

Intersys Conditions for the supply of Hardware and Services

The Customer's attention is particularly drawn to the provisions of clause 11 (Limitation of liability).

1. The following definitions and rules of interpretation apply in these Conditions.

1.1 Definitions. Business Day: any day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
Commencement Date: has the meaning given in clause 2.2. **Conditions:** these terms and conditions as amended from time to time in accordance with clause 14.5(b). **Contract:** the contract between Intersys and the Customer for the supply of Hardware and/or Services in accordance with these Conditions and which incorporates the terms in the Order. **Customer:** the person or firm who purchases the Hardware and/or Services from Intersys. **Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time, as amended. **Deliverables:** deliverables set out in the Order or otherwise produced by Intersys for the Customer. **Delivery Location:** has the meaning given in clause 3.3. **Force Majeure Event:** has the meaning given to it in clause 14.4. **Hardware:** the hardware (or any part of it) as set out in the Order. **Hardware Specification:** means the specification for the applicable hardware, if any, provided or made available by the applicable Third Party Supplier, including any terms and conditions of such third party. **Intersys:** Intersys Limited, registered in England and Wales with company number 0329525. **Intersys Materials:** has the meaning given in clause 7.1(g). **Intellectual Property Rights:** patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future. **Losses:** claims, demands, actions, awards, judgments, settlements, costs, expenses, liabilities, damages and losses (including all interest, fines, penalties, management time and legal and other professional costs and expenses). **Order:** the Customer's written acceptance of Intersys' quotation for Services and/or Hardware. **Services:** the services, including the Deliverables, supplied by Intersys to the Customer as set out in the Service Specification. **Service Specification:** the description or specification for the Services as provided in writing, or otherwise made available to Customer, by Intersys or the applicable Third Party Supplier. **Support Contract:** a separate contract for support services entered into between the parties (and all renewals and/or extensions thereof). **Third Party Supplier:** means the applicable third party supplier of Hardware, or software, as appropriate.

1.2 Interpretation. (a) A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality). (b) A reference to a party includes its successors and permitted assigns. (c) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision. (d) Any words referring to the terms **including, include, in particular, for example** or **similar** expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms. (e) A reference to **writing** or **written** includes email.

2. BASIS OF CONTRACT

2.1 The Order constitutes an offer by the Customer to purchase Hardware, Services and/or Deliverables in accordance with these Conditions. **2.2** The Order shall only be deemed to be accepted when Intersys issues written acceptance of the Order at which point and on which date the Contract shall come into existence unless agreed otherwise in writing (**Commencement Date**). **2.3** These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate (without prejudice to any Support Contract), or which are implied by law, trade custom, practice or course of dealing. **2.4** Any quotation given by Intersys shall not constitute an offer and is only valid for a period of up to 20 Business Days from its date of issue, unless stated or confirmed otherwise by Intersys in writing. **2.5** All of these Conditions shall apply to the supply of both Hardware and Services except where application to one or the other is specified.

3. HARDWARE AND DELIVERY

3.1 The Hardware are described in the Order. **3.2** Intersys shall deliver, or procure the delivery of, the Hardware to the location set out in the Order or such other location as the parties may agree (**Delivery Location**) at any time after Intersys (or its supplier) notifies the Customer that the Hardware are ready. **3.3** Delivery of the Hardware shall be completed on the completion of unloading of the Hardware at the Delivery Location. **3.4** Any dates quoted for delivery of the Hardware are approximate only, and the time of delivery is not of the essence. Without limiting the preceding statement, Intersys shall not be liable for any delay in delivery of the Hardware that is caused by a Force Majeure Event or the Customer's failure to provide Intersys with adequate delivery instructions or any other instructions that are relevant to the supply of the Hardware. **3.5** If the Customer fails to take delivery of the Hardware, then except where such failure or delay is caused by a Force Majeure Event or by Intersys' failure to comply with its obligations under the Contract in respect of the Hardware, Intersys shall be entitled to charge the Customer for all restocking costs and expenses incurred as a result.

