



Ocular

INTEGRATING  
TECHNOLOGIES  
FOR A SAFER FUTURE

# Ocular Integration Limited Agreement for Sale of Goods and Services.

QF3233 Issued 03/25

## AGREEMENT FOR THE SALE OF GOODS AND SERVICES

This Agreement is made on **xx/xx/xxxx**

### **Between:**

Ocular Integration Limited registered in England and Wales under company number 5831231, whose registered office is at: 3 Attenborough Lane, Chilwell, Nottingham. NG9 5JN (the "Supplier").

And

The company or other legal entity who intends to purchase Goods and/or Services from the Supplier pursuant to a Purchase Order (**Customer**).

### **AGREEMENT SUMMARY**

Each of the Supplier and the Customer may be referred to as a 'Party' or together may be referred to as the 'Parties' under this Agreement.

The Supplier has agreed to supply the Customer with Goods and/or Services (as defined below) on the terms of this Agreement

The Agreement is comprised of the following sections:

- This Agreement Summary
- Schedule 1 – General Terms and Conditions
- Schedule 2 – Additional terms applicable to the supply of Goods
- Schedule 3 – Additional terms applicable to the supply of Services
- Schedule 4 – Software Licence
- The Services Schedule (for the supply of Services)
- Initial Quote Documentation produced by the Supplier (to the extent that such documentation contains information not already covered by the Services Schedule or any of the Schedules).

Unless otherwise set out in one of the Schedules, defined terms that are used in this Agreement Summary shall have the same meaning as those set out in clause 1 of Schedule 1 (General Terms and Conditions).

The Parties have agreed to be bound by the terms contained in this Agreement.

This Agreement becomes effective and binding upon the Parties in accordance with clause 2.4 of Schedule 1.

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## SCHEDULE 1

### GENERAL TERMS AND CONDITIONS

#### 1. INTERPRETATION

1.1 In this Agreement the following words shall have the following meanings:

**Adverse Impact** means:

- (a) a substantial change to the Supplier's ability to perform the Agreement in accordance with its terms and the Law; or
- (b) a significant increase in the costs incurred by the Supplier in performing the Agreement since the price for the Goods or Services was last agreed; or
- (c) a substantial adverse impact on the Supplier's ability to re-sell or commercially exploit the Goods or Services (within the terms of this Agreement).

**Agreement:** this Agreement (including any Purchase Order(s)) between the Supplier and the Customer for the sale and purchase of Goods and/or Services in accordance with the Clauses and Schedules (as relevant) which are contained herein.

**Anti-Bribery and Corruption Policy** means the Supplier's anti-bribery and corruption policy as amended and updated from time to time by the Supplier and notified to the Customer (a copy of which is available on the Supplier's website) to ensure compliance with anti-bribery and corruption laws, including (but not limited to) the Bribery Act 2010.

**Anti-Slavery Policy** means the Supplier's anti-slavery policy as amended and updated from time to time by the Supplier and notified to the Customer (a copy of which is available on the Supplier's website) to ensure compliance with anti-slavery and human trafficking laws including (but not limited to) the Modern Slavery Act 2015.

**Business Day** means a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

**Charges** means the charges payable by the Customer for the supply of the Goods and/or provision of the Services by the Supplier, as set out in either the Services Schedule or any Quote Documentation or order acknowledgement produced by the Supplier.

**Commencement Date** has the meaning given in clause 2.4 of Schedule 1.

**Commercially Sensitive or Confidential Information** means any and all information relating to a Party to this agreement which might fairly be considered to be of a confidential nature and includes, but is not limited to:

- (a) all technical and commercial information concerning a Party's business, systems, software and services, including without limitation such information relating to released or unreleased software or hardware (including samples, models), the marketing or promotion of any product, business policies or practices
- (b) information of whatever nature relating to that Party, which is or has been obtained whether in writing, electronically, pictorially, in machine readable form, or orally by the Receiving Party or its advisers from the Disclosing Party, its consultants or advisers, whether reasonably considered part of this Agreement or not
- (c) information derived by observation during visits or meetings,

- (d) information derived from information falling within sub-paragraph (a), (b) or (c) above (including without limitation such copies, summaries, reproductions as may be authorised under this Agreement and any unauthorised copies, summaries or reproductions), and
- (e) the fact that any discussions in relation to this Agreement are taking or have taken place and the contents of such discussions.

**Customer** the company who purchases the Goods and/or Services from the Supplier pursuant to a Purchase Order.

**Customer Materials** means all materials, equipment and tools, drawings, specifications and data supplied by the Customer to the Supplier.

**Data Controller** has the meaning set out in the Data Protection Legislation as amended, repealed or replaced from time to time.

**Data Processor** has the meaning set out in the Data Protection Legislation as amended, repealed or replaced from time to time.

**Data Protection Legislation** means the Data Protection Act 2018, the Electronic Communications Data Protection Directive (2002/58/EC), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2003/2426) and the General Data Protection Regulations (2016/679) (GDPR) as amended and enforced in the United Kingdom from time to time and including where applicable, the guidance and codes of practice issued by the Information Commissioner.

**Data Subject** has the meaning set out in the Data Protection Legislation as amended, repealed or replaced from time to time.

**Deliverables** means the deliverables set out in the Services Schedule, or the Goods as set out in the Purchase Order or any Quote Documentation.

**Delivery** has the meaning given to it in Clause 2.5 of Schedule 2.

**Delivery Point** means the place where the delivery of the Goods is to take place as defined in Clause 2.2 of Schedule 2.

**Export Control Laws** means all legislation, statutes, regulations, treaties, conventions and all forms of secondary legislation imposed by the United Kingdom that relate to the export or import of certain goods or services, including (but not limited to) the Dual Use Regulations (EC 428/2009), The Export Control Act 2002 and the Export Control Order (SI 2008/3231) as each is amended, updated, replaced and enforced by the United Kingdom from time to time and including where applicable, the guidance and costs and codes of practice issued by the Department for International Trade from time to time.

**Force Majeure Event** has the meaning given to it in Clause 4.4 of Schedule 1.

**FOIA:** the Freedom of Information Act 2000, together with any guidance or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

**Goods** means the items (or any part of them) as set out in the Purchase Order or Quote Documentation

**Goods Specification** means any documentation for the Goods, including plans or drawings that are agreed to in writing by the Customer and are appended to a Purchase Order.

**Group** means in relation to either the Supplier or the Customer, that company, any subsidiary or any holding company from time to time of that company and any subsidiary from time to time of a holding company of the Supplier or Customer.

**Insurance Policies** means commercial general liability insurance cover, employer's liability insurance cover, professional indemnity insurance cover, public liability insurance cover and any other insurance cover required by law or as notified as being required by the Customer from time to time to the Supplier.

**Intellectual Property Rights** means patents, rights to inventions, copyright, moral rights, trademarks, service marks, business names, domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to use and to protect the confidentiality of Confidential Information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or not and including all applications and rights to apply for and be granted, renewals or extensions thereof and all similar rights or forms which subsist or will subsist now or in the future in any part of the world;

**Law** means any legal provision that a Party must comply with including any:

- (a) law or subordinate legislation applicable in England and Wales within the meaning of section 21(1) of the Interpretation Act 1978; and/or
- (b) bye-law, regulation, order or code of practice, judgment of a court of law, or requirement of any regulatory body, whether in the United Kingdom or elsewhere, as applicable to this Agreement, the Supplier or Customer.
- (c) A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.

**License** means a worldwide, non-exclusive, royalty free and revocable license to use the Software and any associated Intellectual Property Rights, more particularly set out in Schedule 4.

**Purchase Order** means the Customer's purchase order for the supply of the Goods and/or Services including any attached Goods Specifications or Service Specifications as the case may be.

**Personal Data** has the meaning set out in the Data Protection Legislation as amended, repealed or replaced from time to time.

**Relevant End Use** means:

- (a) any dual use of the Goods (as defined in article 2 (1) of the Dual Use Regulations (EC 428/2009)); and/or
- (b) any military use; and/or
- (c) any use in connection with the design, development, maintenance, production, storage or manufacture of any chemical, biological or nuclear weapons or other explosive devices (of any kind) or the storage of any missiles or other propulsion systems capable of delivering such weapons.

**Quote Documentation** means any documentation provided by the Supplier to the Customer setting out the price, delivery times, specifications and/or availability of the Goods and/or Services, whether as:

- (a) An informal request for pricing, or
- (b) A formal quotation, or
- (c) In response to the Customer's request for information (RFI), request for quotation (RFQ) processes or any tender/bid/proposal documents or processes, as amended from time to time.

**Request For Information** means a request for information or an apparent request under any relevant code of practice on accessing Government information or under the FOIA.

**Services Schedule** means the schedule which may be either attached to this Agreement or included within any quote documentation produced by the Supplier providing (non-exhaustive) details of which Services (if any) are to be provided by the Supplier to the Customer and the applicable Charges.

**Services Start Date** is the earlier of:

- (a) the date when the Supplier begins to supply the Services pursuant to Clause 2.1 of Schedule 3; or
- (b) any specific date as may be set out in the Services Schedule; or
- (c) (if none of the circumstances above are applicable) the point when the Parties can, by reason of their conduct, be deemed to have started the provision of Services by the Supplier pursuant to these Conditions.

**Services** means the services including the Deliverables supplied by the Supplier to the Customer as set out in the Services Schedule, Purchase Order or this Agreement.

**Service Specification(s)** the description or specification for the Services provided in writing by the Supplier to the Customer.

**Supplier IPRs** all Intellectual Property Rights subsisting in the Deliverables excluding any Customer Materials incorporated into the Deliverables.

**Term** means the period of time running from the Services Start Date which may be more particularly set out in the Services Schedule and subject to the provisions of clause 2 in Schedule 3, until the supply of Services has finished, or this Agreement has been brought to an end at an earlier point, in line with the terms of this Agreement.

