

Terms and Conditions

INSTALLATION TECHNOLOGY LTD - STANDARD TERMS AND CONDITIONS FOR SUPPLY OF GOODS AND SERVICES

1 DEFINITIONS

In this document the following words shall have the following meanings:

- 1.1 "Agreement" means these Terms and Conditions together with the terms of any applicable Equipment Schedule and/or Specification of Services Schedule
- 1.2 "Customer" means the organisation or person who purchases goods and services from the Supplier;
- 1.3 "Intellectual Property Rights" means all patents, registered and unregistered designs, copyright, trademarks, know-how and all other forms of intellectual property wherever in the world are enforceable;
- 1.4 "Specification of Services Schedule" or "Specification Document" means a statement of work, quotation or other similar document describing the goods and services to be provided by the Supplier and the price to be paid;
- 1.5 "Equipment Schedule" means the items of hardware and software to be provided by the supplier and/or to which the services in the Specification of Services will be applied
- 1.5 "Supplier" means Installation Technology Limited, Unit 13 Headley Park Area 10, Headley Road East, Woodley, Berks, RG5 4SW

2 GENERAL

- 2.1 These Terms and Conditions shall apply to all contracts for the supply of goods and services by the Supplier to the Customer.
- 2.2 Before the commencement of the services the Supplier shall submit to the Customer a Specification Document confirming the general scope of the supply of services and goods and the price payable.
- 2.3 The Supplier shall use all reasonable endeavors to complete the supply of goods and services within estimated time frames, but time shall not be of the essence in the performance of any services.

3 PRICE AND PAYMENT

- 3.1 The price for the supply of goods and services is as set out in the Specification Document. The Supplier shall invoice the Customer Monthly and for reasonable out-of-pocket expenses incurred in providing those goods and services.
- 3.2 Invoiced amounts shall be due and payable within 30 days of the date of the invoice. The Supplier shall be entitled to charge interest on overdue invoices from the date when payment

becomes due from day to day until the date of payment at a rate of 2.50% per annum above the base rate of the Bank of England.

- 3.3 In the event that the Customer's procedures require that an invoice be submitted against a purchase order for payment, the Customer shall be responsible for issuing such purchase order before the goods and services are supplied.

- 3.4 If, due to action or inaction on the part of the Customer, work is unable to be commenced on the date agreed the Customer agrees to pay the Supplier's actual costs incurred by the delay.

4 SPECIFICATION OF THE GOODS

- 4.1 All goods shall be required only to conform to the specification in the Specification Document. For the avoidance of doubt no description, specification or illustration contained in any product pamphlet or other sales or marketing literature of the Supplier and no representation written or oral, correspondence or statement shall form part of the contract.

- 4.2 The Customer assumes all responsibility for performance and delivery of hardware and software items mandated by them and any adverse impact of the delivery by the Supplier of any services described in the Specification Document.

5 DELIVERY

- 5.1 The date of delivery specified by the Supplier is an estimate only. Time for delivery shall not be of the essence of the contract and the Supplier shall not be liable for any loss, costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the goods.

- 5.2 All risk in the goods shall pass to the Customer upon delivery.

6 TITLE

Title in the Goods shall not pass to the Customer until the Supplier has been paid in full for the Goods.

7 CUSTOMER' OBLIGATIONS

- 7.1 To enable the Supplier to perform its obligations under this Agreement the Customer shall:

- 7.1.1 Co-operate with the Supplier;
- 7.1.2 Provide the Supplier with any information reasonably required by the Supplier;
- 7.1.3 Obtain all necessary permissions and consents which may be required before the commencement of the services including any passes and permits required for access to and

