

Standard Terms & Conditions

For the supply of IT related services

Kerv Transform

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Version:

SP/24/05

Date:

3rd May, 2024

Status:

Draft / Review / **Approved**

Classification:

Public / Internal / **Confidential** / Commercial

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TERMS & CONDITIONS

SP/22/05

1. Application & Definitions

1.1. Application

- 1.1.1. This document defines standard Terms and Conditions as issued by Kerv Transform for the supply of IT related services. These Terms and Conditions must be read in conjunction with the associated Scope of Works.
- 1.1.2. In the event of conflict between these Terms and Conditions and the Statement of Works, the Statement of Works shall prevail unless expressly otherwise agreed by the Supplier in writing.
- 1.1.3. These Terms and Conditions shall apply to the provision of ICT Services by the Supplier to the Customer.

1.2. Definitions and Interpretation

- 1.2.1. In these Terms and Conditions, unless the context otherwise requires, the following expressions have the following meanings:

"Agreement"	means the Agreement entered into by the Customer and the Supplier to which these Terms and Conditions apply and shall universally carry the same meaning as "Contract / Agreement / Professional Services Agreement / PSA"
"Business Day"	means, any day other than Saturday and Sunday or recognised public holidays as published in the United Kingdom.
"Commencement Date"	means the date upon which these Terms and Conditions come into effect and therefor apply as set out in the Statement of Works in relation to these Terms and Conditions;
"ITAD"	IT Asset Disposal, for the provision of services relating to the secure and compliant disposal of IT hardware and data
"GDPR"	The General Data Protection Regulation (GDPR) (EU) 2016/679
"Services"	means the services to be provided by the Supplier to the Customer as set out in the Statement of Works
"Equipment"	means the Equipment listed in the Statement of Works
"Fees"	means any and all sums payable by the Customer to the Supplier arising out of the performance of the Supplier's obligations under these Terms and Conditions
"Software"	means any and all programs, applications, instructions or similar that may from time to time be installed on the Customers computer systems
"Hardware"	means any and all Computing hardware, servers, appliances, Storage, Media or similar that may from time to time be managed or serviced as part of this Agreement
"Terms of Payment"	means the terms of payment of Fees as set out in the Schedule.
"ADR"	Alternate Dispute Resolution

- 1.2.2. The headings used in these Terms and Conditions are for convenience only and shall have no effect upon the interpretation of these Terms and Conditions.

- 1.2.3. Words imparting the singular number shall include the plural and vice versa.

- 1.2.4. References to any gender shall include the other gender.

2. Supplier's Obligations

2.1. The Supplier shall;

- 2.1.1. With effect from the Commencement Date the Supplier shall, in consideration of the Fees being paid in accordance with the terms of payment, provide the Services expressly identified in the Statement of Works, or otherwise agreed under these Terms and Conditions.
- 2.1.2. The Supplier will use due care skill and diligence to perform the Services identified in the Statement of Works or otherwise agreed under these Terms and Conditions.
- 2.1.3. The Supplier undertakes to provide the personnel necessary for the performance of the Services and that such personnel shall possess the appropriate skills, qualifications and expertise suitable for the tasks assigned to them.
- 2.1.4. The Supplier will not guarantee the performance of any Software which the Supplier has undertaken to support as part of the Statement of Works.
- 2.1.5. The Supplier shall not be responsible for any failures in hardware or software due to manufacturer design
- 2.1.6. The Supplier shall use all reasonable endeavours to complete its obligations under the Statement of Works.
- 2.1.7. With respect to the supply of onsite Service Personnel at any given location, the Supplier shall not be deemed responsible for delays of service due to conditions beyond reasonable control (predominantly relating to industrial strikes or Force Majeure).

3. Customer's Obligations

3.1. The Customer shall:

- 3.1.1. allow the Supplier access to the Equipment and all relevant Software for investigation purposes;
- 3.1.2. provide adequate working space and facilities for the Supplier's staff; and
- 3.1.3. Co-operate with them in the diagnosis of any defect or malfunction in the Equipment or Software.
- 3.1.4. The Customer shall allow the Supplier the use of any Equipment, computer systems, peripherals or other hardware necessary to enable it to provide the Services and shall be responsible for procuring, installing and maintaining all communications media not supplied by the Supplier.
- 3.1.5. The Customer will not allow any changes or modifications to the Software to be made by any party other than those authorised by the Supplier. If such changes or modifications are carried out without authorisation or appropriate notification, the Supplier reserves the right to review these Terms and Conditions and make adjustments accordingly.
- 3.1.6. The Customer will make freely available to the Supplier all documentation associated with the Equipment, working documents, original Software installation media, current data backups, Equipment and any other relevant hardware for the efficient maintenance of the Equipment and the Software.
- 3.1.7. The Customer shall create regular data backups in such a manner as to minimise any potential data loss and to ensure that these are made available to the Supplier as required.
- 3.1.8. The Customer shall take all reasonable precautions to ensure the safety and health of the Supplier's personnel while such personnel are at the Customer's premises.
- 3.1.9. The Customer shall nominate at least one peer level point of contact to that of the Supplier, that should be readily available to respond to queries arising from the ongoing services provided through this agreement
- 3.1.10. The Customer shall respond to scheduling of Service Reviews and ensure that 2 consecutive review schedules are not missed

