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**TERMS AND CONDITIONS**

**(these "Terms and Conditions")**

**1. Definitions**

In this Agreement:

1.1 the following terms shall have the following meanings unless the context otherwise requires:

**"Agreement":** these Terms and Conditions together with the Schedule and any document referred to in these Terms and Conditions or the Schedule;

**"Bespoke Services":** if applicable the modifying and creation of individual bespoke elements of any Equipment as may be stipulated in the Schedule;

**"Breach of Duty":** the breach of any: (i) obligation arising from the express or implied terms of a contract to take reasonable care or exercise reasonable skill in the performance of the contract; or (ii) common law duty to take reasonable care or exercise reasonable skill (but not any stricter duty);

**"Business Day":** any day other than: (i) a Saturday; (ii) a Sunday; or (iii) a day when the clearing banks in the City of London are not physically open for business;

**"Confidential Information":** any information in any form or medium obtained by or on behalf of either Party from or on behalf of the other Party in relation to this Agreement which is expressly marked as confidential or which a reasonable person would consider to be confidential, whether disclosed or obtained before, on or after the date of this Agreement, together with any reproductions of such information or any part of it;

**"Customer"**, **"you"** or **"your":** the recipient of Equipment and/or Services under this Agreement, as stipulated in the Schedule;

**"Delivery Address":** the location to which we are to deliver the Equipment, as may be stipulated in the Schedule;

**"Estimated Lead Time":** the estimated period within which we will deliver the Equipment to the Delivery Address, as may be stipulated in the Schedule;

**"Equipment":** the items of equipment, (including the Modified Equipment if applicable), plant, machinery or appliances supplied or to be supplied by us to you pursuant to this Agreement, as may be stipulated in the Schedule;

**"Equipment Fees":** the fees payable by you to us for the supply by us of the Equipment, as may be stipulated in the Schedule;

**"Event of Force Majeure":** has the meaning given to it in Clause 12.1;

**"Fees":** the Equipment Fees, the Training Fees and the Services Fees;

**"Installation Services":** the services that we provide to you to install the Equipment at your premises, if applicable and as set out in the Schedule;

**"Intellectual Property Rights":** copyright and related rights, trade marks and service marks, trade names and domain names, rights under licences, rights in get-up, rights to goodwill or to sue for passing off or unfair competition, patents, rights to inventions, rights in designs, rights in computer software, database rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

**"Liability":** liability in or for breach of contract, Breach of Duty, torts (including negligence and intentional torts), deliberate breach (including deliberate personal repudiatory breach), misrepresentation, restitution or any other cause of action whatsoever relating to or arising under or in connection with this Agreement, including liability expressly provided for under this Agreement or arising by reason of the invalidity or unenforceability of any term of this Agreement (and, for the purposes of this definition, all references to "**this Agreement**" shall be deemed to include any collateral contract);

**"Modified Equipment"** the bespoke equipment modified in accordance with the Specification, and created as a result of the Bespoke Services;

**"Party":** us or you, and "**Parties**" means both of us and you;

**"Personnel":** all persons employed or engaged by us to provide the Training;

**"Quantity":** the quantity of the Equipment you order from us, as may be stipulated in the Schedule;

**"Rates":** our time and materials rates from time to time for the provision of services by the Personnel, which, in respect of the Training and as at the date of this Agreement, shall be as set out in the Schedule and subject to change from time to time on our notification to you;

**"Schedule":** the written document we provide to you containing specific information relating to the particular Equipment and/or services supplied or to be arranged to be supplied by us to you;

**"Services":** the Installation Services, the Training Services and the Bespoke Services;

**"Services Fees":** the fees payable by you to us for the provision of the Services, as may be stipulated in the Schedule;

**"Specification":** the detailed technical requirements agreed between the Parties, in order for us to implement the Bespoke Services, as outlined in the Schedule and as amended from time to time by an agreement between the Parties in writing;
**"Technology":** any methods, techniques, discoveries, inventions (whether patentable or not), formulae, formulations, technical and product specifications, equipment descriptions, plans, layouts, drawings, computer programs, assembly, quality control, installation and operating procedures, operating manuals, technical and marketing information, designs, data, know-how and other information in relation to and the manufacture of the Modified Equipment; and

**"Training":** the training as specified in the Schedule, to be provided by us to assist you in using the Equipment.

1.2 references to "**Clauses**" are to clauses of these Terms and Conditions;

