shall not represent itself as an agent of Xarios for any purpose, nor pledge Xarios' credit or give any condition or warranty or make any representation on Xarios' behalf or commit Xarios to any contract or otherwise incur any liability on behalf of Xarios howsoever arising. Further, the Reseller shall not without Xarios' prior written consent make any representations, warranties, guarantees or other commitments with respect to the specifications, features or capabilities of Products which are inconsistent with those contained in the promotional materials or Manuals supplied by Xarios (including without limitation the EULA).

- 2.4** The Reseller's appointment under this clause 2 only grants to the Reseller the right to distribute the Products and does not transfer any right, title or interest to any such Products to the Reseller or its customers. Use of the terms "sell", "license", "purchase" and "price" will be interpreted in accordance with this clause.
- 2.5** Nothing in this Agreement shall:
- 2.5.1** Entitle the Reseller to any priority of supply in relation to the Deliverables as against Xarios or any third party;
- 2.5.2** Affect Xarios' freedom to contract with any third party in respect of the Deliverables; or
- 2.5.3** save as expressly provided otherwise, prevent the Reseller from contracting with any third party in respect of any products or services similar to the Deliverables.

3. Orders

- 3.1** This Agreement shall apply to all Orders placed by the Reseller and accepted by Xarios during the Term. The Reseller agrees to deal with Xarios on the terms of this Agreement to the exclusion of all other terms, conditions, warranties or representations.
- 3.2** The Reseller shall place all Orders for Deliverables by completing and submitting an Order Form to Xarios.
- 3.3** No terms or conditions endorsed on, delivered with or contained in any Order Form(s), specification or any other document supplied by the Reseller or implied by trade or course of dealing shall form part of this Agreement.
- 3.4** An Order is deemed to have been accepted and a contract shall come into existence between the parties in respect of an Order when written confirmation of acceptance of that Order has been sent by Xarios to the Reseller (an "Order Confirmation").
- 3.5** Xarios reserves the right to make any changes in the specification of the Deliverables to be supplied which are required to conform to any Applicable Laws or which do not materially affect their performance. The Reseller accepts that Xarios is a manufacturer and distributor of goods and services and is not responsible for any variations made by any supplier of Xarios or for the failure to supply any Products as a result of shortage of supplies.
- 3.6** No Order for which an Order Confirmation has been sent may be cancelled by the Reseller except with the prior agreement in writing of Xarios and on terms that the Reseller shall indemnify Xarios 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 Xarios as a result of cancellation.

4. Delivery, risk and title

- 4.1** Xarios shall supply to the Reseller the Deliverables set out in each Order (following the issue of an Order Confirmation in respect of the same).
- 4.2** Xarios shall, in respect of each Order, use its reasonable endeavours to supply the Deliverables to the Reseller and / or the End User (as appropriate) by the date set out in the Order Confirmation.
- 4.3** Where Software is supplied by Xarios to the Reseller, Xarios shall supply the most recent version of the Software (including all Updates and Releases) as at the date of despatch, which may be provided by way of appropriate media or by making it available to download from the Xarios internet download area as notified by Xarios to the Reseller from time to time.
- 4.4** Unless otherwise agreed:
- 4.4.1** The Products will be delivered to the Site;
- 4.4.2** The Reseller shall be responsible for the cost of delivery of the Products;
- 4.4.3** Risk in the Products will pass from Xarios to the Reseller upon delivery to the Site (or to the End User on the Reseller's behalf where the Site is the End User's premises).
- 4.5** Whilst delivery dates are given by Xarios in good faith, the times for delivery stated in clause 4.2 shall be estimates only and time shall not be of the essence for the supply of the Deliverables. Delays in the delivery of an Order shall not entitle the Reseller to:
- 4.5.1** Refuse to take delivery of the Order; or
- 4.5.2** Claim damages; or
- 4.5.3** Terminate this Agreement, subject always to clause 20.
- 4.6** Xarios shall have no liability for any failure or delay in delivering an Order to the extent that such failure or delay is caused by the Reseller's failure to comply with its obligations under this Agreement.
- 4.7** The parties acknowledge that in performing the Xarios Services, Xarios may be required to provide the Xarios Services directly to End Users and may be required to visit the premises of, and interface with, End Users. In all such cases, Xarios shall be acting as the Reseller's subcontractor and, unless otherwise expressly approved by the Reseller in writing (and without prejudice to any other contractual relationship which may exist between Xarios and the End User, including the EULA), there shall be no direct contractual relationship between Xarios and End Users for the supply of the Xarios Services.
- 4.8** If, at any time during or after the Term, an End User decides that it no longer wishes to receive the Reseller Services from, or otherwise deal with, the Reseller in respect of the Products it has purchased, Xarios shall continue to supply the End User Services to which that End User is entitled and may cease dealing with the Reseller in respect of the same and may deal instead with the End User or with the reseller appointed by that End User to deliver the Reseller Services or services similar to the Reseller Services in place of the Reseller (if any)