4. HARDWARE - QUALITY

4.1 On delivery, the Hardware shall conform in all material respects with their applicable Hardware Specification. **4.2** Subject to clause 4.3 and any applicable Hardware Specification, Intersys may, at its option, repair or replace defective Hardware, or refund the price of the defective Hardware in full if: (a) The Customer gives notice in writing within a reasonable time of delivery that some or all of the Hardware do not comply with the warranty set out in clause 4.1; (b) Intersys (or its Third Party Supplier) is given a reasonable opportunity of examining such Hardware; and (c) the Customer (if asked to do so by Intersys or its Third Party Supplier) returns such Hardware to Intersys (or the Third Party Supplier) at the Customer's cost. **4.3** Intersys (and its Third Party Supplier) shall not be liable for the Hardware's failure to comply with the warranty in clause 4.1 if: (a) the Customer makes any further use of such Hardware after giving a notice in accordance with clause 4.2; (b) the defect arises because the Customer failed to follow Intersys' or the Third Party Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Hardware or (if there are none) good trade practice; (c) the Customer alters or repairs such Hardware without the written consent of Intersys or the Third Party Supplier; (d) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or (e) the Hardware differs from their description or the Hardware Specification as a result of changes made to the Hardware in compliance with applicable statutory or regulatory standards. **4.4** Except as provided in this clause 4, Intersys shall have no liability to the Customer in respect of the Hardware's failure to comply with the warranty set out in clause 4.1. **4.5** The terms of these Conditions shall apply to any repaired or replacement Hardware supplied by Intersys.

5. HARDWARE - TITLE AND RISK

5.1 Subject to the Hardware Specification, the risk in the Hardware shall pass to the Customer on completion of delivery. **5.2** Title to the Hardware shall not pass to the Customer until Intersys receives payment in full (in cash or cleared funds) for the Hardware. **5.3** Until title to the Hardware has passed to the Customer, the Customer shall: (a) store the Hardware separately from all other Hardware held by the Customer so that they remain readily identifiable as Intersys' property; (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Hardware; (c) maintain the Hardware in satisfactory condition and keep them insured against all risks for their full price on Intersys' behalf from the date of delivery; (d) notify Intersys immediately if it becomes subject to any of the events listed in clause 12.2(b) to clause 12.2(d); (e) give Intersys such information relating to the Hardware as Intersys may require from time to time. **5.4** If before title to the Hardware passes to the Customer the Customer becomes subject to any of the events listed in clause 12.2(b) to clause 12.2(d) then, without limiting any other right or remedy Intersys may have, Intersys may at any time: (a) require the Customer to deliver up all Hardware in its possession that have not been resold, or irrevocably incorporated into another product; and (b) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Hardware are stored in order to recover them.

6. SUPPLY OF SERVICES

6.1 Intersys shall endeavour to supply the Services to the Customer in accordance with the Service Specification in all material respects. **6.2** Intersys shall use all reasonable endeavours to meet any performance dates for the Services, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services. **6.3** Intersys reserves the right to amend the Service Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and Intersys shall notify the Customer in any such event. **6.4** Intersys warrants to the Customer that: (a) the Services will be provided using reasonable care and skill; (b) by a sufficient number of competent personnel with appropriate skills, qualifications and experience; and (c) that, as far as it is aware, the Services performed by Intersys will not infringe the UK Intellectual Property Rights of any third party. **6.5** Notwithstanding the foregoing, Intersys specifically denies any implied or express representation that the Services or any Deliverable will be fit: (a) to operate in conjunction with any hardware items or software products other than with those that are identified in the Order or the relevant Services Specification as being compatible with the Deliverable; or (b) to operate uninterrupted or error-free.

7. CUSTOMER'S OBLIGATIONS

7.1 The Customer shall: (a) ensure that the terms of the Order are complete and accurate; (b) co-operate with Intersys in all matters relating to the Contract, Hardware and/or Services; (c) provide Intersys, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by Intersys to provide the Services; (d) provide Intersys with such information and materials as Intersys may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects; (e) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start; (f) comply with all applicable laws, including health and safety laws; (g) keep all materials, hardware, documents and other property of Intersys (**Intersys Materials**) at the Customer's premises in safe custody at its own risk, maintain Intersys Materials in good condition until returned to Intersys, and not dispose of or use Intersys Materials other than in accordance with Intersys written instructions or authorisation; and (h) comply with all Customer obligations as set out in the Service Specification, Hardware Specification and Order(s). **7.2** If Intersys' performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**): (a) without limiting or affecting any other right or remedy available to it, Intersys shall have the right to suspend performance of the Contract (or the relevant part of it) until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays Intersys performance of any of its obligations; (b) Intersys shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Intersys' failure or delay to perform any of its obligations as set out in this clause 7; and (c) the Customer shall reimburse Intersys on written demand for any costs or losses sustained or incurred by Intersys arising directly or indirectly from the Customer Default.

