



GENERAL TERMS AND CONDITIONS FOR WIGHT COMPUTERS LTD

Wight Computers Limited is incorporated and registered in England and Wales with company number 08262738.

Our registered office is at Unit 2, Ashey Vineyard, Ashey Road, Ryde, Isle of Wight, PO33 4BB.

Our VAT number is GB144683595.

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The Customer's attention is particularly drawn to the provisions of clause 13 (Limitation of liability).

1. INTERPRETATION

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

1.1. Definitions:

Business Day: a 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 17.8.

Contract: a contract between the Supplier and the Customer for the supply of Equipment and/or Services in accordance with the following:

- (A) the Conditions;
- (B) any Managed Services Agreement;
- (C) each Order; and
- (D) any applicable Specific Terms and Conditions.

Control: shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression change of control shall be construed accordingly.

Customer: the person, firm or company who purchases the Equipment and/or Services from the Supplier.

Controller, processor, data subject and personal data, special category data, processing and appropriate technical and organisational measures shall have the meanings given to them in the Data Protection Legislation.

Data Protection Legislation: (i) to the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of personal data; or (b) to the extent the EU GDPR applies, the law of the European Union or any member state of the European Union to which the Company or Client is subject, which relates to the protection of personal data.

Deliverables: any deliverables set out in the Order.

Delivery Location: has the meaning given in clause 4.2.

Equipment: the equipment (or any part of it) set out in the Order.

Equipment Price: the price for the Equipment as set out in the Order or, if no price is quoted, the price set out in the Supplier's published price list as at the date of the Order.

Equipment Specification: any specification for the Equipment, including any relevant plans or drawings, that is provided in writing to the Customer by the Supplier.

EU GDPR: the General Data Protection Regulation ((EU) 2016/679).

Fees: together the Equipment Price and the Service Fees, and any interest due on the same under this Contract.

Force Majeure Event: has the meaning given to it in clause **16.1**.

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), 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 in any part of the world.

Managed Services Agreement: an agreement for the provision of managed services provided in writing by the Supplier to the Customer.

Order: The Customer's order for the supply of Equipment and/or Services.

Protected Data: means personal data received from or on behalf of the Customer in connection with the performance of the Supplier's obligations under the Contract.

Representatives: means in relation to the Supplier, its officers, employees, professional advisers, consultants and contractors that need to know the Confidential Information to enable the Supplier to comply with the terms of the Contract.

Restricted Person: means any person employed or engaged by the Supplier during the term of the Contract who has been engaged in the provision of the Services or the management of the Contract either as principal, agent, employee, independent contractor or in any other form of employment or engagement.

Service Fees: the fees as detailed in the Order payable by the Customer to the Supplier for the Services, which is made up of the Subscription Fee and any applicable Usage Fee.

Services: the services, including the Deliverables, supplied by the Supplier to the Customer as set out in the Service Specification.

Service Specification: the specific services, functions and deliverables (if any) to be provided by the Supplier to the Customer as detailed in the Order.

Specific Terms and Conditions: The Supplier's specific terms and conditions (if any) are applicable to the Services (or any part of them) referred to in the Order.

Subscription Fee: that regular part of the Service Fee.

Supervisory Authority: means any regulator, authority or body responsible for administering data protection laws.

Supplier: Wight Computers Limited incorporated and registered in England and Wales with company number 08262738 whose registered office is at Unit 2, Ashey Vineyard, Ashey Road, Ryde, Isle of Wight, PO33 4BB.

UK GDPR: has the meaning given to it in the Data Protection Act 2018.

Usage Fee: that variable part of the Service Fee based on actual Usage for a period as detailed in the Order.

1.2. Interpretation:

- 1.2.1. A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.2.2. A reference to a party includes its personal representatives, successors and permitted assigns.
- 1.2.3. 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.
- 1.2.4. Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.2.5. A reference to **writing** or **written** includes fax and email.

2. BASIS OF CONTRACT

- 2.1. Each Order constitutes an offer by the Customer to purchase Equipment and/or Services in accordance with the Contract. For the avoidance of any doubt each Contract shall constitute a separate agreement between the parties.
- 2.2. An Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order, at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.3. Any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions of the Equipment or illustrations or descriptions of the Services contained in the Supplier's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Equipment described in them. They shall not form part of the Contract or have any contractual force unless stated otherwise in the Contract.
- 2.4. These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate or which are implied by trade, custom, practice or course of dealing.
- 2.5. All of these Conditions shall apply to the supply of both Equipment and Services except where application to one or the other is specified.

3. EQUIPMENT

- 3.1. The Equipment is described in the Equipment Specification.
- 3.2. To the extent that the Equipment (or part of it) is to be manufactured or supplied in accordance with an Equipment Specification supplied by the Customer, the Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Supplier arising out of or in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Equipment Specification. This clause **3.2** shall survive termination of the Contract.
- 3.3. The Supplier reserves the right to amend the Equipment Specification if required by any applicable statutory or regulatory requirement, and the Supplier shall notify the Customer in any such event.