**Third Party** shall mean any individual, firm, association, organisation, or body corporate which is not one of the Parties.

**Third Party Software** means computer software and programs produced by a Third Party and supplied to the Supplier as part of any Goods or Services subsequently offered by the Supplier to the Customer.

**Variation Threshold** the set value of any proposed changes to the Services (as a proportion of the overall Charges) provided by the Supplier to the Customer which is more particularly set out in the Services Schedule.

The headings in this Agreement are inserted for convenience only and shall not affect its construction.

A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.

Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

Unless the context otherwise requires, words in the singular shall include the plural and, in the plural, shall include the singular.

Any Purchase Orders made subject to this Agreement shall form part of this Agreement and shall take effect upon signature as if they were set out in full in the body of this Agreement.

The Schedules and Clauses form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules. Any reference to a Schedule or Clause is reference to a schedule or clause of this Agreement.

A reference to a holding company or a subsidiary means a holding company or a subsidiary (as the case may be) as defined in section 1159 of the Companies Act 2006 and a company shall be treated, for the purposes only of the membership requirement contained in sections 1159(1)(b) and (c), as a member of

another company even if its shares in that other company are registered in the name of (a) another person (or its nominee), whether by way of security or in connection with the taking of security, or (b) as a nominee.

## **2. FORMATION AND INCORPORATION**

- 2.1. Unless otherwise agreed in writing, the Agreement will be based upon these clauses to the exclusion of all other terms and conditions and all previous oral or written representations exchanged between the Customer and the Supplier.
- 2.2. The Quote Documentation constitutes an offer by the Supplier to sell Goods and/or Services referred to in the Quote Documentation in accordance with this Agreement. The Customer may accept that offer by providing a valid Purchase Order.
- 2.3. The terms and conditions of this Agreement are the sole terms and conditions that form the Agreement between the Parties to the exclusion of all other terms and conditions. No terms or conditions endorsed upon, delivered with or contained in the Customer's Purchase Order, or any other similar document, whether in full or by reference to an electronic link, will form part of this Agreement simply because of a reference to such document in the Purchase Order.
- 2.4. The Purchase Order placed by the Customer shall only be deemed to be accepted when the Supplier issues a written acknowledgement or acceptance of the Order at which time the Agreement shall come into existence (Commencement Date).
- 2.5. The Customer must ensure that the terms of its Purchase Order and any applicable specifications are complete and accurate.
- 2.6. The Supplier will not be bound by any quotation given and shall have power to vary or withdraw a quotation at its discretion.
- 2.7. No Purchase Order which the Supplier has accepted, may be cancelled by the Customer except with the prior written agreement of the Supplier and on the strict proviso that the Customer shall, notwithstanding any provision in Clause 9 of Schedule 1, fully indemnify the Supplier against any losses, costs, damages, work done, charges and expenses undertaken, suffered or incurred by the Supplier prior to or as a result of, such cancellation.

## **3. DESCRIPTION OF GOODS OR SERVICES**

- 3.1. All drawings, system designs, layouts, descriptive matter, specifications and advertising issued by the Supplier (or the manufacturer of the Goods) and any descriptions or illustrations contained in the materials produced by the Supplier prior to the Commencement Date are issued or published to give an approximate idea of the Goods or Services described in them. Unless otherwise agreed by the Supplier and added into the Services Schedule or the Purchase Order, they will form no part of the Agreement, and the Customer acknowledges that no reliance has been placed on them before deciding to place any Purchase Order.
- 3.2. The Supplier may, at its discretion, make changes to the Goods Specification or Services Specification, design, materials or finishes of the Goods or the provision of the Services which are required to conform to any applicable safety or other statutory or regulatory requirements or which do not materially affect their quality or performance.

## **4. FORCE MAJEURE**

- 4.1. The Supplier shall not breach this Agreement through any failure to perform or any delay in performing their obligations under the Agreement if the delay or failure was due to any Force Majeure Event which either prevents or significantly delays the Supplier from performing their obligations in this Agreement.

- 4.2. If the circumstances set out in Clause 4.1 arise, the Supplier shall be entitled to a reasonable extension of the time for performing their obligations contained herein.
- 4.3. If the Force Majeure Event causing the period of delay or non-performance continues for six (6) consecutive weeks either Party may terminate this Agreement by serving not less than ten (10) Business Days advance written notice on the other. Termination by either Party under this Clause 4.3 is made without prejudice to the rights or remedies available that have accrued up to the point of termination.
- 4.4. Without prejudice to the generality of Clause 4.1, any one or more of the following shall be regarded as a "Force Majeure Event":
  - 4.4.1. government actions relating to war or threat of war, a declared state of national emergency, riot, civil disturbance, acts of domestic or international terrorism, sabotage or requisition; or
  - 4.4.2. a cyber-attack (including but not limited to virus attacks or deliberate use of any form of malware, ransomware, phishing, spyware, 'Trojan Horse' viruses or any form of 'denial-of-service' attacks) perpetrated by a Third Party upon the computer systems of either Supplier or the Customer, provided always that the Supplier or the Customer (as the case may be) had installed the latest available firewall and security updates applicable to their computer systems at the time of the attack; or
  - 4.4.3. an act of God, fire, explosion, flood or epidemic; or
  - 4.4.4. any unexpected change to the import or export regulations relating to the Goods or any embargoes placed upon the Goods; or
  - 4.4.5. labour disputes which may involve the Supplier's workforce; or
  - 4.4.6. the inability to obtain or a delay in obtaining, supplies of adequate or suitable material, fuel, parts, machinery or labour necessary for the Supplier to perform its obligations under this Agreement.
- 4.5. Nothing in this Clause 4 shall be deemed to reduce or prevent the Supplier or the Customer from using their reasonable endeavours to re-commence performing their obligations, notwithstanding the existence of any ongoing Force Majeure Event, so long as it remains safe to do so.
- 4.6. The Supplier and the Customer shall use their reasonable endeavours to mitigate the costs or effects of any Force Majeure Event.

## **5. CUSTOMER OBLIGATIONS**

- 5.1. For so long as the Supplier is supplying Goods or Services to the Customer, the Customer shall:
  - 5.1.1. ensure that the Purchase Order is complete and accurate; and
  - 5.1.2. if required, provide the Supplier with accurate plans and details of where the Goods are to be installed and Services are to be provided (if any), showing all relevant utility service routes and apparent obstacles which may affect the work of the Supplier; and
  - 5.1.3. obtain and maintain all licences, permits, consents and permissions required for the Supplier to deliver the Goods and perform the Services; and
  - 5.1.4. co-operate with the Supplier in all matters relating to the Services; and
  - 5.1.5. provide, for the Supplier, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, access to the Customer's premises, office



accommodation, data and other facilities as reasonably required by the Supplier or its agents, subcontractors, consultants and employees; and

- 5.1.6. provide, in a timely manner, such other accurate and complete information as the Supplier may reasonably require in order to deliver the Goods or perform the Services; and
- 5.1.7. ensure that the power supplied to any devices onsite is clean and supported by an uninterruptible power supply or other suitable power device; and
- 5.1.8. only allow appropriately trained operators to use and manage Goods provided by the Supplier; and
- 5.1.9. back-up their critical computer programmes and software systems on a regular basis and if necessary, make such back-ups available to employees, agents and/or subcontractors of the Supplier who are delivering the Services to the Customer; and
- 5.1.10. maintain copies of all system documentation including any technical drawings (if any) and make such materials available (upon reasonable request) to the employees, agents and/or subcontractors of the Supplier who are delivering the Services to the Customer; and
- 5.1.11. provide, if any of the Services require the Supplier to make one or more site visits, a safe working environment at the Customer's site for the employees, agents and/or subcontractors who attend the Customer's site to carry out the Services. This obligation shall be performed at no extra cost to the Supplier and includes (but is not limited to):
  - (a) providing all necessary individual 'personal protective equipment' for use by the Supplier's employees, agents and/or subcontractors who attend the Customer's site to carry out the Services; and
  - (b) ensuring that all information regarding 'safe operating procedures', on-site safety, emergency evacuation procedures and other health and safety compliance processes have been clearly communicated (in the appropriate language) to those employees, agents and/or subcontractors of the Supplier who will attend the Customer's site to carry out the Services; and
- 5.1.12. not and shall procure that no other members of the group of companies of which the Customer is a part, shall deny or impede any attempted or actual physical access to the premises carried out by the Supplier's employees, authorised subcontractors or consultants, without first providing at least twenty-eight (28) days advance written notice to the Supplier and a written explanation for the reasons behind the relevant denial of access; and
- 5.1.13. comply with any Laws that will apply to the performance of their obligations under this Agreement; and
- 5.1.14. comply with any other reasonable request made by the Supplier in writing so as to enable the Supplier to satisfy its' obligations under the Agreement:
- 5.1.15. ensure that any networks to which the Supplier is supplying Goods and/or Services are appropriately protected, maintained and monitored against the intrusion or introduction of any virus attacks, any form of malware, ransomware, phishing, spyware, 'Trojan Horse' viruses or any form of 'denial-of-service' attacks.

- 5.2. If the Supplier's performance of its obligations under the Agreement is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees

(whether or not such act or omission amounts to a breach of clause 5.1 above), the Supplier shall:

- 5.2.1. not be liable for any costs, charges or losses or damages of any kind, sustained or incurred by the Customer that arise directly or indirectly from such prevention or delay;
- 5.2.2. be entitled to payment of the Charges despite any such prevention or delay; and
- 5.2.3. be entitled to recover from the Customer, any reasonable additional costs, charges or losses the Supplier sustains or incurs that arise directly or indirectly from such prevention or delay.

