

Terms of Resale

1. Background

- 1.1 Nimans owns or has rights to certain software.
- 1.2 The Reseller is a provider of software resale services.
- 1.3 Nimans wishes to appoint the Reseller as an authorised reseller of certain of Nimans' software, to market and distribute the software in accordance with this Agreement.

2. Structure of this Software Reseller Agreement

- 2.1 This Agreement comprises of:
 - 2.1.1 the Appointment which sets out the details of the Parties;
 - 2.1.2 these Terms of Resale which set out the legal terms governing the relationship between the Parties; and
 - 2.1.3 the Software Schedules which describe the specific services that Nimans is to provide to the Reseller for resale.
- 2.2 Where Nimans agrees to provide new services to the Reseller for resale under this Agreement, the Parties shall agree a new Software Schedule detailing such services. Unless otherwise stated, each agreed Software Schedule shall become part of this Agreement and shall be subject to the Appointment and these Terms of Resale.
- 2.3 Unless and until any such new Software Schedule comes into effect in accordance with its terms, all discussions, proposals and negotiations between the Parties regarding the provision of such new services and additional services by Nimans shall be treated as being subject to contract and shall not create binding obligations on the Parties regarding the provision of those services.
- 2.4 Each Software Schedule will, where necessary or appropriate, incorporate terms and conditions and service levels that are specific to the particular type or types of service(s) being provided under that Software Schedule.
- 2.5 In the event that there is any conflict, inconsistency or ambiguity between any provisions of this Agreement, the following order of interpretation shall prevail:
 - 2.5.1 the Software Schedule; then
 - 2.5.2 the Appointment; then
 - 2.5.3 the Terms of Resale.
- 2.6 For the purposes of clause 2.5, an omission (whether deliberate or inadvertent) shall not of itself be considered to give rise to any conflict or inconsistency between any provisions of this Agreement.

3. Definitions and interpretation

- 3.1 In this Agreement:

Appointment

the appointment of the Reseller at the front of these Terms of Resale;

Business Day

means a day other than a Saturday, Sunday or bank or public holiday in England;

Commencement Date

means the date of this Agreement as specified in the Appointment;

Confidential Information

means all information (whether in oral, written or electronic form) relating to a party's business which may reasonably be considered to be confidential in nature including information relating to that party's technology, business, management, Know-how, Intellectual Property Rights, assets, finances, strategy, products and customers;

Control

has the meaning given to it in section 1124 of the Corporation Tax Act 2010 and the expressions change of Control, Controls and Controlled shall be construed accordingly;

Customer

means a customer of the Reseller who is authorised by an End User Agreement to use the Software in accordance with the terms of the End User Agreement;

Documentation

means the current user guides that may be provided by Nimans from time to time for use with the Software;

End User Agreement

means an end user licence agreement between the Reseller and a Customer which is in a form and identical in all material respects to the template set out in Schedule 3 or in such other form as Nimans and Reseller may agree in writing from time to time or where no end user licence agreement has been agreed in such form as may be agreed between the Reseller and the Customer;

Fees

means the fees payable by the Reseller to Nimans for the Software as set out in the Software Schedule and as varied from time to time in accordance with this Agreement and/or the Software Schedule;

Force Majeure Event

means any act, event, omission or accident beyond the reasonable control of a party that could not have been reasonably anticipated or avoided by a party, which prevents it from, or delays it in, performing its obligations under this Agreement;

Good Industry Practice

in relation to any undertaking and any circumstances, means the exercise of that degree of care, professionalism, skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or company engaged in the same type of activity under the same or similar circumstances;

Initial Period

the period commencing on the Commencement Date and expiring after the period set out in the Appointment;

Intellectual Property Rights

means copyright, patents, rights in inventions, rights in Confidential Information, Know-how, trade secrets, trademarks, service marks, trade names, design rights, rights in get-up, database rights, rights in data, semi-conductor chip topography rights, utility models, domain names, rights in computer software and all similar rights of whatever nature and, in each case:

- a. whether registered or not;
- b. including any applications to protect or register such rights;

- c. including all renewals and extensions of rights of applications;
- d. whether vested, contingent or future; and
- e. wherever existing;

IP Claim

means any claim brought against the Reseller by any third party (including any claim brought against the Reseller by a Customer relating to a claim by any other third party) alleging that the use of the Software by any Customer under an End User Agreement or by the Reseller infringes any copyright, database right, registered trade mark, registered design right or registered patent in the United Kingdom;

Know-how

means inventions, discoveries, improvements, processes, formulae, techniques, specifications, technical information, methods, tests, reports, component lists, manuals, instructions, drawings and information relating to customers and suppliers (whether written or in any other form and whether confidential or not);

Month

means a calendar month or part thereof;

Nimans IPR

has the meaning given in clause 14.2;

Nimans Policies

means the following Nimans' company policies which are available upon request and as updated from time to time by Nimans;

Nimans Support

means the support services provided by Nimans to the Reseller as set out in the Software Schedule, where applicable;

Nimans Support Runoff Period

where applicable and where agreed by the Parties in writing, means a period starting on the end of the Term and ending on the date agreed for support to end by the Parties;

Order

each individual order for Software to be supplied to the Reseller in accordance with and incorporating the terms of this Agreement;

Party

either of Nimans or the Reseller, and Parties shall mean both Nimans and the Reseller together;

Reseller Products

has the meaning given in the Software Schedule, where applicable;

Reseller Support

means the relevant services provided by the Reseller to Customers in relation to the Software as set out in the Software Schedule;

Reseller Responsibilities

means the Reseller's obligations set out in clauses 7 and 8;

Reseller's Rights

has the meaning given in clause 4.2;

Software

means the software in object code form more particularly described in the Software Schedule, including any Updates of the same made available to the Reseller by Nimans;

Software Schedule

the software schedule (together with any appendices contained therein) agreed between the Parties from time to time regarding the provision of the Software;

Specification

has the meaning given in the Software Schedule, where applicable;

Supplier

Nimans' supplier of the Software;

Term

has the meaning given in clause 4.1;

Terms of Resale

the terms and conditions of resale detailed in the main body of this Agreement;

Territory

the United Kingdom or such other territory as may be agreed in writing between Nimans and the Reseller;

Third Party Support

means the support services provided by an accredited third party to the Customer as set out in the Software Schedule, where applicable;

Update

means a Software maintenance update, patch or bug-fix which does not constitute an Upgrade;

Upgrade

means a version or release of the Software intended to have new or improved functionality or any other new version or release of the Software designated by Nimans as an Upgrade;

Value-added Products

means the Reseller Products as distributed or combined with the Software in accordance with the Software Schedule, where applicable;

VAT

means United Kingdom value added tax, any other tax imposed in substitution for it and any equivalent or similar tax imposed outside the United Kingdom;

Warranty Period

has the meaning set out in clause 14.2; and

Year

means each successive period of 12 Months beginning on the Commencement Date.