4. DELIVERY OF EQUIPMENT

- 4.1. The Supplier shall ensure that:
 - 4.1.1. each delivery of the Equipment is accompanied by a delivery note which shows all relevant Customer and Supplier reference numbers, the type and quantity of the Equipment (including the code number of the Equipment, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Equipment remaining to be delivered; and
 - 4.1.2. it states clearly on the delivery note any requirement for the Customer to return any packaging material to the Supplier. The Customer shall make any such packaging materials available for collection at such times as the Supplier shall reasonably request. Returns of packaging materials shall be at the Supplier's expense.
- 4.2. The parties may agree either that:
 - 4.2.1. the Supplier shall deliver the Equipment to the location set out in the Order or such other location as the parties may agree (**Delivery Location**) at any time after the Supplier notifies the Customer that the Equipment is ready; or
 - 4.2.2. the Customer shall collect the Equipment from the Delivery Location within three Business Days of the Supplier notifying the Customer that the Equipment is ready.
- 4.3. Delivery of the Equipment shall be completed on the completion of unloading or loading (as may be appropriate) of the Equipment at the Delivery Location.
- 4.4. Any dates quoted for delivery of the Equipment are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Equipment that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Equipment.
- 4.5. If the Supplier fails to deliver the Equipment, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement Equipment of similar description and quality in the cheapest market available, less the price of the Equipment. The Supplier shall have no liability for any failure to deliver the Equipment to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions for the Equipment or any relevant instruction related to the supply of the Equipment.
- 4.6. If the Customer fails to take or accept delivery of the Equipment within three Business Days of the Supplier notifying the Customer that the Equipment is ready, then except where such failure or delay is caused by a Force Majeure Event or by the Supplier's failure to comply with its obligations under the Contract in respect of the Equipment:
 - 4.6.1. delivery of the Equipment shall be deemed to have been completed at 9.00 am on the third Business Day following the day on which the Supplier notified the Customer that the Equipment was ready; and
 - 4.6.2. the Supplier shall store the Equipment until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 4.7. If ten Business Days after the Supplier notified the Customer that the Equipment was ready for delivery the Customer has not taken or accepted delivery of it, the Supplier may resell or otherwise dispose of part or all of

the Equipment and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Equipment or charge the Customer for any shortfall below the price of the Equipment.

4.8. The Supplier may deliver the Equipment in instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

5. QUALITY OF EQUIPMENT

- 5.1. To the extent that the benefit of any warranties made by the manufacturer of the Equipment to the Supplier can be assigned to the Customer, the Supplier shall, at the cost of the Customer, assign them to the Customer.
- 5.2. Until such assignment, the Supplier will co-operate with the Customer in any reasonable arrangements to provide the Customer with the benefit of such warranties or like condition including enforcement at the cost of and for the benefit of the Customer.
- 5.3. The Equipment is sold "as seen". The Supplier makes no representations and gives no warranties as to the quality, condition, state or description of the Equipment, or their fitness or suitability for any purpose. All implied statutory or common law terms, conditions and warranties as to the Equipment are excluded to the fullest extent permitted by law.

6. TITLE AND RISK

- 6.1. The risk in the Equipment shall pass to the Customer on completion of delivery.
- 6.2. Title to the Equipment shall not pass to the Customer until the Supplier receives payment in full (in cleared funds) for the Equipment.
- 6.3. Until title to the Equipment has passed to the Customer, the Customer shall:
 - 6.3.1. store the Equipment separately from all other equipment held by the Customer so that they remain readily identifiable as the Supplier's property;
 - 6.3.2. not remove, deface or obscure any identifying mark or packaging on or relating to the Equipment;
 - 6.3.3. maintain the Equipment in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery;
 - 6.3.4. notify the Supplier immediately if it becomes subject to any of the events listed in clauses **14.2.2** to **14.2.4**; and
 - 6.3.5. give the Supplier such information relating to the Equipment as the Supplier may require from time to time.
- 6.4. If before title to the Equipment passes to the Customer, the Customer becomes subject to any of the events listed in clauses **14.2.2** to **14.2.4** then, without limiting any other right or remedy the Supplier may have:
 - 6.4.1. the Customer's right to use the Equipment in the ordinary course of its business shall cease immediately; and
 - 6.4.2. the Supplier may at any time:

- 6.4.2.1. require the Customer to deliver up the Equipment; and
- 6.4.2.2. if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Equipment is stored in order to recover it.