## **6 CHARGES**

- 6.1 The Charges for the Goods or Services shall be the same as the Supplier's quoted price as set out in the Quote Documentation or the Purchase Order and are exclusive of any VAT (or other applicable taxes which may be due). Additional costs and charges in respect of packaging, insurance and transport of the Goods and any administrative banking charges or costs incurred by the Supplier as a result of processing any payments from the Customer, can at the discretion of the Supplier, either be added onto any invoice raised by the Supplier or can be invoiced to the Customer separately unless agreed otherwise.
- 6.2 The Customer hereby acknowledges and accepts that:
  - 6.2.1 the Charges may be subject to amendment in accordance with this clause 6; and
  - 6.2.2 the Supplier acting in its discretion is entitled to charge overtime on a pro-rata basis in respect of any time spent delivering the Services that exceeds the time and cost allowances that comprise the initial Charges for the Services. The rate of overtime shall be based on any hourly rates used to calculate the initial prices agreed for the Services; and
  - 6.2.3 the Supplier is entitled to charge the Customer for any expenses reasonably incurred by the individuals and / or engineers to whom the Supplier entrusts with the completion of the Services. Such expenses will include (but are not limited to) travelling expenses, hotel costs, subsistence and any other associated expenses with the provision of the Services to the Customer.
- 6.3 Subject to clause 6.7 to 6.12 (inclusive) the Supplier reserves the right to amend the Charges:
  - 6.3.1 in line with the average percentage increase in either (i) the Retail Prices Index or the Consumer Price Index published in the preceding twelve (12) month period or (ii) the latest official average rate of inflation as published by the Office of National Statistics with the first such amendment not taking effect before the first anniversary of either the Delivery of the Goods or the Services Start Date and shall be based on the latest available figure for the percentage increase in the relevant indexation figure which is chosen by the Supplier as the basis for an increase in the Charges; and/or
  - 6.3.2 for the supply of the Goods or provision of the Services if any of the assumptions in clause 6.6 are incorrect (as the case may be); and/or

- 6.3.3 by giving notice to the Customer at any time before Delivery (or deemed delivery) of the Goods or before provision of the Services commences, to reflect any increase in the cost of the Goods or Services that is due to:
- 6.3.3.1 any factor beyond the reasonable control of the Supplier whether arising before or after the Commencement Date; or
  - 6.3.3.2 any request made by the Customer to change the delivery dates, quantities or type of Goods previously ordered by the Customer; or
  - 6.3.3.3 any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate information or instructions (whether in relation to the Goods or Services); or
  - 6.3.3.4 any change in law which has an Adverse Impact upon the Supplier; and/or
- 6.3.4 within one month of completing a review of the Services provided to the Customer under clause 3.4 of Schedule 3, for the ongoing provision of the Services.
- 6.4 Unless otherwise stated in any Purchase Order, the price for the Goods is given on an Ex Works-basis (Incoterms 2020) and where the delivery is other than Ex Works, the Customer shall pay the Supplier's charges for export duties transport, packaging, loading, unloading and insurance in addition when it is due to pay for the Goods.
- 6.5 In calculating the price for the Goods and/or the Services (as the case may be) the Supplier has made the following assumptions:
- 6.5.1 that the Services will be carried out at the Customer's premises during normal working hours and that a continuity of work schedule is assured; and/or
  - 6.5.2 that the Supplier will be advised by the Customer prior to the acceptance of any Purchase Order of any restrictions or conditions which may adversely affect access or cause additional labour time or unusual hours of work to be incurred; and/or
  - 6.5.3 that all civil works at the Customer's premises necessary to enable the Supplier to install the Goods or provide the Services will be undertaken prior to the Supplier carrying out the Services; and/or
  - 6.5.4 that a clean supply of electricity necessary to enable the Supplier to install the Goods and/or provide the Services will be made available; and/or
  - 6.5.5 that there are no hidden or unusual circumstances which may affect the provision of the Services which were not previously notified to the Supplier prior to the acceptance of any Purchase Order.
- 6.6 Notwithstanding any other provision in this Agreement, if the Customer requests a change be made to the provision of the Services and the value of the proposed change(s) is/are equal to or greater than the Variation Threshold, the Supplier may, in its absolute discretion, seek a renegotiation of the Agreement with the Customer.
- 6.7 Subject to clause 6.9 if the re-negotiation referred to in clause 6.7 is agreed, the Parties will record the agreed changes in a signed contract change control note, specifically stated that it is intended to make changes to this Agreement.
- 6.8 Unless a contract change control note for the provision of Services is agreed and signed by the Customer and the Supplier pursuant to clause 6.7 and 6.8 this Agreement for the provision of

Services between the Supplier and the Customer will continue and will remain unaffected by any proposed changes.

6.9 If the Supplier would like to amend the Charges under any part of this clause 6, it shall issue a written price amendment notice to the Customer (**Price Amendment Notice**). To be valid, the Price Amendment Notice will comply with the provisions of clause 6.11.

6.10 The Price Amendment Notice shall:

6.10.1 be issued not less than twenty (20) Business Days from the date when the change in the Charges will take effect; and

6.10.2 inform the Customer of the intended change to the Charges, the reasons behind the change and the date from which the amended Charges will take effect; and

6.10.3 be in written form and will be delivered to the Customer in accordance with clause 11.

6.11 The amended Charges will take effect from the date set out in the Price Amendment Notice.

## **7 PAYMENT**

7.1 Unless otherwise agreed between the parties, the Supplier may invoice the Customer for any Goods at any time after Delivery of the same has been made.

7.2 The Supplier may invoice the Customer for any Services in accordance with any plan agreed in the Services Schedule.

7.3 If no such plan for the provision of the Services is included in the Services Schedule, the Supplier may invoice the Customer in advance of providing the Services. Each invoice shall include all reasonable supporting information required by the Customer.

7.4 Time for payment shall be of the essence.

7.5 Unless otherwise agreed payment of the Charges is due not later than 30 days from the date upon which the Supplier's invoice is dispatched to the Customer or (in respect of the provision of Services) in such other time period as may be contained in the Services Schedule with the latter taking precedent over the former.

7.6 No payment shall be deemed to have been received until the Supplier is holding cleared funds.

7.7 All payments payable to the Supplier under the Agreement shall become due immediately upon termination of the Agreement (for any reason), notwithstanding any other provision to the contrary.

7.8 All Charges due under this Agreement shall be paid in full without any set-off, counterclaim or withholding rights that the Customer may have (now or in the future) pursuant to either the laws of England and Wales or any other jurisdiction in which the Customer is based or has a domiciliary address (other than in respect of any deduction or withholding of tax as required by law).

7.9 The Supplier may in its discretion appropriate any payment made by the Customer to the Supplier to such of the invoices for the Goods or the Services as the Supplier thinks fit.

7.10 If the Customer fails to make any payment under this Agreement on the due date then (without prejudice to its other rights and remedies) the Supplier may charge the Customer interest (both before and after judgement) on the amount unpaid at the annual rate of 8% above the Bank of England's published base rate from time to time until payment is made in full (a part of a month

being treated as a full month for the purpose of calculating interest) and the Supplier will be entitled to suspend the delivery of or operation of the Goods or performance of the Services until the outstanding amount has been received by the Supplier from the Customer.

- 7.11 The Supplier is entitled to set-off or withhold any amounts it may owe to the Customer under this Agreement (for any reason at any point in time) against any monies owed by the Customer to the Supplier under this Agreement.
- 7.12 Legal title to any of the Goods supplied under this Agreement shall remain with the Supplier until the Customer has paid in full for those Goods. Until legal title to any Goods passes to the Customer, the Supplier shall have an irrevocable right to recover from the Customer, any Goods previously supplied to it by the Supplier.

## **8 DATA PROTECTION**

8.1 To the extent that either the Supplier or the Customer are processing Personal Data (**Data Processor**) belonging to the other (**Data Controller**), the Data Processor shall:

8.1.1 process the Personal Data only in accordance with any written instructions provided by the Data Controller, which may be specific instructions or instructions of a general nature as set out or required by this Agreement or as otherwise notified by the Data Controller to the Data Processor; and

8.1.2 implement appropriate technical, security and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against loss, destruction, damage, alteration or disclosure of the Personal Data (accidental or otherwise), having regard to the state of the art, the costs of implementing the protective measures, the nature, scope, context and purposes for which the Data Processor is to process the Personal Data, as well as having regard to:

8.1.2.1 the ability of the Data Processor to anonymise the Personal Data; and/or

8.1.2.2 the ability to ensure the Personal Data's ongoing confidentiality and integrity; and/or

8.1.2.3 the ability for the Data Processor to restore any Personal Data; and/or

8.1.2.4 the processes required to test and evaluate the effectiveness of these measures; and

8.1.3 provide the Data Controller with all reasonable assistance and support that allows the Data Controller to respond to and comply with, the terms of any information request sent from a Data Subject to a Data Controller in accordance with the Data Protection Legislation; and

8.1.4 assist the Data Controller in ensuring their compliance with any of the obligations contained in the Data Protection Legislation; and

8.1.5 upon receipt of a written request from the Data Controller or following termination of this Agreement, delete or return all copies of any Personal Data previously received pursuant to the terms of this Agreement to the Data Controller, save where any Personal Data must be retained by the Data Processor in accordance with any law, rule, court order or other legal obligation or duty; and

8.1.6 ensure that any employee, agent or authorised representative has agreed to comply with the terms of this clause 8 and are aware of the confidential nature of the Personal Data received from the Data Controller; and