- 3.2 Interpretation

In this Agreement:

- 3.2.1 a reference to this Agreement includes its schedules, appendices and annexes (if any);
- 3.2.2 the table of contents, background section and any clause, schedule or other headings in this Agreement are included for convenience only and shall have no effect on the interpretation of this Agreement;
- 3.2.3 unless the context otherwise requires, reference to a 'clause' shall be to a clause of the main body of this Agreement and reference to a 'paragraph' shall be a reference to the relevant paragraph of a schedule;
- 3.2.4 a reference to a 'party' includes that party's personal representatives, successors and permitted assigns;
- 3.2.5 a reference to a 'person' includes a natural person, corporate or unincorporated body (in each case whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns;

- 3.2.6 a reference to a 'company' includes any company, corporation or other body corporate, wherever and however incorporated or established;
- 3.2.7 a reference to a gender includes each other gender;
- 3.2.8 words in the singular include the plural and vice versa;
- 3.2.9 any words that follow 'include', 'includes', 'including', 'in particular' or any similar words and expressions shall be construed as illustrative only and shall not limit the sense of any word, phrase, term, definition or description preceding those words;
- 3.2.10 a reference to 'writing' or 'written' includes any method of reproducing words in a legible and non-transitory form;
- 3.2.11 each of the obligations of the Reseller (and each of the rights and remedies of Nimans) are cumulative and each such obligation (and right and remedy) shall be without prejudice to any other to the maximum extent permitted by applicable mandatory law;
- 3.2.12 a reference to any law or legislation is a reference to that law or legislation as amended, recast, replaced, extended, re-enacted or consolidated from time to time;
- 3.2.13 a reference to legislation includes all subordinate legislation made from time to time under that legislation;
- 3.2.14 a reference to any English action, remedy, method of judicial proceeding, court, official, legal document, legal status, legal doctrine, legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include a reference to that which most nearly approximates to the English equivalent in that jurisdiction; and
- 3.2.15 in the case of any inconsistency between any provision of the schedules to this Agreement and any clause of this Agreement the latter shall prevail and in the case of any inconsistency between any provision of the annexes or appendices and any provision of the schedules, the latter shall prevail.

4. Reseller's appointment and rights

4.1 Nimans hereby appoints the Reseller, on a non-exclusive basis, to resell the Software to Customers in the Territory in accordance with this Agreement from the Commencement Date. The Reseller's appointment shall continue for the Initial Period and shall thereafter continue until terminated by either Party giving the other Party 60 days' written notice not to expire before the end of the Initial period, or otherwise terminated in accordance with this Agreement (the Term).

4.2 Nimans grants the Reseller the following rights in relation to the Software on the following terms and subject to the terms of this Agreement:

4.2.1 Rights

Nimans grants the Reseller rights to:

- market, promote, resell and provide Reseller Support in connection with the Software and the Documentation to Customers in the Territory;
- the additional Reseller rights set out in clause 4.2.2; and
- install and utilise the Software and Documentation as necessary for the performance of the Reseller's rights referred to in this clause 4.2.1, (the **Reseller's Rights**).

4.2.2 **Value-added products:** Where applicable, the Reseller may market and resell the Software and the Documentation in combination with the Reseller Products in accordance with the Software Schedule.

4.2.3 **Transferability:** The Reseller's Rights are personal to the Reseller and are non-transferable save as provided in clause 28.

4.2.4 **Rights reserved:** All rights not specifically and expressly granted in writing to the Reseller under this Agreement are hereby expressly reserved to Nimans. Nothing in this Agreement shall prevent Nimans from marketing, promoting, distributing and supporting the Software or Documentation to any persons within the Territory either directly or via other distributors, resellers, partners or agents.

5. Delivery of Software and the Documentation

5.1 Nimans shall use its reasonable endeavours to make available the latest version of the Software to the Reseller for use, reproduction and distribution in accordance with this Agreement as soon as is reasonably practicable from the date of the Order.

5.2 Nimans shall use its reasonable endeavours to make available a master copy of the latest version of the Documentation to the Reseller for use and distribution in accordance with this Agreement as soon as is reasonably practicable from the date of the Order. The Reseller shall ensure it uses the Documentation applicable to the Software version installed.

5.3 Unless otherwise expressly agreed in this Agreement and/or the Software Schedule, the Reseller shall only be entitled to receive Updates or Upgrades to the Software from Nimans in circumstances where these are provided by the Supplier.

5.4 Nimans shall notify the Reseller when the Software is ready to be downloaded and/or activated and shall provide any necessary activation codes or licence keys. It is the Reseller's responsibility to ensure that its computer system and network connection is capable of downloading the Software and the Documentation.

5.5 Unless otherwise agreed in writing, the Reseller shall be responsible for installing the Software and any other copies in accordance with the instructions provided by Nimans.

6. Orders

6.1 The Reseller may from time to time during the term of each relevant Software Schedule place Orders for Software. When placing an Order, the Reseller shall provide Nimans and/or the Supplier with such Customer details as are reasonably required by Nimans and/or the Supplier in order to provide the Software. Each Customer whose details are provided by the Reseller to Nimans shall be deemed to have provided permission for its Order to be processed by Nimans and/or the Supplier (and no further enquiry shall be made by Nimans or the Supplier).

6.2 Nimans may accept or reject Orders in its discretion. Nimans shall advise the Reseller if an Order is not accepted stating the reason why.

6.3 In the event that the Reseller wishes to cancel an Order following acceptance but before the provision of the relevant Software commences, cancellation of an Order following acceptance shall be at Nimans or the Supplier's discretion (as applicable) and may be subject to such conditions and charges as Nimans or the Supplier requires.

6.4 An Order shall not come into effect and be binding on Nimans until it commences in accordance with the relevant Software Schedule. Upon acceptance of an Order the terms of this Agreement shall apply to that Order to the exclusion of any other terms and conditions, including those contained within the Reseller's purchase order.

7. Reseller's Responsibilities—Customers

7.1 The Reseller shall ensure it does not:

7.1.1 make, give or by any act or omission give rise to any licence, promise, warranty, guarantee, indemnity, representation, agreement, arrangement or binding right, remedy or obligation (howsoever arising under any legal theory) concerning the Software or Documentation other than strictly in accordance with the Software Schedule;

7.1.2 supply or licence the Software or Documentation to any third party in a manner which would constitute or contribute to the commission of a crime, tort, fraud or other unlawful activity (including activities deemed unlawful under a complainant's jurisdiction) or which is immoral;

- until the relevant third party has duly entered into an End User Agreement that is legally binding under all applicable laws on each of the Reseller and Customer (and shall promptly provide evidence of the same at Nimans's request); and
- other than in accordance with the terms of the relevant End User Agreement and this Agreement;

7.1.3 provide any support, maintenance or other services in connection with the Software other than Reseller Support on the terms of a duly executed End User Agreement; or

7.1.4 amend, modify or vary any terms of any End User Agreement with any Customer without Nimans's prior express written consent.

7.2 The Reseller shall at all times:

7.2.1 comply at all times with its obligations under and in connection with each End User Agreement;

7.2.2 provide the Reseller Support to Customers in accordance with the Software Schedule; and

7.2.3 only:

- provide the latest and most up to date version of the Software and the Documentation to the Customers; and
- make any new or modified Updates of the Software and relevant updates to the Documentation available to each Customer in accordance with the terms of their respective End User Agreement.

7.3 The Reseller shall at all times:

7.3.1 be responsible for and ensure that all Customers comply with their respective End User Agreement and (as between the Reseller and Nimans) be liable to Nimans for any act or omission by any Customer in breach of their End User Agreement as if it were the Reseller's own act or omission; and

7.3.2 provide Nimans with such information and assistance as Nimans may reasonably require for the purpose of enforcing the terms of any End User Agreement with a Customer.