8. CHARGES AND PAYMENT

8.1 The price for Hardware: (a) shall be the price set out in the Order or, if no price is quoted nor made available in the Order, shall be available on request; and (b) shall be exclusive of all costs and charges of packaging, insurance, transport of the Hardware, which shall be invoiced to the Customer. **8.2** The charges for Services: (a) the charges shall be calculated on a time and materials basis and in accordance with Intersys' daily fee rates; as set out in the Order or as available on request to Intersys; (b) Intersys' daily fee rates for each individual person are calculated on the basis of an eight-hour day between 9.00 am and 5.00 pm worked on Business Days; (c) Intersys shall be entitled to charge an overtime rate of 150% (save for Sundays and bank holidays which are charged at 200%) of the daily fee rate on a pro rata basis for each part day or for any time worked by individuals whom it engages on the Services outside the hours referred to in clause 8.2(b); and (d) Intersys shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom Intersys engages in connection with the Services including travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by Intersys for the performance of the Services, and for the cost of any materials. **8.3** Intersys reserves the right to: (a) increase the charges for the Services on an annual basis with effect from each anniversary of the Commencement Date; and (b) increase the price of the Hardware, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Hardware to Intersys that is due to: (i) any price beyond the control of Intersys (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs); (ii) any request by the Customer to change the delivery date(s), quantities or types of

Hardware ordered; (iii) any changes made to the Hardware Specification; and (iv) any delay caused by any instructions of the Customer in respect of the Hardware or failure of the Customer to give Intersys adequate or accurate information or instructions in respect of the Hardware.

8.4 In respect of Hardware, Intersys shall invoice the Customer on or at any time after completion of delivery. In respect of Services, Intersys shall invoice the Customer monthly in arrears. **8.5** The Customer shall pay each invoice submitted by Intersys: (a) within 30 days of the date of the invoice; and (b) in full and in cleared funds to a bank account nominated in writing by Intersys; and (c) time for payment shall be of the essence of the Contract. **8.6** All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Contract by Intersys to the Customer, the Customer shall, on receipt of a valid VAT invoice from Intersys, pay to Intersys such additional amounts in respect of VAT as are chargeable on the supply of the Services or Hardware at the same time as payment is due for the supply of the Services or Hardware. **8.7** If the Customer fails to make a payment due to Intersys under the Contract by the due date, then, without limiting Intersys' remedies under clause 12 (Termination), the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 8.7 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%. **8.8** All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law). **8.9** Without limiting Intersys' remedies under clause 12 (Termination) or clause 8.7 above, Intersys shall be entitled (at its sole discretion) to cancel any amounts agreed with the Customer in the event the Customer fails to make a payment due to Intersys under the Contract by the due date.

9. INTELLECTUAL PROPERTY RIGHTS

9.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by Intersys (or its licensors). **9.2** Unless expressly otherwise agreed in writing between the parties, Intersys grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free, revocable licence during the term of the Contract to copy the Deliverables (excluding materials provided by the Customer) for the purpose of receiving and using the Services (including the Deliverables) in its business. **9.3** The Customer shall not sub-license, assign or otherwise transfer the rights granted by clause 9.2. **9.4** The Customer grants Intersys a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by the Customer (**Customer Materials**) to Intersys for the term of the Contract for the purpose of providing the Services to the Customer. **9.5** Unless agreed otherwise in writing by Intersys, the Customer shall on demand indemnify Intersys from and against all Losses incurred by Intersys or its employees, officers, agents and contractors arising out of or in connection with any claim, demand or action alleging that the Customer Materials infringe any Intellectual Property Rights of a third party. This clause 9.5 shall survive termination of the Contract.