1.3 the headings are inserted for convenience only and shall not affect the construction or interpretation of this Agreement;

1.4 a "**person**" includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);

1.5 a reference to a Party includes its personal representatives, successors or permitted assigns;

1.6 words imparting the singular shall include the plural and vice versa. Words imparting a gender shall include the other gender and the neutral and references to persons shall include an individual, company, corporation, firm, partnership, trust, association, government or local authority department or other authority or body (whether corporate or unincorporated);

1.7 a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;

1.8 any phrase introduced by the terms "**including**", "**include**", "**in particular**" or any similar expression, shall be construed as illustrative, shall not limit the sense of the words preceding or following those terms, and shall be deemed to be followed by the words "without limitation" unless the context requires otherwise; and

1.9 a reference to "**writing**" or "**written**" includes in electronic form and similar means of communication (except under Clause 16).

**2. Agreement**

2.1 The terms of this Agreement apply to the exclusion of any terms and conditions submitted, proposed or stipulated by you in whatever form and at whatever time. These Terms and Conditions apply to all Equipment and Services.

2.2 Save as expressly provided in this Agreement, this Agreement shall operate to the entire exclusion of any other agreement, understanding or arrangement of any kind between the Parties preceding the date of this Agreement and in any way relating to the subject matter of this Agreement and to the exclusion of any representations not expressly stated in this Agreement except for any fraudulent misrepresentations or any misrepresentation as to a fundamental matter. Each of the Parties acknowledges that it has not entered into this Agreement based on any representation that is not expressly incorporated into this Agreement.

2.3 This Agreement constitutes the whole agreement and understanding of the Parties as to the subject matter of this Agreement and there are no provisions, terms, conditions or obligations, whether oral or written, express or implied, other than those contained or referred to in this Agreement.

2.4 The Schedule must be in the form we require from time to time. This Agreement shall be legally formed and the Parties shall be legally bound when we have received and signed the Schedule that has been signed by an authorised signatory of you and submitted by you to us. Submission by you to us of the signed Schedule shall be deemed to be an offer by you to purchase Equipment and/or Services (as specified in the Schedule) from us, subject to the provisions of this Agreement, and our counter-signature on the Schedule shall be considered our acceptance of such offer, but the requirements for us to perform any of our obligations under this Agreement shall be conditional upon our receipt from you of any advance payment of Fees as required under this Agreement. If we never receive the signed Schedule from you once we have sent it to you, we will take your continued instructions following our sending of the Schedule to you as evidence of your acceptance of the terms of the Schedule and therefore entry into this Agreement.

2.5 If you provide to us a purchase order for your receipt of Equipment and/or Services other than as set out in Clause 2.4, that purchase order (and any terms and conditions attached or referred to in it) shall be purely for your administrative purposes and shall not form part of this Agreement.

2.6 In the event of a conflict between these Terms and Conditions and the Schedule, then the Schedule shall prevail over these Terms and Conditions.

**3. Services**

3.1 We warrant that:

3.1.1 we shall use our reasonable skill and care in providing the Services;

3.1.2 our employees, agents and subcontractors have the necessary skill to provide any Services;

3.1.3 any Services will be provided in a professional, competent and workmanlike manner;

3.1.4 we have all necessary consents, rights and permission to enter into, and perform our obligations under, this Agreement;

3.1.5 we shall ensure that our employees, agents and subcontractors co-operate with, and make themselves available at all reasonable times for, discussion and meetings with, you and your employees, agents or subcontractors; and

3.1.6 we shall comply with all applicable laws, statutes, regulations and bye-laws in relation to the exercise of our rights and performance of our obligations under this Agreement.

3.2 We are not responsible for any people, equipment, deliverables or services that we are not expressly stipulated to provide in this Agreement. You are responsible for any people, equipment, deliverables and services that you need to obtain from someone other than us. Except for any matter in relation to which we specifically agree in writing to advise or do, we shall not be responsible, or have any Liability (subject to Clause 13.2), for advising on, or failing to advise on, or doing, or failing to do, anything else.

3.3 Subject to us performing the Services within any timeframe agreed as being necessary for the performance of the Services, we may select our own working times and location provided that the nature of particular services does not require those particular services to be undertaken during particular working times or at a particular location (in which situation you shall be entitled to request that we perform the Services at such working times and location as are reasonable in the circumstances).