7.4 If a Customer has breached the terms of the End User Agreement, the Reseller shall promptly:

7.4.1 use all reasonable endeavours including court action and obtaining injunction(s) to ensure such breach is promptly ceased and remedied; and

7.4.2 unless otherwise agreed in writing by Nimans exercise its right(s) to terminate the relevant End User Agreement to the extent they arise as a consequence of such breach.

8. Reseller's responsibilities—General

Marketing

8.1 The Reseller shall at all times:

8.1.1 market and promote the Software and Reseller Support and/or Third Party Support to Customers and prospective Customers in the Territory (at its own cost) in accordance with the terms of this Agreement;

8.1.2 distribute the Software and the Documentation to Customers in the Territory (at its own cost) in accordance with the terms of this Agreement; and

8.1.3 use all reasonable endeavours to promote use of the Software throughout the Territory.

8.2 The Reseller shall ensure it does not:

8.2.1 conduct its business or any dealings with third parties (including Customers) in any manner which is likely to have a negative impact on the goodwill or reputation of Nimans; or

8.2.2 do, permit or omit to do anything which in the reasonable opinion of Nimans is prejudicial to marketing or sales of the Software or any related products or services.

Reseller resources and training

8.3 The Reseller shall ensure that at all times:

8.3.1 it has sufficient and suitable equipment and facilities to perform the Reseller's Responsibilities; and

8.3.2 all personnel engaged in the performance of the Reseller's Responsibilities shall have the appropriate qualifications, training and experience to adequately perform the Reseller's Responsibilities.

8.4 The Reseller's personnel shall at all times throughout the provision of the Reseller's Responsibilities and this Agreement remain the employees or sub-contractors of the Reseller and shall remain under the overall control of the Reseller. The Reseller and Nimans acknowledge and agree that the Reseller's personnel are not, nor are they deemed to be for any purpose, employees of Nimans.

8.5 Any services (including training, support or maintenance) provided by Nimans to the Reseller other than as expressly provided for under this Agreement shall be charged to the Reseller at Nimans's standard charges for such services in force from time to time.

Other general obligations

8.6 The Reseller shall at all times:

8.6.1 comply with its warranties and obligations in clause 13;

8.6.2 without prejudice to any other obligation, comply with Nimans's reasonable instructions in relation to the use of the Software;

8.6.3 provide such information and assistance as Nimans may reasonably require to perform Nimans's obligations and exercise Nimans's rights under this Agreement;

8.6.4 ensure all information provided to Nimans is complete and accurate in all respects;