- 8.1.7 not cause or permit the Personal Data to be transferred to any territory outside of the European Union or any country that has an adequacy statement, without first obtaining the express written permission of the Data Controller; and
  - 8.1.8 following receipt of a reasonable written request from the Data Controller, provide such information and evidence as may be reasonably required to show that the Data Processor is complying with its obligations under this clause 8 and any Data Protection Legislation; and
  - 8.1.9 immediately notify the Data Controller in writing (by providing sufficient details) of:
    - 8.1.9.1 any breach of the security measures required to be put in place to protect any Personal Data; or
    - 8.1.9.2 any loss or potential loss of any Personal Data, arising from any breach of the security measures in place that are to protect the Personal Data; and
  - 8.1.10 ensure it does not knowingly or negligently do or omit to do anything which places the Data Controller in breach of its obligations under the Data Protection Legislation; and
  - 8.1.11 ensure that any third party (whether individual or body corporate) or sub-contractor that will process any Personal Data previously supplied by the Data Controller to the Data Processor will:
    - 8.1.11.1 comply with the terms of this clause 8; and
    - 8.1.11.2 implement its own appropriate contractual, technical and organisational security measures so that the processing of any Personal Data performed by a third party will comply with all Data Protection Laws; and
  - 8.1.12 in the event that any complaint is made by a Data Subject regarding the Data Processor's handling of that subject's Personal Data:
    - 8.1.12.1 provide the Data Controller with full details of the complaint; and
    - 8.1.12.2 provide the Data Controller with any other requested or necessary information; and
  - 8.1.13 permit the Data Controller to inspect and audit the Supplier's Data Processing activities (and/or those of its agents, subsidiaries and subcontractors) and comply with all reasonable requests or directions by the Data Controller to enable them to verify and/or procure that the Data Processor is in full compliance with its obligations under this Agreement; and
  - 8.1.14 upon request, provide a written description of the technical and organisational methods employed by the Data Processor for processing Personal Data.
- 8.2 Each of the Supplier and the Customer agrees to indemnify and keep indemnified and defend at its own expense the other party against all costs, claims, damages or expenses incurred by the other Party or for which the other Party may become liable due to any failure by a Party, its employees or agents to comply with any of its obligations under this clause 8.
- 8.3 The authority for any third party to process any Personal Data belonging to the Data Controller on behalf of the Data Processor shall terminate automatically when this Agreement terminates.

## **9 LIMITATION OF LIABILITY**

- 9.1 Nothing in this Agreement excludes or limits the liability of either party to the other for:
- 9.1.1 death or personal injury caused by a Party's negligence (or that of its employees, agents or subcontractors); or
  - 9.1.2 fraud or fraudulent misrepresentation committed by either Party; or
  - 9.1.3 a breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982; or
  - 9.1.4 a breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
  - 9.1.5 any liability which cannot be limited or excluded by applicable law.
- 9.2 All warranties, conditions and other terms implied by statute or common law (including those implied by section 13 to 15 of the Sale of Goods Act 1979 and those implied by sections 3 to 5 of the Supply of Goods and Services Act 1982) are, to the fullest extent permitted by law, excluded from this Agreement.
- 9.3 Subject to clause 9.1 the Supplier's total liability to the Customer, whether in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance of this Agreement shall be limited to the lower of:
- 9.3.1 for the supply of Goods only, an amount equal to the Charges payable by the Customer for the Goods pursuant to this Agreement; or
  - 9.3.2 where the Supplier is providing Services to the Customer, an amount equal to the Charges payable for the Services arising in the 12 months prior to the date when the liability is incurred, or such other shorter period of time, if the Agreement is less than 12 months' old when the liability is incurred.
- 9.4 Subject to clause 9.1 the Supplier shall not be liable to the Customer, whether in contract, tort (including negligence) for breach of statutory duty or otherwise, howsoever caused and arising under or in connection with the Agreement for any indirect or consequential losses suffered by the Customer, which includes (but is not limited to):
- 9.4.1 loss of profits; or
  - 9.4.2 loss of revenue; or
  - 9.4.3 interest charges or cost of capital; or
  - 9.4.4 economic losses; or
  - 9.4.5 loss of contracts; or
  - 9.4.6 loss of savings whether actual or anticipated; or
  - 9.4.7 loss of use or corruption of any software, data or Confidential Information; or
  - 9.4.8 any indirect, special or consequential losses, arising under or in connection with this Agreement, including such losses or damages as may be reasonably foreseeable at the date this Agreement is entered into.
- 9.5 Notwithstanding clause 9.1 the Customer shall indemnify the Supplier against all actions, proceedings, costs, losses, claims or demands in any way connected with the Agreement that are brought against, threatened to be brought against or incurred or suffered by the Supplier

save where the Supplier is solely responsible for such action, proceedings, costs, losses, claims or demands brought against, threatened to be brought against or incurred or suffered by the Supplier.

- 9.6 Nothing in this Agreement shall be taken to restrict or limit a Party's duty to mitigate any losses they may suffer as a result of a breach of this Agreement by the other Party.

## **10 TERMINATION**

- 10.1 Without affecting any other right or remedy available to it, either Party may terminate the Agreement with immediate effect if:

10.1.1 the other Party commits a material breach of its obligations under the Agreement and (providing that such breach is capable of remedy) fails to remedy that breach within fifteen (15) Business Days after receipt of a notice in writing from the injured Party requesting them to do so; or

10.1.2 the other Party takes any step or action in connection with its entering administration, provisional liquidation or other 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 purposes of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the other Party takes any steps or action in another jurisdiction, in connection with any analogous procedures in the relevant jurisdiction; or

10.1.3 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

10.1.4 one Party reasonably anticipates that any one of the above set of circumstances is about to occur in respect of the other Party; or

10.1.5 one Party fails to pay any amount due under the Agreement on the due date for payment.

- 10.2 Notwithstanding any other provision in this clause 10 if the Customer does not accept a variation to the Price under clause 6.3 the Supplier may, subject to clause 10.3, without affecting any other right or remedy available to it, terminate this Agreement by giving the Customer not less than twenty (20) Business Days' notice

- 10.3 On termination of this Agreement:

10.3.1 the Customer shall immediately pay all the Supplier's outstanding unpaid invoices (and interest accrued thereon). In respect of any Services and Goods 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; and

10.3.2 the Customer shall return all the Supplier's materials, Deliverables or Goods which have not been fully paid for.

- 10.4 If the Customer fails to comply with clause 10.3 the Supplier may enter the Customer's premises and take possession of the Goods which have been delivered to the Customer.

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

- 10.6 Without prejudice to any other right or provision of this Agreement and without incurring any liability to the Customer, the Supplier is entitled, in its discretion and subject to giving the



Customer not less than three (3) months' advance written notice, to terminate any part (or all) of this Agreement or any Purchase Order.

- 10.7 Any provision of the Agreement whose intention is to have effect after termination (or expiry) shall continue in full force and effect.

## **11 NOTICES**

- 11.1 All notices and demands to be served on either the Customer or the Supplier under the Agreement must be in writing and either:

11.1.1 delivered by hand (with a receipt for delivery); or

11.1.2 via email to a notified email address with a delivery and read receipt; or

11.1.3 sent by registered pre-paid first-class post; or

11.1.4 by other registered next working day delivery service to the registered office or principal place of business of either the Customer or the Supplier:

11.1.4.1 to any address of either the Customer or the Supplier which is set out in any document that forms part of the Agreement (including the Purchase Order); or

11.1.4.2 such other address as may be notified by one Party to the other from time to time.

- 11.2 Notices and demands addressed to the Supplier shall be marked for the attention of a Director.

- 11.3 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.

## **12 GENERAL**

- 12.1 Each right of remedy of the Supplier under the Agreement is reserved without prejudice to any other right of remedy the Supplier may have (whether under the Agreement or not).

- 12.2 If any provision or part-provision of the Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the 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 and such deletion shall not affect the enforceability of the rest of the Agreement.

- 12.3 The Agreement constitutes the entire agreement between the Supplier and the Customer and supersedes and extinguishes all previous agreements, promises, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

- 12.4 Each Party acknowledges that in entering into this Agreement, it has not relied on and shall have no remedies in respect of any statement, representation, assurance or warranty that is not set out in the Agreement. Neither Party shall have any claim for innocent or negligent misrepresentation based on any statement in the Agreement.

- 12.5 Any variation to a term of this Agreement or the provision of Goods and / or Services provided hereunder shall have no effect unless expressly agreed in writing and signed by the Supplier.

- 12.6 Failure by the Supplier to enforce or partially enforce any provision of the Agreement will not be construed as a waiver of any of its rights under the Agreement.

- 12.7 A waiver by the Supplier of any breach of the Agreement by the Customer will not be construed as a waiver of any subsequent breach of the same or any other provision.
- 12.8 The Supplier may assign, licence or sub-contact all or any part of its rights or obligations under the Agreement without the Customer's consent.
- 12.9 The Agreement is personal to the Customer who may not assign, licence or sub-Agreement all or any of its rights or obligations under the Agreement without the Supplier's prior written consent.
- 12.10 The Supplier and the Customer do not intend that any of the terms of the Agreement will be enforceable by virtue of the Agreements (Rights of Third Parties) Act 1999 by any person not a Party to it.
- 12.11 Each Party undertakes that it shall not at any time during the Agreement and for a period of five years after termination of the Agreement, disclose to any person any Confidential Information belonging to the other Party, except as permitted by this Agreement, or as required by law.
- 12.12 Notwithstanding clause 12.11 above, each Party may disclose the other Party's Confidential Information as follows:
- 12.12.1 to its employees, officers, representatives or advisors who need to know such information in order to carry out their obligations under the Agreement (provided that such recipients of the Confidential Information agree to the terms of a confidentiality obligation in respect of the Confidential Information that is at least equal to that set out in clause 12.11); and
  - 12.12.2 as may be required by law, by order of a court of competent jurisdiction or any governmental or regulatory body.
- 12.13 Neither Party shall use the Confidential Information for anything other than for the performance of their respective obligations under this Agreement (and any associated document).
- 12.14 Unless expressly agreed otherwise between the parties, in respect of the Customer's obligations in this Agreement, time shall be of the essence.
- 12.15 This Agreement may be executed in any number of counterparts, each of which when executed (and delivered) shall constitute a duplicate original, but all the counterparts shall together constitute the one document. Transmission of the executed counterpart of this Agreement (by any means including email) shall take effect as delivery of the executed counterpart. Upon reasonable request, each Party shall provide the other with the original of such counterpart as soon as reasonably practicable thereafter. Subject to clause 2.4 no counterpart shall be effective and binding until each party has executed and delivered at least one counterpart. The Parties may also use a recognised electronic signature application, and such electronic signature shall be treated as though the counterpart was signed underhand.