- 4.9** Xarios shall provide all marketing, advertising and promotional information, documentation and materials relating to the Products reasonably required by the Reseller to enable the Reseller to properly and efficiently discharge its duties and obligations under this Agreement;
- 4.10** The Reseller shall inspect all Hardware on delivery and inform Xarios within 3 days if any of the Hardware is damaged or any Hardware which should have been delivered has not been delivered. The Reseller's only remedy in respect of damaged or short delivery shall be the provision of replacement Hardware and Xarios shall not be liable for any damage or under delivery that is not notified in this way.
- 4.11** If the Reseller fails to take delivery of an Order on the date of delivery, then, except where such failure or delay is caused by Xarios' failure to comply with its obligations under this Agreement or where Products are rejected in accordance with clause 4.10:
- 4.11.1** delivery of the Order shall be deemed to have been completed at 5.00 pm on the date of attempted delivery; and
- 4.11.2** Xarios shall store the Order until delivery takes place, and shall be entitled to charge the Reseller for all related costs and expenses (including insurance).
- 4.12** Xarios may deliver Orders by instalments, which may be invoiced and paid for separately. References in this Agreement to Orders shall, where applicable, also be read as references to instalments.
- 4.13** Title to Hardware shall not pass to the Reseller until the later of delivery of the Hardware and receipt by Xarios of payment in full (in cash or cleared funds) of the Price for such Hardware.
- 4.14** Until title to Products has passed to the Reseller, the Reseller shall:
- 4.14.1** Hold such Hardware on a fiduciary basis as Xarios' bailee;
- 4.14.2** Ensure that no charge, lien or other encumbrance is created over the Hardware;
- 4.14.3** Store such Hardware in a secure, safe, dry and clean environment and separately from all other goods held by the Reseller so that they remain readily identifiable as Xarios' property;
- 4.14.4** Not remove, deface or obscure any identifying mark or packaging on or relating to such Hardware; and
- 4.14.5** Maintain such Hardware in satisfactory condition and keep them insured on Xarios' behalf for their full price against all risks with an insurer that is reasonably acceptable to Xarios. The Reseller shall obtain an endorsement of Xarios' interest in the Hardware on its insurance policy, subject to the insurer being willing to make the endorsement. On request the Reseller shall allow Xarios to inspect such Hardware and the insurance policy.
- 4.15** If, before title to Hardware passes to the Reseller, the Reseller becomes subject to any of the events in clauses 17.3.1 then, provided that such Hardware has not been resold and without limiting any other right or remedy Xarios may have, Xarios may at any time require the Reseller to deliver up such Hardware and, if the Reseller fails to do so promptly, enter any premises of the Reseller or of any third party where the relevant Hardware is stored in order to recover it.

5. Price and payment

- 5.1** The prices to be paid by the Reseller to Xarios for the Deliverables shall be the prices set out in the Price List less the Discount (the "Price"). The Reseller shall additionally pay the cost of delivery and any applicable Value Added Tax.
- 5.2** Xarios shall have the right to amend the Discount at any time after the expiry of the Minimum Term on 60 days' notice in writing to the Reseller. If the Reseller does not agree to the changes to the Discount, the Reseller may terminate this Agreement by giving a minimum of 30 days' notice, to expire on or after the date on which the change to the Discount was due to take effect.
- 5.3** Xarios reserves the right, upon notice to the Reseller, at any time to increase the Price to reflect:
- 5.3.1** any increase in the cost of the Deliverables to Xarios which is due to any factor beyond Xarios' reasonable control (including, without limitation, any costs passed down from Xarios' suppliers, any foreign exchange fluctuations, currency regulations, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture); and / or
 - 5.3.2** any change in delivery dates, quantities or specifications requested by the Reseller; and/or
 - 5.3.3** any delay caused by any instructions of the Reseller or failure of the Reseller to give Xarios adequate information or instructions.
- 5.4** Xarios may issue an invoice in respect of an Order at any time after the Deliverables have been made available or delivered.
- 5.5** The Reseller shall pay the Price of each Order within 30 days of the date of the relevant invoice.
- 5.6** All amounts payable by the Reseller under this Agreement shall be payable in pounds sterling by bank transfer or cheque (using such payment details as are notified by Xarios to the Reseller from time to time).
- 5.7** The Reseller shall not be entitled by reason of set-off, counterclaim, abatement or other similar deduction to withhold payment of any amount due to Xarios provided that where any part of any invoice is disputed by the Reseller and Xarios accepts that the dispute is genuine the Reseller may deduct from the payment of the invoice in question the amount attributable to the disputed items.
- 5.8** Without prejudice to any other rights or remedies of Xarios, if, in respect of an Order, the Reseller fails to pay an invoice after having been given 14 days' written notice by Xarios to remedy its failure to pay by the due date, Xarios may:
- 5.8.1** suspend performance of its obligations due under this Agreement in respect of that Order (including the supply of the Deliverables); and / or
 - 5.8.2** suspend performance of its obligations due under this Agreement in respect of any other Order placed by the Reseller; and / or

- 5.8.3** disable the relevant End User's access to the Software; and/or
- 5.8.4** charge interest on the amount unpaid at the rate of 4% over the bank of England base rate until payment in full of all sums outstanding (including any interest due) has been received.

