

Framework Agreement

This framework agreement (the “**Agreement**”) is effective from _____ (the “**Effective Date**”) by and between:

- (1) **AXIANS NETWORKS LIMITED**, a company incorporated in England and Wales (registered company number 04407184) whose registered office is Viables 3, Jays Close, Basingstoke, Hampshire, RG22 4BS (“**Axians**”); and
- (2) **[CUSTOMER LIMITED]**, a company incorporated in [England and Wales/Scotland/Northern Ireland] (registered company number [0123456789]) whose registered office is [Address] (the “**Customer**”)

Each a “**Party**” and together the “**Parties**”

WHEREAS

- (A) This Agreement is a framework agreement under which the Customer will purchase and Axians will supply Product(s) and Services as agreed from time to time under a Statement of Work or an Accepted Purchase Order.
- (B) The Parties agree that such Product(s) and Services shall be provided to the Customer by Axians in accordance with the terms and conditions of this Agreement (as detailed hereunder) and any applicable Statement of Work.

The Parties, intending to be legally bound, have executed this Agreement through their authorised signatories

**Signed for and on behalf of
Axians Networks Limited**

**Signed for and on behalf of
Customer**

Signature:

Signature:

.....
Name:

.....
Name:

.....
Position:

.....
Position:

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Date:

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Date:

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NOW IT IS AGREED AS FOLLOWS

1. Scope and Term

- 1.1 This Agreement is a framework agreement governing the overall relationship between Axians and the Customer in respect of the provision of the Product(s) and Services by Axians to the Customer under any agreed Statement of Work or Accepted Purchase Order, as applicable.
- 1.2 The Customer shall be entitled to, at any time during the Term, order Product(s) and/or Services from Axians under a Statement of Work or an Accepted Purchase Order pursuant to and in accordance with this Agreement and the Ordering Procedure, subject to the provisions of the Conditions. In accordance with the Conditions, Axians shall supply the Product(s) and/or Services in consideration of the payment of the Total Charges by the Customer.
- 1.3 This Agreement shall commence on the Effective Date and shall continue in full force and effect unless and until terminated earlier in accordance with the provisions herein.

2. Ordering Procedure and Basis of Contract

- 2.1 Unless otherwise agreed between the Parties, the following ordering procedure ("**Ordering Procedure**") shall apply to the provision of Product(s) and/or Services:
 - 2.1.1 At such time as the Customer has a requirement for Product(s) and/or Services, the Customer shall request a Quotation from Axians.
 - 2.1.2 Following such request, Axians shall: (i) provide the Customer with a Quotation; and (ii) identify whether the provision of the relevant Product(s) and/or Services requires the execution of a Statement of Work.
 - 2.1.3 Upon receipt of a Quotation, the Customer shall be entitled to submit an Order to Axians for such Product(s) and/or Services as detailed in the Quotation the Customer wishes to purchase. The submission of an Order by the Customer shall constitute an offer to purchase the relevant Product(s) and/or Services subject to the Conditions.
 - 2.1.4 Following receipt of an Order, Axians shall, in its entire discretion, either:
 - (i) confirm acceptance of the Order to the Customer by (a) the execution of any applicable Statement of Work (subject to the content of which being agreed between the Parties); or (b) where the Parties have determined that a Statement of Work is not required, providing an Order Acknowledgement; or
 - (ii) decline the Order for any reason or if it is inconsistent with the Conditions or the Quotation.
 - 2.1.5 In the event that Axians declines an Order in accordance with Clause 2.1.4 (ii) above, Axians may, in its entire discretion, suggest to the Customer such amendments as are appropriate for the Order to be acceptable to Axians.
- 2.2 The execution by the Parties of any relevant Statement of Work in accordance with Clause 2.1.4(i)(a) above shall form a binding contract governed by the Conditions for the supply of the relevant Product(s) and/or Services.
- 2.3 Acceptance of an Order in accordance with Clause 2.1.4(i)(b) above shall form a binding contract ("**Accepted Purchase Order**") governed by the terms of the Agreement for the supply of the relevant Product(s) and/or Services.
- 2.4 For the purpose of any Statement of Work or Accepted Purchase Order, the Conditions shall apply to the exclusion of, and shall prevail over, any terms and conditions contained in or referred to in any documentation submitted by the Customer (including as detailed or referred to in any purchase order) or in any correspondence or elsewhere or otherwise implied by trade custom, practice or course of dealing between the Parties.
- 2.5 In the event of conflict between the terms of this Agreement and any applicable Statement of Work, the terms of the Statement of Work shall take precedence in respect of the provision of the specific Product(s) and/or Services detailed therein.

- 2.6 The Agreement and each Statement of Work and/or Accepted Purchase Order (as applicable) constitutes the entire agreement between the Parties for the subject matter thereof and supersedes and extinguishes any previous agreement between the Parties relating to the relevant subject matter.
- 2.7 Each Party acknowledges that it has not been induced to enter into this Agreement (including any Accepted Purchase Order or Statement of Work) in reliance on, nor has it been given, any promise, warranty, representation, statement, assurance, covenant, agreement, undertaking, indemnity or commitment of any nature whatsoever ("**Representation**"), except as expressly set out in this Agreement (or relevant Statement of Work, where applicable).
- 2.8 Each Party hereby withdraws all and any Representations and, to the extent that a Party is the recipient of or has been induced by any Representations, such Party acknowledges that the Representations have been withdrawn (or have otherwise expired) and such Party unconditionally and irrevocably waives any claims, rights or remedies (including but not limited to rescission) which it might otherwise have had in relation to the same.
- 2.9 Any samples, drawings, descriptive matter, proposals, Project Plan or advertising produced by Axians (or any of its suppliers) and any descriptions or illustrations contained in Axians' (or any of its suppliers') proposals, catalogues or brochures are produced for the purpose of giving an approximate idea of the Product(s) and/or Services described in them. Unless otherwise agreed in Writing, such items shall not form part of the Agreement, Statement of Work and/or Accepted Purchase Order (as applicable), nor shall they have any contractual effect.

3. Charges and Payment

- 3.1 Unless otherwise stipulated in a Statement of Work or otherwise advised by Axians in writing:
- 3.1.1 the Customer shall pay Axians the Total Charges within thirty (30) days of the date of invoice;
- 3.1.2 all Charges shall be exclusive of VAT and any other imposed taxes, levies or duties, etc. (for which the Customer shall be additionally liable); and
- 3.1.3 all Charges shall be inclusive of packaging, shipping, carriage, insurance and delivery (provided that the intended delivery destination is within the European Union).
- 3.2 Unless otherwise stipulated in a Statement of Work, Axians shall be entitled to invoice the Customer (as applicable):
- 3.2.1 for Product(s), upon shipment;
- 3.2.2 for Services (save for Professional Services), upon the commencement of the Services;
- 3.2.3 for Professional Services, upon completion or Monthly in arrears (whichever the earlier).
- 3.3 The Total Charges shall be payable by the Customer without any set-off (both legal and equitable) or deduction or any other form of withholding, unless required by mandatory law.
- 3.4 The Customer must notify Axians within seven (7) days of the date of invoice in the event that any element of the Total Charges detailed therein is disputed.
- 3.5 Unless otherwise agreed by the Parties, any annual or periodic Charges for Services shall start to accrue from delivery. Where the Services replace a pre-existing service provided by Axians, the Charges under the replaced service shall stop accruing at such time the Charges start to accrue for the new Services.
- 3.6 Where Charges are payable on an annual or periodic basis and the relevant Statement of Work or Accepted Purchase Order under which such Charges are payable is terminated in accordance with the Conditions, the Customer shall be obliged to pay such Total Charges as apportioned on a pro rata basis calculated up to the effective date of termination or cessation of the relevant Services, whichever is the later.

- 3.7 Axians shall be entitled in its entire discretion, acting reasonably, to withdraw any credit facility provided to the Customer (including but not limited to allowing the Customer to pay the Total Charges subsequent to the delivery/performance of any Product(s)/Services) and, amongst other things, Axians shall be entitled to withdraw any agreed payment terms and instead require payment of the Total Charges in advance of delivery and/or performance of Product(s) and/or Services, respectively. Axians shall notify the Customer of any such change(s) by notice in writing, which shall be effective immediately.