4. Data Protection & GDPR

- 4.1. For the purposes of this Condition, the terms “Data Controller”, “Data Processor”, “Data Subject”, “Personal Data”, “Process” and “Processing shall have the meaning prescribed under the GDPR.
- 4.2. The Supplier shall (and shall ensure that it’s entire Staff) comply with any notification requirements under the GDPR and both Parties will duly observe all their obligations under the GDPR which arise in connection with the Agreement.
- 4.3. Notwithstanding the general obligation in this clause, where the Supplier is processing Personal Data (as defined by the GDPR) as a potential Data Processor or Sub Processor for the Customer the Supplier shall:
 - 4.3.1. Process the Personnel Data only in accordance with instructions from the Customer (which may be specific instructions or instructions of a general nature) as set out in this Agreement or as otherwise notified by the Customer;
 - 4.3.2. comply with all applicable laws;
 - 4.3.3. Process the Personal Data only to the extent; and in such manner as is necessary for the provision of the Provider’s obligations under this Contract or as is required by Law or any Regulatory Body;
 - 4.3.4. implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;
 - 4.3.5. take reasonable steps to ensure the reliability of its staff and agents who may have access to the Personal Data;
 - 4.3.6. obtain prior written consent from the Customer in order to transfer the Personal Data to any sub-contractor for the provision of the Services;
 - 4.3.7. not cause or permit the Personal Data to be transferred outside of the European Economic Area without the prior consent of the Customer;
 - 4.3.8. ensure that all staff and agents required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this Condition;
 - 4.3.9. implement best practice and processes to minimise any risk of staff and agents publishing disclosing or divulging any of the Personal Data to any third parties unless directed in writing to do so by the Customer
 - 4.3.10. not disclose Personnel Data to any third parties in any circumstances other than with the written consent of the Customer or in compliance with a legal obligation imposed upon the Customer; and
 - 4.3.11. notify the Customer (within five Working Days) if it receives a complaint or request relating to the Customer’s obligations under the GDPR
- 4.4. The Supplier shall reasonably indemnify and keep reasonably indemnified the Customer against reasonable actions, claims, costs, damages, deductions, expenses losses and liabilities incurred by the Customer in respect of any breach by the Supplier (and/or any act or omission of any sub-contractor) of its obligations under this Clause to a maximum liability as stipulated under section “Supplier Insurance Standards”.
- 4.5. The provision of this Condition shall apply during the Agreement Period and for a period of 1 year thereafter.

5. Security, ransomware and virus protection

- 5.1. Kerv Transform do not warrant protection against malicious behaviour, nor the availability or performance of security appliances or software – KERV TRANSFORM cannot guarantee 100% protection from such threats.
 - 5.2. Kerv Transform provide a 'run and maintain' service and does not accept liability in any form for direct or indirect loss, impact to business or loss of service as a result of any security breach, ransomware, virus attack of other electronic means of compromise under any circumstances.
 - 5.3. In the event that Kerv Transform identify areas of potential risk, these shall be diligently informed to the Customer for review and relevant remedial planning.
6. Backup, data protection and recovery, data loss
 - 6.1. Kerv Transform shall use all reasonable endeavours to ensure best practices are leveraged in the management of backup processes but do not warrant the availability or performance of data backup appliances or software – Kerv Transform cannot guarantee 100% assurance of operation and successful recovery. As a result, Kerv Transform accept no liability in any form for direct or indirect loss, impact to business or loss of service as a result of any process with regards to data backup and recovery services.
7. Copyright and Intellectual Property
 - 7.1. Content created by the Supplier
 - 7.1.1. Intellectual Property Rights in this Agreement and all documents, records, data, or other information produced by the Supplier as part of the Services shall belong exclusively to the Supplier.
 - 7.2. Content created by the Customer
 - 7.2.1. Intellectual Property Rights in this Agreement and all documents, records, data, or other information produced by the Customer as part of the Services shall belong exclusively to the Customer.
8. Payment Terms
 - 8.1. All payment of Fees required to be made pursuant to these Terms and Conditions by either Party shall be made within 30 calendar days' of the date upon which issue (and subsequent receipt) of the relevant invoice without any set-off, withholding or deduction except such amount (if any) of tax as that party is required to deduct or withhold by law.
 - 8.2. The Customer agrees to pay the Fees in accordance with the Commercial Schedule in the Statement of Works.
9. Additional charges
 - 9.1. Any such charge for additional services shall be invoiced separately from any Fees due under the Statement of Works and shall be agreed by both parties in writing prior to the commencement of work.
 - 9.2. The Customer shall pay the Supplier for any additional services provided by the Supplier that are not specified in the Statement of Works in accordance with the Supplier's 8 hour standard daily rate of £800+VAT or £400+VAT per 4 hour slots.
 - 9.3. The Customer shall pay the Supplier for any travel expenses incurred for emergency out of hour's requirements. Any such charge for additional services shall be invoiced separately from any Fees due under the Statement of Works and shall be agreed by both parties in writing prior to the commencement of work.
 - 9.4. All sums payable by either Party pursuant to these Terms and Conditions are exclusive of any value added or other tax or other taxes on profit, for which that Customer shall be additionally liable.
10. Amendments and Variations to this Agreement