- working on the Customer's site(s) in order to carry out the services; and
- 7.1.4 Comply with such other requirements as may be set out in the Specification Document or otherwise agreed between the parties
- 7.2 The Customer shall be liable to compensate the Supplier for any expenses incurred by the Supplier as a result of the Customer's failure to comply with Clause 7.1.
- 7.3 Without prejudice to any other rights to which the Supplier may be entitled, in the event that the Customer terminates or cancels the goods and services agreed to in the Specification Document, the Customer shall be required to pay to the Supplier as agreed damages and not as a penalty the full amount of any third party costs to which the supplier has committed and in respect of cancellations on less than five working days' written notice the full amount of the goods and services contracted for as set out in the Specification Document, and the Customer agrees this is a genuine pre-estimate of the Supplier's losses in such a case. For the avoidance of doubt, the Customer's failure to comply with any obligations under Clause 7.1 shall be deemed to be a cancellation of the goods and services and subject the payment of the damages set out in this Clause.
- 7.4 In the event that the Customer or any third party, not being a sub-contractor of the Supplier and not being a sub-contractor, whose use was mandated by the Supplier, shall omit or commit anything which prevents or delays the Supplier from undertaking or complying with any of its obligations under this Agreement, then the Supplier shall notify the Customer as soon as possible and:
- 7.4.1 The Supplier shall have no liability in respect of any delay to the completion of any project;
- 7.4.2 If applicable, the timetable for the project will be modified accordingly;
- 7.4.3 The Supplier shall notify the Customer at the same time if it intends to make any claim for additional costs.
- 8 ALTERATIONS TO THE SPECIFICATION**
- 8.1 The parties may at any time mutually agree upon and execute new Specification Documents. Any alterations in the scope of goods and/or services to be provided under this Agreement shall be set out in writing in the Specification Document, which shall reflect the changed goods and/or services and price, and any other terms agreed between the parties.
- 8.2 The Customer may at any time request alterations to the Specification Document by notice in writing to the Supplier. On receipt of the request for alterations the Supplier shall, within 5 working days or such other period as may be agreed between the parties, advise the Customer by notice in writing of the effect of such alterations, if any, on the price and any other terms already agreed between the parties.
- 8.3 Where the Supplier gives written notice to the Customer agreeing to perform any alterations on terms different to those already agreed between the parties, the Customer shall, within 5 working days of receipt of such notice or such other period as may be agreed between the parties, advise the Supplier by notice in writing whether or not it wishes the alterations to proceed.
- 8.4 Where the Supplier gives written notice to the Customer agreeing to perform alterations on terms different to those already agreed between the parties, and the Customer confirms in writing that it wishes the alterations to proceed on those terms, the Specification Document shall be amended to reflect such alterations and thereafter the Supplier shall perform this Agreement upon the basis of such amended terms.
- 9 SECURITY & CONFIDENTIALITY**
- The Customer will use all reasonable endeavors and good industry practice to maintain the confidentiality of any data and information entrusted to it by the Supplier and to disclose it only to such of its employees, servants, contractors, consultants, clients and business associates who need to know it for the purpose of receiving, operating and maintaining the goods and services described in the Specification Document.
- 10 WARRANTY**
- 10.1 The Supplier warrants that as from the date of delivery for a period of 12 months the goods and all their component parts, where applicable, are free from any defects in workmanship, construction or materials and agrees to rectify any such defects notified to it during this period. This warranty does not apply to any data or associated software delivered supplied to or licensed to the customer under this Agreement.
- 10.2 The Supplier does not guarantee the accuracy or completeness of any data and associated software supplied or licensed by the Supplier to the Customer under this Agreement or that it is free from error or defect. The Supplier does not make any other warranty about the data and associated software.
- 10.3 The Supplier warrants that the services performed under this Agreement shall be performed using reasonable skill and care, and of a quality conforming to generally accepted industry standards and practices.
- 10.4 Except as expressly stated in this Agreement, all warranties whether express or implied, by operation of law or otherwise, are hereby excluded in relation to the goods and services to be provided by the Supplier.
- 11 INDEMNIFICATION**

The Customer shall indemnify the Supplier against all claims, costs and expenses which the Supplier may incur and which arise, directly or indirectly, from the Customer's breach of any of its obligations under this Agreement, including any claims brought against the Supplier alleging that any goods and/or services provided by the Supplier in accordance with the Specification Document infringes a patent, copyright or trade secret or other similar right of a third party.

12 LIMITATION OF LIABILITY

12.1 Nothing in these Terms and Conditions shall exclude or limit the Supplier's liability for death or personal injury resulting from the Supplier's negligence or that of its employees, agents or sub-contractors

12.2 Except in respect of death or personal injury due to negligence for which no limit applies, the entire liability of the Supplier to the Customer in respect of any claim whatsoever or breach of this Agreement, whether or not arising out of negligence, shall be limited to the price paid by the Customer to which the claim relates.

12.3 In no event shall the Supplier be liable to the Customer for any loss of business, loss of opportunity or loss of profits or for any other indirect or consequential loss or damage whatsoever. This shall apply even where such a loss was reasonably foreseeable, or the Supplier had been made aware of the possibility of the Customer incurring such a loss.