7. SUPPLY OF SERVICES

- 7.1. The Supplier shall supply the Services to the Customer in accordance with the relevant Managed Services Agreement, Statements of Work, and/or Specific Terms and Conditions as applicable. The Services may include applications or other services provided by third parties.
- 7.2. The Supplier shall provide technical assistance and training (which may incur a reasonable additional charge depending on requirements unless set out in any Managed Services Agreement or Specific Terms and Conditions) for the set-up and provision of the Services when reasonably requested to do so. The Supplier shall use reasonable endeavours to meet any performance dates for the Services specified (including any project work that is time and materials charged) but any such dates shall be estimates only, and time shall not be of the essence for the performance of the Services.
- 7.3. The Supplier 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 the Supplier shall notify the Customer in any such event.
- 7.4. The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill by personnel whose qualifications and experience will be appropriate for the tasks allocated to them.
- 7.5. Unless stated in any Managed Services Agreement or Specific Terms and Conditions, the Supplier does not warrant that the Services will be error-free or uninterrupted.
- 7.6. The Supplier shall cooperate with the Customer in all matters relating to the supply of Services subject to the Order it relates to.
- 7.7. The Supplier will maintain all necessary statutory and regulatory licenses and permits to provide the services within the Order.
- 7.8. The Supplier shall maintain professional indemnity insurance in the sum of no less than £1,000,000 in respect of any breach of its obligations under the Order.

8. CUSTOMER'S OBLIGATIONS

- 8.1. The Customer shall:
 - 8.1.1. ensure that the terms of the Order and any information it provides in the Service Specification and the Equipment Specification are complete and accurate;
 - 8.1.2. co-operate with the Supplier as far as reasonable in all matters relating to the Services and Equipment;
 - 8.1.3. provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier to provide the Services;

- 8.1.4. provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services and Equipment, and ensure that such information is complete and accurate in all material respects;
- 8.1.5. prepare the Customer's premises for the supply of the Services;
- 8.1.6. comply with all applicable laws, including health and safety laws;
- 8.1.7. comply with any policies issued by the Supplier including (but not limited to) acceptable use, security and disaster recovery;
- 8.1.8. respond to Supplier enquiries in a professional and timely manner;
- 8.1.9. provide the Supplier with remote and (if requested) physical access to any systems that the Supplier supports;
- 8.1.10. comply with the terms of any licence(s) applicable to the Services;
- 8.1.11. keep all contact information provided to the Supplier up to date and correct in order to enable account management and technical notifications about the Services;
- 8.1.12. if the Services include VoIP services, to keep the Supplier informed of any phone location changes in order to ensure details are correct for the use of 999 emergency services;
- 8.1.13. keep the Supplier up to date with any changes to the infrastructure or environment relating to the Services that might impact the performance of the Services;
- 8.1.14. maintain any Equipment and insure any rented or loaned Equipment against all risks for its full value on the Customer's behalf from the date of delivery;
- 8.1.15. notify the Supplier as soon as reasonably practicable of any loss of or damage to rented or loaned Equipment (fair wear and tear excepted) and, on request, reimburse the Supplier for the price for any loss or damage to it;
- 8.1.16. establish, maintain and monitor adequate internal security measures for the Customer's access and use of the Services including the confidentiality and safe storage of all login details, user names and passwords and updating them regularly;
- 8.1.17. use the Services for the Customer's business purposes only;
- 8.1.18. comply with any additional obligations as set out in the Service Specification and the Equipment Specification;
- 8.1.19. return any loaned or rented Equipment to the Supplier well-packaged and in good condition (fair wear and tear excepted) within thirty (30) days of termination of Contract; and
- 8.1.20. where the Services include applications or other services provided by third parties, to comply with any terms, conditions and instructions issued by those third parties.

- 8.2. The Customer shall not access or use the Services for any unlawful purpose including:
 - 8.2.1. in any way which is likely to infringe the Intellectual Property Rights of a third party;

- 8.2.2. for the transmission, display, downloading or uploading of any material which is or is likely to be construed as defamatory, threatening, offensive, abusive, obscene or which will or is likely to cause unnecessary anxiety or inconvenience to a third party or which is otherwise unlawful;
- 8.2.3. attempting to gain unauthorised access to the Services;
- 8.2.4. attempting to modify, distribute, reverse engineer or otherwise attempting to decipher any code in connection with the Services and/or any other aspect of the Supplier's or the Supplier's licensor's technology;
- 8.2.5. in any way that is likely to cause damage or adversely affect the operation of the Services or interfere with or disrupt the Customer's website, other websites, servers or networks; and
- 8.2.6. in any way that will or is likely to interfere with the use and enjoyment of the Services for other users.

8.3. The Customer shall not knowingly or recklessly transmit any electronic material (including viruses) through the Services supplied by the Supplier, which causes or is likely to cause detriment or harm in any degree to computer systems owned or managed by the any third party supplier to the Supplier or other internet users.