3.4 We shall use our reasonable endeavours to perform our obligations under this Agreement within any timescales set out in this Agreement. However, subject to Clause 13.2, we shall not have any Liability for any delays or failures to accurately perform our obligations:

3.4.1 if we have used those endeavours; or

3.4.2 if caused by any failure or delay on your part or on the part of your employees, agents or subcontractors or by

any breach by you of this Agreement or any other agreement.

If there is any slippage in time, we shall use our reasonable endeavours to reschedule delayed tasks to a mutually convenient time.

3.5 We have the right to make any changes to the Services which are necessary to comply with any applicable law, safety requirement, or which do not materially affect the nature or quality of the Services, and we shall notify you in any such event.

3.6 If we are delayed or hindered in providing any Services as a result of any breach, delay or failure by you to perform any of your obligations under this Agreement or of any other agreement between us and you, then we may charge you at our time and materials rates from time to time for:

3.6.1 any time reasonably incurred as a result of the hindrance or breach (including any wasted time for which we had anticipated that our Personnel would provide Services under this Agreement but become unable to provide the Services at that time as a result of your act or omission); and

3.6.2 any time that we were going to spend in providing the Services, in addition to the time we actually do spend in providing the Services.

3.7 Except as expressly stipulated in this Agreement:

3.7.1 we shall not be responsible for providing or achieving any particular results or outcomes or within a particular time; and

3.7.2 we exclude all conditions, warranties, terms and obligations, whether express or implied by statute, common law or otherwise, to the fullest extent permitted by law in respect of the Equipment and the Services.

**4. Bespoke Services**

4.1 If applicable, the Parties shall meet to discuss and agree the Specification. During the meeting we shall make suggestions and advise on what should be included in the Specification, however it will be at your discretion whether you accept such suggestions, and you shall be responsible to ensure that the Speciation meets your individual needs and requirements.

4.2 You warrant that you will provide us with such assistance and instructions that we may reasonably require to provide the Bespoke Services and we shall have no Liability (subject to Clause 13.2) for any failure to provide the Modified Equipment in accordance with the Specification to the extent caused by your failure to properly ensure the provision of the relevant information, and to the extent we have followed your instructions.

4.3 The Parties acknowledge that, as between them, we shall retain ownership of all Intellectual Property Rights in the Technology.

**5. Training**

5.1 In consideration of the Training Fees outlined in the Schedule, we will provide Training to you.

5.2 Any additional training required by you shall be provided by us at the Rates in force.

5.3 Training shall be carried out at such premises as we and you agree from time to time. Any special equipment necessary for the Training shall be provided by us.

**6. Timesheets**

Where applicable, on completion of the Services, the relevant service technician will submit a timesheet to you outlining the number of hours worked and travel times. It is your responsibility to ensure that each timesheet is correct, and you shall have the right to either accept, reject, or make any amendments to a timesheet if in your reasonable opinion it is incorrect. If you fail to accept, reject or amend a timesheet within one Business Day of receiving such timesheet, that timesheet will be deemed accepted by you and an invoice will be generated for those Services which you will be Liable to pay.

**7. Warranty**

7.1 We warrant that on delivery the Equipment shall:

7.1.1 conform in all material respects with their description; and

7.1.2 be free from material defects in design, material and workmanship.

7.2 Subject to Clause 7.3, if:

7.2.1 you give notice in writing within a five Business Days of the time of discovery that some or all of the Equipment do not comply with the warranty set out in Clause 7.1;

7.2.2 you give to us a reasonable opportunity to examine such Equipment; and

7.2.3 you (if we ask you to do so by) return such Equipment to us at our cost;

we shall, at our option and at our discretion, without any admission of fault, repair or replace the defective Equipment, or refund the price of the defective Equipment in full.

7.3 Subject to Clause 13.2, we shall not have any Liability for providing Equipment to the extent caused by our compliance with and reliance on the Specification, your instructions, or requirements in respect of the Equipment. You must indemnify us against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by us in connection with any claim made against us for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with our compliance with the Specification, your instructions, or requirements. This Clause 7.3 shall survive termination of this Agreement for any reason.

7.4 We shall not be responsible for the Equipment's failure to comply with the warranty in Clause 7.1 if:

7.4.1 you make any further use of such Equipment after giving a notice in accordance with Clause 7.2;

7.4.2 the defect arises because you failed to follow our oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Equipment or (if there are none) good trade practice;

7.4.3 you alter or repair such Equipment without our written consent;

7.4.4 the defect arises as a result of fair wear and tear, wilful damage, negligence or abnormal working conditions;

7.4.5 you have not paid for the Equipment in full; or

7.4.6 the Equipment differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

7.5 We reserve the right to amend the specification of the Equipment if required by any applicable statutory or regulatory requirements.