4. Delivery

- 4.1 Axians shall use reasonable endeavours to deliver or supply the Product(s) and/or Services in accordance with any agreed Delivery Dates. Axians shall not be liable to the Customer or any other person(s) for any Losses arising from, under or in connection with any delay or failure to deliver or supply any Product(s) and/or Services by any Delivery Date and accordingly time shall not be of the essence.
- 4.2 Where any delay arises then the relevant Delivery Date shall be extended to a later date to be agreed between the Parties and Axians shall use reasonable endeavours to reduce any such delay.
- 4.3 Unless agreed in Writing, Axians shall be entitled to deliver or supply the Product(s) or Services by instalments, which at Axians' discretion can be invoiced and paid for by the Customer separately. Each instalment shall constitute a separate contract. Any delay or failure in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 4.4 Axians shall deliver the Product(s) in accordance with Incoterms FCA, provided that the intended delivery destination is within the European Union. Axians shall advise the Customer in writing of the applicable delivery terms in the event that the Customer requires Product(s) to be delivered outside of the European Union (including an indication of any additional Charges, taxes, duties or levies, etc. where applicable, for which the Customer shall be additionally liable).
- 4.5 Axians shall deliver the Product(s) or Services to the address provided to Axians by the Customer and detailed in the Order or Statement of Work.
- 4.6 The Customer shall be required to inspect any Product(s) delivered as soon as is practicable and in any event within five (5) Working Days of receipt. The Customer shall notify Axians immediately upon discovery of any damage or shortfall in the Product(s) delivered. Axians shall not be responsible for any Product(s) damaged in transit or any shortfall unless the Customer notifies Axians of such within five (5) Working Days of receipt of the Product(s) and also provides an additional notice in writing within ten (10) days of receipt of the Product(s).
- 4.7 If any delivery or supply of the Product(s) or Services is delayed or refused due to the Customer's request or default, Axians reserves the right to charge the Customer for any reasonable and demonstrable additional costs.
- 4.8 Where a Delivery Date for a particular Product and/or Service is agreed by both Parties to be a Business Critical Date then time shall be of the essence but only in respect of the specific Product and/or Services so agreed.

5. Passing of Title and Risk

- 5.1 Unless otherwise agreed in a Statement of Work or advised by Axians in writing:
- 5.1.1 risk of loss or damage of any Equipment supplied by Axians to the Customer pursuant to the Agreement will pass to the Customer in accordance with Incoterms FCA; and
- 5.1.2 title in any Equipment shall pass from Axians to the Customer only once all Relevant Charges have been received by Axians in full.
- 5.1A In the event that the Customer wishes to enter, or is intending to enter, into any financial arrangement or transaction with a third party under which title in any Equipment is required to pass from Axians to such third party directly ("**Transaction**"), Axians shall provide written confirmation to the Customer if it is able to transfer or pass title in the given Equipment to the relevant third party instead of the Customer, subject to the following:

- 5.1A.1 the Customer shall be required to provide Axians with reasonable written notice (and in any event before the relevant Order has been accepted/Statement of Work executed) of:
 - (i) the Transaction (including if the Transaction is in any way part of or linked to the Customer Reselling); and
 - (ii) any other details or information that Axians may request.
 - 5.1A.2 the Transaction shall not in any way prejudice or limit Axians' rights under the Agreement, nor shall it negate or limit any responsibilities or obligations of the Customer under the Agreement (or under any Statement of Work or Accepted Purchase Order). Where relevant, the Customer hereby procures the proper performance by the third party of any obligations that the Customer is responsible for under this Agreement (or under any Statement of Work or Accepted Purchase Order);
 - 5.1A.3 Axians shall invoice and receive payment from such third party as may be agreed by the Customer pursuant to the Transaction; however, the Customer shall remain solely responsible to Axians for the payment (or for any non-payment, as the case may be) of all Total Charges properly due and payable under this Agreement (or under any Statement of Work or Accepted Purchase Order), notwithstanding the Transaction;
 - 5.1A.4 the Customer shall indemnify and hold Axians harmless from and against all and any Losses arising out of or in connection with the Transaction pursuant to (or Axians complying with) this Clause 5.1A;
 - 5.1A.5 the Transaction shall not affect the operation of the Agreement (or under any Statement of Work or Accepted Purchase Order) in any way save that Axians shall transfer title in the Equipment to the nominated third party in lieu of the Customer. All references to title passing or transferring to the Customer in this Agreement (or under any Statement of Work or Accepted Purchase Order) shall therefore be read as though they are references to the relevant third party; and
 - 5.1A.6 notwithstanding the preceding paragraphs, nothing in the Transaction or any action carried out by either Party in making arrangements for the Transaction shall create or cause any rights for the relevant third party under or pursuant to this Agreement (or under any Statement of Work or Accepted Purchase Order), nor shall such third party have the benefit of or the right to enforce any term of this Agreement (or under any Statement of Work or Accepted Purchase Order). Furthermore, Axians shall not in any way or capacity be party to any contract or other arrangement that the Customer has in place with such third party for, or in the furtherance of, the Transaction (nor shall the Transaction cause the creation of a contract or other similar arrangement between Axians and the third party directly).
- 5.2 Until title to Equipment has passed to the Customer, the Customer shall:
- 5.2.1 hold the Equipment on a fiduciary basis as Axians' bailee;
 - 5.2.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Equipment; and
 - 5.2.3 maintain the Equipment in satisfactory condition and keep them insured against all risks from the date of delivery.
- 5.3 If, before title to Equipment passes to the Customer in accordance with Clause 5.1, the Customer:
- 5.3.1 becomes subject to an Insolvency Event or Axians reasonably believes that an Insolvency Event is about to happen and notifies the Customer accordingly; or
 - 5.3.2 fails to pay the Relevant Charges within sixty (60) days of the date due;

then, without prejudice to any other rights or remedy that Axians may have, Axians shall be entitled at any time to require that the Customer delivers up such Equipment to Axians and, if the Customer fails to do so promptly, Axians shall have the right to enter any premises of the Customer or of any third party where the Equipment is stored in order to recover it.

- 5.4 Subject to the provisions in this Clause 5.4 and Clause 5.5, nothing in this Clause 5 shall operate to restrict or prevent the Customer's ability to resell or otherwise supply or distribute any Products or Services to any third party ("**Resell**") provided that the Customer has obtained from the relevant Vendors all and any authorisations, licences and/or permissions that the Customer is required to obtain in order to Resell ("**Permissions**"). The Customer hereby acknowledges that it is the Customer's sole responsibility to obtain such Permissions and warrants that, in the event it does Resell, it shall at all times comply with the Permissions and shall act in accordance with any instructions or requirements of the relevant Vendors and Axians. Where requested by the Customer, Axians shall provide reasonable assistance to the Customer in obtaining any relevant Permissions; however, the Customer hereby acknowledges that the grant of such Permissions is at the absolute discretion of the relevant Vendors and Axians shall not be in any way responsible or liable should the Customer fail to obtain any Permissions.
- 5.5 The Customer shall provide reasonable written notice to Axians if it intends to Resell (and in any event prior to the relevant Order being accepted/Statement of Work executed). The Customer hereby acknowledges that, if it Resells, Axians shall not be party to any contract or other arrangement the Customer has with any third party. The Customer may in its sole discretion determine the price for any Products and Services it Resells provided that the Customer shall at all times ensure that any price or discount that it provides to its customers shall not prejudice, bring into disrepute or cause any potential diminution in the value or general opinion of the brand or business of Axians, any relevant Vendors and/or any product(s) and/or services that Axians and/or such Vendors sell or supply.

6. Commercial Returns

- 6.1 The Customer has no entitlement to and Axians has no obligation to accept a return of Equipment other than that as a consequence of the operation of Clause 8, Clause 15 or Clause 16. Any other type of return shall be deemed to be a "Commercial Return". If Axians does agree to accept a Commercial Return then Axians will issue an RMA to the Customer, which will detail the conditions under which the return will be accepted. If the Customer fails to fulfil the obligations stipulated in the RMA, which may include the payment of the costs of shipment, then Axians shall be entitled in its entire discretion to refuse the return.

7. Customer Obligations

- 7.1 The Customer warrants and represents that it shall:
- 7.1.1 perform its obligations under this Agreement in accordance with Good Industry Practice;
 - 7.1.2 perform its obligations under this Agreement in accordance with all Applicable Laws;
 - 7.1.3 promptly provide Axians with any assistance, information, facilities (including adequate working space and office facilities), Documentation and other matters as may be reasonably requested by Axians;
 - 7.1.4 provide Axians with full, safe and uninterrupted access (including remote access) to the Customer's premises, systems and Customer's Environment as may reasonably be required for the purpose of performing the Services or supplying any Product(s);
 - 7.1.5 promptly inform Axians of any matters which are likely to adversely affect the provision of the Product(s) or Services to the Customer (including, but not limited to, any proposed change(s) to the Customer's Environment or in the Customer's infrastructure or any delay); and
 - 7.1.6 promptly comply with Axians' reasonable instructions and advice relating to the provision of the Product(s) or Services and the security, integrity or performance of the Product(s) or Services.