8.4. The Customer agrees to fully indemnify and to hold the Supplier harmless from and against any claim brought by a third party resulting from the improper use of the Services by the Customer and in respect of all losses costs actions proceedings claims damages expenses (including reasonable legal costs and expenses) or liabilities whatsoever suffered or incurred by the Supplier in consequence of the Customer's breach or non observance of these terms and conditions.

8.5. The Customer shall consult with the Supplier and shall defend and pay all costs damages awards fees (including any reasonable legal fees) and indemnify and satisfy any judgements against the Supplier arising from the above claims and shall provide the Supplier with notice of such claims. If the Supplier so decides the Supplier shall defend all claims at the cost of the Customer and the Customer hereby grants the Supplier full authority to defend compromise or settle such claims and reasonable assistance necessary to defend such claims at the Customer's sole expense.

8.6. The Customer acknowledges that the Supplier is unable to exercise control over the content of information passing via the Services and the Supplier hereby excludes all liability of any kind for the transmission or reception of infringing information of whatever nature.

8.7. Unless the Supplier has appointed the Customer as a partner or reseller, the Customer agrees that it will not market, offer to sell or resell the Services to any third party.

8.8. If the Services include any project work that is time and material charged, the Customer accepts that:

- 8.8.1. any failure by the Customer to adhere to the terms of this Contract that leads to delays will result in target dates being extended so as to accommodate fully the effects of such delay; and
- 8.8.2. any delay that is directly or indirectly caused by any act or omission by the Customer may result in the Supplier charging the Customer for the effects of such a delay on a time and materials basis at its standard published day billing rates.

8.9. If the Supplier's 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**):

- 8.9.1. without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Services 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 the Supplier's performance of any of its obligations;
- 8.9.2. the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause **8.9**; and
- 8.9.3. the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

8.10. In order to protect the legitimate business interests of the Supplier, the Customer covenants with the Supplier that it shall not (except with the prior written consent of the Supplier):

- 8.10.1. attempt to solicit or entice away; or
- 8.10.2. solicit or entice away from the employment or service of the Supplier

the services of any Restricted Person other than by means of a national advertising campaign open to all-comers and not specifically targeted at such staff of the Supplier.

- 8.11. The Customer further covenants with the Supplier that it shall not (except with the prior written consent of the Supplier) employ or engage or otherwise facilitate the employment or engagement of any Restricted Person.
- 8.12. The Customer shall be bound by the covenants set out in clauses **8.10** and **8.11** during the term of the Contract and for a period of 12 months after its termination or expiry.
- 8.13. If the Customer commits any breach of clause **8.10** or clause **8.11** the Customer shall, on demand, pay to the Supplier a sum equal to one year's basic salary or the annual fee that was payable by the Supplier to the Restricted Person plus the recruitment costs incurred by the Supplier or relevant in replacing such person. The Customer acknowledges that it has had the opportunity to obtain independent legal advice on the implications of this clause and agrees to be bound by it.

9. FEES & PAYMENT

- 9.1. The Customer shall pay the Fees to the Supplier in accordance with this clause and with any other payment terms agreed between the parties in the Order.
- 9.2. The Equipment Price:
 - 9.2.1. unless otherwise stated, shall be exclusive of all costs and charges of packaging, insurance, transport, installation and set-up of the Equipment which shall be invoiced to the Customer; and
 - 9.2.2. is payable on Order.
- 9.3. The Supplier reserves the right to:
 - 9.3.1. increase the Service Fees (or any part of them) at any time on notice to the Customer;

- 9.3.1.1. in line with the percentage increase in the Retail Prices Index in the preceding 12-month period and the first such increase shall take effect on the first anniversary of the Commencement Date and shall be based on the latest available figure for the percentage increase in the Retail Prices Index or Average Earnings Index; and / or
- 9.3.1.2. in line with any price increase levied upon the Supplier by any third party supplier at any time;

9.3.2. increase the Equipment Price by giving notice to the Customer at any time before delivery to reflect any increase in the cost of the Equipment to the Supplier that is due to:

- 9.3.2.1. any factor beyond the control of the Supplier (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- 9.3.2.2. any request by the Customer to change the delivery date(s), quantities or types of Equipment ordered, or the Equipment Specification;
- 9.3.2.3. any delay caused by any instructions of the Customer in respect of the Equipment or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Equipment; or
- 9.3.2.4. in line with any price increase levied upon the Supplier by any third party supplier at any time

9.3.3. charge for any costs reasonably incurred by it resolving any complaints or reports received from any governmental or other competent authority or from any emergency service organisation in relation to the Customer's use of the Services. Where the Supplier receives any enquiry of the type described in this clause then it shall, where not prevented by law from doing so, inform the Customer of such enquiry and shall (to the extent that it is permitted to do so) consult with the Customer as to the form that any response from the Supplier shall take.