### **13 FREEDOM OF INFORMATION**

- 13.1 This clause 13 shall only apply where the Customer is a public authority or body that is subject to the provisions of the FOIA.
- 13.2 Where the Customer is subject to the requirements of the FOIA, the Supplier shall:
- 13.2.1 provide all necessary assistance and cooperation reasonably required by the Customer to enable the Customer to comply with its obligations under the FOIA; and

- 13.2.2 transfer to the Customer any Request For Information relating to this Agreement that will fall under the FOIA, as soon as is reasonably practicable for the Supplier to do so; and
  - 13.2.3 provide the Customer with a copy of all information belonging to the Customer referred to in the Request For Information which is in its possession or control in a form reasonable required by the Customer within 20 Business Days of receiving the Customers' request for such information; and
  - 13.2.4 not respond directly to a Request For Information made pursuant to the FOIA unless authorised in writing to do so by the Customer.
- 13.3 The Supplier acknowledges that the Customer may be required under the FOIA to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. The Customer shall take reasonable steps to notify the Supplier of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA, as amended) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Agreement) the Customer shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA.
- 13.4 Unless the Customer is explicitly and directly required to disclose Commercially Sensitive Information belonging to the Supplier pursuant to the FOIA, the Customer will use their best endeavours to ensure that their response to a Request For Information does not include any Commercially Sensitive Information.
- 13.5 Notwithstanding any other term of this Agreement, the Supplier consents to the publication of this Agreement in its entirety (including variations), subject only to the redaction of information that is exempt from disclosure in accordance with the provisions of the FOIA.
- 13.6 The Customer shall, prior to publication, consult with the Supplier on the manner and format of publication and to inform its decision regarding any redactions. The Supplier shall assist and co-operate with the Authority to enable the Customer to publish this Agreement if required, provided always that the reasonable costs incurred by the Supplier in complying with this clause 13, will be met by the Customer.

## **14 ETHICAL COMPLIANCE**

- 14.1 In performing their obligations under this Agreement, the Supplier and the Customer shall:
- 14.1.1 comply with all applicable anti-slavery and human trafficking laws, statutes and regulations from time to time in force including the Modern Slavery Act 2015; and
  - 14.1.2 comply with the Anti-Slavery Policy or the Customer's own anti-slavery policy; and
  - 14.1.3 not engage in any activity or conduct that would constitute an offence under sections 1, 2 or 4 of the Modern Slavery Act 2015, if such activity, practice or conduct were carried out in the United Kingdom; and
  - 14.1.4 not employ, have not employed and will not employ any individual who is under the age of sixteen (16) years of age regardless of whether any national or local laws to which the Supplier or Customer may also be subject, define a child as being younger than sixteen (16) years of age; and
  - 14.1.5 include, when appropriate and where required by the Modern Slavery Act 2015, in its Agreements with subcontractors and suppliers, suitable anti-slavery and human

- trafficking provisions that are at least as onerous as those set out in this clause 14; and
- 14.1.6 each undertake to the other, not to purchase or use or source any components or raw materials of Conflict Minerals (as defined in clause 14.11 below) (whether under this Agreement or under any connected Agreement or arrangement) which have originated from (directly or indirectly) the Democratic Republic of Congo or any other Adjoining Territory (as defined in clause 14.11 below); and
- 14.1.7 each undertake to the other, not to interact, purchase from, source from or deal in any way with any person, entity or country on the UK Sanctions List (as defined in clause 14.11 below) (whether under this Agreement or under any connected Agreement or arrangement).
- 14.2 The Supplier and the Customer each represent and warrant to the other that at the date of this Agreement:
- 14.2.1 neither they nor any of their officers, employees or other persons associated with them have been convicted of any offence involving slavery and human trafficking, or any offence under the Sanctions Regime; and
- 14.2.2 having made reasonable enquiries, so far as they are aware have not been and are not currently the subject of any investigation or other enforcement proceedings by any governmental or other regulatory body regarding any offence arising in connection with slavery and human trafficking or the Sanctions Regime.
- 14.3 The Parties shall implement reasonable procedures and protocols to ensure that there is no slavery or human trafficking, or breach of the Sanctions Regime in its supply chains.
- 14.4 Either Party shall notify the other as soon as it becomes aware of any actual or suspected breach of this clause 14 or any actual or suspected slavery or human trafficking or breach of the Sanctions Regime in another supply chain that is connected (directly or indirectly) to this Agreement.
- 14.5 For each 12-month period each of the Supplier and the Customer shall prepare an annual slavery and human trafficking statement on its website, setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in its supply chains or within any part of its business.
- 14.6 Each of the Supplier and Customer shall:
- 14.6.1 maintain records to trace the supply chain of Goods and Services provided under this Agreement; and
- 14.6.2 permit each other upon receipt of an advance written notice to have access to and take copies of any records maintained pursuant to this clause 14; and
- 14.6.3 implement annual audits of its subcontractors' and suppliers' compliance with the Anti-Slavery Policy for each complete 12-month period running from the Commencement Date.
- 14.7 The Supplier hereby agrees to indemnify the Customer against any losses, liabilities, damages or costs (including reasonable legal fees) and expenses incurred by (or awarded against) the Customer as a result of any breach of this clause 14 by the Supplier.
- 14.8 The Customer hereby agrees to indemnify the Supplier against any losses, liabilities, damages or costs (including reasonable legal fees) and expenses incurred by (or awarded against) the Supplier as a result of any breach of this clause 14 by the Customer.

14.9 Notwithstanding any other clause in this Agreement, either Party may terminate the Agreement with immediate effect by giving written notice to the other Party, if the other Party commits a breach of clause 14. Breach of this clause 14 shall be deemed a material breach, which is irremediable, under clause 10.

14.10 Each of the Supplier and the Customer shall use their reasonable endeavours to procure that any companies in a Group, of which they are also a member, will comply with the terms and spirit of this clause 14.

14.11 In this clause 14 words shall have the following meanings:

- 14.11.1 **Adjoining Territory** means any country that shares an internationally recognised border with the Democratic Republic of Congo; and
- 14.11.2 **Conflict Minerals** means any mineral or their derivative (including but not limited to tin, tungsten, tantalum and gold) determined by the Foreign, Commonwealth and Development Office to be financing any conflict in the Democratic Republic of Congo or any Adjoining Territory.
- 14.11.3 **UK Sanctions List or Sanctions Regime** means the list of people, entities or countries where the UK government has imposed sanctions on any person, entity or country, either unilaterally or in compliance with the United Nations sanctions requirements.

## 15 **ANTI BRIBERY**

15.1 Each of the Supplier and the Customer shall:

- 15.1.1 comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including the Bribery Act 2010;
- 15.1.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the United Kingdom;
- 15.1.3 comply with the Anti-Bribery and Corruption Policy or shall have and shall maintain in place throughout the term of the Agreement its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the relevant requirements and will enforce them where appropriate;
- 15.1.4 immediately notify the other Party in writing if a foreign public official becomes an officer or employee of the Supplier or the Customer and acquires a direct or indirect interest in either the Supplier or the Customer (and each of the Supplier and the Customer warrant that they have no foreign public officials as officers or employees or as direct or indirect owners at the date of this Agreement); and
- 15.1.5 on request, starting from the Commencement Date and annually thereafter, certify to the other Party in writing signed by a director of the company, that they have complied with this clause 15. Each Party shall provide such supporting evidence of compliance with this clause 15 to the other, as they may reasonably request.

15.2 The Supplier shall use their reasonable endeavours to ensure that any person who is performing services or providing goods in connection with this Agreement does so only on the basis of a written Agreement which imposes on and secures from such person terms equivalent to those imposed on the Supplier in this clause 15.

15.3 Breach of this clause 15 shall be deemed a material breach, which is irremediable, under clause 10.

- 15.4 For the purpose of this clause 15, the meanings of 'adequate procedures' and 'foreign public official' shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purposes of this clause 15 a person associated with the Supplier includes any agent or subcontractor of the Supplier.
- 15.5 Each of the Supplier and the Customer shall use their reasonable endeavours to procure that any companies in a Group, of which they are also a member will comply with the terms and spirit of this clause 15.

## **16 ANTI FACILITATION OF TAX EVASION**

- 16.1 Each of the Supplier and the Customer shall and shall procure that any companies in a Group of which they are a member, or any persons associated with them who are performing any services on their behalf under this Agreement will:
- 16.1.1 not engage in any activity, practice or conduct which would constitute:
    - 16.1.1.1 a tax evasion offence under section 45 (1) Criminal Finances Act 2017; or
    - 16.1.1.2 a foreign tax evasion facilitation offence under section 46 (1) Criminal Finances Act 2017; and
  - 16.1.2 not do, or omit to do any act that will cause or lead either the Supplier or the Customer to breach any part of the Criminal Finances Act 2017; and
  - 16.1.3 report any request from a third party to facilitate the evasion of tax in any jurisdiction within the meaning of Part 3 Criminal Finances Act 2017; and
  - 16.1.4 have and shall maintain throughout the term of this Agreement, such policies and procedures as are reasonable to prevent the facilitation of tax evasion and to ensure compliance with this clause 16.
- 16.2 Breach of this clause 16 shall be deemed a material breach, which is irremediable, under clause 10.1 of this Agreement.