7.6 Except as provided in this Clause 4, and subject to Clause 13.2, we shall have no Liability in respect of the Equipment's failure to comply with the warranty set out in Clause 7.1.

7.7 The warranty set out in this Clause 4 is restricted to you, and no warranty is made to any other person, whether subsequent buyer or user or customer, or to any bailee, licensee, assignee, employee, agent or otherwise.

7.8 If you make an invalid claim under the warranty set out in this Clause 4, we may charge you for our fees and costs of dealing with that claim, including examining (and travelling in order to examine), storing, repairing or replacing the Equipment.

**8. Delivery of the Equipment**

8.1 We shall ensure that:

8.1.1 each delivery of the Equipment is accompanied by a delivery note which shows the date of this Agreement, all relevant reference numbers, special storage instructions (if any) and, if the Equipment are being delivered by instalments, the outstanding balance of Equipment remaining to be delivered; and

8.1.2 if we require you to return any packaging materials to us, that fact is clearly stated on the delivery note. You must make any such packaging materials available for collection at such times as we shall reasonably request. Returns of packaging materials shall be at our expense.

8.2 Unless we and you agree otherwise in writing, we shall deliver the Equipment to you at the Delivery Address within the Estimated Lead Time.

8.3 You must ensure that our delivery vehicle is able to access the Delivery Address to deliver the Equipment, including assuring that the access routes are of a sufficient size for the delivery vehicle and that there is space for the delivery vehicle to stop at the kerb-side outside the Delivery Address or otherwise within the Delivery Address. If you have any concerns in this respect, you must contact us as soon as possible.

8.4 We cannot leave the Equipment at the Delivery Location if you, or someone you have authorised to accept delivery, are not present to accept delivery. Anyone at the Delivery Address will be deemed to be authorised to accept delivery.

8.5 The Estimated Lead Time is approximate only, and the time of delivery is not of the essence. Subject to Clause 13.2, we shall not have any Liability for any delay in delivery of the Equipment that is caused by an Event of Force Majeure or your failure to provide us with adequate delivery instructions or any other instructions that are relevant to the supply of the Equipment.

8.6 If you are not available to take delivery of the Equipment, we may leave instructions to arrange redelivery. We may also pass on to you any costs incurred by us as a consequence of no-one being available to take delivery.

8.7 If delivery of the Equipment is delayed by your unreasonable refusal to accept delivery, if you are not at the Delivery Address on the delivery date that we agree with you, if you refuse to sign for the delivery of the Equipment on delivery or if you do not (within one week of our first attempt to deliver the Equipment to you) accept delivery, then we may (without prejudice to any other right or remedy available to us) charge you for our reasonable storage fee and other costs reasonably incurred by us, including redelivery costs.

8.8 If we fail to deliver the Equipment, our Liability shall be limited (subject to Clause 13.2) to the costs and expenses incurred by you in obtaining replacement Equipment of similar description and quality in the cheapest market available, less the price of the Equipment.

8.9 If, 10 Business Days after we notified you that the Equipment were ready for delivery, you have not taken delivery of them, we may resell or otherwise dispose of part or all of the Equipment.

8.10 We may deliver the Equipment by instalments, which we may invoice and require payment for separately. Any delay in delivery or defect in an instalment shall not entitle you to cancel any other instalment.

8.11 Risk in the Equipment shall pass to you on the unloading of the Equipment from our delivery vehicle at the Delivery Address.

8.12 Where the Equipment requires installation, we shall install the Equipment at the Delivery Address. You shall procure that your duly authorised representative shall be present at the installation of the Equipment. Acceptance by such representative of installation shall constitute conclusive evidence that you have examined the Equipment and have found it to be in good condition, complete and fit in every way for the purpose for which it is intended. If required by us, your duly authorised representative shall sign a receipt confirming such acceptance.

8.13 To facilitate installation where applicable, you shall at your sole expense provide all requisite materials, facilities, access and suitable working conditions to enable installation to be carried out safely and expeditiously.

**9. Title**

9.1 Notwithstanding delivery, title to and ownership of the Equipment shall not pass to you until either:

9.1.1 we have received in full (in cash or in cleared funds) all sums due to us in respect of the Equipment, and all other sums which are or which become due to us from you on any account ("**Payment**"); or

9.1.2 you resell the Equipment, in which case title to that Equipment shall pass to you at the time specified in Clause 9.3.