- 8.6.5 give Nimans reasonable prior written notice of any information the Reseller requires in accordance with this Agreement and promptly notify Nimans if the Reseller has reason to suspect that any such information is inadequate, inaccurate or incomplete;
- 8.6.6 indicate it is acting as reseller and not as author or developer of the Software in all correspondence and dealings with third parties;
- 8.6.7 perform the Reseller's Responsibilities in compliance with such Nimans Policies as are relevant to the Reseller's performance of the Reseller's Responsibilities;
- 8.6.8 perform its other obligations as set out in this Agreement; and
- 8.6.9 ensure that it does not incur any liability, debt or obligation whatsoever on behalf of Nimans.
- Indemnity**
- 8.7 The Reseller shall indemnify, keep indemnified and hold harmless Nimans from and against all losses, damages, liabilities, fees, costs and expenses incurred by Nimans arising in connection with any one or more of the following:
- 8.7.1 any breach of this Agreement by the Reseller;
- 8.7.2 any use or combination of the Software with the Reseller Products; and/or
- 8.7.3 any claim by any third party that any materials produced by, or conduct of, the Reseller in connection with the Reseller's Responsibilities and/or this Agreement, is defamatory or otherwise contrary to law.
- 9. Nimans's obligations**
- 9.1 Nimans shall:
- 9.1.1 provide the Reseller with Nimans Support in accordance with the Software Schedule;
- 9.1.2 provide the Reseller with information about the Software and the Documentation as Nimans in its discretion considers necessary in connection with the performance of its obligations under this Agreement, and update the same, on a timely and regular basis;
- 9.1.3 provide the Reseller with adequate sales and marketing materials relating to the Software for the Reseller to use, reproduce and distribute solely for the purpose of the Reseller fulfilling its obligations under this Agreement;
- 9.1.4 provide the Reseller with such information and assistance as the Reseller may reasonably require to perform its obligations under this Agreement; and
- 9.1.5 to the extent reasonably possible, give the Reseller advanced notice of any Updates of the Software which Nimans intends to issue to the Reseller.
- 10. Record keeping and reporting**
- 10.1 The Reseller shall maintain accurate and complete accounts and records of all matters relevant to the performance of its obligations under this Agreement, including regarding:
- 10.1.1 enquiries from and correspondence with Customers and potential Customers;
- 10.1.2 transactions and legal or other proceedings with Customers;
- 10.1.3 all communications regarding the Software or Documentation (including any calls or other communications with Customers relating to reported defects or deficiencies in any of them); and
- 10.1.4 the distribution and sub-licensing of the Software to each Customer.
- 10.2 Upon request, within five Business Days of the end of each Month (the Report Month), the Reseller shall provide to Nimans in such format as the parties agree a written report containing details of:
- 10.2.1 the numbers of copies of the Software and the Documentation sold by product in the Report Month;
- 10.2.2 if requested by Nimans, a complete and accurate copy of each End User Agreement entered into in the Report Month;
- 10.2.3 all marketing and promotional activity undertaken by the Reseller in the Report Month; and
- 10.2.4 all payments due or credited to Nimans in respect of the matters referred to in the report.
- 10.3 Within ten Business Days of being requested to do so by Nimans, the Reseller shall provide Nimans with copies of the records referred to in clause 10.1 for the purpose of verifying that the Reseller's treatment of the Software and its other acts and omissions are in accordance with this Agreement.
- 10.4 The Reseller shall keep, and promptly make available to Nimans on request from time to time, complete and accurate records to enable Nimans to verify all Fees that may be due under this Agreement.
- 10.5 The parties' respective rights and obligations under this clause 10 shall apply during the Term, survive termination or expiry of this Agreement and continue for two years after the end of this Agreement or the Nimans Support Runoff Period (if later), where applicable.
- 11. Audits**
- 11.1 Where applicable, the Reseller shall allow and procure for Nimans (and any authorised representatives of Nimans) access to its premises, equipment and records to:
- 11.1.1 inspect the equipment on which the Software is installed or on which Nimans reasonably believes the Software might be installed; and
- 11.1.2 audit (including allowing Nimans to use software audit tools on the Reseller's systems and take copies of information and documents) the records, accounts and other information to be kept under clause 10 to the extent necessary to verify to the Reseller's compliance with its obligations under this Agreement.
- 11.2 Unless otherwise agreed in writing and subject to clause 11.4, the inspections and audits referred to in clause 11.1 shall be undertaken:
- 11.2.1 during the Reseller's normal business hours on Business Days;
- 11.2.2 subject to the provision by Nimans of a minimum of five Business Days' notice; and
- 11.2.3 not more than twice in any calendar year during the Term.
- 11.3 At Nimans's option, the inspections and audits referred to in clause 11.1 may be undertaken by way of remote access or by way of physical attendance or both.
- 11.4 Where such inspection or audit is required by any regulator or by law, or where Nimans in good faith suspects any breach of this Agreement, the Reseller shall allow such inspection or audit at any time and there shall not be a limit to the number of such inspections or audits that can be undertaken.
- 11.5 Nimans shall, at its own cost, provide all reasonable assistance and cooperation to the Reseller in conducting any inspection and audit undertaken under this clause 11. Nimans shall comply with the Reseller's reasonable directions in order to minimise disruption to the Reseller's business and to safeguard the confidentiality of the Reseller's Confidential Information.
- 11.6 Nimans shall pay bear its own costs in connection with each inspection and audit, unless the audit or inspection shows that the Reseller has underpaid Nimans by 2% or more or the Reseller is in material breach of this Agreement, in which case the Reseller shall pay:
- 11.6.1 the costs of the auditor and Nimans's other reasonable costs in connection with the inspection and audit; and
- 11.6.2 any amount by which Nimans has been underpaid and applicable interest calculated in accordance with this Agreement within 14 days of Nimans's written request.
- 11.7 The parties' respective rights and obligations under this clause 11 shall apply during the Term, survive termination or expiry of this Agreement and continue for 24 Months thereafter.
- 12. Fees, Invoicing and Payment**
- 12.1 Unless otherwise agreed by the Parties, the Reseller shall pay Nimans the amounts set out in Software Schedule for the Software.
- 12.2 All amounts payable under this Agreement are exclusive of VAT, sales and other tax or duties applicable which shall be paid in addition by the Reseller to Nimans at the rate and in the manner prescribed by law. Save in respect of taxes payable on Nimans's net income, the Reseller shall:
- 12.2.1 pay to Nimans all amounts in respect of the VAT, sales and other tax or duties arising under or in connection with this Agreement in or outside the United Kingdom; and
- 12.2.2 (excluding any amount paid by the Reseller under clause 12.2.1) promptly reimburse Nimans for any taxes or duties that Nimans may be required to pay in connection with this Agreement or its performance.
- 12.3 Unless agreed otherwise by the Parties, Nimans shall invoice the Reseller for all sums due under this Agreement on a Monthly basis.
- 12.4 Unless otherwise specified in any Software Schedule, the Reseller shall pay all Fees:
- 12.4.1 by monthly Direct Debit to the account notified to the Reseller from time to time. Payment by Direct Debit will be taken within thirty (30) days of the date of invoice
- 12.4.2 any other method agreed by Nimans within fifteen (15) days of the date of invoice.
- 12.5 Where payments are made by Direct Debit, a Direct Debit instruction form must be completed. This will give the Reseller the protection of the Direct Debit Guarantee.
- 12.6 If the Reseller (acting reasonably and honestly) disputes any amount due to Nimans under any invoice, the Reseller shall notify Nimans of the same giving all relevant details of the dispute within ten (10) Business Days of the date of invoice (or such date as is otherwise specified in any Software Schedule) and, on the date scheduled for payment of the relevant invoice, the Reseller shall pay to Nimans all amounts not validly disputed by the Reseller.
- 12.7 Where sums due are not paid in full by the due date, Nimans may, without limiting its other rights, charge interest on such sums at 5% a year above the Bank of England base rate from time to time in force and all reasonable costs and expenses it incurs in securing payment of such outstanding amounts. Interest shall apply from the due date for payment until actual payment in full, whether before or after judgment.
- 12.8 The Reseller shall not be entitled to offset any amounts owed by Nimans to the Reseller under this Agreement or otherwise with any amount owed by the Reseller to Nimans. Nimans shall be entitled to offset any amounts owed by the Reseller to Nimans under this Agreement or otherwise with any amount owed by Nimans to the Reseller.
- 12.9 The Reseller is responsible for collecting any monies owed to the Reseller by its Customers in connection with the Software and shall pay invoices issued by Nimans in respect of the Software regardless of any outstanding monies owed to it by its Customers or in dispute with its Customer.
- 12.10 Nimans may vary the Fees by giving the Reseller not less than 30 days' prior written notice of such variation.
- 13. Warranties**
- 13.1 The Reseller warrants and represents to Nimans that:
- 13.1.1 the Reseller has the right, power and authority to enter into this Agreement and to perform the Reseller's Responsibilities;
- 13.1.2 the performance of the Reseller's Responsibilities does not and shall not infringe the Intellectual Property Rights of any third party; and
- 13.1.3 the Reseller's Responsibilities shall be performed:
- with all reasonable skill, care and diligence;
 - in compliance with any applicable service standards and so as to meet or exceed any agreed service standards;
 - in accordance with Good Industry Practice; and
 - so as to conform with all applicable laws.
- 13.2 If the Software delivered to a Customer fails to conform to the Specification, Nimans shall, at its option use reasonable endeavours to work with the Supplier to correct errors in the Software within a reasonable time provided the Reseller notifies it in writing within the Warranty Period and provides sufficient information to enable the Supplier to reproduce the errors.
- 13.3 This clause 13 is subject to the Reseller complying with its obligations under this Agreement and shall not apply to the extent that any error in the Software arises as a result of:
- 13.3.1 installation or use of the Software with the Reseller Products or any part thereof (whether separately or as part of the Value-added Products);
- 13.3.2 any error arising from any act or omission by the Reseller (including corruption of copies);
- 13.3.3 breach by any Customer of their End User Agreement;
- 13.3.4 any IP Claim;
- 13.3.5 incorrect operation or use of the Software (including any failure to follow the Documentation);
- 13.3.6 installation or use of the Software other than for the purposes for which it is intended;

