

## Agreed terms

### 1. Interpretation

#### 1.1 Definitions:

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

**Delivery Date:** means the date the Buyer requires the delivery of Equipment.

**Delivery Location:** the address the Seller should deliver the Equipment to.

**Equipment:** the equipment, details of which are set out in the Quote.

**Excess Usage Charge:** the Price payable for usage over the initial quantity of items listed in the Quote.

**Managed Services:** any one-off, ongoing or regular services which the Seller is providing to the Buyer (which may include installation or professional services). These are further described at Schedule 1 below where applicable.

**Payment Date[s]:** the date of this agreement OR the date[s] of when the Equipment/Managed Services are made available to the Buyer.

**Price:** the price for the Equipment/Managed Services as in the Quote.

**Software:** pre-packaged software or electronic software/software license supplied to the Buyer by the Seller pursuant to the Quote.

**Quote:** the Seller's written quotation setting out details of the applicable Equipment, Software and/or Managed Services and the proposed Price.

**VAT:** value added tax chargeable in the UK.

#### 1.2 Interpretation:

- (a) A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.

- (b) Any phrase introduced by the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the

sense of the words preceding those terms.

- (c) A reference to **writing** or **written** includes emails.

### 2. Price and payment

- 2.1 The Buyer shall pay the Price on the Delivery of the Equipment, Managed Services or Software as set out in the Quotation. Payment shall be made to the bank account nominated in writing by the Seller.

- 2.2 The Price:

- (a) excludes amounts in respect of VAT, which the Buyer shall additionally be liable to pay the Seller at the prevailing rate, subject to the receipt of a valid VAT invoice; and

- 2.3 The Seller shall issue the Buyer with an invoice for the Price plus VAT at the prevailing rate (if applicable) on signature of this agreement. The Seller shall ensure that the invoice includes the Equipment, Managed Services and/or Software, the invoice number, the Seller's VAT registration number, and any supporting documentation that the Buyer may reasonably require.

- 2.4 Each party shall pay interest on any sum due under this agreement, calculated as follows:

- (a) **Rate.** 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- (b) **Period.** From when the overdue sum became due, until it is paid.

- 2.5 The time for payment is of the essence. Payment will only be effected when the Seller receives the Price in cleared funds.

- 2.6 For any Managed Services provided by the Seller, the Seller may increase the Price no more than once in any 12-month period, always provided that the first such increase shall fall after the first anniversary of the Payment Date[s]. The Seller shall give the Buyer not less than one (1) months' notice of any increase. Any such increase shall not exceed the percentage increase, over the last 12 months for which figures are available, in the UK All Items Retail Prices Index; save in any case where the Supplier can reasonably evidence that its own increased costs of delivering the Managed Se

rvices are greater than such amount in which case the increase shall equal that higher amount. Any increase in the Price shall apply with effect from expiry of the Seller's notice.

2.7 Where the Buyer consumes more Managed Services or Software then originally detailed in the Quote, the Seller will enact an Excess Usage Charge at the unit cost detailed in the Quote.

### **3. Delivery and Software**

3.1 The Seller shall deliver the Equipment to the Buyer at the Delivery Location agreed during the Seller's usual business hours.

3.2 If the Buyer fails to take delivery of the Equipment when due the Seller may charge reasonable costs of storage from the Delivery Date until delivery is completed.

3.3 The Delivery Date is approximate only, and the time of delivery is not of the essence. The Seller shall not be liable for any delay in delivery of the Equipment that is caused by:

- (a) events, circumstances or causes beyond its reasonable control; or
- (b) the Buyer's failure to provide the Seller with adequate delivery instructions or any other instructions that are relevant to the sale of the Equipment or provision of Managed Services.

3.4 Delivery is completed on the completion of the Equipment arriving at the Delivery Location.

3.5 If a Quote includes licensed Software products ("**Licensed Software**"), such Licensed Software may be provided by Seller to Buyer subject to an end user license agreement that is either provided in the packaging, available online or is agreed to when the Licensed Software is installed. Nothing herein shall be construed to grant any rights or license to use any Software or other intellectual property in any manner or for any purpose not expressly permitted by such license agreement.