9.2 Until title to the Equipment has passed to you, you must:

9.2.1 hold the Equipment on a fiduciary basis as our bailee;

9.2.2 hold the Equipment in good, saleable conditions and keep them insured against all risks for their full price from the date of delivery;

9.2.3 keep an up-to-date list of the location of our property and present this to us on request;

9.2.4 not destroy, deface or obscure any identifying mark or packaging on or relating to the Equipment; and

9.2.5 store the Equipment separately from other goods or in any way so that they remain readily identifiable as our property.

9.3 You may resell (with our written consent), or use the Equipment in the ordinary course of your business (but not otherwise) before we receive payment for the Equipment. However, if you resell the Equipment before that time:

9.3.1 you do so as principal and not as our agent; and

9.3.2 title to that Equipment shall pass from us to you immediately before the time at which resale by you occurs.

9.4 If the Equipment is attached to or incorporated into any other materials or goods, the property in the new material or good shall vest in us until Payment in the proportion of the value of the Equipment to the other constituent elements.

9.5 If, before title passes, you become subject to any of the events listed in Clause 14.2.3, then, without limiting any other right or remedy we may have, your right to resell the Equipment, or use them in the ordinary course of your business, ceases immediately.

9.6 We may at any time until title passes under this Clause 9 without notice recover possession of the Equipment which are our property, or goods to the equivalent value of the Equipment. You hereby grant, or procure the grant, to us and our employees, agents and subcontractors, an irrevocable licence to enter for that purpose any premises then occupied by or in the ownership or possession of you or your direct or indirect customer. You must indemnify us against all claims, losses, damages, liabilities, costs and expenses so arising.

9.7 We shall be entitled to recover payment for the Equipment notwithstanding that ownership of any of the Equipment has not passed from us.

9.8 On termination of this Agreement for any reason, our rights contained in this Clause 9 shall remain in full force and effect.

**10. Your obligations**

10.1 You must:

10.1.1 ensure that the terms of the Schedule, and any Specification or instructions you provide to us for the Services and/or for the Equipment (including any designs for the Equipment), are complete and accurate;

10.1.2 provide proper, adequate, safe, comfortable and suitable environmental and operating conditions if we undertake any work at your premises;

10.1.3 inform us in writing a reasonable time before the commencement of any Services of any regulations relevant to us when working at any premises under your control;

10.1.4 be present and available at your premises at the required times to enable us to perform our obligations at the times we reasonably require under this Agreement;

10.1.5 sign a confirmatory note upon any of the Services (in whole or in part) having taken place, or any of the Equipment having been delivered, if we reasonably require you to do so;

10.1.6 ensure that your employees, agents and subcontractors fully co-operate with, and make themselves available at all reasonable times for discussion and meetings with, us and our employees, agents and subcontractors and to enable us to promptly perform our obligations under this Agreement;

10.1.7 promptly provide to us such data, information and assistance that will enable us to promptly perform our obligations under this Agreement;

10.1.8 promptly comply with all of our reasonable requests in connection with this Agreement;

10.1.9 have all rights, permissions and consents to enter into, and perform your obligations under, this Agreement; and

10.1.10 comply with all applicable laws, statutes, regulations and bye-laws in relation to the exercise of your rights and performance of your obligations under this Agreement.

10.2 You must ensure that the Services and the Equipment, and the Modified Equipment (if applicable) are sufficient and suitable for your purposes and meet your individual requirements.

10.3 You must provide us with the information required to enable us to properly provide the Services. We shall not be responsible or, subject to Clause 13.2, have any Liability for any failure to provide the Services to the extent caused by your failure to properly ensure the provision of the relevant information.

**11. Fees**

11.1 In consideration for obtaining the relevant Equipment and Services we provide pursuant to this Agreement, you must pay to us the relevant Fees.

11.2 You must pay the Fees to us at such times and in such instalments as we may direct from time to time. Unless set out otherwise in this Agreement, we may issue invoices to you for the Fees at such intervals as we may, at our absolute discretion, consider appropriate.

11.3 Unless otherwise set out in the Schedule, all sums due under this Agreement are exclusive of VAT or other sales, import or export duties or taxes (if applicable) which shall be payable in addition at the same time as payment of any sums due.

11.4 You must pay us by any payment method that we may stipulate from time to time. No payment shall be considered paid until we have received it in cleared funds in full.