- 7.2 If the Customer fails to comply with any material obligation in the Conditions then Axians may on written notice forthwith suspend the provision of the Product(s) and/or Services until such failure has been fully remedied and the Delivery Dates shall be extended to reflect any such delay and Axians shall not be responsible nor liable for any failure to meet/achieve any Business Critical Date(s) accordingly. If Axians determines that, acting reasonably, such delay has caused an increase in costs or expenses to Axians in carrying out its obligations under a Statement of Work or Accepted Purchase Order, Axians may in its entire discretion invoice the Customer for the difference. Axians shall use reasonable endeavours to mitigate its costs in relation to all such delays.
- 7.3 The Customer shall ensure that, in relation to a given Statement of Work or Accepted Purchase Order, it maintains at its own cost the continuous operation of the Customer's Environment. The Customer acknowledges that whilst Axians may provide advice as to how the requirements for the Customer's Environment might be met, unless otherwise specifically detailed in a Statement of Work, Axians shall have no responsibility nor liability for the selection, implementation, operation, security, maintenance or suitability of the Customer's Environment.
- 7.4 If at any time the Customer makes any claim whatsoever against Axians or otherwise requests that Axians investigates any problem that has arisen in connection with the provision of the Product(s) and/or Services, the Customer shall provide to Axians all reasonable support and assistance (including, where applicable, physical access) in order for Axians to assess, work on and modify the relevant Product(s) and/or Services.
- 7.5 The Customer warrants and represents that:
- 7.5.1 the Customer is the proprietor or appropriate licensee of the Customer's Input Material and has an unencumbered legal and beneficial right in all Intellectual Property Rights in Customer's Input Material in order to grant such permission(s) and/or licence(s) to Axians as stipulated in this Agreement;
 - 7.5.2 the Customer's Input Material does not and shall not infringe any Intellectual Property Rights or any other rights whatsoever of any person;
 - 7.5.3 the Customer's Input Material does not constitute or contain Inappropriate Content, does not contain any material which has been obtained in violation of any Applicable Laws and nothing contained in the Customer's Input Material would, if published, constitute a contempt of court under the laws of any legal jurisdiction; and
 - 7.5.4 the Customer's Input Material is true, accurate and complete in all respects.
- 7.6 Unless otherwise agreed in Writing, in the event that during the performance of the Agreement (including during any Statement of Work and/or any Accepted Purchase Order) that the contract of employment of any employees of the Customer or any third party ("**Transferred Employees**") shall transfer to Axians pursuant to TUPE, the Customer shall indemnify Axians from and against all Losses howsoever arising or incurred by Axians in relation to the following:
- 7.6.1 the termination (or other cessation, howsoever caused) of the employment of any of the Transferred Employees by Axians, the Customer or any relevant third party;
 - 7.6.2 anything done or omitted to be done in respect of any of the Transferred Employees which is deemed to have been omitted or done respectively by any party by virtue of TUPE which, for the avoidance of doubt, shall include (but not be limited to) any failure by Axians to comply with Regulation 13 of TUPE and, if required by TUPE, Regulation 14 of TUPE;
 - 7.6.3 any claim made at any time by any employee of the Customer or relevant third party other than the Transferred Employees who claim to have become (or would have become) an employee of or have rights against Axians by virtue of TUPE; and

- 7.6.4 any failure by Axians to comply with its obligations pursuant to Regulation 13 of TUPE or any other provision under TUPE which is caused by the delay, failure or omission of the Customer and/or relevant third party to notify Axians of the (potential) applicability of TUPE or the delay, failure or omission to provide such information as required by Axians including (but not exclusively) information that is required to be provided under Regulation 11 of TUPE within such period as would be reasonable in order to allow Axians to comply with its obligations under TUPE.
- 7.7 For the avoidance of doubt, Clause 7.6 above will apply (but not exclusively) to any Losses which are incurred by Axians:
- 7.7.1 in relation to any redundancy liability, including all statutory and contractual redundancy liabilities or any liabilities arising under the redundancy policy of the Customer or any third party;
- 7.7.2 as a result of the dismissal of any person who is an employee of the Customer or any relevant third party other than the Transferred Employees who claim to have become (or would have become) an employee of or have rights against Axians by virtue of TUPE; and
- 7.7.3 as part of any reorganisation and/or relocation of Axians and its provision of the Product(s) and/or Services to the Customer.
- 7.8 If requested by Axians, the Customer will use all reasonable endeavours to procure and deliver to Axians copies of all tax, PAYE, social security and National Insurance records and copies of any other documents or record (reasonably requested by Axians) which are relevant to such employees of the Customer or of any relevant third party that may, in Axians' reasonable opinion, be in scope to transfer to Axians pursuant to TUPE. Such documents may include (but not exclusively) details of remuneration payable, material terms and conditions of employment, details of any disciplinary, grievance, court or tribunal proceedings brought, and any other personal information referred to under Regulation 11 of TUPE.
- 7.9 Axians agrees that each and any Personnel it uses, appoints or seconds to fulfil its obligations to the Customer under this Agreement (including under any Statement of Work and/or any Accepted Purchase Order) are, and shall for all purposes remain, the employee(s) of Axians (or any of its subcontractors, suppliers or Affiliates) and that it is not intended that the contracts of employment of any such persons will transfer to the Customer or any replacement provider on termination or expiry of this Agreement (or such relevant Statement of Work or Accepted Purchase Order) or any part thereof or otherwise.

8. Warranties and Obligations of Axians

- 8.1 Subject to Clauses 8.2 to 8.9 (inclusive), Axians warrants that it shall:
- 8.1.1 have full power and authority to enter into and perform the terms of the Agreement and any subsequently agreed Statement of Work or Accepted Purchase Order;
- 8.1.2 have full unencumbered title to any Equipment to be supplied under a given Statement of Work or an Accepted Purchase Order;
- 8.1.3 supply Equipment that materially conforms to its Specification;
- 8.1.4 subject to Clause 9, supply Software that materially conforms to its Specification and, if applicable, supply the physical medium on which the Software is furnished free from defects in materials and workmanship under ordinary use; and
- 8.1.5 perform the:
- 8.1.5.1 Professional Services; and
- 8.1.5.2 all Services other than Professional Services;
- with reasonable care and skill and in accordance with Good Industry Practice.
- 8.2 The Customer shall give notice to Axians as soon as it is reasonably able upon becoming aware of any breach of Warranty.
- 8.3 Unless otherwise stated in writing, the Warranty Period for:

- 8.3.1 Equipment is twelve (12) Months from the date of shipment to the Customer (“**Equipment Warranty Period**”);
 - 8.3.2 Software is ninety (90) days from the date of shipment to the Customer for Third Party Software, or ninety (90) days from the Live Date for Axians Software (“**Software Warranty Period**”); and
 - 8.3.3 Professional Services is ninety (90) days following completion of the relevant portion of the Professional Services being performed (“**Professional Services Warranty Period**”).
- 8.4 Subject to Clause 8.5, if the Customer discovers any material defect in any Equipment, Software or Professional Services after the relevant Live Date, it shall notify Axians with full details of such defect. If the Customer can evidence that any such defect has arisen within the relevant Warranty Period and is caused as a direct result of Axians’ breach of Warranty, Axians shall use reasonable endeavours to correct the defect within a reasonable period of time by:
- 8.4.1 at Axians’ option, replacing or repairing the relevant Equipment;
 - 8.4.2 re-performing the relevant Professional Services;
 - 8.4.3 in respect of any Software, at Axians’ option, to: (i) undertake or arrange such work as is reasonably necessary to correct any material defect and, if applicable, in accordance with the Third Party Software proprietor/licensor’s instructions; and/or (ii) to replace any defective physical medium upon which the relevant Software is furnished; or
 - 8.4.4 at Axians’ entire discretion, refund any Relevant Charges paid.
- Any such repair or replacement (including but not limited to where Axians has provided modified, amended or replaced applications) shall, where applicable, become part of the relevant Product(s).
- 8.5 Notwithstanding anything to the contrary set out in the Conditions, Axians shall have no responsibility nor liability to remedy a breach of Warranty or any of its other obligations under the Conditions where such breach arises as a result of the occurrence of any of the events or circumstances described in Clause 8.6 or as a result of any failure on the part of the Customer to observe or perform any of its obligations under the Conditions.
- 8.6 Notwithstanding anything to the contrary set out in the Conditions, no claim of whatever nature may be brought under the Agreement (including under any Accepted Purchase Order or Statement of Work) against Axians and Axians shall have no liability to the Customer or any other third party to the extent that such claim arises as a consequence of the following acts:
- 8.6.1 the improper use, operation or neglect of any Product(s) and/or Services;
 - 8.6.2 the modification of any Product(s) and/or Services or their merger (in either whole or part) with any other application or hardware which is not performed or authorised by Axians under the Conditions;
 - 8.6.3 the failure within a reasonable period of time to implement any recommendations or solutions advised in writing by Axians in respect of any faults;
 - 8.6.4 any repair, reconstruction, adjustment, alteration or modification of Product(s) and/or Services without Axians’ prior written consent;
 - 8.6.5 the use of Product(s) and/or Services for a purpose for which they were not designed; or
 - 8.6.6 the use of Product(s) and/or Services to access, transfer or process data which was not anticipated by the Parties in the relevant Statement of Work or Accepted Purchase Order.
- 8.7 The operation of the Warranty provisions above in this Clause 8 shall be in addition to any applicable third party or manufacturer’s warranty that the Customer may also have the benefit.
- 8.8 The Customer’s rights detailed under Clause 8.4 represent the exclusive remedy of the Customer in respect of any breach of Warranty by Axians.
- 8.9 Axians shall use reasonable endeavours to ensure that its Personnel:

- 8.9.1 comply with all of the Customer's reasonable and lawful instructions in connection with their use and access to Customer Site(s), Customer's Personnel and Customer's Environment in connection with the provision of the Product(s) or Services; and
 - 8.9.2 comply with all reasonable health and safety and security policies of the Customer that are made known to its Personnel.
- 8.10 In the event that Axians supplies second-user or second-hand Equipment to the Customer under an Accepted Purchase Order or Statement of Work, the Warranty Period for such Equipment shall be fourteen (14) days only and, accordingly, the relevant provisions of Clauses 8.1 to 8.4 (inclusive) shall apply for such Equipment for the duration of this period only. The operation of this Clause 8.10 shall be in addition to any applicable third party or manufacturer's warranty for such Equipment that the Customer may have the benefit.
- 8.11 Subject to the foregoing, all conditions, warranties, terms and undertakings, express or implied, statutory or otherwise in respect of the provision of any Product(s) and/or the performance of any Services are hereby excluded to the fullest extent permitted by law.
- 8.12 Unless specified in a Statement of Work, Axians shall not be required to provide to the Customer an exit plan nor any exit assistance following the cessation or termination of any Services, howsoever caused. The Customer acknowledges that any exit assistance that Axians may provide shall be a chargeable activity.