10.1. No amendment or variation to this Agreement shall be effective unless it is agreed in writing and signed by or on behalf of each of the Parties.

10.2. Both Supplier and Customer shall comply with any formal procedures for amending or varying the Agreement which either the Supplier or Customer may have in place from time to time.

11. Termination

11.1. The exercise of rights to terminate this Agreement shall not affect any existing rights or obligations of either Party

11.2. Customer initiated termination - end of contracted term;

11.2.1. The Customer must provide the Supplier with a minimum 3 months termination notice of contract in writing prior to the contract end date.

11.2.2. In the event that the Customer fails to provide the Supplier with a minimum 3 months termination notice of contract in writing prior to the contract end date, the contract shall automatically renew for 12 months. If the contract automatically renews, a minimum 3 month termination notice is required prior to the contract end date.

11.3. Customer initiated termination - during contracted term;

11.3.1. The Customer may terminate this Agreement by written notice with immediate effect if:

11.3.1.1. The Supplier commits a breach of this Agreement, and fails to remedy such breach (if capable of remedy) within ten business days of service of a notice by the Customer on the Supplier stating the breach;

11.3.1.2. or the Supplier becomes insolvent or enters into administration, or has a receiver or liquidator appointed or ceases to trade or makes an arrangement with its creditors to pay any debt; or

11.3.1.3. the Supplier is prevented from providing the Service (or any part thereof) for a period of longer than 10 business days for reasons beyond its reasonable control.

11.3.1.4. Upon serving termination by the Customer, the Supplier shall return any payments made in advance for services that have not been rendered within 14 calendar days of acceptance of termination by the Supplier. Services that have not been rendered shall be repaid for full months of service on a pro-rata basis. For example if the contract start date is 1st January, the annual term is paid in full, termination is served and accepted on 15th May, the balance due to be returned = $[(\text{Annual Services Fee} \div 12) \times 7]$. Note that licenses for monitoring, and backups are non-refundable and will be excluded from the annual service fee calculation.

11.3.2. The Supplier may terminate this Agreement by written notice with immediate effect if:

11.3.2.1. any sum owing to the Supplier by the Customer under any of the provisions of the Agreement is not paid within 10 business days of the due date for payment;

11.3.2.2. the Customer is in breach of any of its obligations hereunder;

11.3.2.3. the Customer has entered into liquidation (other than for the purposes of a bona fide amalgamation or reconstruction) whether compulsory or voluntarily or compounds with its creditors generally or has an administrator, administrative receiver or receiver appointed over all or a substantial part of its undertaking or assets;

11.3.2.4. the Customer has become bankrupt or shall be deemed unable to pay its debts by virtue of Section 123 of the Insolvency Act 1986;

11.3.2.5. the Customer ceases or threatens to cease to carry on business; or

- 11.3.2.6. any circumstances whatsoever beyond the reasonable control of the Supplier necessitate and justify the Termination of the Services.