6. Advertising and promotion

The Reseller shall during the Term:

- 6.1** Advertise and promote the Products in the Territory provided that the use by the Reseller of any advertising materials and promotional literature containing the Trademarks or other references to the Products shall be subject to the prior written consent of Xarios and Xarios' style guidelines as provided to the Reseller from time to time;
- 6.2** Observe all directions and instructions given to it by Xarios or its Affiliates in relation to the advertising and promotion of the Products to the extent that such promotions or advertisements refer to the Products or otherwise use the Trademarks, and shall not make any statement as to the quality or manufacture of the Products without the prior written approval of Xarios;
- 6.3** Conduct its business in a manner that reflects favourably at all time on Xarios and its Affiliates and the good name, goodwill and reputation of Xarios and its Affiliates and not enter into any contract or engage in any practice detrimental to the interests of Xarios, its Affiliates or the Products;
- 6.4** Avoid deceptive, misleading or unethical practices that are, or might be, detrimental to Xarios, its Affiliates, the Products or the public and shall not publish or employ, or cooperate in the publication or employment of, any false, misleading or deceptive advertising material or other representations with regard to Xarios, its Affiliates or the Products; and
- 6.5** Where agreed by the parties, attend and participate in trade fairs and exhibitions in the Territory in order to promote the Products.

7. Updates, Releases and Software Assurance

- 7.1** SA Subscribers shall be entitled to receive all Updates and Releases relating to the Software they have purchased that are issued by Xarios during the period of their subscription.

8. Reseller warranties and obligations

- 8.** The Reseller warrants to Xarios that it has full capacity and authority and all necessary consents to enter into and perform its obligations under this Agreement.
- 8.2** The Reseller undertakes and agrees with Xarios during the Term that it shall:

- 8.2.1** use all reasonable endeavours to advertise, promote and market the Products in the Territory and in accordance with clause 6;
- 8.2.2** provide installation and support services to the End Users:
 - 8.2.2.1** in accordance with all training and Manuals provided by Xarios;
 - 8.2.2.2** using reasonable care and skill in accordance with good industry practice; and
 - 8.2.2.3** in a manner that causes minimal disruption to the business processes and Systems of End Users (other than where otherwise agreed or in respect of any unavoidable disruption that is required in order properly to perform the Reseller Services);
- 8.2.3** bring the EULA to the attention of each End User and shall procure that each End User shall have accepted the terms of the EULA prior to the use by the End User of the Software;
- 8.2.4** refrain from amending or varying the terms of the EULA;
- 8.2.5** in respect of any third party software supplied by Xarios, bring to the attention of each End User any Third Party EULA applicable to that software and shall procure that each End User shall have accepted the terms of the Third Party EULA prior to the use by the End User of the third party software;
- 8.2.6** where Xarios grants the Reseller the right to operate under a sub-licence, comply with the terms of the applicable master licence between Xarios and its licensor;
- 8.2.7** ensure that the terms of any agreement relating to the provision of the End User Services and / or the Reseller Services formed between the Reseller and End Users corresponds with the corresponding terms in this Agreement.
- 8.2.8** use its best endeavours to ensure that the Products it sells are compatible for use with End Users' Systems;
- 8.2.9** accept responsibility for the selection of the Products suitable for the needs of End Users and their Systems and the Reseller acknowledges that the Products have not been developed to meet the individual requirements of the Reseller or any End User;
- 8.2.10** employ a sufficient number of suitably qualified personnel to ensure the proper fulfilment of the Reseller's obligations under this Agreement;
- 8.2.11** in all instances ensure that the Products are installed at End Users' premises and shall only be moved, altered, adjusted or interfered with by suitably trained and experienced persons;
- 8.2.12** ensure that the number of copies of the Software provided to End Users correlates with the number of End User Licences purchased;
- 8.2.13** at its own cost keep the Products in its possession stored securely and in conditions appropriate for their storage;
- 8.2.14** provide all such reasonable assistance as Xarios may require in order to provide the Xarios Services to the Reseller and / or End Users;

- 8.2.15** not act or omit to act, and shall procure that its employees, agent and subcontractors do not act or omit to act, in any way that may invalidate or otherwise detrimentally affect any of Xarios' insurance policies;
 - 8.2.16** inform Xarios immediately of any changes in ownership or Control of the Reseller and of any change in its organisation or method of doing business which might affect the performance of the Reseller's duties in this Agreement;
 - 8.2.17** comply with all Applicable Laws; and
 - 8.2.18** give written notice to Xarios as soon as it is reasonably able upon becoming aware of a breach of its or Xarios' warranties.
- 8.3** The Reseller accepts and acknowledges that the Products are not secure and that Xarios does not guarantee the prevention or detection of any unauthorised attempts to access the Products or End Users' Systems.