9. Software

- 9.1 The Customer hereby acknowledges that, in respect of any Third Party Software supplied pursuant to this Agreement under any Statement of Work and/or Accepted Purchase Order, Axians is a licensee, distributor or agent only. Unless otherwise agreed in a Statement of Work, Axians shall, depending on the relationship and terms agreed between Axians and the relevant Third Party Software proprietor or licensor, procure for or grant to (as applicable) the Customer (and/or other specified end user(s)) a licence for such Third Party Software under terms and conditions as provided by the relevant Third Party Software proprietor or licensor. The Customer further acknowledges that such licence may take the form of a non-negotiable "click through" or "shrink wrap" licence between the Customer (and/or other specified end user) and the relevant Third Party Software proprietor or licensor.
- 9.2 Unless otherwise agreed in a Statement of Work, Axians shall grant to the Customer (and/or any specified end user) a non-exclusive, non-transferrable (save in respect of any Affiliate of the Customer) licence to use and maintain any Axians Software. Nothing in this Clause 9.2 shall limit any non-waivable right that the Customer may enjoy under mandatory law to decompile the Axians Software as is necessary in order to achieve interoperability, provided that the Customer shall first have formally requested in writing that Axians provides the information necessary to achieve such interoperability and Axians has failed to make such information available within a reasonable period.
- 9.3 Axians makes no warranty that:
- 9.3.1 the Software provided pursuant to this Agreement (under a Statement of Work and/or Accepted Purchase Order) will work in combination with any hardware or any application or any other software products or computer program;
 - 9.3.2 that the operation of the Software will be uninterrupted or error free; or
 - 9.3.3 all defects in the Software will be corrected.
- 9.4 In respect of any third party products expressed as being compatible with the relevant Software in the related Statement of Work or Specification, Axians shall use reasonable endeavours to provide compatibility but shall have no responsibility where the non-compatibility is caused by a "bug" or defect in the third party's product.

- 9.5 Axians shall not be obligated to remedy any Third Party Software defect that cannot be remedied with the latest software release. The Customer shall be entitled to receive any maintenance releases (such as patches and fixes but not including feature releases) at no charge during the Software Warranty Period. The Customer may at its option purchase Services for support under which the Customer may be entitled to receive future maintenance releases for Third Party Software for the duration of such support Services.

10. Limitation of Liability

- 10.1 Subject to Clauses 10.2 to 10.4 inclusive, the total liability of Axians arising under or in connection with the Agreement (including arising under or in connection with any Statement of Work or Accepted Purchase Order) for all Incidents during a given Liability Period shall not exceed the greater of: (i) five hundred thousand pounds (£500,000); or (ii) one hundred and twenty-five per cent (125%) of the aggregate value of the Charges paid by the Customer pursuant to the Agreement in the given Liability Period.
- 10.2 Subject to Clauses 10.3 and 10.4, the total liability of Axians arising under or in connection with the Agreement (including arising under or in connection with any Statement of Work or Accepted Purchase Order) for all Incidents causing damage or loss to, or the destruction of, tangible property during a given Liability Period shall not exceed the greater of: (i) one million pounds (£1,000,000); or (ii) one hundred and twenty-five per cent (125%) of the aggregate value of the Charges paid by the Customer pursuant to the Agreement in the given Liability Period.
- 10.3 Subject to Clause 10.4, Axians shall not in any event be liable under or in connection with the Agreement (including under or in connection with any Statement of Work or Accepted Purchase Order), irrespective of whether such Losses were reasonably foreseeable or in the contemplation of the Parties, for any:
- 10.3.1 indirect or consequential loss or damages;
 - 10.3.2 special or pure economic loss, costs, damages, charges or expenses;
 - 10.3.3 loss of profits;
 - 10.3.4 loss of anticipated savings;
 - 10.3.5 loss of business and/or business opportunity;
 - 10.3.6 diminution in the value or loss of goodwill, reputation and/or damage to brand (and/or any similar losses);
 - 10.3.7 loss of or damage to data;
 - 10.3.8 loss of or damage to data capture;
 - 10.3.9 loss of or diminution in website electronic commerce transactions or traffic;
 - 10.3.10 wasted management expenditure.
- 10.4 Nothing in this Agreement, in any Statement of Work or any Accepted Purchase Order shall operate to exclude or limit liability with respect to:
- 10.4.1 Total Charges properly due and payable by the Customer to Axians;
 - 10.4.2 either Party's liability for deliberate repudiatory breach;
 - 10.4.3 either Party's liability for death or personal injury resulting from its negligence;
 - 10.4.4 either Party's liability for fraud or fraudulent misrepresentation;
 - 10.4.5 either Party's liability which cannot be excluded by law;
 - 10.4.6 Axians' liability for the indemnities provided under Clause 11.7 and/or Clause 11.8;
 - 10.4.7 the Customer's liability for the indemnities provided under Clause 5.1A, Clause 7.6, Clause 11.7 and/or Clause **Error! Reference source not found.**; or
 - 10.4.8 the Customer's liability for any breach of Clause 7.8.

- 10.5 Without prejudice to the generality of any other term of the Conditions and subject to Clauses 10.4.3 to 10.4.5 (inclusive), Axians shall neither be liable nor responsible to the Customer or any other third party for any Loss and/or Incident which occurs, arises as a result of (or following) or to the extent any Incident and/or Loss is exacerbated by:
- 10.5.1 the Customer's breach of, or failure to observe and/or perform, its obligations under the Conditions;
 - 10.5.2 any unauthorised access or use by the Customer of the Background Intellectual Property;
 - 10.5.3 the Customer's use of the Product(s) and/or Services:
 - (i) before the Live Date; or
 - (ii) after the Customer became, or should have become, aware of the relevant defect, Loss and/or Incident (up until such point as Axians has confirmed that a resolution has been completed);
 - 10.5.4 the Customer's failure to implement any measures reasonably suggested and/or requested by Axians, provided that Axians is able to evidence such request/suggestion;
 - 10.5.5 the Customer not having appropriate disaster recovery and/or business continuity policies/procedures in place (or failing to properly follow any that may be in place);
 - 10.5.6 the Customer failing to perform any data backup(s) recommended in any Statement of Work prior to the provision of the relevant Services by Axians;
 - 10.5.7 the Customer's Environment or network being of such design that it fails to meet Good Industry Practice, save where the design failure in question is specifically recommended by Axians; and/or
 - 10.5.8 Axians (or any of its Personnel) carrying out any work in accordance with the Customer's instructions and any such Loss or Incident arises or occurs as a result of the work being carried out in the manner instructed.
- 10.6 Subject to Clauses 10.4.3 to 10.4.5 (inclusive), if a number of Incidents give rise to substantially the same loss then they shall be regarded as giving rise to only one claim under the Agreement, Statement of Work or Accepted Purchase Order.
- 10.7 Clauses 10.1 to 10.6 (inclusive) sets out the entire financial liability of Axians for all and any Incidents and/or Losses.