- 13.3.7 modification or alteration of the Software without the written consent of Nimans;
- 13.3.8 installation or use of the Software with other software or on equipment with which it is incompatible;
- 13.3.9 failure to install any Update or Upgrade recommended and made available by Nimans or the Supplier; or
- 13.3.10 any third party hardware, software, product or service.
- 13.4 The Reseller acknowledges that no liability or obligation is accepted by Nimans (howsoever arising whether under contract, tort, in negligence or otherwise):
- 13.4.1 in relation to any of the Reseller Products or any part thereof;
- 13.4.2 that the Software shall meet any Customer's (or other person's) individual needs, whether or not such needs have been communicated to Nimans;
- 13.4.3 that the operation of the Software shall not be subject to minor errors or defects; and
- 13.4.4 that the Software shall be compatible with any software or with any particular hardware or equipment other than as set out in this Agreement or the Documentation.
- 13.5 Subject to clause 20.4 and its express warranties and obligations in respect of the Software and the Documentation set out in this Agreement, Nimans does not give any warranties or have any obligations in respect of third party software, equipment or products.
- 13.6 Subject to clause 20.4, clauses 13.3 and 15 set out the Reseller's sole and exclusive remedies (howsoever arising, whether in contract, tort, negligence or otherwise) for any breach of clause 13.2 or for any other error or defect in, defective performance of or inability of any person to use the Software or any part of it.
- 13.7 Other than as set out in this clause 13, and subject to clause 20.4, all warranties, conditions, terms, undertakings or obligations whether express or implied and including any implied terms relating to quality, fitness for any particular purpose, reasonable care and skill or ability to achieve a particular result are excluded to the fullest extent allowed by applicable law.
- 14. Intellectual Property Rights**
- Ownership**
- 14.1 Except as expressly agreed in this Agreement, no Intellectual Property Rights of either party are transferred or licensed as a result of this Agreement.
- 14.2 The Software, the Documentation, Nimans's Marks and all Intellectual Property Rights in these (Nimans IPR) are and shall remain the sole and exclusive property of Nimans and its licensors, if any, whether the Software is separate or combined with any other products. Nothing in this Agreement or any licence or sub-licence granted under it shall convey or transfer any ownership or proprietary interest in any Nimans IPR to the Reseller or any third party.
- Licences of Nimans IPR**
- 14.3 Subject to the terms of this Agreement, Nimans grants to the Reseller a non-exclusive and personal licence to use and copy the Software and the Documentation during the Term only to the extent necessary for the Reseller to perform its obligations and exercise the Reseller's Rights in accordance with this Agreement.
- 14.4 The Reseller's rights in relation to the Software and the Documentation under clause 14.3 are subject to restrictions that the Reseller shall not (except to the extent such activities are expressly permitted by mandatory law which cannot be varied by agreement of the parties):
- 14.4.1 make copies of the Software or the Documentation, except:
- in accordance with any reproduction rights granted to the Reseller in accordance with clause 4.2.1;
 - a reasonable number of copies to the extent and for such period as is reasonable and necessary for:
 - the performance of its obligations in respect of distribution and sub-licensing to Customers as required under duly executed End User Agreements;
 - the Reseller to provide the Reseller Support; and
 - back-up and/or archival purposes;
- 14.4.2 modify, adapt, correct errors in or create derivative works from, the Software or Documentation or permit the Software or any part of it except as expressly permitted under this Agreement pursuant to clause 4.2.1(b) to be combined or merged with or become incorporated in any other program;
- 14.4.3 decode, reverse engineer, adapt, decipher, disassemble, decompile or otherwise translate or convert the Software except as expressly authorised by Nimans in writing after the date of this Agreement;
- 14.4.4 assign, sub-licence, lease, resell, distribute or otherwise deal in or encumber any of Nimans IPR (other than the granting of sub-licenses of and distribution of the Software and the Documentation to Customers in accordance with this Agreement);
- 14.4.5 permit any third party to have possession of or use the Software or Documentation unless they are a bona fide Customer;
- 14.4.6 use the Software in any manner to provide outsourcing or any other services to third parties or (unless separately licensed) for its own use;
- 14.4.7 attempt to circumvent or interfere with any security features of the Software; or
- 14.4.8 remove or alter any copyright or other proprietary notice on or displayed in the Software or the Documentation or on any packaging accompanying the Software if delivered on physical media and, as a condition of any reproduction rights granted to the Reseller in this Agreement, the Reseller shall reproduce and display such notices on each copy it makes of any Software and/or Documentation.
- 14.5 The Reseller is not granted any rights in relation to Nimans IPR except for those rights expressly granted in this Agreement. The rights in the Software licensed to the Reseller shall not include the right for any person (including any affiliate, sub-contractor or contractor of the Reseller) that is not a Customer in accordance with this Agreement to use or have access to the Software unless expressly agreed in writing by Nimans.
- 14.6 If it is necessary for the Reseller or any Customer to decompile the Software in order to create an independent program to allow the inter-operability of the Software with other software, the Reseller shall notify Nimans in writing in advance and request the provision of the information necessary to enable such inter-operability. Nimans may, but is not obliged to, provide such information and assistance to the Reseller or Customer as it considers appropriate.
- 14.7 Without prejudice to any other rights or obligations of either party, if the Reseller at any time has or obtains additional copies of the Software beyond those licensed under this Agreement (including duplicate deliveries), it shall promptly destroy the additional copies.
- 14.8 Nimans reserves the sole and exclusive right at its discretion to assert claims against third parties for infringement or misappropriation of Nimans IPR.
- 14.9 In marketing and distributing the Software, the Reseller shall take reasonable steps in accordance with Good Industry Practice to protect Nimans IPR and shall promptly notify Nimans of any confirmed or suspected infringement of such rights of which the Reseller becomes aware.
- Grant by Reseller and reuse of Know-how**
- 14.10 Subject to any other terms expressly agreed by the parties, the Reseller grants Nimans a licence of such of its Intellectual Property Rights as are necessary to enable Nimans to fulfil its obligations and exercise its rights under this Agreement but not otherwise.
- 14.11 Each party shall be entitled to use in any way it deems fit any skills, techniques or Know-how acquired or developed or used in performance of this Agreement provided always that such skills, techniques or Know-how do not:
- 14.11.1 infringe the other party's Intellectual Property Rights; or
- 14.11.2 disclose or breach the confidentiality of the other party's Confidential Information.
- 15. IP Claims**
- 15.1 In the event of an IP Claim the Reseller shall:
- 15.1.1 promptly notify Nimans upon becoming aware of any actual or threatened IP Claim and provides full written particulars;
- 15.1.2 make no comment or admission and takes no action that may adversely affect Nimans's ability to defend or settle the IP Claim (and ensures that any Customer affected by such IP Claim does likewise);
- 15.1.3 provide (and ensures any affected Customer provides) all assistance reasonably required by Nimans; and
- 15.1.4 give (and ensures each affected Customer gives) Nimans sole authority to defend or settle the IP Claim as Nimans considers appropriate.
- 15.2 If the Software is or is likely to become subject to an IP Claim, Nimans shall use reasonable endeavours to:
- 15.2.1 obtain the right for the Reseller and each affected Customer to continue to use the Software; or
- 15.2.2 replace or modify the Software (or the part of it subject to the IP Claim) so that it becomes non-infringing.
- 15.3 If Nimans is unable to achieve either of the outcomes described in clause 15.2 having used reasonable endeavours (including where the costs of doing so are commercially prohibitive) or otherwise elects to proceed under this clause 15.3 then, Nimans may elect by written notification to the Reseller that:
- 15.3.1 this Agreement shall immediately terminate;
- 15.3.2 the Reseller shall promptly terminate each End User Agreement in accordance with its terms and the Reseller shall (and shall ensure that each Customer shall) uninstall, delete and cease to use the Software and/or the Documentation which is the subject of the IP Claim; and
- 15.3.3 Nimans shall issue a credit or a refund (at Nimans's option) to the Reseller for the Fees paid by the Reseller to Nimans under this Agreement in respect of any End User Agreement terminated pursuant to this clause 15.3 subject to a reasonable deduction to reflect each affected Customer's use of the Software and access to Reseller Support under their respective End User Agreement.
- 15.4 Nimans shall have no liability or obligations under this clause 15 in respect of (and shall not be obliged to defend) any IP Claim which arises in whole or in part from:
- 15.4.1 the Reseller Products or any installation or use of the Software with the Reseller Products or any part thereof (whether separately or as part of the Value-added Products);
- 15.4.2 any software other than the Software (whether or not provided by or on behalf of Nimans in connection with this Agreement);
- 15.4.3 any modification of the Software without Nimans's express written approval;
- 15.4.4 installation or use of the Software otherwise than in accordance with this Agreement or Nimans's instructions; or
- 15.4.5 installation or use of the Software in combination with any software, hardware or data that has not been supplied or expressly authorised by Nimans.
- 15.5 Subject to clause 20.4, the provisions of this clause 15 set out the Reseller's sole and exclusive remedies (howsoever arising, including in contract, tort, negligence or otherwise) for any IP Claim or any other actual or alleged infringement of any Intellectual Property Rights.
- 15.6 The provisions of clause 20 shall apply to any payments under or in connection with this clause 14.
- 16. Confidential Information**
- 16.1 Each party shall maintain the confidentiality of the other party's Confidential Information and shall not without the prior written consent of the other use, disclose, copy or modify the other party's Confidential Information (or permit others to do so) other than as necessary for the exercise of its rights and performance of its obligations under this Agreement.
- 16.2 The parties acknowledge and agree that:
- 16.2.1 the terms of this Agreement including the prices and Fees set out in the Software Schedule; and
- 16.2.2 all information relating to the Software, the Documentation and any other technical or operational specifications or data relating to the Software, are all part of Nimans's Confidential Information.
- 16.3 Each party undertakes to:
- 16.3.1 disclose the other party's Confidential Information only to those of its officers, employees, agents, sub-contractors and contractors to whom and to the extent to which such disclosure is necessary for the purposes contemplated under this Agreement; and
- 16.3.2 procure that such persons are made aware of and agree in writing to observe the obligations in this clause 16 and comply with such obligations.
- 16.4 Each party shall give notice to the other of any unauthorised misuse, disclosure, theft or loss of the other party's Confidential Information immediately upon becoming aware of the same.