### **4. Title and risk**

4.1 The risk of damage to or loss of the Equipment shall pass to the Buyer on completion of delivery.

4.2 The title to the Equipment shall pass to the Buyer only on payment in full (in cash or cleared funds) of the Price.

4.3 Until title to the Equipment has passed to the Buyer, the Buyer shall:

- (a) store the Equipment separately from all other goods held by the Buyer so that they remain readily identifiable as the Seller's property;
- (b) not remove, deface or obscure any identifying mark on or relating to the Equipment;
- (c) maintain the Equipment in satisfactory condition and keep it insured against all risks for its full price from the date of delivery; and
- (d) provide the Seller promptly with such information and records as the Seller may reasonably request in writing concerning the Buyer's ongoing financial position.

4.4 The Seller may recover Equipment in which title has not passed to the Buyer. The Buyer irrevocably licenses the Seller, its officers, employees and agents, to enter any premises of the Buyer (including with vehicles), in order to satisfy itself that the Buyer is complying with the obligations in clause 4.3 and to recover any Equipment in which property has not passed to the Buyer.

### **5. Manufacturer's warranties**

5.1 To the extent that the benefit of any warranties made by the manufacturer of the Equipment to the Seller can be assigned to the Buyer, the Seller shall, if requested by the Buyer and at cost of the Buyer, assign them to the Buyer.

5.2 Until such assignment, the Seller will co-operate with the Buyer in any reasonable arrangements to provide the Buyer with the benefit of such warranties or like condition, including enforcement at the cost of and for the benefit of the Buyer.

### **6. Termination and Cancellation Charges**

6.1 The Buyer may terminate the order for the Equipment prior to the Delivery Date by paying the Seller 25% of the Price relating to the cancelled Equipment. Otherwise, the amendment, cancellation, or termination of this Agreement will not affect the outstanding obligations of either party

**7. LIMITATION OF LIABILITY. SELLER SHALL NOT BE LIABLE TO THE BUYER FOR ANY DIRECT DAMAGES IN EXCESS OF THE**

**AMOUNT INVOICED HEREUNDER AND BUYER SHALL NOT BE LIABLE FOR DIRECT DAMAGES IN EXCESS OF THE PRICE. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY QUOTE OR ORDER ISSUED HEREUNDER, WHETHER THE CLAIM ALLEGES TORTIOUS CONDUCT (INCLUDING NEGLIGENCE) OR ANY OTHER LEGAL BASIS EVEN IF THE OTHER PARTY HAS ADVANCE NOTICE OF THE POSSIBILITY OF SUCH DAMAGES. THE PRICE REFLECTS THIS ALLOCATION AND DISCLAIMER OF LIABILITY.**

**8. General**

**8.1 Force majeure.** Neither party shall be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control (but which excludes Buyer's non-payment). If the period of delay or non-performance continues for 3 months, the party not affected may terminate this agreement by giving 30 days' written notice to the affected party.

**Entire agreement.**

**8.2** This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

**8.3** Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

**8.4 Variation.** No variation of this agreement shall be effective unless it is in writing and

signed by the parties (or their authorised representatives).

**8.5 Waiver.** A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not:

- (a) waive that or any other right or remedy; or
- (b) prevent or restrict the further exercise of that or any other right or remedy.

**8.6 Severance.** If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement. If any provision or part-provision of this agreement is deemed deleted under this clause 8.6 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

**8.7 Further assurance** Each party shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may reasonably be required for the purpose of giving full effect to this agreement.

**8.8 Third party rights.** No one other than a party to this agreement shall have any right to enforce any of its terms.

**8.9 Governing law.** This agreement, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by, and construed in accordance with the law of England and Wales.

**8.10 Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this agreement or its subject matter or formation.

## **Schedule 1**

### **MANAGED SERVICES.**

If Seller is providing Managed Services (which may include professional, installation or technical services) as set forth in the Quote and/or provided by Seller on-site (whether at the Delivery Location or otherwise), Seller will:

- i. provide those services as described in the Quote.
- ii. exercise due care and skill in the provision of those services

If the Managed Services do not meet the service levels or comply with the terms set forth in the Quote, Buyer must notify Seller in sufficient detail in writing describing the alleged failure, within 30 days of completion of such Managed Services; and Seller will then modify or re-provide such Managed Services so that they perform in accordance with the service levels stated in such Quote within a reasonable time (to be agreed between the parties in writing depending upon the complexity of the issue). The foregoing constitutes Seller's sole obligation and Buyer's sole remedy for Managed Services provided under this Agreement.