9. Xarios warranties and obligations

- 9.1** Xarios warrants to the Reseller that:
- 9.1.1** it has full capacity and authority and all necessary consents to enter into and perform its obligations under this Agreement;
 - 9.1.2** the Products will be supplied free of any charge, lien or encumbrance;
 - 9.1.3** the Products will comply in all material respects with Xarios' specifications.
 - 9.1.4** it will provide the Xarios Services:
 - 9.1.4.1** using reasonable care and skill in accordance with good industry practice; and
 - 9.1.4.2** in a manner that causes minimal disruption to the business processes and Systems of End Users (other than where otherwise agreed or in respect of any unavoidable disruption that is required in order to properly perform the Xarios Services);
 - 9.1.5** obtain and maintain all permissions, licences and consents as are required in order for Xarios to provide the Deliverables;
 - 9.1.6** use its reasonable endeavours to ensure that the Products are free from viruses, worms, Trojan horses and other malicious code but Xarios does not warrant that the use of the Products will be uninterrupted or error-free;
 - 9.1.7** it will respond promptly to the Reseller's queries and correspondence in relation to the Products; and
 - 9.1.8** it will comply with all Applicable Laws.
- 9.2** If the Reseller notifies Xarios in writing of any defect or fault in the Hardware or the Software which constitutes a breach of the warranty in clause 9.1.3 within the Warranty Period

following delivery, and such defect or fault does not result from the Reseller, or anyone acting with the authority of the Reseller, having amended the Hardware or the Software or used them outside the terms of this Agreement for a purpose or in a context other than the purpose or context for which they were designed or in combination with any other product not provided by Xarios, or they have otherwise been used contrary to the instructions of Xarios, Xarios shall, at its option, do one of the following:

- 9.2.1** repair them;
 - 9.2.2** replace them; or
 - 9.2.3** refund any of the Price paid for them by the Reseller on their return (and all copies thereof), provided the Reseller provides all the information that may be necessary to assist Xarios in resolving the defect or fault, including a documented example of any defect or fault, or sufficient information to enable Xarios to re-create the defect or fault. A warranty does not include any labour required to replace faulty equipment or re-commission the recovered part.
- 9.3** If the Reseller notifies Xarios in writing of any defect or fault in the provision of the Xarios Services, Xarios shall, at its option, do one of the following:
- 9.3.1** repeat the provision of the relevant Services; or
 - 9.3.2** refund any of the Price paid by the Reseller in respect of the relevant Services, provided the Reseller provides all the information that may be necessary to assist Xarios in resolving the defect or fault.
- 9.4** All other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into this Agreement or any collateral agreement, whether by statute, common law or otherwise, are hereby excluded, including the implied conditions, warranties or other terms as to satisfactory quality and fitness for purpose.
- 9.5** The Reseller's sole remedy and Xarios' only obligation and liability to the Reseller in the event of a breach of the warranties in clauses 9.1.3 and 9.1.4 are set out in clauses 9.2 and 9.3 respectively.

10. Audit, reporting and forecasts

- 10.1** The Reseller shall during the Term promptly inform Xarios if there is any change of Control of the Reseller or any change in the key personnel of the Reseller which will or may affect the Reseller's performance of its obligations under this Agreement.
- 10.2** The Reseller shall inform Xarios immediately if it knows or suspects that an End User has used or is using any of the Products in an unauthorised manner.
- 10.3** During the Term the Reseller shall keep, at its principal place of business, the Records. During the Term Xarios or its authorised representative shall on reasonable notice at all reasonable

times be entitled to request copies of and/or inspect the Records (whether stored in tangible or intangible form and on whatsoever medium).

11. Insurance

- 11.1** Each party shall, during the Term, have in place and maintain public liability and professional indemnity insurance with insured limits reasonably appropriate for its business.