13 TERMINATION

Either party may terminate this Agreement forthwith by notice in writing to the other if:

13.1 the other party commits a material breach of this Agreement and, in the case of a breach capable of being remedied, fails to remedy it within 30 calendar days of being given written notice from the other party to do so;

13.2 the other party commits a material breach of this Agreement which cannot be remedied under any circumstances;

13.3 the other party passes a resolution for winding up (other than for the purpose of solvent amalgamation or reconstruction), or a court of competent jurisdiction makes an order to that effect;

13.4 the other party ceases to carry on its business or substantially the whole of its business; or

13.5 the other party is declared insolvent or convenes a meeting of or makes or proposes to make any arrangement or composition with its creditors; or a liquidator, receiver, administrative receiver, manager, trustee or similar officer is appointed over any of its assets.

14 INTELLECTUAL PROPERTY RIGHTS

14.1 All Intellectual Property Rights produced from or arising as a result of the performance of this

Agreement shall, so far as not already vested, become the absolute property of the Supplier, and the Customer shall do all that is reasonably necessary to ensure that such rights vest in the Supplier by the execution of appropriate instruments or the making of agreements with third parties.

14.2 Where the Intellectual Property Rights are owned by the Supplier, a non-exclusive, non-transferable license to use the Intellectual Property will be granted by the Supplier to the Customer on the terms set out in the Specification Document

14.3 Except where expressly permitted in this Agreement, the Customer must not sell the data and associated software (or any part of it) or to make any use of the data and associated software which is not referred to in this Agreement.

14.4 The Customer recognises that the Intellectual Property Rights to commercial off the shelf software packages will normally be vested in the manufacturer of the software (a third party). In such circumstances the Supplier will supply the software on the understanding that the Customer enters into a license agreement with the manufacturer.

15 FORCE MAJEURE

Neither party shall be liable for any delay or failure to perform any of its obligations if the delay or failure results from events or circumstances outside its reasonable control, including but not limited to acts of God, strikes, lock outs, accidents, war, acts of terrorism, fire, the act or omission of government, highway authorities or any telecommunications carrier, operator or administration or other competent authority, or the delay or failure in manufacture, production, or supply by third parties of equipment or services, and the party shall be entitled to a reasonable extension of its obligations after notifying the other party of the nature and extent of such events.

16 INDEPENDENT CONTRACTORS

The Supplier and the Customer are contractors independent of each other, and neither has the authority to bind the other to any third party or act in any way as the representative of the other, unless otherwise expressly agreed to in writing by both parties. The Supplier may, in addition to its own employees, engage sub-contractors to provide all or part of the services being provided to the Customer and such engagement shall not relieve the Supplier of its obligations under this Agreement or any applicable Specification Document.

17 ASSIGNMENT

The Customer shall not be entitled to assign its rights or obligations or delegate its duties under this Agreement without the prior written consent of the Supplier.

18 SEVERABILITY

If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any Court of competent jurisdiction such provision shall be severed and the remainder of the provisions herein shall continue in full force and effect as if this Agreement had been agreed with the invalid illegal or unenforceable provision eliminated.

19 WAIVER

The failure by either party to enforce at any time or for any period any one or more of the Terms and Conditions herein shall not be a waiver of them or of the right at any time subsequently to enforce all Terms and Conditions of this Agreement.

20 NOTICES

Any notice to be given by either party to the other may be served by email, fax, personal service or by post to the address of the other party given in the Specification Document or such other address as such party may from time to time have communicated to the other in writing, and if sent by email shall unless the contrary is proved be deemed to be received on the day it was sent, if sent by fax shall be deemed to be served on receipt of an error free transmission report, if given by letter shall be deemed to have been served at the time at which the letter was delivered personally or if sent by post shall be deemed to have been delivered in the ordinary course of post.

21 ENTIRE AGREEMENT

This Agreement contains the entire agreement between the parties relating to the subject matter and supersedes any previous agreements, arrangements, undertakings or proposals, oral or written. Unless expressly provided elsewhere in this Agreement, this Agreement may be varied only by a document signed by both parties.

22 NO THIRD PARTIES

Nothing in this Agreement is intended to, nor shall it confer any rights on a third party.

23 GOVERNING LAW AND JURISDICTION

This Agreement shall be governed by and construed in accordance with the law of England and the parties hereby submit to the exclusive jurisdiction of the English courts.