11. Intellectual Property Rights

- 11.1 Unless otherwise specified in a Statement of Work, Axians and the Customer irrevocably agree that all existing and future Intellectual Property Rights in the Product(s), Services and Background Intellectual Property will at all times during the continuance of this Agreement (including during any Statement of Work and/or an Accepted Purchase Order) and following its termination vest absolutely in Axians or Axians' licensors.
- 11.2 The Customer grants to Axians a royalty free, non-exclusive, non-transferable (save in respect of any Affiliate or Personnel of Axians) licence to use the Customer's Input Material and the Customer's Intellectual Property Rights for the duration of the Agreement (including during any relevant Statement of Work or Accepted Purchase Order, if longer) to the extent necessary for the purpose of:
- 11.2.1 supplying the Product(s) and/or Services; and/or
 - 11.2.2 complying with any of its obligations under the Conditions.
- 11.3 Axians grants to the Customer a royalty-free, non-exclusive, non-transferable (save in respect of any Affiliate or Personnel of the Customer) licence to use such Background Intellectual Property as is relevant and to the extent necessary for the use of the Equipment and Services for the duration of the Agreement (including during any relevant Statement of Work or Accepted Purchase Order, if longer).
- 11.4 Each Party covenants with the other Party that it shall:

- 11.4.1 keep confidential the other Party's Input Material save for those parts of the other Party's Input Material which came into the public domain or the possession of the other Party otherwise than by breach of obligations of confidentiality;
 - 11.4.2 maintain reasonable control over the Party's Input Material and their location and upon request forthwith produce such record to the other Party;
 - 11.4.3 notify the other Party immediately if they become aware of any unauthorised use of the whole or any part of the other Party's Input Material by any third party; and
 - 11.4.4 without prejudice to the foregoing, take all such other reasonable steps as shall from time to time be necessary to protect the confidential information and Intellectual Property Rights of the other Party in the other Party's Input Material which shall be at least equal to the steps taken to safeguard their own confidential information.
- 11.5 Each Party shall inform their respective Personnel and Affiliates that the other Party's Input Material constitutes confidential information and that all Intellectual Property Rights therein are the property of the other Party and each Party shall take all reasonable steps as shall be necessary to ensure compliance by its Personnel and Affiliates with the provisions of Clause 11.4.
- 11.6 Save as expressly set out or contemplated in the Conditions, neither Party shall be entitled to copy in whole or in part the other Party's Input Material and each Party shall ensure where copying is authorised it only copies such Input Material to the extent necessary for the performance of its obligations under the Agreement, any Statement of Work or Accepted Purchase Order (as applicable).
- 11.7 Each Party (in this Clause 11 the "**Indemnifying Party**") will indemnify and hold harmless the other Party (in this Clause 11 the "**Indemnified Party**") from and against any Losses that may be awarded against, or payable by, the Indemnified Party to any third party in respect of any claim or action that the use by the Indemnified Party of the Indemnifying Party's Input Material in accordance with the provisions of the Conditions infringes the Intellectual Property Rights of any third party, provided that the Indemnified Party:
- 11.7.1 gives notice to the Indemnifying Party of any such suspected Intellectual Property Rights infringement forthwith upon becoming aware of the same;
 - 11.7.2 gives the Indemnifying Party the sole conduct of the defence to any claim or action in respect of an Intellectual Property Rights infringement and does not at any time admit liability or otherwise settle or compromise (or attempt to settle or compromise) the said claim or action except upon the express instructions of the Indemnifying Party; and
 - 11.7.3 acts in accordance with the reasonable instructions of the Indemnifying Party and gives to the Indemnifying Party such assistance as it shall reasonably require in respect of the conduct of the said defence including, without prejudice to the generality of the foregoing, the filing of all pleadings and other court process and the provision of all relevant documents.
- 11.8 Axians shall indemnify and hold harmless the Customer from and against any Losses that may be awarded against, or payable by, the Customer to any third party in respect of any claim or action that the use of the Product(s) and/or Services in accordance with the provisions of the Conditions by the Customer infringes the Intellectual Property Rights of any third party (save to the extent that such claim or action arises from the use of Customer's Input Material or arises as a result of the Customer failing to comply with any term of any licence between the Customer and any Third Party Software proprietor/licensor pursuant to Clause 9), provided that the Customer:
- 11.8.1 gives notice to Axians of any such suspected Intellectual Property Rights infringement forthwith upon becoming aware of the same;
 - 11.8.2 gives Axians the sole conduct of the defence to any claim or action in respect of an Intellectual Property Rights infringement and does not at any time admit liability or otherwise settle or compromise (or attempt to settle or compromise) the said claim or action except upon the express instructions of Axians; and

- 11.8.3 acts in accordance with the reasonable instructions of Axians and gives to Axians such assistance as it shall reasonably require in respect of the conduct of the said defence including, without prejudice to the generality of the foregoing, the filing of all pleadings and other court process and the provision of all relevant documents.
- 11.9 Any Party obliged to indemnify the other Party under Clauses 11.7 or 11.8 shall reimburse the other Party its reasonable costs properly incurred in complying with the provisions of Clauses 11.7 or 11.8.
- 11.10 Neither Party shall have any liability nor responsibility for Losses to the other Party in respect of any Intellectual Property Rights infringement if such arises as a result of any breach by the other Party of its obligations under the Conditions (including but not limited to any failure by the Customer to comply with its obligations under any licence between the Customer and any Third Party Software proprietor/licensor pursuant to Clause 9).
- 11.11 In the event of there being an Intellectual Property Rights infringement in respect of the use of either Party's Input Material under Clause 11.7, the Indemnifying Party shall (at its own expense and option):
- 11.11.1 procure the right for the Indemnified Party to continue using the Indemnifying Party's Input Materials;
 - 11.11.2 make alterations, modifications or adjustments to the Indemnifying Party's Input Materials so that they become non-infringing; or
 - 11.11.3 replace the Indemnifying Party's Input Material with appropriate non-infringing substitutes.
- 11.12 In the event of there being an Intellectual Property Rights infringement under Clause 11.8 in respect of the use by the Customer of the Product(s) and/or Services and provided that any such claim or action does not arise from the use of Customer's Input Material or any failure by the Customer to comply with its obligations under any licence between the Customer and any Third Party Software proprietor/licensor pursuant to Clause 9, Axians shall (at its own expense and option):
- 11.12.1 procure the right for the Customer to continue using the affected Product(s) and/or Services;
 - 11.12.2 make alterations, modifications or adjustments to the affected Product(s) and/or Services so that they become non-infringing; or
 - 11.12.3 replace the affected Product(s) and/or Services with appropriate non-infringing substitutes.

12. Confidentiality

- 12.1 Each of the Parties undertakes to the other during the Term of this Agreement (including during any Statement of Work and/or Accepted Purchase Order) and following termination (however arising) to keep confidential, subject to the provisions of this Clause 12, all information (written or oral) that it shall have obtained or received as a result of the discussions leading up to or the entering into or performance of the Agreement, the content of the Agreement and any information (whether written or oral) disclosed by one Party to the other that is identified by the disclosing Party as confidential at the time of disclosure, save for information which is:
- 12.1.1 already in the receiving Party's possession other than as a result of a breach of this Clause and is not subject to an obligation of confidentiality; or
 - 12.1.2 in the public domain other than as a result of a breach of this Clause.
- 12.2 Each of the Parties undertakes to the other to take all such steps as shall from time to time be necessary to ensure compliance with the provisions of this Clause 12 by its Personnel.
- 12.3 Either Party may disclose any confidential information to:
- 12.3.1 its auditors and professional advisors;

12.3.2 comply with any law, regulation or government request (including the rules of any applicable stock exchange and HM Revenue and Customs); and

12.3.3 their respective Personnel to the extent they require such information to observe and perform the Parties' obligations under the Agreement;

provided that the Party disclosing the confidential information under this Clause 12.3 ensures that the person to whom confidential information is disclosed is made aware of the confidential nature the confidential information and should not use the same except for the purposes for which the disclosure is made.

13. Force Majeure

13.1 Neither Party shall be liable for any breach of the Conditions which arises from an Event of Force Majeure.

13.2 Each of the Parties agrees to give notice forthwith to the other upon becoming aware of an Event of Force Majeure and such notice shall contain details of the circumstances giving rise to the Event of Force Majeure and an estimate of the non-performance and delay.

13.3 If an Event of Force Majeure occurs, the affected Party must:

13.3.1 take all reasonable steps to overcome the effects of the Event of Force Majeure (but this does not require the settlement of claims on unreasonable terms); and

13.3.2 resume compliance with the Conditions as soon as is practicable after the Event of Force Majeure no longer affects such Party.

13.4 If a default due to an Event of Force Majeure shall continue for forty-five (45) days, then either Party shall be entitled to terminate such affected Statement of Work or Accepted Purchase Order (or such affected part thereof) immediately upon giving written notice to the other Party. The Parties shall not have any liability in respect of the termination of a Statement of Work as a result of an Event of Force Majeure.

14. Relationship Management

14.1 Each Party shall during the Term appoint a contact and each shall provide relevant details for such contact (as amended from time to time) to the other Party in writing.

15. Suspension and Termination

15.1 If the Customer fails to pay the Total Charges within twenty-one (21) days of the receipt of a written reminder for payment or fails to observe and perform any of its material obligations under the Conditions (or if Axians is otherwise entitled to suspend the provision of any of the Product(s) or Services and/or terminate the Agreement, any Statement of Work and/or an Accepted Purchase Order), Axians shall be entitled to (in its entire discretion), by giving written notice to the Customer and without prejudice to any of its other rights and remedies, to immediately restrict or suspend the provision of the Product(s) and/or Services until such time as either: (i) the Total Charges (or such relevant portion thereof), together with any interest payable thereon, have been received in clear funds by Axians; or (ii) where suspension was a result of a material breach on the part of the Customer of its obligations under the Conditions, the Customer has remedied such breach to the reasonable satisfaction of Axians.

15.2 Either Party (in this Clause 15 the "**Terminating Party**") may terminate immediately on written notice to the other Party (in this Clause 15 the "**Other Party**") the Agreement and all and any Statement(s) of Work and/or Accepted Purchase Order(s) at that time in effect if the Other Party becomes subject to an Insolvency Event. The Customer shall be liable to pay all Total Charges up until the day of termination in the event of it exercising its right to terminate under this Clause 15.2.