9.4. Unless the parties otherwise agree, the following shall apply:

- 9.4.1. the Supplier shall invoice the Customer for the Equipment Price and/or the Service Fee on or at any time after the Order date as detailed in the Order; and
- 9.4.2. where the Services include applications or other services provided by third parties, the Customer shall be liable for full payment in respect the entire term of each service even where the term of that service exceeds the term of the Contract;
- 9.4.3. for the avoidance of doubt, the Customer acknowledges that termination of the Contract for any reason will not avoid its liability under clause **9.4.2** above.
- 9.4.4. the Supplier must be notified of any dispute(s) with an invoice within 5 working days of the invoice date by email to accounts@wightcomputers.co.uk, otherwise the invoice will be accepted as being accurate and valid.

9.5. Where applicable, the Supplier may invoice the Customer for all or any part of the Service Fees monthly or quarterly in advance for all Services.

- 9.6. Unless otherwise agreed, including as may be specified in an Order, the Customer shall pay each invoice submitted by the Supplier:
 - 9.6.1. within 15 days of the date of the invoice or in accordance with any credit terms agreed by the Supplier and confirmed in writing to the Customer; and
 - 9.6.2. by bank transfer in full and in cleared funds to a bank account nominated in writing by the Supplier, and time for payment shall be of the essence of the Contract.
- 9.7. Cheque payments are not accepted. If by any reason a cheque payment must be made, it will incur a minimum processing fee of £35.
- 9.8. **Pro-Rated payment.** The Supplier may pro-rata the Service Fee as follows:
 - 9.8.1. in the event that the date the Supplier starts providing any Services falls after the first day of the month, the first invoice shall reflect a pro-rated fee for that first partial month; and
 - 9.8.2. thereafter, the Supplier shall invoice the Customer for the total monthly fee for each subsequent month. The first invoice following the Order will include the pro-rated fee for the partial month plus the total fee for the following month.
- 9.9. 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 the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services or Equipment at the same time as payment is due for the supply of the Services or Equipment.
- 9.10. The Customer shall be liable to pay the Supplier the value of all actual and reasonable expenses incurred by the Supplier in the provision of the Services, including, where relevant, travel time and costs, congestion charge, tolls, parking, hotels, and subsistence incurred by the Supplier in performance of Services at sites owned or operated by the Customer. Where not otherwise specified in the Order, the amount payable by the Customer shall be the full value of the expenses.
- 9.11. If the Customer fails to make a payment due to the Supplier under the Contract on or before the due date, then, without limiting the Supplier's remedies under clause 14 (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 9.11 will accrue each day at 6% a year above the Bank of England's base rate from time to time but at 6% a year for any period when that base rate is below 0%. The Customer shall reimburse all costs and expenses (including legal costs) incurred by the Supplier in the collection of any overdue amount.
- 9.12. Subject to Clause 9.5, if the Customer fails to make full payment of any invoice on or before its due date the Supplier may give the Customer written notice of the fact that it is in default (a "**Payment Default Notice**") and unless the amount of that invoice is paid in full within ten (10) Business Days of the Customer's receipt of that Payment Default Notice, the Supplier may, without prejudice to any other rights it may have:
 - 9.12.1. suspend the Services immediately until it has received payment in full of all sums due; and/or
 - 9.12.2. terminate the Order for material irremediable breach immediately; and/or
 - 9.12.3. exercise a lien over the equipment owned by Customer until such time as all outstanding payments are made in full and, if payment is not received within a reasonable timeframe, the Supplier shall be entitled to sell or lease any such equipment in order to make good Customer's debt; and/or

- 9.12.4. initiate application to court to recover the total value of the contract and any associated legal, and court costs incurred.
- 9.13. 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).
- 9.14. The Customer agrees to indemnify and keep indemnified and defend at its own expense the Supplier against all costs, claims, damages or expenses incurred by the Supplier or for which the Supplier may become liable due to any failure by the Customer to pay any price increase levied upon the Supplier by a third-party supplier in accordance with clause **9.3.1.2** above.

10. INTELLECTUAL PROPERTY RIGHTS

- 10.1. Unless stated otherwise, 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 the Supplier or a third-party licensor.
- 10.2. The Customer acknowledges that it has no right, title or interest in or to such Intellectual Property Rights relating to the Equipment or Services other than as expressly set out in the Contract or as permitted by law. The Customer acknowledges that any right to use any software provided as part of the Services is granted to the Customer by any third party licensor which the Customer will agree either directly with that third party, for example by way of an end user licence agreement, or with the Supplier if the Supplier is a reseller of the third party licenses which will come under a separate licence agreement.
- 10.3. The Customer shall indemnify and hold the Supplier harmless against any costs, liabilities, losses and expenses, including reasonable legal costs arising from any claim relating to the infringement of any third party Intellectual Property Rights in relation to this Contract, the Services and/or Equipment provided that:
 - 10.3.1. the Supplier gives notice of the claim;
 - 10.3.2. the Customer has sole control and defence of the claim; and
 - 10.3.3. the Supplier provides reasonable cooperation in the defence and settlement of the claim.
- 10.4. The Supplier grants the Customer a royalty-free, non-exclusive license to use any Supplier documents provided as part of the Services for the purposes of using the Services only.
- 10.5. The Customer grants the Supplier a royalty-free, non-exclusive licence to use any Customer materials for the Term of the Contract for the purpose of supplying the Equipment and the Services.