24 INTERPRETATION

24.1 In this agreement:

"Data Protection Laws" means the GDPR and the Privacy and Electronic Communication Regulations 2003, any amendment, consolidation or re-enactment thereof, any legislation of equivalent purpose or effect enacted in the United Kingdom, or, where relevant, the European Union, and any orders,

guidelines and instructions issued under any of the above by relevant national authorities, a judicial authority in England and Wales or, where relevant, a European Union judicial authority;

"GDPR" means the General Data Protection Regulation (EU) 2016/679 as in force from time to time;

"Personal Data" has the meaning given to it by the GDPR, but shall only include personal data to the extent that such personal data, or any part of such personal data, is processed in relation to the services provided under this agreement; and

"Replacement National Legislation" means legislation in the United Kingdom, which is enacted to cover, in whole or part, the same subject matter as the GDPR.

24.2 Words and phrases with defined meanings in the GDPR have the same meanings when used in this Agreement.

24.3 If the GDPR ceases to apply to the United Kingdom, references to the GDPR, to provisions within it and to words and phrases with defined meanings in it, shall be deemed references to Replacement National Legislation, the nearest equivalent provisions in it and the nearest equivalent words and phrases in it (as the case may be).

24.4 For the avoidance of doubt, compliance with this Agreement shall not relieve the Supplier of any of its direct obligations under the GDPR.

Note: The reference to "Supplier" in clause 1.4 may need to be amended depending on how the supplier is defined in the specific agreement which is being varied.

25 DETAILS OF PROCESSING

Note: Article 28 GDPR and the ICO's guidance on processing contracts explains that the following information in this clause 2 needs to be set out in the processor clauses. This information will need to be inserted depending on the specific agreement that is being varied.

25.1 The following details apply to the processing being carried out under this agreement:

25.1.1 The Personal Data will be processed for the provision of Services as set out in the agreement.

26 OBLIGATIONS

26.1 Each party shall comply with the Data Protection Laws applicable to it in connection with this agreement and shall not cause the other party to breach any of its obligations under Data Protection Laws.

26.2 Where a party, or a sub-contractor of a party, processes Personal Data (that party being the "Processor") on behalf of the other party or a member of its group (that party being the

- "Controller") in connection with this agreement, the Processor shall, or shall ensure that its sub-contractor shall:
- 26.2.1 process the Personal Data only on behalf of the Controller, only for the purposes of performing its obligations under this agreement, and only in accordance with instructions contained in this agreement or instructions received in writing from the Controller from time to time. The Processor shall notify the Controller if, in its opinion, any instruction given by the Controller breaches Data Protection Laws or other applicable law;
 - 26.2.2 not publish, disclose or divulge any of the Personal Data to any third party (including for the avoidance of doubt the data subject itself), unless directed to do so in writing by the Controller;
 - 26.2.3 document all processing in accordance with Article 30 of the GDPR;
 - 26.2.4 only grant access to the Personal Data to persons who need to have access to it for the purposes of performing this agreement and, to the extent such persons are granted access, that they are only granted access to the part or parts of the Personal Data necessary for carrying out their role in performance of this agreement;
 - 26.2.5 ensure that all persons with access to the Personal Data are:
 - 26.2.5.1 reliable, trustworthy and suitably trained on Data Protection Laws and as a result are aware of the Processor's duties as a processor and their personal obligations with regards to this agreement and Data Protection Laws;
 - 26.2.5.2 subject to an obligation of confidentiality or are under an appropriate statutory obligation of confidentiality; and
 - 26.2.5.3 notified of the confidential nature of the Personal Data;
 - 26.2.6 as a minimum, take all measures required pursuant to Article 32 of the GDPR in accordance with best practice and provide a written description of, and rationale for, each of the technical and organisational measures implemented, or to be implemented, to:
 - 26.2.6.1 protect the Personal Data against unauthorised or unlawful processing and accidental loss, destruction, damage, alteration or disclosure; and
 - 26.2.6.2 detect and report Personal Data breaches within good time;
 - 26.2.7 not engage another processor (a "Sub-Processor") to process the Personal Data on its behalf without specific written consent of the Controller, approving a named Sub-Processor, such consent always subject to:
 - 26.2.7.1 the Processor binding any Sub-Processor by written agreement, imposing on the Sub-Processor obligations in relation to the Personal Data equivalent to those set out in this agreement, and a right to procure that the Sub-Processor ceases processing without delay on termination of this agreement; and
 - 26.2.7.2 the Processor remaining liable to the Controller for the acts and omissions of any Sub-Processor, as if they were the acts and omissions of the Processor;
 - 26.2.8 notify the Controller within five business days if it receives any communication from a third party relating directly or indirectly to the processing of the Personal Data, including but not limited to requests to exercise rights under Data Protection Laws, complaints or general correspondence and shall provide the Controller with a copy of any such communication. The Processor shall not take action in relation to such communication, unless compelled by law, without the Controller's prior approval, and shall comply with any instructions the Controller gives in relation to such communication;
 - 26.2.9 taking into account the nature of the processing and so far as is possible, assist the Controller with the fulfilment of the Controller's obligation to respond to requests for exercising data subject's rights under the Data Protection Laws and in responding to any other request, complaint or communication by, but not limited to, providing information requested by the Controller and relevant Personal Data within a reasonable time and in a commonly used electronic format, taking into account the timescales for the Controller complying with the data subject's request under Data Protection Laws;
 - 26.2.10 taking into account the nature of the processing and the information available to the Processor, assist the Controller in ensuring compliance with its obligations pursuant to Articles 32 to 36 of the GDPR inclusive. Such assistance shall include, but shall not be limited to:
 - 26.2.10.1 notifying the Controller immediately upon discovering a Personal Data breach, providing all information it has, or reasonably should have, in relation to the Personal Data breach, so that the Controller is able to satisfy its obligations under Articles 33 and 34 of the GDPR and is able to properly investigate the Personal Data breach;
 - 26.2.10.2 assisting in the risk assessment of the processing of the Personal Data which the Processor carries out under this agreement in order that the Controller is able to complete a data protection impact assessment in compliance with Article 35 of the GDPR, and consult with a relevant supervisory authority if necessary in compliance with Article 36 of the GDPR, including providing information about the Processor's current technical and organisational measures, and what further measures it could put in place to mitigate any risks to the rights and freedoms of data subjects, and the risks of Personal Data breach in relation to the Personal Data, as identified by it or the Controller;