- 15.3 A Statement of Work or an Accepted Purchase Order (or affected part thereof) may be terminated forthwith by the Terminating Party if the Other Party commits a material breach thereunder and the Other Party fails to remedy the same within thirty (30) days of receiving written notice from the Terminating Party giving particulars of the breach (provided always that such material breach is capable of remedy within thirty (30) days, otherwise the Other Party shall be required to have put into place such steps as are appropriate to remedy the material breach to the Terminating Party's reasonable satisfaction).
- 15.4 The termination of any Statement(s) of Work or Accepted Purchase Order(s) (or affected part(s) thereof) in accordance with Clause 15.3 shall not cause the termination or cessation of the Agreement or any other Statements of Work or Accepted Purchase Orders (or any part thereof or the obligations of either Party thereunder) which are in effect on such date the relevant written notice of termination is provided for the affected Statement(s) of Work and/or Accepted Purchase Order(s). Accordingly, the Agreement and such other Statement(s) of Work and/or Accepted Purchase Order(s) shall remain in full force in accordance with its/their terms.
- 15.5 Either Party may terminate the Agreement by giving to the other not less than ninety (90) days' notice in writing, such notice to take effect no earlier than twelve (12) Months following the Effective Date. The termination of the Agreement in accordance with this Clause 15.5 shall not cause the termination or cessation of any Statements of Work or Accepted Purchase Orders (or any part thereof or the obligations of either Party thereunder) in effect on such date the relevant written notice is provided, nor on the date of the expiration of the relevant written notice. Accordingly, all Statements of Work and/or Accepted Purchase Orders shall remain in force in accordance with its/their relevant terms.
- 15.6 Any termination shall be without prejudice to any other rights or remedies a Party may be entitled to hereunder or at law and shall not affect any accrued rights or liabilities of either Party nor the coming into or continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.
- 15.7 Axians shall be entitled to terminate immediately on written notice to the Customer the Agreement and all and any Statement of Work(s) or Accepted Purchase Order(s) at that time in effect at any time if:
- 15.7.1 there is a change in the Control of the Customer which results in the Customer being Controlled by a person or persons whom Axians considers, in its reasonable opinion, to be a direct competitor; or
 - 15.7.2 at any time there is a change in the Control of the Customer which results in the Customer being Controlled by a person or persons whom Axians has, acting reasonably, demonstrable concerns regarding their financial standing, provided that: (a) Axians has requested reasonable assurances from the Customer as to its continued ability to perform its obligations under the Agreement, Statement(s) of Work and/or Accepted Purchase Order(s) following the change in Control (the "Financial Standing Assurances"); and (b) either the Customer has failed to provide such Financial Standing Assurances within a reasonable period or Axians, acting reasonably, is not satisfied with the Financial Standing Assurances provided by the Customer.

16. Early Cancellation

- 16.1 Unless otherwise stated by Axians in writing, prior to the Delivery Date the Customer shall be entitled to cancel any delivery of any Product(s) provided that a minimum of forty-five (45) days written notice is given before the earlier of (as applicable):
- (i) the Delivery Date; or
 - (ii) the intended date any Product(s) are to be received by Axians at its storage or pre-staging facility (as relevant).

Upon exercising its right of cancellation under this Clause 16.1, the Customer shall be required to pay any reasonable and demonstrable costs that Axians has incurred as a result of such cancellation.

16.2 Except as detailed in Clause 16.1 or may otherwise be specified in an executed Statement of Work, the Customer shall have no right of cancellation and the Customer shall be required to pay the Total Charges for any Product(s).

17. Change Control

17.1 Where applicable for the Services provided, the Parties shall detail in the relevant Statement of Work such change control procedures as are appropriate.

18. Corruption and Anti-Bribery

18.1 The Parties shall, and shall procure that their officers, employees, agents and subcontractors shall:

18.1.1 comply with all applicable anti-bribery laws, including but not limited to, the UK Bribery Act 2010, the US Foreign Corrupt Practices Act (FCPA) and the French Sapin II Law; and

18.1.2 undertake to put in place and implement adequate procedures to ensure that their officers, employees, agents and subcontractors, either directly or indirectly, do not offer or authorise the payment of any money, gifts, bribes, kickbacks or anything of value, or give, or agree to give, solicit or receive any advantage or consideration of any kind to induce or influence the proper performance of any person in connection with this Agreement or for showing or forbearing to show favour or disfavour to any person in relation to this Agreement; and

18.1.3 without prejudice to paragraph 18.1.1, not do or omit to do any act or thing that would cause the other Party to be guilty of an offence under the applicable anti-bribery laws.

18.2 The Parties agree to notify the other Party of any breach of any terms of paragraph 18.1 without undue delay. On receipt of any such notice, the non-defaulting Party shall have the right to terminate this Agreement and require full indemnification from the defaulting Party.

19. Escalation Procedure and Expert Determination

19.1 All disputes arising out of or in connection with the Agreement (including under or in connection with any Statement of Work or Accepted Purchase Order) shall first be referred to one of the relevant Customer contacts and Axians contacts who shall discuss and attempt to resolve such dispute as soon as reasonably practicable and, in any event, within three (3) Working Days.

19.2 Where a dispute to be considered by the relevant Customer contacts or Axians contacts in accordance with Clause 19.1 is not resolved by them within three (3) Working Days then either Party may refer the matter to a Senior Representative (and their equivalent from the other Party) and the Senior Representatives shall consider the dispute as soon as reasonably practicable.

19.3 The Senior Representatives may agree that the dispute shall be referred to an Expert who shall act as an expert and not as an arbitrator (and for the avoidance of doubt the provisions of the Arbitration Act 1996 shall be excluded in relation to any such dispute). Failing an acceptable or prompt decision (in the reasonable opinion of both Parties) from the Expert, either Party may notify the other Party of a formal dispute.

19.4 The Parties shall each bear their own costs in relation to any dispute under this Clause 19 and the fees and all other costs shall be borne jointly in equal proportion by the Parties unless otherwise directed.

19.5 Nothing in this Clause 19 shall prevent or delay either Party from seeking any interim injunctions, interdicts, orders or any other court application in connection with any matter under the Agreement.

20. Non-solicitation of employees

20.1 During the Term and for a period of six (6) Months thereafter, the Customer shall not (on its own behalf or on behalf of any person) directly or indirectly:

(i) entice or endeavour to entice away from Axians; or

(ii) contract with or employ in any capacity;
any employee of Axians who was at any time during the performance of this Agreement (including under any Statement(s) of Work and/or Accepted Purchase Order(s)) directly involved in the supply of the Product(s) or Services as a senior employee or an employee in any managerial, technical, advisory, consultative or sales/marketing capacity.

20.2 In the event of any breach of Clause 20.1 by the Customer, the Customer shall pay to Axians on demand as liquidated damages a sum equal to thirty per cent (30%) of the annual salary of, plus all other benefits payable to, the relevant employee.

21. Assignment and third party rights

21.1 Subject to Clauses 21.2 to 21.4 inclusive, neither Party is entitled to assign, novate, charge or otherwise transfer the benefit of the Agreement, any Statement of Work or Accepted Purchase Order, nor any of its rights or obligations under the Agreement, any Statement of Work or Accepted Purchase Order, nor hold the benefit of the Agreement, any Statement of Work or Accepted Purchase Order in trust for any third party, without the prior written consent of the other Party, which will not be unreasonably withheld or delayed.

21.2 Axians shall be entitled to delegate any of its obligations under the Agreement, any Statement of Work and/or any Accepted Purchase Order to any of its Affiliates, provided that Axians shall always remain responsible to the Customer for the performance of any such obligations so delegated.

21.3 Nothing in this Clause 21 shall affect Axians' right to subcontract the performance of any of its obligations under the Agreement, any Statement of Work and/or any Accepted Purchase Order provided that Axians shall always remain responsible to the Customer for the performance of any such obligations so subcontracted.

21.4 Notwithstanding anything to the contrary, the Parties hereby agree that they are the only parties to this Agreement and intend that nothing in the Agreement shall confer any rights on any third parties. The Contracts (Rights of Third Parties) Act 1999 is excluded from and shall not apply to the Agreement and, accordingly, any party other than the Parties shall not have the benefit of or the right to enforce any term of the Agreement, any Accepted Purchase Order or Statement of Work.

22. Data Protection

22.1 Both Parties will comply with all applicable requirements of the Data Protection Legislation. This clause 22 is in addition to, and does not relieve, remove or replace, a Party's obligations under the Data Protection Legislation. In this Clause 22, Applicable Laws means the General Data Protection Regulation (GDPR) (EU) 2016/679 and any data protection legislation in force in England and Wales including the Data Protection Act 2018 or any successor legislation.

22.2 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the data controller and Axians is the data processor (where Data Controller and data Processor have the meanings as defined in the Data Protection Legislation).

22.3 Without prejudice to the generality of clause 22.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable the lawful transfer of the Personal Data (as defined in the Data Protection Legislation) to Axians for the duration and purposes of this Agreement.