11.5 Payment must be in the currency in force in England from time to time or such other currency as we may stipulate from time to time for the Fees.

11.6 We reserve the right to increase the Fees in respect of any Services or Equipment not included in the Schedule which we may agree, at our absolute discretion, to provide to you in addition to those Services and Equipment set out in the Schedule.

11.7 We reserve the right to increase the Fees in respect of any Equipment, by giving notice to you at any time before delivery, to reflect any increase in the cost of the Equipment to us that is due to:

11.7.1 any factor beyond our control (include foreign exchange fluctuations, tax or duty increases, increase in supplier costs, increase in labour, materials or other manufacturing costs, or changes in any relevant laws);

11.7.2 any request by you to change the delivery date(s), Quantity or type or design of Equipment ordered; and/or

11.7.3 any delay caused by your instructions in respect of the Equipment or your failure to give us adequate or accurate information or instructions in respect of the Equipment.

11.8 We reserve the right to increase the Fees in respect of any Equipment to reflect any increases in labour, materials or other manufacturing costs, which may occur as a result of us providing the Equipment to you in accordance with your instructions and this Agreement.

11.9 You must pay all amounts due under this Agreement in full without any set-off, counterclaim, deduction or withholding except as required by law. We may, without limiting our other rights or remedies, set off any amount owing to us by you against any amount payable by us to you.

11.10 If you are late in paying any part of any monies due to us under this Agreement and such payment remains outstanding for seven days following us providing notice to you of such outstanding payment, we may (without prejudice to any other right or remedy available to us whether under this Agreement or by any statute, regulation or bye-law) do any or all of the following:

11.10.1 charge interest and other costs on the overdue amount due but unpaid at the annual rate of interest set under Section 6 of the Late Payment of Commercial Debts (Interest) Act 1998 from time to time from the due date until payment (after as well as before judgment), such interest to run from day to day and to be compounded monthly;

11.10.2 recover our costs and expenses and charges (including legal and debt collection fees and costs) in collecting the late payment;

11.10.3 sell or otherwise dispose of any Equipment which are the subject of the relevant Schedule and apply the proceeds of sale to the overdue payment; and

11.10.4 suspend performance of this Agreement until payment in full has been made.

11.11 You hereby acknowledge that we may perform credit checks on you via Experian and we may use and submit that information to credit agencies. If, in our absolute discretion, we believe that you are unable to make any payments under this Agreement, we shall require immediate payment of any Fees due from you to us.

**12. Confidentiality**

12.1 Each Party must keep the other Party's Confidential Information confidential and must not:

12.1.1 use such Confidential Information except for the purpose of exercising or performing its rights and obligations under this Agreement; or

12.1.2 disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this Clause 12.

12.2 Each Party must use adequate procedures and security measures to protect the other Party's Confidential Information from inadvertent disclosure or release to unauthorised persons.

12.3 A Party may disclose the other Party's Confidential Information to those of its employees, agents and subcontractors who need to know such Confidential Information provided that:

12.3.1 it informs such employees, agents and subcontractors of the confidential nature of the Confidential Information before disclosure; and

12.3.2 it does so subject to obligations equivalent to those set out in this Clause 12.

12.4 A Party may disclose the Confidential Information of the other Party to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other Party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this Clause 12.4, it takes into account the reasonable requests of the other Party in relation to the content of such disclosure.

12.5 The obligations of confidentiality in this Clause 12 shall not extend to any matter which either Party can show:

12.5.1 is in, or has become part of, the public domain other than as a result of a breach of the confidentiality obligations of this Agreement; or

12.5.2 was independently developed by it; or

12.5.3 was independently disclosed to it by a third party entitled to disclose the same; or

12.5.4 was in its written records prior to receipt.

12.6 Each Party reserves all rights in its Confidential Information. No rights or obligations in respect of a Party's Confidential Information other than those expressly stated in this Agreement are granted to the other Party, or to be implied from this Agreement.

12.7 We may identify you as our client and the type of Equipment and Services provided by us to you, provided that, in doing so, we shall not reveal any of your Confidential Information (without your prior written consent).

12.8 On termination of this Agreement, each Party must:

12.8.1 return to the other Party all documents and materials (and any copies) containing, reflecting, incorporating or based on the other Party's Confidential Information;

12.8.2 erase all the other Party's Confidential Information from its computer systems (to the extent possible); and

12.8.3 certify in writing to the other Party that it has complied with the requirements of this Clause 12.8, provided that a recipient Party may retain documents and materials containing, reflecting, incorporating or based on the other Party's Confidential Information to the extent required by law or any applicable governmental or regulatory authority.