- 26.2.11 at the Controller's option, delete or return to the Controller the Personal Data, and procure that any party to whom the Processor has disclosed the Personal Data does the same:
- 26.2.11.1 when the Controller instructs the Processor to do so, in which case the Processor shall be excused from its obligations under this agreement to the extent that such action prevents it from complying with those obligations; or
- 26.2.11.2 after the termination of Services under this agreement which involve processing the Personal Data, such obligation to include deleting or returning all copies of the Personal Data, unless applicable law requires the Processor to retain the Personal Data. Where the Controller requests the return of Personal Data, the Processor shall use all reasonable endeavors to ensure it is in the format and on the media specified by the Controller;
- 26.2.12 comply with any instructions of the Controller to modify the Personal Data, or restrict its processing, and procure that any party to whom the Processor has disclosed the Personal Data does the same;
- 26.2.13 where reasonably possible, store the Personal Data in a structured, commonly used and machine-readable format;
- 26.2.14 not transfer Personal Data outside of the European Economic Area without the prior written consent of the Controller. Where the Controller consents to the transfer of Personal Data outside the European Economic Area, the Processor shall comply with:
 - 26.2.14.1 the obligations of a controller under Articles 44 to 50 of the GDPR inclusive by providing an adequate level of protection to any Personal Data transferred; and
 - 26.2.14.2 any reasonable instructions of the Controller in relation to such transfer;
- 26.2.15 have a data protection officer where required by the GDPR, and where a data protection officer is not required, have a named individual that is responsible and available to deal with data protection issues as and when they arise in conjunction with the Controller;
- 26.2.16 make available to the Controller all information necessary to demonstrate compliance with this agreement insofar as it relates to data protection; and
- 26.2.17 allow the Controller, or its external advisers (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit the Processor's data processing activities and those of its relevant agents, group companies and sub-contractors, and comply with all reasonable requests or directions by the Controller, to enable to Controller to verify and procure that the Processor is in full compliance with its obligations under this agreement insofar as it relates to data protection.

- 26.3 Notwithstanding anything in this agreement, information provided by a Processor to a Controller, whether through audit or otherwise, may be disclosed by the Controller if requested or required generally or specifically by applicable law, a court of competent jurisdiction, a supervisory authority, a certification body (as referred to by Article 43 of the GDPR) or a monitoring body (as referred to by Article 41 of the GDPR) for the purposes of responding to a claim, request for information, inquiry or investigation.

Note: On the basis that the potential fines for breach of the GDPR are much higher than for previous data protection laws, Colleges should look at the liability clauses in their Processor contracts and consider whether liability is capped at too low an amount. Under this clause 5, the Supplier's liability to the College for breach of data protection is unlimited.