12. Liability

12.1. Mutual Liability

- 12.1.1. The Customer and Supplier shall reasonably indemnify the other party against reasonable damages, costs, claims and expenses suffered by the other party arising from loss or damage to any equipment (including that of third parties) caused by the other party, or its agents or employees.
- 12.1.2. Where either party consists of two or more persons such expression throughout shall mean and include such two or more persons and each or any of them. All obligations on the part of such a party shall be joint and several obligations of such persons.
- 12.1.3. The maximum liability either party shall be liable for shall be restricted without exception to the values as prescribed under section "Supplier Insurance Standards"

13. Marketing

13.1. Case study and website

- 13.1.1. The Customer agrees that the Supplier may utilise the business relationship described within the Statement of Works for the purpose of marketing or through the use of digital content such as the internet or via its Website to promote the services delivered herein.
- 13.1.2. Such materials may be produced for the purpose of a Case Study and made publically available for prospecting new clients.

13.2. Third Party references

- 13.2.1. The Customer agrees to participate and to provide written or verbal reference to the Third Parties who may be seeking similar services from the Customer. The Customer agrees to not unreasonably withhold any such reference made upon reasonable request.

14. Sub-contracting and assignment

- 14.1. The Customer or the Supplier shall not assign to a third party any or all of its rights or obligations under these Terms and Conditions without the prior written consent of the other party.

15. Supplier insurance standards

- 15.1. The Supplier shall maintain the following insurance standards.

Professional indemnity insurance of not less than £1,000,000 per claim

Public liability insurance for not less than £5,000,000 per claim

Employer's liability insurance of not less than £10,000,000 per claim

- 15.2. The supplier agrees to maintain and keep maintained such insurance levels throughout the duration of the Agreement and for a period of 1 year after this Agreement terminates.

16. Non-solicit

16.1. Mutual non-solicitation of staff and resources

- 16.2. Both the Supplier and Customer warrants and undertakes that it will not for the duration of the Term on their own account or in partnership or association with any person, firm, company or organisation or otherwise and whether directly or indirectly during or for a period of 6 months from the end of the Term solicit or entice away or attempt to solicit or entice away (or authorise the taking of any such

action by any other person) any executive or worker of the Supplier or the Customer who has worked with the Supplier or the Customer on the provision of the Services during the Term.

17. Force Majeure

17.1. Neither Party to these Terms and Conditions shall be liable for any failure or delay in performing their obligations where such failure or delay results from any cause that is beyond the reasonable control of that Party. Such causes include, but are not limited to: power failure, Internet Service Supplier failure, industrial action, transport delays and incidents, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is beyond the control of the Party in question.

18. Waiver

18.1. No waiver by either Party of any breach of these Terms and Conditions shall be considered as a waiver of any subsequent breach of the same or any other provision. A waiver of any term, provision or condition of these Terms and Conditions shall be effective only if given in writing and signed by the waiving party and then only in the instance and for the purpose for which any waiver is given.

18.2. No failure or delay on the part of any Party in exercising any right, power or privilege under these Terms and Conditions shall operate as a waiver of, nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise of or the exercise of any other right, power or privilege.

19. Severance

19.1. If any provision of these Terms and Conditions is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other remaining provisions of these Terms and Conditions and the remainder of the provision in question shall not be affected thereby.

20. Notices

20.1. Serving notices

20.1.1. All notices under these Terms and Conditions shall be in writing and be deemed duly given if signed by, or on behalf of, a duly authorised officer of the Party giving the notice.

20.1.2. Notices shall be deemed to have been duly given:

20.1.3. when delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient; or

20.1.4. when sent, if transmitted by fax or e-mail and a successful transmission report or return receipt is generated; or

20.1.5. on the fifth business day following mailing, if mailed by national ordinary mail, postage prepaid; or

20.1.6. on the tenth business day following mailing, if mailed by airmail, postage prepaid.

20.1.7. in each case addressed to the most recent address, e-mail address, or facsimile number notified to the other Party.

20.1.8. Service of any document for the purposes of any legal proceedings concerning or arising out of these Terms and Conditions shall be effected by either Party by causing such document to be delivered to the other Party at its registered or principal office, or to such other address as may be notified to one Party by the other Party in writing from time to time.

21. Law and Jurisdiction

21.1. Governing Law

21.1.1. These Terms and Conditions (including any non-contractual matters and obligations arising therefrom or associated therewith) shall be governed by, and construed in accordance with, the laws of England and Wales.

21.1.2. Any dispute, controversy, proceedings or claim between the Parties relating to these Terms and Conditions (including any non-contractual matters and obligations arising therefrom or associated therewith) shall fall within the jurisdiction of the courts of England and Wales.

21.2. Alternative Dispute Resolution

21.2.1. In the event of a Dispute arising in relation to the provision of the services in this Agreement, both parties agree to Alternate Dispute Resolution through a registered ADR authority based in the United Kingdom

21.2.2. Each party shall be liable for their own costs arising from ADR exclusively and in no way shall be liable for costs arising through the use of ADR for the other party.

END OF TERMS & CONDITIONS



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