11. DATA PROTECTION

- 11.1. Where the supply of Services involves the processing of Customer personal data by the Supplier, the Supplier and the Customer will enter into a separate data processing agreement.
- 11.2. The Customer and the Supplier acknowledge that the Supplier is the Controller of Customer personal data that relates to the execution of this Contract, including the names and contact details of Customer employees who deal with the Supplier directly. Both parties shall at all times comply with the Data Protection Legislation in connection with the processing of this personal data.
- 11.3. The Supplier may, without the consent of but by written notice to the Customer, unilaterally amend this clause to comply with changes in the Data Protection Legislation.

11.4. The Customer agrees that the Supplier may provide the Customer's contact details to any third party supplier that it uses to provide the Services solely for the purpose of delivering the Services.

12. CONFIDENTIALITY

12.1. **Confidential Information** means all confidential information that the one party discloses or makes available to the other before, on or after the date of this agreement. This includes:

- 12.1.1. the fact that discussions and negotiations are taking place and the status of those discussions and negotiations;
- 12.1.2. the existence and terms of this agreement;
- 12.1.3. all confidential or proprietary information relating to:
 - 12.1.3.1. the business, affairs, customers, clients, suppliers, plans, intentions, or market opportunities of a party; and
 - 12.1.3.2. the operations, processes, product information, know-how, technical information, designs, trade secrets or software of a party;
- 12.1.4. any information, findings, data or analysis derived from Confidential Information; and
- 12.1.5. any other information that is identified as being of a confidential nature; but excludes any information referred to in clause 12.2.

12.2. Information is not Confidential Information if:

- 12.2.1. it is, or becomes, generally available to the public other than as a direct or indirect result of the information being disclosed by the Supplier in breach of this agreement;
- 12.2.2. it was, is, or becomes available to the party on a non-confidential basis from a person who, to that party's knowledge, is not under any confidentiality obligation in respect of that information;
- 12.2.3. it was lawfully in the possession of the party before the information was disclosed by the other party;
- 12.2.4. it is developed by or for the party independently of the information disclosed by the other party; or
- 12.2.5. the parties agree in writing that the information is not confidential.

12.3. Both parties undertake to:

- 12.3.1. keep the Confidential Information secret and confidential;
- 12.3.2. not use or exploit the Confidential Information in any way except for complying with its obligations under the Contract;
- 12.3.3. not directly or indirectly disclose or make available any Confidential Information in whole or in part to any person, except as expressly permitted by, and in accordance with this agreement;

- 12.3.4. not copy, reduce to writing or otherwise record the Confidential Information except as strictly necessary for complying with its obligations under the Contract; and
- 12.3.5. apply the same security measures and degree of care to the Confidential Information as they apply to their own confidential information, which they warrant as providing adequate protection from unauthorised disclosure, copying or use.

12.4. Both parties shall establish and maintain adequate security measures to safeguard the Confidential Information from unauthorised access or use.

12.5. Both parties may disclose the Confidential Information to its Representatives on the basis that it:

- 12.5.1. informs those Representatives of the confidential nature of the Confidential Information before it is disclosed; and
- 12.5.2. procures that those Representatives comply with the confidentiality obligations in clause **12.3** as if they were the Supplier.

12.6. Both parties shall be liable for the actions or omissions of their Representatives in relation to the Confidential Information as if they were the actions or omissions of the party themselves.

12.7. If so requested by the other party at any time by notice in writing, the party shall promptly:

- 12.7.1. destroy or return to the Customer all documents and materials (and any copies) containing, reflecting, incorporating or based on the other party's Confidential Information;
- 12.7.2. erase all the Confidential Information from its computer and communications systems and devices used by it, or which is stored in electronic form;
- 12.7.3. to the extent technically and legally practicable, erase all the Confidential Information which is stored in electronic form on systems and data storage services provided by third parties; and
- 12.7.4. certify in writing to the other party that it has complied with the requirements of this clause **12.7**.

12.8. Nothing in clause **12.7** shall require either party to return or destroy any documents and materials containing or based on the Confidential Information that that party is required to retain by applicable law, or to satisfy the requirements of a regulatory authority or body of competent jurisdiction or the rules of any listing authority or stock exchange, to which it is subject. The provisions of this agreement shall continue to apply to any documents and materials retained by either party pursuant to this clause **12.8**.