10. CONFIDENTIALITY AND DATA PROTECTION

10.1 Each party undertakes that it shall not at any time during the Contract, and for a period of three years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 10.2. **10.2** Each party may disclose the other party's confidential information: (a) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 10; and (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority. **10.3** Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract. **10.4** Both parties will comply with all applicable requirements of the Data Protection Legislation, and where required shall enter into a data processing agreement as an addendum to this Contract. This clause 10.4 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.

11. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.

11.1 The limits and exclusions in this clause reflect the insurance cover Intersys has been able to arrange and the Customer is responsible for making its own arrangements for the insurance of any excess loss. **11.2** The restrictions on liability in this clause 11 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise. **11.3** Nothing in the Contract limits any liability which cannot legally be limited, including but not limited to liability for: (a) death or personal injury caused by negligence; (b) fraud or fraudulent misrepresentation; and (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession). **11.4** Subject to clause 11.3, Intersys' total liability to the Customer under any Order shall not exceed the Total Charges under that Order. **11.5** **Total Charges** means all sums paid by the Customer and all sums payable under the Contract in respect of Services and/or Hardware actually supplied by Intersys, whether or not invoiced to the Customer. **11.5** Intersys' liability for the following types of loss is wholly excluded: (i) loss of profits; (ii) loss of sales or business; (iii) loss of agreements or contracts; (iv) loss of anticipated savings; (v) loss of use or corruption of software, data or information; (vi) loss of or damage to goodwill; and (vii) indirect or consequential loss. **11.6** Intersys has given commitments as to compliance of the Hardware and Services with relevant specifications in clause 3 and clause 6. In view of these commitments, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract. **11.7** Unless the Customer notifies Intersys that it intends to make a claim in respect of an event within the notice period, Intersys shall (subject to clause 11.3) have no liability for that event. The notice period for an event shall start on the day on which the Customer became, or ought reasonably to have become, aware of the event having occurred and shall expire twelve (12) months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail. **11.8** This clause 11 shall survive termination of the Contract.

12. TERMINATION

12.1 Without affecting any other right or remedy available to it and unless agreed otherwise in writing between the parties, Intersys may terminate the Contract by giving the Customer not less than 90 days' written notice. **12.2** Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if: (a) the other party commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within thirty (30) days after receipt of notice in writing to do so; (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business; (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or (d) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy. **12.3** Without affecting any other right or remedy available to it, Intersys may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment. **12.4** Without affecting any other right or remedy available to it, Intersys may suspend the supply of Services or all further deliveries of Hardware under the Contract or any other contract between the Customer and Intersys if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 12.2(b) to clause 12.2(d), or Intersys reasonably believes that the Customer is about to become subject to any of them.

13. CONSEQUENCES OF TERMINATION

13.1 On termination of the Contract: (a) the Customer shall immediately pay to Intersys all of Intersys' outstanding unpaid invoices and interest and, in respect of Services and Hardware supplied but for which no invoice has been submitted, Intersys shall submit an invoice, which shall be payable by the Customer immediately on receipt; (b) the Customer shall return all of Intersys' Materials and any Deliverables or Hardware which have not been fully paid for (or which the Customer is not entitled to use following termination). If the Customer fails to do so, then Intersys may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract. **13.2** Termination or expiry of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry. **13.3** Any provision of the Contract that expressly or by implication is intended to have effect after termination or expiry shall continue in full force and effect.

14. GENERAL

14.1 Assignment and other dealings. (a) Intersys may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract. (b) The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of Intersys. **14.2 Notices.** (a) Any notice given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case). (b) Any notice shall be deemed to have been received: (i) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; and (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting. (c) This clause 14.2 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution. (d) A notice given under the Contract is not valid if sent by email. **14.3 Entire agreement.** (a) Without prejudice to any Support Contract, the Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. (b) Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation nor negligent misrepresentation based on any statement in the Contract. (c) Nothing in this clause shall limit or exclude any liability for fraud. **14.4 Force Majeure.** Neither party shall be in breach of the Contract nor liable for delay in performing or failing to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control (a **Force Majeure Event**). **14.5 Various.** (a) Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract. (b) Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives). (c) A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy. (d) If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause 14.4 shall not affect the validity and enforceability of the rest of the Contract. (e) Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party. (f) In the event of any conflict or inconsistency between the Contract and any Support Contract, the Support Contract shall take precedence for the support services under such Support Contract only. (g) The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England. (h) Each party irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.