12. Anti-bribery

- 12.1** The Reseller shall comply with all applicable laws relating to anti-bribery and anticorruption including but not limited to the Bribery Act 2010 ("Relevant Requirements") and shall have and shall maintain in place throughout the Term its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements and will enforce them where appropriate.
- 12.2** The Reseller shall:
- 12.2.1** promptly report to Xarios any request or demand for any undue financial or other advantage of any kind received by the Reseller in connection with the performance of this Agreement; and
- 12.2.2** From time to time upon Xarios' request certify to Xarios in writing signed by an officer of the Reseller, compliance with this clause 12 by the Reseller and all persons associated with it under clause 12.3. The Reseller shall provide such supporting evidence of compliance as Xarios may reasonably request.
- 12.3** The Reseller shall ensure that any person associated with the Reseller who is performing Reseller Services or fulfilling the Reseller's obligations in connection with this Agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Reseller in this clause 12 ("Relevant Terms"). The Reseller shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to Xarios for any breach by such persons of any of the Relevant Terms.
- 12.4** Breach of this clause 12 shall be deemed a material breach under clause 17.2.1.
- 12.5** For the purpose of this clause 12, the meaning of adequate procedures and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act) and section 8 of that Act respectively. For the purposes of this clause, a person associated with the Reseller includes but is not limited to any subcontractor of the Reseller.

13. Intellectual property

- 13.1** All right, title and interest in the Intellectual Property Rights subsisting in the Deliverables and the Trademarks belongs, and shall belong, to Xarios and / or its licensors.
- 13.2** The Reseller shall, at the expense of Xarios, take all such steps as Xarios may reasonably require to assist Xarios in maintaining the validity and enforceability of the Intellectual Property Rights of Xarios during the Term.
- 13.3** Xarios makes no representation or warranty as to the validity or enforceability of the Intellectual Property Rights subsisting in the Deliverables.
- 13.4** Without prejudice to the right of the Reseller or any third party to challenge the validity of any Intellectual Property Rights of Xarios, the Reseller shall not do or authorise any third party to do any act which would or might invalidate or be inconsistent with any Intellectual Property Rights of Xarios and shall not omit or authorise any third party to omit to do any act which, by its omission, would have that effect or character.
- 13.5** Xarios grants to the Reseller a non-exclusive, revocable, non-transferable licence (subject to the terms and conditions of this Agreement and during the Term and solely for the purposes of performing the Reseller's obligations under this Agreement) to:
- 13.5.1** make and use such reasonable copies of the Software as may be reasonably required for internal use at the Reseller's premises and for the purposes of demonstrating, marketing and selling the Products to End Users; and
- 13.5.2** make such further copies of the Software as are required to provide the same to each End User customer of the Reseller in accordance with the number of End User Licences purchased by that End User and the instructions of Xarios from time to time.
- 13.6** The Reseller shall be entitled to make such copies of the Software for archival and back up purposes as may be reasonably required by the Reseller from time to time.
- 13.7** The Reseller shall not:
- 13.7.1** copy the Deliverables or any part of them except to the extent and for the purposes expressly permitted by this Agreement; or
- 13.7.2** modify, adapt, create any derivative work, reverse engineer, decompile, disassemble or carry out any act otherwise restricted by copyright or other Intellectual Property Rights in the Deliverables.
- 13.8** Xarios grants the Reseller a non-exclusive, revocable, non-transferable licence to use the Trademarks in the Territory during the Term in connection with the advertising, marketing and promotion of the Products only, provided always that such use conforms to the terms of this Agreement.
- 13.9** Xarios makes no representation or warranty as to the validity or enforceability of the Intellectual Property Rights in the Trademarks, nor as to whether the same infringe any Intellectual Property Rights of third parties.

- 13.10** The Reseller shall ensure that each reference to, and use of, any of the Trademarks by the Reseller is in a manner approved from time to time by Xarios and accompanied by an acknowledgement in a form approved by Xarios that the same is a Trademark (or registered Trademark) of Xarios.
- 13.11** The Reseller shall not:
- 13.11.1** use any of the Trademarks in any way which might prejudice their distinctiveness or validity or the goodwill of Xarios therein;
 - 13.11.2** use in relation to the Products any Trademarks other than the Trademarks without obtaining the prior written consent of Xarios; or
 - 13.11.3** Use any trademarks or trade names so resembling any Trademark or trade names of Xarios as to be likely to cause confusion or deception.
- 13.12** Other than the licences expressly granted under this Agreement, neither party grants any licence of, right in or makes any assignment of any of its Intellectual Property Rights. In particular, except as expressly provided in this Agreement, the Reseller shall have no rights in respect of any trade names or trademarks used by Xarios in relation to the Products or their associated goodwill, and the Reseller hereby acknowledges that all such rights and goodwill shall inure for the benefit of and are (and shall remain) vested in, Xarios.
- 13.13** The Reseller shall promptly give notice in writing to Xarios in the event that it becomes aware of:
- 13.13.1** any infringement or suspected infringement of the Trademarks or any other Intellectual Property Rights of Xarios; and
 - 13.13.2** any claim that any Product or the manufacture, use, sale or other disposal of any Product or use of the Trademarks infringes the rights or misuses the confidential information of any third party.
- 13.14** In the case of any matter falling within clause 13.13.1:
- 13.14.1** Xarios shall in its absolute discretion, determine what action if any shall be taken in respect of the matter; and
 - 13.14.2** Xarios shall have sole control over and shall conduct any consequent action as it shall deem necessary; and
 - 13.14.3** Xarios shall pay all costs in connection with that action and shall be entitled to all damages and other sums which may be paid or awarded as a result of any such action.
- 13.15** In the case of any matter falling within clause 13.13.2:
- 13.15.1** Xarios shall defend the Reseller, its officers, directors and employees against any claims that the marketing, advertising or distribution of the Products in accordance with this Agreement infringes any Intellectual Property Right and shall indemnify the Reseller for and against any amounts awarded against the Reseller in judgment or settlement of such claims, provided that:

- 13.15.1.1** Xarios is given prompt notice of such claim;
- 13.15.1.2** the Reseller provides reasonable co-operation to Xarios in the defence and settlement of such claim, at Xarios' expense; and
- 13.15.1.3** Xarios is given sole authority to defend or settle the claim;
- 13.15.2** in the defence or settlement of the claim, Xarios may obtain for the Reseller the right to continue distributing the Product in the manner contemplated by this Agreement, replace or modify the Product so that it becomes noninfringing or, if such remedies are not reasonably available, refund the price paid for the Product in question and remove it from this Agreement forthwith by notice in writing and without liability to the Reseller. Xarios shall not in any circumstances have any liability if the alleged infringement is based on:
 - 13.15.2.1** a modification of the Products by anyone other than Xarios; or
 - 13.15.2.2** the Reseller's marketing, advertising, distribution or use of the Products in a manner contrary to this Agreement and / or the instructions given to the Reseller by Xarios; or
 - 13.15.2.3** the Reseller's marketing, advertising, distribution or use of the Products after notice of the alleged or actual infringement from Xarios or any appropriate authority;
- 13.15.3** The foregoing states the Reseller's sole and exclusive rights and remedies, and Xarios' entire obligations and liability, in the case of any matter falling under clause 13.13.2.
- 13.16** The Reseller shall at the request and expense of Xarios, provide all reasonable assistance to Xarios (including, but not limited to, the use of its name in, or being joined as a party to, proceedings) in connection with any action to be taken by Xarios, provided that the Reseller is given such indemnity as it may reasonably require against any damage to its name.

14. Confidentiality

- 14.1** Each party may have access to the Confidential Information of the other party under this Agreement. A party's Confidential Information shall not include information that:
 - 14.1.1** is or becomes publicly known through no act or omission of the receiving party; or
 - 14.1.2** was in the other party's lawful possession prior to the disclosure; or
 - 14.1.3** is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
 - 14.1.4** is independently developed by the receiving party, which independent development can be shown by written evidence; or
 - 14.1.5** is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.

- 14.2** Neither party shall use, copy, adapt, alter, disclose or part with possession of any Confidential Information of the other party except as strictly necessary to perform its obligations or exercise its rights under this Agreement.
- 14.3** Each party agrees to 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.
- 14.4** The terms of this Agreement, but not the fact that the Reseller is a customer of Xarios, shall be deemed to be Confidential Information.
- 14.5** The obligations in this clause shall survive termination of this Agreement for any reason.

15. Data protection

- 15.1** Each party shall comply with its respective obligations under the DPA and references in this clause to “data processor”, “data controller” and “personal data” shall have the meanings defined in the DPA.
- 15.2** Where the Reseller or any of its subcontractors, as part of the fulfilment of its obligations under this Agreement, processes personal as a data processor on behalf of Xarios:
- 15.2.1** the Reseller shall, and shall procure that its subcontractors shall:
- 15.2.1.1** act only on instructions from Xarios as a data controller (as defined in the DPA), which such instructions shall include to process personal data (as defined in the DPA) in accordance with this Agreement;
- 15.2.1.2** comply with Xarios’ instructions in relation to the processing of personal data as such instructions are given and varied from time to time by Xarios;
- 15.2.1.3** at all times take all appropriate technical and organisational measures against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data; and
- 15.2.1.4** not transfer any personal data outside of the European Economic Area without Xarios’ prior written consent; and
- 15.2.1.5** immediately notify Xarios if it receives any complaint, notice or communication which relates directly or indirectly to the processing of personal data under this Agreement, provide full co-operation and assistance in relation to any such complaint, notice or communication;
- 15.2.2** Xarios may from time to time serve on the Reseller an information notice requiring the Reseller, within such time and in such form as is specified in the information notice, to furnish to Xarios such information as Xarios may reasonably require relating to:

- 15.2.2.1** compliance by the Reseller or by its subcontractors with the Reseller's obligations to Xarios under this Agreement in connection with the processing of personal data; and/or
- 15.2.2.2** the rights of data subjects, including but not limited to subject access rights.
- 15.2.3** the Reseller shall provide to Xarios on request a copy of all personal data held by it pursuant to this Agreement, in the format and on the media reasonably specified by Xarios, and shall promptly inform Xarios if any such data is lost or destroyed or becomes damaged, corrupted, or unusable. The Reseller will restore such data at its own expense.
- 15.3** The obligations in this clause 15 shall survive termination of this Agreement for any reason.