- 16.5 The provisions of this clause 16 shall not apply to information which:
- 16.5.1 is or comes into the public domain through no fault of the recipient, its officers, employees, agents, sub-contractors or contractors;
- 16.5.2 is lawfully received by the recipient from a third party free of any obligation of confidence at the time of its disclosure;
- 16.5.3 is independently developed by the recipient, without access to or use of the other party's Confidential Information; or
- 16.5.4 is required by law, by court or governmental or regulatory order to be disclosed provided that the relevant party, where possible, notifies the other party at the earliest opportunity before making any disclosure.
- 16.6 The obligations under this clause 16 shall survive the variation and expiry or termination of this Agreement for a period of five years following the end of this Agreement.
- 16.7 Each party shall establish and maintain adequate security measures to safeguard Confidential Information and data of the other party in its possession from unauthorised access, use or copying.
- 16.8 Nothing in this Agreement shall prevent Nimans from retaining and utilising for any purpose (at all times during and after the Term of this Agreement):
- 16.8.1 any Confidential Information of Nimans; and/or
- 16.8.2 any of the records and accounts referred to in clauses 10.1 and/or 10.2.
- The rights and obligations of the parties in this clause 15 and in clause 23 are agreed to be subject to this clause 16.8.
- 17. Compliance with law**
- 17.1 Subject to clause 17.2, each party shall comply with all laws applicable to them and shall maintain such authorisations and all other approvals, permits and authorities as are required from time to time to perform their obligations under or in connection with this Agreement.
- 17.2 The Reseller shall:
- 17.2.1 be responsible for obtaining and maintaining all necessary export and other government approvals, permits, authorisations and authorities to allow the distribution of the Software and the Documentation and the exercise of the Reseller's Rights and performance of the Reseller's Responsibilities in accordance with all applicable laws; and
- 17.2.2 indemnify, keep indemnified and hold harmless Nimans from and against any losses, damages, liability, costs (including legal fees) and expenses incurred by Nimans as a result of or in connection with any failure by the Reseller to comply with clause 17.2.1.
- 18. Anti-bribery**
- 18.1 For the purposes of this clause 18:
- 18.1.1 the expressions **adequate procedures** and **associated with** shall be construed in accordance with the Bribery Act 2010 and guidance published under it; and
- 18.1.2 **Bribery Laws** means the Bribery Act 2010 and associated guidance published by the Secretary of State for Justice under the Bribery Act 2010 and all other applicable United Kingdom laws, legislation, statutory instruments and regulations in relation to bribery or corruption and any similar or equivalent laws in any other relevant jurisdiction.
- 18.2 The Reseller shall ensure that it and each person referred to in clauses 18.2.1 to 18.2.3 (inclusive) does not, by any act or omission, place Nimans in breach of any Bribery Laws. The Reseller shall comply with all applicable Bribery Laws in connection with the performance of the Reseller's Responsibilities and this Agreement, ensure that it has in place adequate procedures to prevent any breach of this clause 18 and ensure that:
- 18.2.1 all of the Reseller's personnel and all direct and indirect sub-contractors, suppliers, agents and other intermediaries of the Reseller;
- 18.2.2 all others associated with the Reseller; and
- 18.2.3 each person employed by or acting for or on behalf of any of those persons referred to in clauses 18.2.1 and/or 18.2.2,
- involved in performing the Reseller's Responsibilities or with this Agreement so comply.
- 18.3 Without limitation to clause 18.2, the Reseller shall not in connection with the performance of the Reseller's Responsibilities and/or this Agreement make or receive any bribe (which terms shall be construed in accordance with the Bribery Act 2010) or other improper payment or advantage, or allow any such to be made or received on its behalf, either in the United Kingdom or elsewhere, and shall implement and maintain adequate procedures to ensure that such bribes or improper payments or advantages are not made or received directly or indirectly on its behalf.
- 18.4 The Reseller shall immediately notify Nimans as soon as it becomes aware of a breach or possible breach of any of the requirements in this clause 18.
- 18.3 Any breach of this clause 18 by the Reseller shall be deemed a material breach of this Agreement that is not remediable and entitle Nimans to immediately terminate this Agreement by notice under clause 22.1.1.
- 19. Anti-tax evasion facilitation**
- 19.1 For the purposes of this clause 19:
- 19.1.1 the expressions **associated with**, **prevention procedures**, **UK Tax Evasion Offence** and **Foreign Tax Evasion Offence** shall be construed in accordance with Part 3 of the Criminal Finances Act 2017 (CFA 2017) and guidance published under it;
- 19.1.2 **Corporate Failure to Prevent Offence** means an offence under section 45 and/or section 46 of CFA 2017 and any other applicable United Kingdom laws, legislation, statutory instruments and regulations in relation to preventing the facilitation of tax evasion and any similar or equivalent laws in any other relevant jurisdiction; and
- 19.1.3 **Reseller Associated Persons** means all or any of the following:
- a. persons associated with the Reseller (Reseller's Associates); and
- b. persons associated with any of the Reseller's Associates,
- in each case, involved in performing services for or on behalf of the Reseller in connection with the Reseller's Responsibilities or with this Agreement.
- 19.2 The Reseller shall ensure that it and the Reseller Associated Persons shall not by any act or omission commit, or cause, facilitate or contribute to the commission by any person including Nimans, of a:
- 19.2.1 Corporate Failure to Prevent Offence;
- 19.2.2 UK Tax Evasion Offence; or
- 19.2.3 Foreign Tax Evasion Offence,
- in connection with the Reseller's Responsibilities or with this Agreement.
- 19.3 The Reseller shall not, and shall ensure that Reseller Associated Persons shall not, solicit or engage with or take steps to solicit or engage with any person associated with Nimans to facilitate the commission of a UK Tax Evasion Offence or a Foreign Tax Evasion Offence in connection with the Reseller's Responsibilities or with this Agreement.
- 19.4 The Reseller shall, and shall procure that Reseller Associated Persons shall, pay, in full and in a timely manner, all taxes due and payable relating to all monies, remuneration, profit and value received or payable by the Reseller or Reseller Associated Persons in connection with the Reseller's Responsibilities or with this Agreement or otherwise.
- 19.5 Without prejudice to clause 19.2, the Reseller shall ensure that it and all relevant Reseller Associated Persons have in place such prevention procedures as it is reasonable in all the circumstances to expect the Reseller and such persons to have in place to prevent any breach of this clause 19.
- 19.6 The Reseller shall immediately notify Nimans as soon as it becomes aware of any allegation, investigation, evidence or report relating to a breach or possible breach of any of the requirements in this clause 19.
- 19.7 Any breach of this clause 19 by the Reseller shall be deemed a material breach of this Agreement that is not remediable and entitle Nimans to immediately terminate this Agreement by notice under clause 22.1.1.
- 20. Limitation of liability**
- 20.1 The Fees reflect the following limitations and exclusions of liability which the Parties acknowledge and agree are reasonable in the circumstances
- 20.2 Subject to clause 20.4, Nimans' entire liability under or in connection with this Agreement whether in contract, tort (including negligence) or for breach of statutory duty, by way of indemnity or otherwise, in respect of all causes of action or claims arising from a single event or a series of connected events shall not exceed the total of the Fees paid or payable by the Reseller in relation to the Software which is the subject of the cause of action or claim during the twelve (12) month period immediately preceding the event giving rise to the cause of action or claim.
- 20.3 Subject to clause 20.4 Nimans shall not be liable, in contract, tort (including negligence) or for breach of statutory duty or otherwise for:
- 20.3.1 any loss or damage incurred by the Reseller as a result of third party claims;
- 20.3.2 any loss of profits, revenue, business opportunity, goodwill, data, contracts or anticipated savings;
- 20.3.3 any losses, liabilities, claims, costs or expenses arising from the combination of the Software with the Reseller Products or any other software or products;
- 20.3.4 any injury to reputation or wasted expenditure; or
- 20.3.5 any indirect, consequential or special losses.
- 20.4 Nothing in this Master Reseller Agreement shall operate so as to exclude or limit the liability of either Party to the other for death or personal injury resulting from its negligence;
- 20.4.1 for fraud or fraudulent misrepresentation; or
- 20.4.2 for any other liability the exclusion or limitation of which is not permitted by the law of England and Wales.
- 20.5 Without limiting its entitlement to recover other types of losses, the parties agree that Nimans may recover the following from the Reseller as direct losses:
- 20.5.1 wasted expenditure or unnecessary charges incurred by Nimans (including regulatory fines); and
- 20.5.2 liability to third parties (including Customers).
- 21. Insurance**
- 21.1 The Reseller shall, for the duration of this Agreement and any Nimans Support Runoff Period, maintain appropriate insurance cover with a reputable insurance company against all relevant liabilities and indemnities that may arise under this Agreement in respect of the Reseller.
- 21.2 The Reseller shall provide to Nimans upon request sufficient evidence of the insurance cover that it is obliged to have and maintain under this Agreement.
- 22. Termination**
- 22.1 Either party may terminate this Agreement at any time by giving notice in writing to the other party if the other party:
- 22.1.1 commits a material breach of this Agreement and such breach is not remediable;
- 22.1.2 commits a material breach of this Agreement which is not remedied within 30 days after receiving written notice requiring it to remedy that breach; or
- 22.1.3 has failed to pay any amount due under this Agreement on the due date and such amount remains unpaid within 20 Business Days after the other party has received notification that the payment is overdue.
- 22.2 Any breach by the Reseller of clauses 14, 16, 18, 19 and 28 shall be deemed a material breach of this Agreement which is not remediable.
- 22.3 Nimans may terminate this Agreement at any time by giving notice in writing to the Reseller if the Reseller:
- 22.3.1 stops carrying on all or a significant part of its business, or indicates in any way that it intends to do so;
- 22.3.2 is unable to pay its debts either within the meaning of section 123 of the Insolvency Act 1986 or if Nimans reasonably believes that to be the case;
- 22.3.3 becomes subject to a moratorium under Part A1 of the Insolvency Act 1986;