22.4 Without prejudice to the generality of Clause 22.1, Axians shall, in relation to any Personal Data processed in connection with the performance by Axians of its obligations under the Agreement:

22.4.1 process Personal Data only on the written instructions of the Customer unless Axians is required by Applicable Laws to otherwise process that Personal Data;

22.4.2 ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss,

- destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures;
- 22.4.3 ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
 - 22.4.4 not transfer any Personal Data outside the European Economic Area unless appropriate safeguards in relation to the transfer have been provided;
 - 22.4.5 notify the Customer without undue delay on becoming aware of a Personal Data breach;
 - 22.4.6 at the written request of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of this Agreement unless required by Applicable Law to store the Personal Data; and
 - 22.4.7 maintain complete and accurate records and information to demonstrate its compliance with this Clause 22.

23. Export Control

23.1 The Customer hereby agrees that it:

- 23.1.1 shall comply, and will ensure that its relevant personnel comply, with all applicable Sanctions and Export Control Laws, including, without limitation, to ensure that the Products are sold, supplied, imported, exported, re-exported, transferred, used, disclosed and/or transported only in accordance with applicable Sanctions or Export Control Laws;
- 23.1.2 will immediately notify Axians if it becomes aware that any of its personnel may have breached applicable Sanctions and Export Control Laws;
- 23.1.3 will not supply any Products or services, in any form, either directly or indirectly, to any person or entity based in Cuba, Iran, Sudan, Syria or North Korea;
- 23.1.4 is solely responsible for compliance with obtaining any consents, licenses, registration or other authorisation for the sale, supply, import, re-export, transfer, use, disclosure or transport of the Products;
- 23.1.5 although Axians shall use reasonable endeavours to inform the Customer of applicable Sanctions and Export Control Laws regarding the Products, be responsible for seeking its own legal advice and ensuring its own compliance with all applicable Sanctions and Export Control Laws; and
- 23.1.6 will indemnify and hold Axians harmless against any claim, loss, liability or damage suffered or incurred by Axians resulting from or related to the Customer's breach of this clause, and that breach of this clause may be considered termination of this Agreement.

24. Publicity

24.1 Each Party agrees not to use or refer to this Agreement or to the name, trade mark or trade name of the other Party in any publicity, advertisements or other disclosure (including customer lists), without first obtaining the approval of the other Party.

25. Compliance

25.1 Each of the Parties warrants to the other that it holds all necessary authorisations or permits required by law for the purposes of carrying out its obligations under the Agreement, and that throughout the term of the Agreement it will continue to hold all such authorisations and permits and the Parties warrant to each other that they shall not engage in any activities or processes which shall cause the other to be in breach of any Applicable Laws.

26. General

- 26.1 Unless otherwise stipulated in a relevant Statement of Work, the Product(s) and/or Services provided by Axians to the Customer pursuant to the Agreement shall be provided during Working Hours. Any of the Product(s) and/or Services required by the Customer outside of Working Hours shall be subject to Axians' standard out-of-hours charges as provided to the Customer from time to time.
- 26.2 The waiver by either Party of a breach or default of any of the provisions of the Agreement by the other Party shall not be construed as a waiver of any succeeding breach of the same or other provisions of the Agreement, nor shall any delay or omission on the part of either Party to exercise or avail itself of any right, power or privilege that it has or may have under the Agreement operate as a waiver of any breach or default by the other Party.
- 26.3 Any notice, request, instruction or other document to be given under the Agreement shall be: (i) delivered by hand; or (ii) sent by first class post to the address of the other Party set out in the relevant Statement of Work or this Agreement (or such other address or number as a Party may have been notified); or (iii) sent by email to the email address of the Customer or Axians, as may be set out in the relevant Statement of Work or otherwise used in the course of dealing between the Parties. Any such notice, request, instruction or other document shall be deemed to have been served: (a) if delivered by hand, at the time of delivery; (b) if sent by post, upon the expiration of two (2) Working Days after dispatch; or (c) if sent by email, the date upon which the email is sent.
- 26.4 If any provision of the Agreement shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable the invalidity or unenforceability of such provision shall not affect the other provisions of the Agreement and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect. The Parties hereby agree to use reasonable endeavours (and in good faith) to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision, which achieves to the greatest extent possible the economic, legal and commercial objectives of the invalid or unenforceable provision.
- 26.5 The Agreement, Accepted Purchase Order or any Statement of Work may only be varied in Writing between the Parties.
- 26.6 The Parties agree that nothing in the Agreement shall be deemed to create any partnership, joint venture or relationship of employer and employee between them.
- 26.7 This Agreement and any dispute arising out of or in connection it its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law and the Parties submit to the exclusive jurisdiction of the English courts.

27. Counterparts

- 27.1 This Agreement may be executed in any number of counterparts, each of which shall be an original, and such counterparts shall together constitute one and the same Agreement, as applicable.

28. Interpretation

- 28.1 Any reference in the Agreement to "writing" shall be construed as including a reference to email.
- 28.2 Any reference to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.
- 28.3 Headings are for convenience only and shall not affect the interpretation.
- 28.4 References to "including", "includes" and "in particular" are illustrative only and none of them shall limit the sense of the words preceding them and each of them shall be deemed to incorporate the expression "without limitation".
- 28.5 Where the Customer is more than one person, their liability under this Agreement, all Statements of Work and/or Accepted Purchase Orders shall be joint and several.
- 28.6 Headings to the Clauses, paragraphs and annexes of this Agreement and under any Statement of Work shall not affect the interpretation.

28.7 In the Agreement the following words and expressions will have the following meanings:

“Accepted Purchase Order”	as detailed in Clause 2.3, a legally binding contract between the Parties entered into pursuant to the terms of this Agreement and the Ordering Procedure for the provision of Product(s) and/or Services;
“Acceptance Tests”	the tests (if applicable) to be carried out by the Customer and/or Axians, as set out in the relevant Statement of Work or otherwise in Writing, which demonstrate that the relevant Product(s) and/or Services materially operate in accordance with their Specification;
“Affiliate”	any subsidiary undertaking of the ultimate parent of the Party, including the ultimate parent;
“Applicable Laws”	means all laws, legislation, regulations or rules or requirements of any relevant government or governmental agency applicable to either Party, the Agreement, an Accepted Purchase Order, Statement of Work, Product(s), Services or Documentation (as the context requires);
“Axians Input Material”	any Input Material provided by Axians to the Customer;
“Axians Software”	any Software that is not Third Party Software;
“Background Intellectual Property”	<p>means all existing and future Intellectual Property Rights that are either:</p> <ul style="list-style-type: none">(a) subsisting or vested in Axians (or any of its Affiliates); or(b) have been (or will be) created by Axians (or any of its Affiliates); <p>which are used or incorporated within any Equipment or Services or are otherwise utilised or provided in connection with and pursuant to the performance of Axians’ obligations under the Agreement (including under any Statement of Work or Accepted Purchase Order), including but not limited to the Intellectual Property Rights in Axians’ Input Material or derived from Axians’ Input Material. However, Intellectual Property Rights:</p> <ul style="list-style-type: none">(i) in the Customer’s Input Materials;(ii) created and developed by Axians solely from the Customer’s Input Materials;(iii) created and developed by Axians for the sole specific use of the Customer on an exclusive basis (and which are expressly identified as such in the relevant Statement of Work); <p>shall not be deemed to constitute Background Intellectual Property;</p>
“Business Critical Date”	a date for delivery of Product(s) and/or Services which is critical to the Customer and specifically identified as a Business Critical Date in a Statement of Work. For the avoidance of doubt, unless clearly stated to be a Business Critical Date, a Delivery Date shall not be deemed a Business Critical Date;
“Charges”	the charges and fees payable to Axians by the Customer pursuant to this Agreement under any Accepted Purchase

	Order and/or Statement of Work for Product(s) and/or Services, as applicable;
“Clauses”	the clauses of this Agreement. “Clause” shall be construed accordingly;
“Commercial Return”	has the meaning as attributed in Clause 6;
“Conditions”	the terms and conditions of this Agreement and/or any applicable Statement of Work;
“Control”	has the meaning attributed to it as per section 840 of the Income and Corporation Taxes Act 1988. “Controlled” shall be construed accordingly;
“Customer’s Environment”	all systems, equipment, infrastructure and environment (including but not limited to hardware, firmware and software, operating system(s), software facilities, other software of whatever sort, processing speed, clock speed, network type speed and capacity, peripherals, peripheral drivers, monitors, disk drives, tape drives, internet access facilities, communications software and printers) at the relevant Customer Site(s);
“Customer’s Input Material”	any Input Material provided by the Customer to Axians;
“Customer’s Intellectual Property Rights”	Intellectual Property Rights which vest in the Customer or which the Customer otherwise has the benefit by way of licence;
“Customer Site(s)”	the relevant premises of the Customer (or such other premises advised by the Customer) at which the Product(s)/Services are to be delivered/performed or otherwise such premises which Axians requires access for the purpose of delivering/performing the Product(s)/Services;
“Delivery Dates”	the dates for the supply or delivery of the Product(s) and/or Services (if any) to the Customer Site(s) as set out in the relevant Statement of Work, Project Plan or otherwise provided by Axians in writing. “Delivery Date” shall be construed accordingly;
“Documentation”	any document in writing, any map, plan, graph, drawing or photograph, any film, moving image, negative, tape, disk, CD ROM or other tape or other device embodying any other data;
“Equipment”	such equipment, cabling and systems provided (or to be provided) by Axians to the Customer pursuant to this Agreement as identified in a Statement of Work or Accepted Purchase Order, but shall not include any such items that are utilised by the Customer under or as part of Services provided by Axians;
“Expert”	such independent expert as is: (a) agreed between the Parties; or (b) in the absence of agreement set out in (a) above within ten (10) Working Days, appointed by the National Computing Centre (or some other British nationally recognised independent centre for expertise in the application of computer technology agreed by the Parties);