16. Liability

- 16.1** The following provisions set out the entire financial liability of Xarios (including any liability for the acts or omission of its employees, agents and subcontractors) to the Reseller in respect of:
 - 16.1.1** any breach of this Agreement; and
 - 16.1.2** any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.
- 16.2** Except as expressly and specifically provided in this Agreement, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this Agreement.
- 16.3** Nothing in this Agreement excludes or limits the liability of Xarios for:
 - 16.3.1** death or personal injury caused by negligence; or
 - 16.3.2** fraud or fraudulent misrepresentation; or
 - 16.3.3** liability under section 12 of the Sale of Goods Act 1979 or section 2 of the Supply and Goods and Services Act 1982; or
 - 16.3.4** any liability that may not be excluded or limited under any Applicable Laws.
- 16.4** Subject to clause 16.3, Xarios shall not in any circumstances be liable, whether in tort (including for negligence or breach of statutory duty howsoever arising), contract, misrepresentation (whether innocent or negligent) or otherwise for:
 - 16.4.1** loss of actual or anticipated profits; or
 - 16.4.2** loss of business; or
 - 16.4.3** depletion of goodwill or similar losses; or
 - 16.4.4** loss of anticipated savings; or

- 16.4.5** loss of goods; or
 - 16.4.6** loss of use; or
 - 16.4.7** loss or corruption of data or information; or
 - 16.4.8** any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.
- 16.5** Other than in relation to any liability under clause 13.15.1 and subject always to clause 16.3, Xarios' total aggregate liability in contract, tort (including negligence or breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall in all circumstances be limited to £50,000.

17. Term and termination

- 17.1** This Agreement shall, unless terminated earlier in accordance with its terms, come into force on the Effective Date and continue for the Minimum Term. Following the expiry of the Minimum Term, this Agreement shall continue in force indefinitely unless and until either party gives the other party no less than three (3) month's prior written notice to terminate this Agreement (the "Term").
- 17.2** This Agreement may be terminated by Xarios, or the provision of the Deliverables may be suspended (at Xarios' discretion), immediately without further liability to the Reseller at any time if:
- 17.2.1** the Reseller commits any material breach of any of the terms of this Agreement which (in the case of breach capable of being remedied) shall not have been remedied within 30 days of a written request to remedy the same;
 - 17.2.2** the Reseller commits a persistent breach of any of the terms of this Agreement
 - 17.2.3** the Reseller fails to pay any sum due to Xarios under this Agreement after having been given 14 days' written notice by Xarios to remedy its failure to pay by the due date;
 - 17.2.4** the Reseller sells or disposes of in any way the whole or any substantial part of its business by one or a series of transactions;
 - 17.2.5** at any time there is a change of Control of the Reseller;
 - 17.2.6** the Reseller challenges or disputes the validity of any of Xarios' Intellectual Property Rights;
 - 17.2.7** the Reseller or any officer, partner or key employee of the Reseller is convicted of any criminal offence (other than minor motoring offences); or
 - 17.2.8** the Reseller purports to assign any of its rights or obligations under this Agreement.

- 17.3** This Agreement may be terminated by either party immediately without further liability to the other party:
- 17.3.1** if the other party makes an arrangement with or enters into a compromise with its creditors, becomes the subject of a voluntary arrangement, receivership, administration, liquidation or winding up, is unable to pay its debts or otherwise becomes insolvent or suffers or is the subject of any distraint, execution, event of insolvency or event of bankruptcy or any other similar process or event, whether in the United Kingdom or otherwise;
- 17.3.2** if the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
- 17.3.3** In the circumstances set out in clause 20.2.