12.9 The provisions of this Clause 12 shall continue to apply after termination of this Agreement.

**13. Limitation of Liability**

13.1 This Clause 13 prevails over all of this Agreement and sets forth our entire Liability, and your sole and exclusive remedies, in respect of:

13.1.1 performance, non-performance, purported performance, delay in performance or mis-performance of this Agreement or any goods, services or deliverables in connection with this Agreement; or

13.1.2 otherwise in relation to this Agreement or entering into this Agreement.

13.2 Neither Party excludes or limits its Liability for:

13.2.1 its fraud; or

13.2.2 death or personal injury caused by its Breach of Duty; or

13.2.3 any breach of the obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982; or

13.2.4 any other Liability which cannot be excluded or limited by applicable law.

13.3 Subject to Clause 13.2, we do not accept and hereby exclude any Liability for Breach of Duty other than any Liability arising pursuant to the terms of this Agreement.

13.4 Subject to Clause 13.2, we shall not have any Liability in respect of any:

13.4.1 indirect or consequential losses, damages, costs or expenses;

13.4.2 loss of actual or anticipated profits;

13.4.3 loss of contracts;

13.4.4 loss of use of money;

13.4.5 loss of anticipated savings;

13.4.6 loss of revenue;

13.4.7 loss of goodwill;

13.4.8 loss of reputation;

13.4.9 loss of business;

13.4.10 ex gratia payments;

13.4.11 loss of operation time;

13.4.12 loss of opportunity;

13.4.13 loss caused by the diminution in value of any asset; and/or

13.4.14 loss of, damage to, or corruption of, data;

whether or not such losses were reasonably foreseeable or we or our agents or contractors had been advised of the possibility of such losses being incurred. For the avoidance of doubt, Clauses 13.4.2 to 13.4.14 (inclusive) of this Clause 13.4 apply whether such losses are direct, indirect, consequential or otherwise.

13.5 Subject to Clause 13.2, our total aggregate Liability arising out of or in connection with all claims in aggregate (including warranty claims and losses relating to the breach of warranty) shall be limited to the lower of:

13.5.1 110% of all amounts paid and total other sums payable, in aggregate, by you to us under this Agreement in the 12 months prior to the date on which the claim first arose; or

13.5.2 £100,000.00

13.6 The limitation of Liability under Clause 13.5 has effect in relation both to any Liability expressly provided for under this Agreement and to any Liability arising by reason of the invalidity or unenforceability of any term of this Agreement.

13.7 You acknowledge and accept that we only provide the Equipment and Services to you on the express condition that we will not be responsible for, nor shall we have any Liability (subject to Clause 13.2) directly or indirectly for any act or omission of you, or your employees, agents or subcontractors, or any third party.

13.8 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms 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.

**14. Termination**

14.1 This Agreement shall commence on the date on which this Agreement is entered into and, unless terminated earlier in accordance with the termination provisions under this Agreement, shall continue in full force and effect until the latest of:

14.1.1 the completion of the provision of the Services, and the supply of any Equipment, as specified in the Schedule, in accordance with this Agreement; or

14.1.2 the conclusion of payment of all sums due under this Agreement.

14.2 Without prejudice to any of our rights or remedies whether under this Agreement or at law, we may terminate this Agreement immediately by notice in writing to you if:

14.2.1 you fail to pay any amount due under this Agreement on the due date for payment and such amount remains in default not less than seven days after being notified to make such payment;

14.2.2 you are in material breach of any of your obligations under this Agreement, and, where such material breach is capable of remedy, you fail to remedy such breach within a period of 10 Business Days of being notified of such breach by us; and/or

14.2.3 you give notice to any of your creditors that you have suspended or are about to suspend payment or if you shall be unable to pay your debts within the meaning of Section 123 of the Insolvency Act 1986, or an order is made or a resolution is passed for your winding-up or an administration order is made or an administrator is appointed to manage your affairs, business and property or a receiver and/or manager or administrative receiver is appointed in respect of all or any of your assets or undertaking or circumstances arise which entitle the court or a creditor to appoint a receiver and/or manager or administrative receiver or administrator or which entitle the court to make a winding-up or bankruptcy order or you take or suffer any similar or analogous action in consequence of debt in any jurisdiction.