“Event of Force Majeure”	causes beyond the reasonable control of either of the Parties including but not limited to fires, insurrection or riots, terrorism, embargoes, inability to obtain supplies, component shortages, strikes or industrial action of any third party, and requirements or regulations of any civil or military authority;
“Expert”	such independent expert as is: (a) agreed between the Parties; or (c) in the absence of agreement set out in (a) above within ten (10) Working Days, appointed by the National Computing Centre (or some other British nationally recognised independent centre for expertise in the application of computer technology agreed by the Parties);
“Good Industry Practice”	in relation to the provision of services and/or the performance of obligations under this Agreement using the degree of skill, care, prudence, supervision, diligence, foresight, quality control and quality management which the industry would (at the relevant time) regard as the best generally accepted processes, techniques and materials and those which would (at the relevant time) be adopted by a leading professional supplier or consumer of services pursuant to the Agreement;
“Inappropriate Content”	means any content which may be construed under the laws of any legal jurisdiction as obscene or blasphemous, offensive to religion, indecent, pornographic, offensive, defamatory or threatening to any person, or liable to incite racial hatred or acts of terrorism;
“Incident”	means any incident, event, statement, act or omission for which Axians would be responsible (directly, indirectly, vicariously or otherwise) to the Customer or any third party for Losses arising under or in connection with this Agreement, a Statement or Work and/or an Accepted Purchase Order, including but not limited to: (a) any breach of the Conditions and/or any failure to perform any or all obligations, however arising and including any repudiatory breach; (b) any payment required to be made under any indemnity; (c) any use made by the Customer or any third party of the Product(s) and/or Services, or any part of them; (d) any misrepresentation and/or mis-statement, including negligence; (e) any tortious act or omission, including negligence; (f) any incident giving rise to a claim in restitution; and/or (g) any breach of statutory duty or otherwise. “Incidents” shall be construed accordingly;
"Incoterms FCA"	means ‘Free Carrier’ as defined in the English language version of the International Chamber of Commerce Incoterms 2010. The Product(s) shall be deemed delivered when they are placed at the disposal of the Customer on the arriving means of transport ready for unloading at the agreed destination, at which point risk in the relevant Product(s) shall transfer from Axians to the Customer;

“Input Material”	the Documentation, data and any other materials and information provided by one Party to the other for the purpose of performing its obligations under the Agreement (including under a Statement of Work and/or an Accepted Purchase Order);
“Insolvency Event”	a proposal for a voluntary arrangement within Part I of the Insolvency Act 1986 or a proposal for any other composition, scheme or arrangement with (or assignment for the benefit of) its creditors generally or if the other Party shall be unable to pay its debts as they fall due within the meaning of Section 123 of the Insolvency Act 1986 or if a trustee, liquidator, receiver, administrator, administrative receiver or similar officer is appointed in respect of all or any part of the business or assets of the other Party or if a petition is presented (unless it is vexatious or frivolous) or a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding up of the other Party or for the making of an administration order (otherwise than for the purpose of an amalgamation or reconstruction) or if anything analogous to any such event occurs to the other Party in any legal jurisdiction;
“Intellectual Property Rights”	means all intellectual property rights including, but not limited to, any and all copyrights, moral rights, related rights, patents, trademarks, trade names, service marks, design rights, database rights, domain name rights, rights in undisclosed or confidential information (such as know-how, trade secrets and inventions (whether patentable or not)), and other similar intellectual property rights (whether registered or not) as existing now or in the future and applications for any such rights as may exist anywhere in the world;
“Liability Period”	such twelve (12) Month period starting on the Effective Date or any anniversary of the Effective Date;
“Live Date”	the date that the Product(s) or Services pass, or are deemed to have passed, the Acceptance Tests (if applicable) or otherwise the date that the Product(s) are delivered or the Services performed;
“Losses”	all and any losses, expenses, liabilities, claims, demands, actions, damages and costs (including all interest, penalties, fines and reasonable legal and other professional costs and expenses). “Loss” shall be construed accordingly;
“Order”	a purchase order, Order Form or other order in such form or manner as understood and agreed between the Parties supplied by the Customer to Axians for the purpose of placing an order for Product(s) and/or Services;
“Order Acknowledgement”	an acknowledgment in any form issued by Axians to the Customer confirming acceptance of an Order in accordance with Clause 2;
“Order Form”	Axians’ standard order form (as made available from time to time) sent to Axians and signed by the Customer detailing the relevant Product(s) and/or Services to be provided;

“Ordering Procedure”	the ordering procedure detailed in Clause 2.1;
“Permissions”	has the meaning as detailed in Clause 5.4. “Permission” shall be construed accordingly;
“Personnel”	a Party’s officers, employees, contractors, representatives and/or agents, as applicable;
“Product”	any Equipment or Software provided or agreed to be supplied by Axians in accordance with a Statement of Work and/or an Accepted Purchase Order pursuant to this Agreement, but shall not include any equipment and/or software that is utilised by the Customer under or as part of Services provided by Axians. “Products” shall be construed accordingly;
“Professional Services”	such Services that are defined as “Professional Services” in a Statement of Work;
“Project Plan”	any mutually agreed and documented plan that may be created detailing the installation of the Product(s) and/or Services;
“Quotation”	a quotation issued by Axians (including as detailed within any proposal) to the Customer detailing the Charges for any Product(s) and/or Services as requested by the Customer;
“Relevant Charges”	such portion of the Total Charges which relate specifically to the Product(s) or Services in question;
“Representation”	has the meaning as detailed in Clause 2.7. “Representations” shall be construed accordingly;
“Resell”	has the meaning as detailed in Clause 5.4. “Resells” and “Reselling” shall be construed accordingly;
“RMA”	the ‘Returns Material Authorisation’ process and documentation, which is required from Axians to authorise return of goods by the Customer in accordance with Clause 6;
“Sanctions and Export Control Laws”	means any law, regulation, statute, prohibition or wider measure applicable to the Products, services and/or to either party relating to the adoption, application, implementation and enforcement of economic sanctions, export controls, trade embargoes or any other restrictive measure;
“Senior Representative”	the individual nominated to act as such by the Customer and Axians from time to time. “Senior Representatives” shall be construed accordingly;
“Services”	any service or services supplied (or to be supplied) by Axians to the Customer as detailed in any Statement of Work or in an Accepted Purchase Order;
“Software”	software (including but not limited to firmware in any Product or any middleware, computer program, code and/or script) supplied by Axians pursuant to this Agreement in accordance with a Statement of Work or an Accepted Purchase Order, but shall not include any such software that is utilised by the Customer under or as part of Services provided by Axians;

"Specification"	means the official specification published by the manufacturer of the relevant Equipment and/or Third Party Software or, in the case of Axians Software, any specification (if any) detailed in the relevant Statement of Work;
"Statement of Work"	a legally binding contract between the Parties entered into pursuant to the terms of this Agreement and the Ordering Procedure for the provision of Product(s) and/or Services and which more particularly describes therein details of the Product(s) and/or Services to be provided and any specific terms applicable to such;
"Term"	the term that this Agreement is in full force and effect in accordance with Clause 1.3;
"Third Party Software"	means any Software which Axians is not the proprietor or ultimate licensor;
"Total Charges"	the Charges plus any VAT and/or additional fees, taxes, duties and levies, etc. that are payable by the Customer to Axians pursuant to this Agreement under any Accepted Purchase Order and/or Statement of Work for Product(s) and/or Services, as applicable;
"Transferred Employees"	has the meaning as detailed in Clause 7.6;
"TUPE"	the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended or any such act or legislation succeeding such;
"VAT"	value added tax as defined by and payable in accordance with the Value Added Taxes Act 1994;
"Vendor"	means any supplier of the Products and Services to Axians, including the originating manufacturer or any proprietor, distributors and/or licensors at any level in the distribution chain preceding the receipt of the relevant Products and Services by Axians. "Vendors" shall be construed accordingly;
"Warranties"	the warranties provided by Axians to the Customer in Clauses 8.1.3, 8.1.4 and 8.1.5.1. "Warranty" shall be construed accordingly;
"Warranty Period"	the relevant period as specified in Clause 8.3 or Clause 8.10 or as otherwise agreed in a Statement of Work;
"Working Day"	any day except a Saturday, Sunday and any recognised public holiday in England. "Working Days" shall be construed accordingly;
"Working Hour"	any hour between 9:00 am to 5:00 pm on a Working Day. "Working Hours" shall be construed accordingly;
"Writing"	means either (a) in writing, in English and signed by or on behalf (via authorised representatives) of each Party; or (b) in a properly executed Statement of Work.