## **17 EXPORT CONTROL**

- 17.1 The Supplier and the Customer shall and shall procure that any companies in a Group of which they are a member, will at all times comply with all Export Control Laws and the terms and spirit of this clause 17.
- 17.2 All obligations on the Supplier to perform its contractual obligations, under this Agreement, shall be conditional on the Supplier obtaining any necessary permit, licence, approval, or authorisation required by any Export Control Law, including (but not limited to) those required in order for the Supplier to receive payment from the Customer.
- 17.3 The Customer warrants and represents to the Supplier that, in the absence of a signed, written approval from the Supplier, it will not use, or otherwise sell, export, transfer, re-export, or re-transfer any part of the Goods and/or Services provided by the Supplier:
- 17.3.1 where the Customer (or the Supplier) has reason to believe that the Goods or Services may be used for a Relevant End Use unless prior authorisation for the sale, export, transfer, re-export or re-transfer has been granted by a competent authority pursuant to any Export Control Law; and/or

- 17.3.2 if the country to which the Goods or Services are ultimately destined is listed as an 'embargoed destination' according to the Export Control Laws, whether or not the Goods and/or Services would be used for a Relevant End Use.
- 17.4 The Customer warrants and represents to the Supplier that the performance of the Agreement will not result in any funds, economic resources, or wider benefits being made available, directly or indirectly, to or for the benefit of any individual, entity, or body designated under restrictive sanctions measures adopted by the government of the United Kingdom, United Nations or implemented by the European Union or the United States, or any Party acting on behalf or at the direction of such an individual, entity, or body.
- 17.5 The Customer shall indemnify and hold harmless the Supplier from and against any claim, proceeding, action, fine, loss, cost and damages arising out of or relating to any non-compliance with this clause 17 or with any Export Control Laws or other international sanctions or measures adopted or implemented by the United Nations or the European Union (including any Member States thereof), or the United States of America and shall compensate the Supplier in full for all losses and expenses resulting therefrom.
- 17.6 If the Supplier is required by any competent authority to provide records of the Supplier's compliance with any Export Control Laws, the Customer shall, upon request by the Supplier, promptly provide the Supplier with all relevant support and information they hold regarding the export of the Goods or Services.

## **18 NON-SOLICITATION**

- 18.1 So long as this Agreement remains in force between the Supplier and the Customer and for a period of six (6) months following the termination or completion of the Agreement, neither the Supplier or the Customer shall, directly or indirectly, by or through itself or any agent or third party, whether for its own benefit or for the benefit of any other person:
- 18.1.1 solicit, entice, induce or endeavour to solicit, entice or induce any employee or other representative of the other Party with a view to employing or engaging any employee or other representative of the other Party on any other terms; or
- 18.1.2 employ or engage or offer to employ or engage any employee or other representative of the other Party, without the prior written consent of the other party.
- 18.2 Nothing in clause 18.1 shall prevent or restrict any employee or other representative of the Customer or the Supplier from responding directly to a bona fide advertisement or recruitment drive adopted by the other party (provided in any medium).
- 18.3 The provisions of this clause 18 shall be without prejudice to a Party's ability to seek damages or claim injunctive relief from the other Party, in the event of a breach of clause 18.1.

## **19 Insurance**

- 19.1 Throughout the Term of this Agreement and for a period of at least six (6) years following the termination of this Agreement, both Parties shall maintain adequate insurance Policies to cover their respective liabilities under this Agreement.

## **20 GOVERNING LAW AND JURISDICTION**

- 20.1 This Agreement, 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 and Wales.

20.2 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 Agreement or its subject matter or formation.



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## **SCHEDULE 2**

### **ADDITIONAL TERMS FOR THE SUPPLY OF GOODS**

The following terms and conditions set out in this Schedule 2 shall apply in addition to the General Terms and Conditions set out in Schedule 1 when the Order placed by the Customer includes the supply of Goods.

#### **1. DEFINED TERMS**

Unless otherwise set out in this Schedule 2 defined terms used in this Schedule 2 shall have the same meaning as those set out in Clause 1.1 of the General Terms and Conditions in Schedule 1.

#### **2. DELIVERY OF GOODS**

- 2.1. Unless otherwise agreed between the Parties, the Delivery Point is the Supplier's premises in Scunthorpe, UK. The Customer shall arrange to collect the Goods from the Delivery Point within 10 Business Days of the Supplier notifying the Customer in writing that the Goods are ready for collection.
- 2.2. The quantity of any consignment of Goods as recorded by the Supplier upon the despatch from to the Delivery Point shall be conclusive evidence of the quantity received by the Customer on delivery.
- 2.3. 'Delivery' of the Goods is complete when:
  - 2.3.1. the Goods reach the Delivery Point; or
  - 2.3.2. where it is previously agreed that a third-party carrier is used to collect and/or transport the Goods to their next destination; the Goods are loaded onto the third-party carrier's chosen mode of transportation.
- 2.4. Goods may be delivered by the Supplier to the Delivery Point before any specified delivery date upon giving reasonable advance notice to the Customer that the Goods are available for delivery.
- 2.5. The Goods shall be delivered to the Delivery Point by such methods as the Supplier thinks fit or by such methods which the Customer and the Supplier may agree in writing from time to time.
- 2.6. Specific dates quoted for the delivery of the Goods in an Order are estimates only and the time of delivery is not of the essence. If no dates are specified in the Order, delivery will be made within a reasonable time.

#### **3. NON-DELIVERY OF GOODS**

- 3.1. Subject always to clause 9.1 of Schedule 1:
  - 3.1.1. the Supplier will not be liable to the Customer for any losses (direct or indirect) howsoever caused (including as a result of negligence) by any delay in the delivery of the Goods or performance of the Services; and
  - 3.1.2. if the Supplier fails to deliver the Goods pursuant to Clause 2 of this Schedule 2, its liability shall be limited to the costs and expenses reasonably incurred by the Customer in obtaining replacement goods of similar description and quality from the Supplier, less the Charges for the Goods originally ordered.
- 3.2. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by:
  - 3.2.1. a Force Majeure Event; or

- 3.2.2. the Customer's failure to provide the Supplier with adequate delivery instructions relating the Goods; or
- 3.2.3. the inability of the Supplier to gain access to or subsequently install any Software onto, a computer program, network or software that belongs to, is used by or is under the control of the Customer (including any of the Customer's agents or authorised representatives).
- 3.3. Where the Goods are otherwise being delivered to a Delivery Location other than the Supplier's place of business, the Supplier shall (subject to clause 9.1 of Schedule 1) not be liable for any non-delivery or late Delivery of the Goods (even if caused by the Supplier's negligence) unless written notice is given by the Customer to the third party carrier and the Supplier not less than (2) Business Days of the date when the Goods would in the ordinary course of events have been delivered.
- 3.4. A signature of qualified acceptance on a carrier's delivery note shall not be written notice to either the third-party carrier or the Supplier for the purposes of this Agreement. Any qualified acceptance on the part of the Customer must be sent in writing in accordance with Clause 11 of Schedule 1.
- 3.5. If the Customer fails to accept delivery of any of the Goods or fails to provide any instructions, documents, licences or authorisations required to enable the Goods to be delivered on time (except because of the Supplier's fault):
  - 3.5.1. risk in the Goods will still pass to the Customer (including for loss or damage caused by the Supplier's negligence) as though they Delivery had been made; and
  - 3.5.2. the Goods will be deemed to have been delivered to the Delivery Point or the Services deemed to have commenced; and
  - 3.5.3. the Supplier is still entitled to charge the Customer in respect of any Services done in respect of the Purchase Order or Goods supplied to the Customer up to the point at which the Goods were to be delivered pursuant to clause 2; and
  - 3.5.4. the Supplier may store or arrange for the storage of Goods until actual Delivery and charge the Customer for all related costs and expenses (including storage, handling and insurance) incurred as a result.
- 3.6. Without prejudice to any other rights contained in this Agreement and subject to any agreement to the contrary, if after ten (10) Business Days the Customer has not taken delivery of the Goods, the Supplier may sell or arrange to sell any part of the Goods at the best price reasonably obtainable in the circumstances to any third party.
- 3.7. To the extent that the price achieved for any sales under Clause 3.6 falls below the Charges as set out in the Order the Customer shall reimburse the Supplier for any shortfall between the final selling price and the original Charges.
- 3.8. Containers and packaging materials supplied to the Customer by the Supplier may be returned to the Supplier. If this occurs the Supplier reserves the right to charge back to the Customer, the reasonable costs incurred by the Supplier in disposing of or processing the containers and packaging materials.

#### **4. SOFTWARE**

- 4.1. In so far as any Goods contain any software or other programs owned by the Supplier, the Supplier will on delivery of the Goods grant to the Customer the Licence to use such software and programs subject to the Customer complying with (i) its other obligations in this Agreement and (ii) on the terms as set out in Schedule 4.

- 4.2. Where any Goods contain any Third-Party Software that is licenced to the Supplier by a third party, the Customer will:
- 4.2.1. enter into any Third-Party licence agreements that the Supplier may be required to enter by the relevant licensor of the Third-Party Software; and
  - 4.2.2. ensure that it will comply with all Third-Party licence terms covering the Third-Party Software that may fall under Clause 4.2.1 of this Schedule 2; and
  - 4.2.3. fully indemnify the Supplier on demand against all liability arising out of or in connection with any breach by the Customer of any Third-Party licences including but not limited to a failure to pay, a delay in performing, or negligence performance or non-performance of any of those Third-Party licence terms.
- 4.3. In respect of any Third-Party Software or other programmes or software belonging to the Supplier or a Third-Party as referred to in Clauses 4.1 and 4.2 of this Schedule 2, the Customer will not:
- 4.3.1. reverse engineer, compile, copy or adapt the whole or any part of the software or programmes, or cause such actions to be taken; and
  - 4.3.2. make any back-up copies of the software or programs, or cause such actions to be taken, except for one copy for reasonable business continuity back-up purposes; or
  - 4.3.3. remove or alter any copyright or other proprietary notice on any of the software or programmes.