- 22.3.4 becomes the subject of a company voluntary arrangement under the Insolvency Act 1986;
- 22.3.5 becomes subject to a restructuring plan under Part 26A of the Companies Act 2006;
- 22.3.6 becomes subject to a scheme of arrangement under Part 26 of the Companies Act 2006;
- 22.3.7 has a receiver, manager, administrator or administrative receiver appointed over all or any part of its undertaking, assets or income;
- 22.3.8 has a resolution passed for its winding up;
- 22.3.9 has a petition presented to any court for its winding up or an application is made for an administration order, or any winding-up or administration order is made against it;
- 22.3.10 is subject to any procedure for the taking control of its goods that is not withdrawn or discharged within five Business Days of that procedure being commenced;
- 23.3.11 has a freezing order made against it;
- 23.3.12 is subject to any recovery or attempted recovery of items supplied to it by a supplier retaining title to those items;
- 23.3.13 is subject to any events or circumstances analogous to those in clauses 22.3.1 to 22.3.12 (inclusive) in any jurisdiction; or
- 23.3.14 takes any steps in anticipation of, or has no realistic prospect of avoiding, any of the events or procedures described in clauses 22.3.1 to 22.3.13 (inclusive) including for the avoidance of doubt, giving notice for the convening of any meeting of creditors, issuing an application at court or filing any notice at court, receiving any demand for repayment of lending facilities, or passing any board resolution authorising any steps to be taken to enter into an insolvency process.
- 22.4 Nimans may without prejudice to its other rights and remedies by notice in writing to the Reseller immediately terminate this Agreement if the Reseller undergoes a change of Control that is, in Nimans's reasonable opinion, likely to have an adverse effect on Nimans or the performance of the Reseller's Responsibilities.
- 23. Consequences of expiry or termination**
- 23.1 In the event of expiry or termination of this Agreement for any reason:
- 23.1.1 the Reseller shall immediately stop promoting, marketing, advertising and soliciting and accepting orders for the Software and the Documentation;
- 23.1.2 the Reseller shall thereafter not (at any time) enter into, extend the term of or amend the terms of any End User Agreement;
- 23.1.3 the Reseller shall immediately remove from all materials in any form which are to be provided or made accessible to any person (including websites, notices, advertisements, catalogues and documents) any reference to it being an 'authorised reseller' of Nimans;
- 23.1.4 save to the extent necessary to comply with its obligations under clause 23.1.7, the Reseller shall immediately stop reproducing, and distributing the Software and the Documentation;
- 23.1.5 save to the extent necessary to comply with any obligations to Customers pursuant to clause 23.1.7, the Reseller shall within seven days of such termination or expiry (or if later the point in time at which it is no longer necessary to retain the information to comply with clause 23.1.7) return to Nimans (or, at Nimans's written notice, destroy) all Confidential Information of Nimans in its possession or under its control and all copies of such information, including returning or destroying (as appropriate):
- all copies of the Software and the Documentation; and
 - all promotional material relating to the Software and the Documentation, then in its possession or under its control;
- 23.1.6 the sub-licences of the Software granted in accordance with this Agreement under each End User Agreement shall continue for the remainder of their respective terms;
- 23.1.7 subject to the Reseller complying at all times with its obligations under this Agreement, the Reseller shall continue to:
- comply with its binding obligations relating to delivery of the Software under any End User Agreement entered into by the Reseller prior to the termination or expiry of this Agreement; and
 - provide Reseller Support to each Customer as required under the terms of their respective End User Agreement during Nimans Support Runoff Period; and
- 23.1.8 except to the extent otherwise expressly agreed in this Agreement (including in clauses 23.1.1 to 23.1.6 (inclusive)) each of the parties' rights and obligations under this Agreement shall survive and remain in full force and effect until the end of Nimans Support Runoff Period.
- 23.2 Termination or expiry of this Agreement for whatever reason shall be without prejudice to the rights of the parties accrued up to the date of such termination or expiry.
- 23.3 Those clauses expressed or implied to survive termination or expiry of this Agreement or the end of Nimans Support Runoff Period shall survive in accordance with their terms, including that the following clauses shall survive: clauses 2, 3, 8.7, 12, 14 to 16 (inclusive), 17.2, 20, 23 to 38 (inclusive).
- 23.4 The Reseller shall have no claim against Nimans for compensation for loss of any reseller rights, loss of goodwill or similar loss following termination or expiry of this Agreement, in whole or in part, for any reason.
- 23.5 Within 20 days of any request(s) by Nimans following the end of Nimans Support Runoff Period, the Reseller shall certify in a written notice to Nimans that it has complied with the relevant obligations set out in this clause 23 (except to the extent expressly permitted in writing by Nimans) to the extent not previously subject to such certification.
- 23.6 Where this Agreement and/or any Software Schedule is terminated in whole or in part by Nimans because of the acts or omissions of the Reseller, the Supplier or a third party nominated by the Supplier shall be entitled, at Nimans' discretion, to offer to continue to supply the Software to each Customer as at the date of such termination in place of the Reseller, subject to each Customer agreeing to Nimans' then current standard terms of business and to being responsible for payment directly to Nimans (or its nominated third party) for all charges associated with the provision and use of such Software. The Reseller agrees to provide to Nimans (or its nominated third party) all Customer details as Nimans requires for this purpose and to work with Nimans to ensure any transition from the Reseller to Nimans directly is as smooth as possible
- 24. Notices**