18. Effect of termination

- 18.1** Save as provided for in this clause 18, each party's rights, liabilities and obligations under this Agreement shall cease upon this Agreement's termination or expiration.
- 18.2** Each party's accrued rights and liabilities and the rights and obligations of each party that are expressly or by implication intended to come into force upon, or remain in force following, the termination or expiration of this Agreement shall survive any termination or expiration of this Agreement.
- 18.3** Upon termination of this Agreement for any reason the Reseller shall:
- 18.3.1** within sixty (60) days of the date of termination, at its sole cost, return (or at Xarios' option destroy) all documents and materials containing Confidential Information of Xarios and irrevocably delete from its computer systems all Confidential Information of Xarios;
- 18.3.2** within 90 days of the date of termination (the "Sell Off Period"), at its sole cost, return (or at Xarios' option destroy) all other documents and materials provided by Xarios to the Reseller relating to the Products or containing the Trademarks (excluding correspondence between the parties but including all samples, technical pamphlets, catalogues, advertising materials and specifications). The Reseller shall be permitted during the Sell Off Period to use such documents and materials only for the purpose of advertising, promoting and selling its remaining stock of Products; and
- 18.3.3** within sixty (60) days of the date of termination, at its sole cost, provide Xarios with copies of the Records
- 18.4** Notwithstanding the previous provisions of this clause, unless this Agreement was terminated by Xarios under clauses 17.2 or 17.3, any Extended Warranty, Software Assurance or End User Services which have previously been purchased by the Reseller shall subject to clause 4.8 continue to be provided by Xarios subject to the terms of this Agreement.

19. Non-solicitation and employment

The Reseller shall not, without Xarios' prior written consent, either during the Term or within six (6) months after the date of effective termination of this Agreement, engage, employ or otherwise solicit for employment or other engagement any employee or contractor of Xarios who has been involved in the performance of this Agreement.

20. Force majeure

- 20.1** Neither party shall in any circumstances be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure results from a Force Majeure Event.
- 20.2** In such circumstances, the affected party shall notify the other party as soon as reasonably practicable after the Force Majeure Event and the effect on its ability to perform its obligations under this Agreement and shall be entitled to a reasonable extension of the time for performing such obligations, provided that, if the period of delay or non-performance continues for 6 months, the other party may terminate this Agreement by giving 30 days' written notice to the affected party.

21. Waiver

- 21.1** A waiver of any right under this Agreement is only effective if it is in writing.
- 21.2** The failure or delay of either party to enforce or to exercise, at any time or for any period of time, any term of or any right or remedy arising pursuant to this Agreement does not constitute and shall not be construed as a waiver of such term, right or remedy and shall in no way affect either party's right to later enforce or exercise it, nor shall any single or partial exercise of any right or remedy preclude any further exercise of the same or the exercise of any other right or remedy.
- 21.3** Unless specifically provided otherwise, rights arising under this Agreement are cumulative and do not exclude rights provided by law.

22. Severance

- 22.1** If any provision of this Agreement (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions will remain in force.
- 22.2** If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision will apply with whatever deletion is necessary to give effect to the commercial intention of the parties.

23. Entire agreement

- 23.1** This Agreement and any documents referred to in it constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter of this Agreement.
- 23.2** Each party acknowledges that, in entering into this Agreement and the documents referred to in it, it does not rely on any statement, representation (whether innocent or negligent), assurance or warranty (“Representation”) of any person (whether a party to this Agreement or not) other than as expressly set out in this Agreement or those documents.
- 23.3** Each party agrees that the only rights and remedies available to it arising out of or in connection with a Representation shall be for breach of contract.

24. Amendments

Save as expressly provided in this Agreement, no amendment or variation of this Agreement shall be effective unless in writing and signed by a duly authorised representative of each of the parties to it.

25. Assignment

- 25.1** The Reseller shall not, without the prior written consent of Xarios, assign, transfer, charge, sub-contract, novate or deal in any other manner with all or any of its rights or obligations under this Agreement.
- 25.2** Xarios may at any time assign, transfer, charge, sub-contract, novate or deal in any other manner with all or any of its rights or obligations under this Agreement.

26. No partnership or agency

Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, nor authorise any party to make or enter into any commitments for or on behalf of any other party except as expressly provided in clause 2.

27. Third party rights

This Agreement is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns, and is not intended to benefit, or be enforceable by, anyone else.

28. Notices

- 28.1** Any notice under this Agreement must be in writing, marked for the attention of the relevant person and delivered by hand or sent by pre-paid first-class post or recorded delivery post or sent by fax to: Xarios: Xarios Limited, Unit 7 Digital Park, Pacific Way, Salford Quays, Manchester, M50 1DR Fax 0845 3736881
- 28.2** A notice delivered by hand will be deemed to have been received when delivered (or if delivery is not in Business Hours, at 9.00 am on the first Business Day following delivery). A correctly addressed notice sent by pre-paid special or recorded delivery post will be deemed to have been received when actually received or when returned via the postal service marked "gone away" or the like. A notice sent by fax will be deemed to have been received at the time of transmission as shown by the timed printout obtained by the sender (or if transmission is not in Business Hours, at 9.00 am on the first Business Day following transmission).

29. Counterparts

This Agreement may be executed in any number of counterparts, each of which will be an original and all of the counterparts together will constitute one and the same instrument.

30. Governing law and jurisdiction

- 30.1** This Agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with the laws of England.
- 30.2** The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any disputes or claims arising out of or in connection with this Agreement, its subject matter or its formation (including non-contractual disputes or claims).