12.9. Each party reserves all rights in its Confidential Information. The disclosure of Confidential Information by one party to other does not give the other party or any other person any licence or other right in respect of any Confidential Information beyond the rights expressly set out in this agreement.

12.10. Except as expressly stated in this agreement, neither party makes any express or implied warranty or representation concerning its Confidential Information including, but not limited to, the accuracy or completeness of the Confidential Information.

12.11. Without prejudice to any other rights or remedies that either party may have, each party acknowledges and agrees that damages alone would not be an adequate remedy for any breach of the terms of this clause. Accordingly, each party shall be entitled to the remedies of injunctions, specific performance or other equitable relief for any threatened or actual breach of this clause by the other party.

13. LIMITATION OF LIABILITY

13.1. This clause **13** sets out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:

- (a) any breach of this Contract;
- (b) any use made by the Customer of the Services; and
- (c) any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including negligence) arising under or in connection with this Contract.

13.2. Except as expressly provided in this Contract:

- (a) the Customer assumes sole responsibility for results obtained from the use of the Equipment and Services, and for conclusions drawn from such use. The Supplier shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Supplier by the Customer in connection with the Equipment or Services, or any actions taken by the Supplier at the Customer's direction; and
- (b) all warranties, conditions and other terms implied by statute, common law or otherwise, including but not limited to the terms implied by sections 13 to 15 of the Sale of Equipment Act 1979 and the terms implied by sections 3 to 5 of the Supply of Equipment and Services Act 1982, are, to the fullest extent permitted by law, excluded from the Contract.

13.3. Nothing in these Conditions shall limit or exclude the Supplier's liability for:

- 13.3.1. death or personal injury caused by its negligence;
- 13.3.2. fraud or fraudulent misrepresentation;
- 13.3.3. breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 or breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession);
- 13.3.4. any other liability which cannot lawfully be excluded or limited; or
- 13.3.5. in the case of the Customer, the Customer's obligation to pay the Fees.

13.4. Subject to clause **13.3**, the Supplier shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:

- 13.4.1. indirect or consequential losses, damages, costs or expenses;
- 13.4.2. loss of actual or anticipated profits;
- 13.4.3. loss of contracts;
- 13.4.4. loss of use of money;
- 13.4.5. loss of anticipated savings;
- 13.4.6. loss of revenue;
- 13.4.7. wasted expenditure;

- 13.4.8. loss of goodwill;
- 13.4.9. loss of reputation;
- 13.4.10. ex gratia payments;
- 13.4.11. loss of business;
- 13.4.12. loss of operation time;
- 13.4.13. loss of opportunity;
- 13.4.14. loss of damage to or corruption of data

whether or not such losses were reasonably foreseeable or the Supplier was aware of the possibility of the Customer incurring such losses. For the avoidance of doubt, clauses **13.4.2** to **13.4.14** apply whether such losses are direct, indirect, consequential or otherwise.

- 13.5. The Customer acknowledges that its use of the internet to access the Services (or part of the Services) is at its own risk and that the Supplier shall not be liable in respect of any goods, services, information, software or other material that the Customer may obtain from a third party when using the internet.
- 13.6. Subject to clause **13.3**, the Supplier's total liability to the Customer, whether in contract, tort (including negligence), breach of statutory duty or otherwise, arising under or in connection with the Contract (including any indemnity under it), shall be limited to the lower of:
 - (a) £1,000,000, or
 - (b) 100% of the Fees paid for the Equipment and Services during the twelve months preceding the date on which the claim arose.
- 13.7. The Customer acknowledges that it has read and understood this clause **13** and that it has adequate insurance or other financial means to cover for any losses beyond those set out in this clause.
- 13.8. This clause **13** shall survive termination of the Contract.

14.TERMINATION

- 14.1. The Contract shall continue for the term specified in the Order or the Contract. If the Customer wishes to terminate the Contract at the end of that term, it shall give to the Supplier not less than three months' written notice. The Supplier may terminate the Contract at the end of the term or at any time by giving the Customer not less than one month's written notice. If the Customer gives no notice or less than three months' written notice is given, the Contract and any Service(s) supplied pursuant to it shall continue for a further period equal to the term. The Supplier may, at its sole discretion, reduce or waive any notice period specified in this clause.
- 14.2. 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:
 - 14.2.1. 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 14 days after receipt of notice in writing to do so;
 - 14.2.2. 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 or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

- 14.2.3. 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
- 14.2.4. 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.

14.3. Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if:

- 14.3.1. the Customer fails to pay any amount due under the Contract on the due date for payment; or
- 14.3.2. there is a change of control of the Customer.

14.4. Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services or all further deliveries of Equipment under the Contract or any other contract between the Customer and the Supplier 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 **14.2.2** to clause **14.2.4**, or the Supplier reasonably believes that the Customer is about to become subject to any of them.