14.3 Termination of this Agreement shall be without prejudice to any accrued rights or remedies of either Party.

14.4 Termination of this Agreement shall not affect the coming into force, or continuance in force, of any provision which is expressly

or by implication intended to come into or continue in force on or after such termination.

14.5 On termination of this Agreement for any reason:

14.5.1 we shall cease to provide the Equipment and Services under this Agreement; and

14.5.2 you must pay to us all amounts owing to us under this Agreement, whether invoiced or not.

**15. Force Majeure**

15.1 Subject to Clause 13.2, neither Party shall have any Liability for any breach, hindrance or delay in performance of its obligations under this Agreement which is caused by an Event of Force Majeure, regardless of whether the circumstances in question could have been foreseen. An "**Event of Force Majeure**" means any cause outside of the Party's reasonable control, including act of God, actions or omissions of third parties (including hackers, suppliers, couriers, governments, quasi-governmental, supra-national or local authorities), insurrection, riot, civil war, civil commotion, war, hostilities, threat of war, warlike operations, armed conflict, imposition of sanctions, embargo, breaking off of diplomatic relations or similar actions, national emergencies, terrorism, nuclear, chemical or biological contamination or sonic boom, piracy, arrests, restraints or detainments of any competent authority, blockade, strikes or combinations or lock-out of workmen, epidemic, fire, explosion, storm, flood, drought, adverse weather conditions, loss at sea, earthquake, natural disaster, accident, collapse of building structures, failure of plant machinery or machinery or third party computers or third party hardware or vehicles, failure or problems with public utility supplies (including general: electrical, telecoms, water, gas, postal, courier, communications or Internet disruption or failure), shortage of or delay in or inability to obtain supplies, stocks, storage, materials, equipment or transportation.

15.2 Each of the Parties agrees to inform the other upon becoming aware of an Event of Force Majeure, such information to contain details of the circumstances giving rise to the Event of Force Majeure.

15.3 The performance of each Party's obligations shall be suspended during the period that the circumstances persist and such Party shall be granted an extension of time for performance equal to the period of the delay.

15.4 Each Party shall bear its own costs incurred by the Event of Force Majeure.

15.5 If the performance of any obligations is delayed under this Clause 15, each Party shall nevertheless accept performance as and when the other shall be able to perform.

15.6 If the Event of Force Majeure continues without a break for more than one month, either Party may terminate this Agreement immediately by notice to the other, in which event neither Party shall have any Liability (subject to Clause 13.2) to the other Party by reason of such termination.

15.7 If we have contracted to provide identical or similar services to more than one customer and we are prevented from fully meeting our obligations to you due to an Event of Force Majeure, we may decide at our absolute discretion which contracts we will perform and to what extent.

**16. Notices**

16.1 Any notice given to either Party under or in connection with this Agreement shall be in writing, addressed to the relevant Party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that Party may have specified to the other Party in writing, and shall be delivered personally, sent by pre-paid first class post, recorded delivery or commercial courier.

16.2 A notice shall be deemed to have been received: if delivered personally, when left at the address referred to in Clause 16.1; if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second Business Day after posting; or, if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

16.3 The provisions of this Clause 16 shall not apply to the service of any proceedings or other documents in any legal action.

**17. Assignment**

You must not assign, transfer, charge or otherwise encumber, create any trust over, or deal in any manner with, this Agreement or any right, benefit or interest under it, nor transfer, novate or sub-contract any of your obligations under it, without our prior written consent (such consent not to be unreasonably withheld or delayed).

**18. Severance**

18.1 If any court or competent authority finds that any provision of this Agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this Agreement shall not be affected.

18.2 If any invalid, unenforceable or illegal provision of this Agreement would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

**19. Waiver**

A waiver of any right or remedy under this Agreement is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a Party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

**20. Third party rights**

A person who is not a Party shall not have any rights under or in connection with this Agreement.

**21. Variation**

This Agreement may not be varied except by a written document signed by or on behalf of each of the Parties.

**22. No partnership**

Nothing in this Agreement shall constitute a partnership or employment or agency relationship between the Parties.

**23. Governing law and jurisdiction**

23.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including

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Congleton
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CW12 1PN
**T: +44 (01260) 281431**

**Aberdeen Office:**
Mactech House
Howe Moss Drive
Kirkhill Industrial Estate
Dyce
Aberdeen
AB21 0GL
**T:+44(01224) 722666**

non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England.

23.2 Each Party irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement, or its subject matter or formation.