## **5. RISK AND TITLE**

- 5.1. The risk in and responsibility for the Goods shall pass to the Customer on completion of Delivery (or deemed delivery under clause 3.6) by the Supplier to either:
- 5.1.1. the Delivery Point; or
  - 5.1.2. the Supplier's chosen carrier.
- 5.2. Legal title to the Goods shall not pass to the Customer until the Supplier receives payment in full (in cash or cleared funds) for the Goods which has become due pursuant to the Purchase Order and the terms of this Agreement. Title to the Goods shall only pass to the Customer once the Supplier is holding cleared funds.
- 5.2.1. The Customer may resell or use the Goods in the ordinary course of its business before title has passed to it under clause 5.2, subject to the following conditions:
    - 5.2.1.1. during such re-sale, the Customer is acting as principal and not as the Supplier's agent; and
    - 5.2.1.2. any sale shall be affected at full market value and the Customer shall promptly account for any sums due to the Supplier within 5 Business Days upon being paid itself; and
    - 5.2.1.3. limited title to the Goods shall pass to the Customer immediately before the time at which resale by the Customer occurs.
- 5.3. Until full title to the Goods has passed to the Customer, the Customer shall:
- 5.3.1. hold the Goods on a fiduciary basis as the Supplier's bailee; and

- 5.3.2. store the Goods (at no cost to the Supplier) separately from all other goods of the Customer or any third party in such a way that they remain readily identifiable as the Supplier's property; and
  - 5.3.3. not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
  - 5.3.4. maintain the Goods in satisfactory condition insured on the Supplier's behalf for their full price against all risks to the reasonable satisfaction of the Supplier. On request the Customer shall produce the policy of insurance to the Supplier.
- 5.4. The Customer's right to possession of the Goods and the right to re-sell the Goods shall each terminate immediately if:
- 5.4.1. the Supplier serves written notice on the Customer terminating their right to use and sell the Goods; or
  - 5.4.2. if any of the circumstances set out in Clause 10.1 of Schedule 1 occur; or
  - 5.4.3. the Customer pledges or in any way charges any of the Goods as security to any third party other than the Customer; or
  - 5.4.4. this Agreement is terminated for any reason.
- 5.5. The Supplier shall be entitled to recover payment for the Goods notwithstanding that title in any of the Goods has not passed from the Supplier.
- 5.6. If the Customer's right to possession of the Goods has terminated under Clause 5.4 of this Schedule 2, then:
- 5.6.1. the Supplier may at any time require the Customer to deliver up all Goods in its possession which have not been sold or irrevocably incorporated (physically) into another product; and
  - 5.6.2. if the Customer does not deliver up the Goods to the Supplier under Clause 5.6.1 of this Schedule 2, the Customer grants the Supplier, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or where the Customer's right to possession has terminated, to recover them.
- 5.7. The Customer shall deliver up the Goods in its possession under Clause 5.6 of this Schedule 2 in the quantity and condition in which they were delivered to the Customer.

## **6. QUALITY OF GOODS**

- 6.1. Unless otherwise agreed between the parties the Supplier warrants that for a twelve (12) month period following Delivery, the Goods shall be:
- 6.1.1. free from material defects in design, material and workmanship; and
  - 6.1.2. of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
  - 6.1.3. fit for any purpose held out by the Supplier which is expressly made known to the Customer.
- 6.2. The Supplier shall not be liable for a breach of any of the warranties in clause 6.1 unless:

- 6.2.1. the Customer gives written notice of the defect to the Supplier and (if the defect arises as a result of damage in transit) to the carrier within 7 days of:
  - 6.2.1.1. the date of Delivery (where the defect would be apparent to the Customer upon a reasonable inspection); or
  - 6.2.1.2. the date when the Customer knew or ought reasonably to have known of the defect (where the defect would not be apparent to the Customer upon a reasonable inspection); and
- 6.2.2. the Supplier is given a reasonable opportunity (after receiving the notice referred to above) to examine such Goods and the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business for the examination to take place there.
- 6.3. The Supplier shall not be liable for a breach of any of the warranties in clause 6.1 if:
  - 6.3.1. the Customer makes any further use of such Goods after giving notice to the Supplier of any potential defect; or
  - 6.3.2. the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if no instructions were provided) good trade practice; or
  - 6.3.3. the Customer (or other third-party contractor) alters, repairs, or attempts to repair such Goods without the written consent of the Supplier; or
  - 6.3.4. the defect in such Goods arises from any design defect in any drawing, design or specification supplied or approved by the Customer; or
  - 6.3.5. the defect arises as a result of:
    - 6.3.5.1. fair wear and tear caused by use of the Goods; or
    - 6.3.5.2. wilful damage or negligence caused by the Customer; or
    - 6.3.5.3. the existence of any abnormal working conditions not previously known or communicated to the Supplier upon receipt of any Purchase Order.
- 6.4. If the Customer makes a valid claim against the Supplier under this Clause 6 of Schedule 2, the Supplier shall at its option repair or replace the defective Goods or refund the price of the defective Goods in full to the Customer.
- 6.5. If the Supplier agrees to repair or replace or offers a refund for any defective Goods under this clause 6, the Customer, if requested by the Supplier, shall return the Goods or the part of such Goods which is defective to the Supplier.
- 6.6. The Customer will always bear the costs incurred to arrange for the return of any Goods for a potential warranty claim under this clause 6. If the Customer has made a valid warranty claim under this clause 6, the Supplier will incur the costs associated in arranging for the return of the Goods to the Customer. If the warranty claim is not valid, the Customer will be responsible for the costs of arranging the return and re-installation of the Goods previously sent to the Supplier under this clause 6.
- 6.7. Except as provided in this clause 6 the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranties set out in clause 6.1.

- 6.8. Any Goods which have been replaced will belong to the Supplier until they have been paid for. Any repaired or replacement Goods will be liable to repair or replacement under the terms specified in clause 6.1 for the unexpired portion of the warranty period referred to in clause 6.1.

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### **SCHEDULE 3**

#### **ADDITIONAL TERMS APPLICABLE TO THE SUPPLY OF SERVICES**

The following terms and conditions set out in this Schedule 3 shall apply in addition to the General Terms and Conditions set out in Schedule 1 whenever the Order placed by the Customer includes the supply of Services.

#### **1 DEFINED TERMS**

Unless otherwise set out in this Schedule 3 defined terms used in this Schedule 3 shall have the same meaning as those set out in clause 1.1 of the General Terms and Conditions in Schedule 1.

#### **2 COMMENCEMENT AND TERM**

- 2.1 The Agreement shall commence on the Services Start Date and shall, unless terminated earlier in accordance with this Agreement, run for the Term.
- 2.2 This Agreement may be extended to run beyond the initial Term. The period of any extension shall be agreed by the parties unless such period is set out in the Services Schedule. If the Customer wishes to extend the Term of this Agreement, they shall give the Supplier as much written notice as they reasonably can, to allow the Supplier to continue providing the Services.
- 2.3 If the Customer and the Supplier extend the Term for supplying any Services, this Agreement shall be extended by the relevant extension period and unless otherwise agreed in writing, the terms of this Agreement will continue to apply un-amended for the duration of any such extension.
- 2.4 If the Customer does not extend this Agreement to run beyond the Term, it will automatically expire at the end of the Term or the completion of the Services.

#### **3 SUPPLY OF SERVICES**

- 3.1 The Supplier shall supply or continue to supply (as the case may be) the Services to the Customer from the Services Start Date in accordance with the Agreement.
- 3.2 In supplying the Services, the Supplier shall use their reasonable endeavours to;
  - 3.2.1 perform the Services with reasonable care and skill in accordance with the Services Schedule and in compliance with any applicable Laws;
  - 3.2.2 ensure that the Deliverables, and all goods, materials, standards and techniques used in providing the Services are of satisfactory quality and are fit for purpose;
  - 3.2.3 ensure that the supply of the Services complies with all applicable laws, statutes, regulations from time to time in force provided that the Supplier shall not be liable under the Agreement if, as a result of such compliance, it is in breach of any of its obligations under the Agreement; and
  - 3.2.4 observe all reasonable health and safety rules and regulations and security requirements that apply at any of the Customer's premises and have been communicated to the Supplier, provided that the Supplier shall not be liable under the Agreement if, because of such observation, it is in breach of any of its obligations under the Agreement.
- 3.3 Unless expressly agreed otherwise in writing:
  - 3.3.1 time shall not be of the essence as regards the delivery of the Services by the Supplier, pursuant to the Services Schedule; and

- 3.3.2 any set times or delivery schedules contained in the Services Schedule in respect of the delivery of the Services are to be treated only as estimates of when the Services will be provided; and
- 3.3.3 the Supplier need only use its reasonable endeavours to provide the Services in accordance with set times or delivery schedules contained in the Services Schedule.
- 3.4 The Supplier may, at any time during the Term of the Agreement, after giving not less than ten (10) Business Days' notice to the Customer, conduct one or more review(s) of the Services that it is providing to the Customer. This review may include (but is not limited to) comparing the current Charges and scope of the Services, to accepted market pricing and scope of similar Services provided by others. Upon completion of any review under this clause 3.4 the Supplier is entitled, at its' discretion to amend the Charges in accordance with clause 6 in Schedule 1.