- 24.1 Any notice given by a party under this Agreement shall:
- 24.1.1 be in writing and in English;
- 24.1.2 be signed by, or on behalf of, the party giving it; and
- 24.1.3 be sent to the relevant party at the address set out in the Appointment.
- 24.2 Notices may be given, and are deemed received:
- 24.2.1 by hand: on receipt of a signature at the time of delivery; or
- 24.2.2 by special or recorded delivery post on the second Business Day after posting.
- 24.3 Any change to the contact details of a party as set out in the Appointment shall be notified to the other party in accordance with clause 24.1 and shall be effective:
- 24.3.1 on the date specified in the notice as being the date of such change; or
- 24.3.2 if no date is so specified, 2 Business Days after the notice is deemed to be received.
- 24.4 All references to time are to the local time at the place of deemed receipt.
- 24.5 This clause does not apply to notices given in legal proceedings or arbitration.
- 24.6 A notice given under this Agreement is not validly served if sent by email.
- 25. Announcements**
- No announcement or other public disclosure concerning this Agreement or any of the matters contained in it shall be made by, or on behalf of, the Reseller without the prior written consent of Nimans (such consent not to be unreasonably withheld or delayed), except as required by law, any court, any governmental, regulatory or supervisory authority (including any recognised investment exchange) or any other authority of competent jurisdiction.
- 26. Relationship**
- The parties are independent businesses and are not partners, principal and agent or employer and employee and this Agreement does not establish any joint venture, trust, fiduciary or other relationship between them, other than the contractual relationship expressly provided for in it. None of the parties shall have, nor shall represent that they have, any authority to make any commitments on the other party's behalf.
- 27. Severability**
- 27.1 If any provision of this Agreement (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of this Agreement shall not be affected.
- 27.2 If any provision of this Agreement (or part of any provision) is or becomes illegal, invalid or unenforceable but would be legal, valid and enforceable if some part of it was deleted or modified, the provision or part-provision in question shall apply with such deletions or modifications as may be necessary to make the provision legal, valid and enforceable. In the event of such deletion or modification, the parties shall negotiate in good faith in order to agree the terms of a mutually acceptable alternative provision.
- 28. Assignment and sub-contracting**
- The Reseller may not assign, transfer, sub-contract or encumber any right or obligation under this Agreement, in whole or in part, without Nimans' prior written consent (such consent not to be unreasonably withheld or delayed).
- 29. Succession**
- This Agreement shall be binding upon, and enure to the benefit of, each of the parties, their respective personal representatives and their respective successors in title.
- 30. Variation**
- No variation of this Agreement shall be valid or effective unless it is in writing, refers to this Agreement and is duly signed or executed by, or on behalf of, each party.
- 31. Entire agreement**
- 31.1 The parties agree that this Agreement constitutes the entire agreement between them and supersedes all previous agreements, understandings and arrangements between them, whether in writing or oral in respect of its subject matter.
- 31.2 Each party acknowledges that it has not entered into this Agreement in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in this Agreement. No party shall have any claim for innocent or negligent misrepresentation on the basis of any statement in this Agreement.
- 31.3 Nothing in this Agreement purports to limit or exclude any liability for fraud.
- 32. Waiver**
- 32.1 No failure, delay or omission by either party in exercising any right, power or remedy provided by law or under this Agreement shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right, power or remedy.
- 32.2 No single or partial exercise of any right, power or remedy provided by law or under this Agreement shall prevent any future exercise of it or the exercise of any other right, power or remedy.
- 32.3 A waiver of any term, provision, condition or breach of this Agreement shall only be effective if given in writing and signed by the waiving party, and then only in the instance and for the purpose for which it is given.
- 33. Set-off**
- Each party shall pay all sums that it owes to the other party under this Agreement without any set-off, counterclaim, deduction or withholding of any kind, save as may be required by law.
- 34. Equitable relief**
- Each party recognises that any breach or threatened breach of this Agreement may cause the other party irreparable harm for which damages may not be an adequate remedy. Accordingly, in addition to any other remedies and damages available to the other party, each party acknowledges and agrees that the other party is entitled to the remedies of specific performance, injunction and other equitable relief without proof of special damages.
- 35. Force Majeure**
- 35.1 A party will not be liable if delayed in or prevented from performing its obligations under this Agreement due to a Force Majeure Event, provided that it:

35.1.1 promptly notifies the other of the Force Majeure Event and its expected duration, and

35.1.2 uses reasonable endeavours to minimise the effects of that event.

35.2 If, due to Force Majeure Event, a party:

35.2.1 is unable to perform a material obligation; or

35.2.2 is delayed in or prevented from performing its obligations for a continuous period of more than 90 days,

the other party may, within a further 10 Business Days, terminate this Agreement on notice, otherwise this Agreement shall continue in full force and effect.

36. Further assurance

The Reseller shall at the request of Nimans do all acts and execute all documents which are necessary to give full effect to this Agreement.

37. Third party rights

Except as expressly provided for in this Agreement, a person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of this Agreement.

38. Governing law and jurisdiction

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

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