15. CONSEQUENCES OF TERMINATION

15.1. On termination of the Contract:

- 15.1.1. the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services and Equipment supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- 15.1.2. the Customer shall return any Deliverables or Equipment which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safekeeping and will not use them for any purpose not connected with this Contract.

15.2. Termination of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.

15.3. Any provision of the Contract that expressly or by implication is intended to have effect after termination shall continue in full force and effect.

16. FORCE MAJEURE

16.1. "**Force Majeure Event**" means an event which is beyond the reasonable control of the party seeking to rely on such event (except to the extent such party could reasonably have avoided such event or its consequences by implementing such business continuity and/or disaster recovery measures and otherwise exercising such level of care in each case as could reasonably be expected of a party in its position, including riot, civil unrest, military action, terrorism or war (whether declared or not) or threat of or preparation for

war; damage to or destruction of premises or equipment, or breakdown of equipment, in each case not attributable to the party seeking to rely on such event; imposition of sanctions, embargo, blockade, or breaking off of diplomatic relations; epidemic (including any Public Health Emergency of International Concern or pandemic declared by the World Health Organization) or pandemic; any failure or refusal of any government or public authority to grant any necessary licence, permit or consent; interruption or failure of a utility service or transport or telecommunications network and/or breakdown of plant or machinery; severe delays or disruptions to the use of railways, shipping, aircraft, motor transport or other means of public or private transport; any change in applicable law which materially impacts a party's ability to perform any obligation under this agreement and/or significantly increases the costs to be incurred and/or effort to be expended by any party in performing its obligations under this agreement; earthquake, storm, fire, flood, landslide or other natural disaster; industrial action, strikes or lock-outs by employees of third parties (excluding sub-contractors and suppliers of the party seeking to rely on such event unless no substitute is reasonably available); and in the case of the Supplier, non-performance by suppliers and sub-contractors.

- 16.2. Neither party shall be in breach of the Contract nor liable for delay in performing or failure to perform any of its obligations under the Contract if such delay or failure results from a Force Majeure Event, provided that the other party is notified of such an event and its expected duration, and it uses all reasonable endeavours to mitigate, overcome or minimise the effects of the Force Majeure Event concerned. If the period of delay or non-performance continues for six weeks or more, the party not affected may terminate this agreement by giving not less than 30 days' written notice to the other party.
- 16.3. Clause **16.1** above shall not apply in respect of any failure or delay by the Customer to make any payment to the Supplier that falls due under the Contract.
- 16.4. The Customer acknowledges and agrees that the Supplier does not and cannot control the flow of data to or from its networks or the storage of data held outside its networks. Such flow and/or storage depend, in large part, on the performance of internet and other software services and/or telecommunications networks provided or controlled by third parties. At times, actions or inactions of such third parties can impair or disrupt the Supplier's connections to the internet (or portions thereof) or such other software platforms upon which access to the Services may be provided. Although the Supplier will where possible use reasonable efforts to remedy and avoid such events, the Supplier cannot guarantee that such events will not occur. Accordingly, the Supplier gives no warranty in relation to and is not liable for any such events and any occurrence of such will be classed as a Force Majeure Event.

17. GENERAL

17.1. Assignment and other dealings

- 17.1.1. The Supplier shall be entitled to assign, mortgage, charge or subcontract, delegate, declare a trust over and deal in any other manner with all or any of its rights and obligations under this Contract (or any Order) to any person or company without the prior written consent of the Customer.
- 17.1.2. The Customer shall not assign, transfer, mortgage, charge, subcontract, 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 the Supplier, which shall not be unreasonably withheld, conditioned or delayed.
- 17.1.3. If the Customer sells its business or assets to a third party, then unless this Contract is novated or transferred to that third party with the Supplier's consent, the full Contract Fees for the whole Term shall immediately fall due and payable to the Supplier by the Customer.

17.2. Notices

- 17.2.1. Any notice or other communication 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); or sent by email to the address specified in the Order.
- 17.2.2. Any notice or other communication shall be deemed to have been received: if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; 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 or at the time recorded by the delivery service; or, if sent by email, at 9.00 am on the next Business Day after transmission.
- 17.2.3. This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

17.3. **Severance.** 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 shall not affect the validity and enforceability of the rest of the Contract.

17.4. **Waiver.** 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 breach or default. 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.

17.5. **No partnership or agency.** 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.

17.6. **Entire agreement.**

- 17.6.1. 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.
- 17.6.2. 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 or negligent misrepresentation based on any statement in the Contract.
- 17.6.3. Nothing in this clause shall limit or exclude any liability for fraud.

17.7. Third parties' rights. 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.

17.8. Variation. 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).

17.9. Governing law. 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 law of England and Wales.

17.10. Jurisdiction. Each party irrevocably agrees that the courts of England and Wales 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.

17.11. Execution. Both parties agree that the signing of the Order electronically shall be as valid as if signed in manuscript.