#### **4 INTELLECTUAL PROPERTY**

- 4.1 The Supplier and its licensors shall retain ownership of all Supplier IPRs. The Customer and its licensors shall retain ownership of all Intellectual Property Rights in the Customer Materials.
- 4.2 The Supplier grants to the Customer or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free, licence to use the Supplier IPRs for the purpose of receiving and using the Services and the Deliverables in the Customer's business during the term of the Agreement.
- 4.3 The Customer grants the Supplier a fully paid-up, worldwide, non-exclusive, royalty-free, non-transferable licence to use, copy and modify the Customer Materials for the Term of the Agreement for the purpose of providing the Services to the Customer in accordance with the Agreement.
- 4.4 The Supplier shall indemnify the Customer in full against any sums awarded by a court against the Customer arising out of or in connection with any claim successfully brought against the Customer for infringement of a third party's rights (including any Intellectual Property Rights) arising out of or in connection with the receipt or use of the Services by the Customer.
- 4.5 The Customer shall indemnify the Supplier in full against any costs, damages or expenses or sums incurred by the Supplier arising out of or in connection with any claim brought or threatened against the Supplier for infringement of a third party's rights (including any Intellectual Property Rights) arising out of, or in connection with, the receipt or use of the Customer Materials by the Supplier.
- 4.6 To the extent that the provision of the Services by the Supplier, requires the Supplier to install, upgrade, repair and/or maintain any software or other computer programs owned by the Supplier, the Supplier hereby grants to the Customer the Licence to use such software and programs (as upgraded, repaired or maintained during the Term of the Agreement) on the terms set out in Schedule 4.
- 4.7 If the Services require the Supplier to perform any works that may affect any Third-Party Software, such works will only be performed in accordance with the conditions set out in any Third-Party licence agreements and provided that the relevant licensor of the Third-Party Software has given their written consent to such works being performed by the Supplier.
- 4.8 The Customer will fully indemnify the Supplier on demand against all liability arising out of or in connection with any breach of a Third-Party Licence by the Supplier whilst performing any agreed Services under the Agreement, regardless of how such liability is incurred or arises.



## **SCHEDULE 4 SOFTWARE LICENCE**

- (A) The Customer has agreed to purchase Services from the Supplier which includes the supply and/or subsequent maintenance of Program Materials (as defined below).
- (B) In connection with such purchase, the Supplier has agreed to grant a licence to the Customer to use the Program Materials subject to the term of this licence (**Licence**) and the terms of the end user license agreement (EULA) which is available here <https://support.synecticsglobal.com/hc/en-gb/articles/12427312902429-Synergy-EULA> .
- (C) Defined terms used in this Licence, but which are not set out in paragraph 1.1 below, shall have the same meaning as those set out in clause 1.1 of Schedule 1.

### **1. DEFINITIONS AND INTERPRETATION**

- 1.1. In this Licence the following words shall have the following meanings:

**Derived Products** means any computer programs that use the Program Materials or modifications of the Program Materials.

**Licensee** means the Customer.

**Program Materials** means the set of computer software programs and machine readable and printed materials (including any upgrades, hotfixes, modified versions or updates) supplied, directly or indirectly by the Licensor to the Licensee excluding any Software belonging to a third party or which is classed as Open Source Software.

**Licensor** means the Supplier.

**Open Source Software** means any and all third-party software code which is supplied with and incorporated into any Program Materials, Derived Products or Third Party Software which is licensed upon terms which generally conform to the open source definition set by The Open Source Initiative from time to time.

### **2. GRANT OF LICENCE**

- 2.1. The Licensor grants to the Licensee a nonexclusive, revocable, limited sub-licence to use the Program Materials and Derived Products on the number of computers as specified in the Services Schedule along with the Services purchased pursuant to the Agreement and any other equipment, systems and hardware purchased by the Licensee.
- 2.2. The use of Program Materials and/or Derived Products on additional computers beyond the number specified in the Services Schedule requires additional Licence(s) from the Licensor. The Program Materials and Derived Products may be copied only for backup purposes.

### **3. COPYRIGHT AND TITLE**

- 3.1. The Program Materials and all Intellectual Property Rights associated with the Program Materials are owned by the Licensor. The Licensee shall treat the Program Materials like any other copyrighted materials, except as otherwise provided in the Agreement or pursuant to paragraph 2.2 of this Schedule 4 regarding the ability to copy the Program Materials or Derived Products solely for backup purposes. All copies of the Program Materials shall display all copyright notices included in the original Program Materials.

### **4. RESTRICTIONS**

- 4.1. The Licensee shall not reverse engineer or otherwise attempt to discern the code (if not provided by the Licensor) of the Program Materials.

- 4.2. The Licensee shall not sell, licence or distribute the Program Materials or Derived Products, except with the Licensor's associated hardware if purchased by the Licensee. The Licensee agrees to notify their employees and agents and authorised representatives who may have access to the Program Materials or Derived Products of the obligations imposed upon the Licensee as contained in the Agreement and this Licence and will ensure that they comply with such restrictions.

## **5. LIMITED WARRANTY AND EXCLUSIVE REMEDY**

- 5.1. For ninety (90) days running from the date when any Services are carried out upon any Program Materials by the Licensor or for the period specified in any extended warranty offered by the Licensor (if applicable) (**Warranty Period**) the Licensor warrants that the media upon which the Program Materials is furnished will be free from defects in material and workmanship under normal use.
- 5.2. While every reasonable effort is made to provide the Licensee with functional and productive software development tools, no warranty is made that the Program Materials themselves will perform, function or operate in an uninterrupted or error-free manner.
- 5.3. The Program Materials are designed and intended for use by computer professionals experienced in the uses and limitations of computer software. It is the Licensee's responsibility to ascertain the suitability of the Program Materials for the Licensee's purposes.
- 5.4. The Licensee's exclusive remedy for breach by the Licensor of this warranty shall be the replacement of any defective media returned within the Warranty Period or, if no replacement which is free of defect is available, refund of the amount paid for the Program Materials (or, if the Program Materials were not separately purchased the sum of £1,000). Except as set forth herein, the Program Materials are licensed on an "as-is" basis.

## **6. SUPPORT AND MAINTENANCE**

- 6.1. Unless specifically agreed in writing in the Services Schedule:
- 6.1.1. the Licensor shall not be required to perform or furnish any other support to users of the Program Materials and Derived Products including, installation and telephone support; and
- 6.1.2. the Licensee shall not receive upgrades or updates to any software provided.
- 6.2. The Licensee shall inform its users of the prohibitions in this Licence against unauthorised access, use and copying of the Software, including screen displays, and shall use its best efforts to enforce such prohibitions.

## **7. LIMITATION OF LIABILITY**

- 7.1. The remedy described in paragraph 5.4 above shall be the Licensee's sole and exclusive remedy under the terms of this Licence and the Licensor and the Licensee agree that it is a fair and reasonable remedy in the circumstances of this Licence.
- 7.2. Subject to Clause 9.2 in Schedule 1, with regards to the Program Materials and the Derived Products, the Licensor shall not be liable for any loss, costs, claims, penalties or damages incurred by the Licensee that arises from a breach of any implied terms of satisfactory quality, merchantability and fitness for purpose.

- 7.3. Subject to clause 9.1 of Schedule 1, the Licensor shall not be liable to the Licensee, whether in contract, tort (including negligence) for breach of statutory duty or otherwise, howsoever caused and arising under or in connection with the Agreement for any indirect or consequential losses suffered by the Customer, which includes (but is not limited to):
- 7.3.1. loss of profits; or
  - 7.3.2. loss of revenue; or
  - 7.3.3. interest charges or cost of capital; or
  - 7.3.4. economic losses; or
  - 7.3.5. loss of contracts; or
  - 7.3.6. loss of savings whether actual or anticipated; or
  - 7.3.7. loss of use or corruption of any software, data or Confidential Information; or
  - 7.3.8. any indirect, special or consequential losses, arising under or in connection with this Agreement, including such losses or damages as may be reasonably foreseeable at the date this License is entered into.
- 7.4. The Licensor shall have no liability or responsibility for any losses suffered by the Licensee as a result of:
- 7.4.1. any unauthorised modifications or conversions or changes made to the software, Program Materials or any Derived Products; and
  - 7.4.2. any errors or malfunctioning of the Licensee's own hardware or software that has not been supplied by the Licensor.

## **8. TERMINATION**

- 8.1. This Licence is effective until terminated. This Licence may be terminated by either the Licensor or Licensee upon giving at least one (1) month advance written notice of termination to the other.
- 8.2. This Licence will terminate automatically without notice from the Licensor in the event that the Licensee fails to comply with any of the terms of this Licence or upon the termination of the Agreement.
- 8.3. Upon termination of this Licence, the Licensee shall cease all use of the Program Materials and Derived Products, destroy all copies of Program Materials and Derived Products in the Licensee's possession or under the Licensee's control, and take such other actions as the Licensor may reasonably request to ensure that no copy of the Program Materials or Derived Products remains in the Licensee's possession or under the Licensee's control.
- 8.4. Subject to Clause 9 of Schedule 1, neither the Licensor nor the Licensee will be liable for damages of any kind as a result of the termination of this Licence according to the terms of this Licence, and termination will not affect any other right or remedy of the Licensor or the Licensee set out in this Licence or the Agreement.

## **9. OPEN SOURCE SOFTWARE**

- 9.1. To the extent that any Program Materials, Derived Products or Third-Party Software contain any Open Source Software, the Customer hereby acknowledges that;
- 9.1.1. the Supplier has not charged the Customer for the supply of any Open Source Software and has not received any commission, royalty or other payment for supplying it;
  - 9.1.2. the Open Source Software has not been developed or provided by the Supplier and is made generally available for use by third party proprietors, licensors and development communities; and
  - 9.1.3. the Supplier has supplied the Open Source Software to the Customer for the Customer's convenience.
- 9.2. The Supplier provides no warranty, and subject to Clause 9 of Schedule 1, excludes all liability for any costs, losses, damages or charges or third party claims faced or incurred by the Customer that arise from:
- 9.2.1. the Customer's use of the Open Source Software; or
  - 9.2.2. any alterations or modifications made to the Open Source Software or any Program Materials or Derived Products or Third Party Software that interface with any Open Source Software, regardless of whether such alterations or modifications were permitted by the Supplier or any provider of any Third Party Software.
- 9.3. The Supplier will only provide technical support for Open Source Software if such support is expressly provided for in the Services Schedule by reference to the name of the relevant Open Source Software, and then only for unmodified Open Source Software (save for modifications that may have been carried out by the Supplier pursuant to such express provisions).

**END OF DOCUMENT**