

## Terms and Conditions

### 1. Interpretation

#### 1.1 Definitions:

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

**Charges:** the charges payable by you for the supply of the Services by us, as set out in the Contract Details.

**Conditions:** these terms and conditions set out in clause 1 (Interpretation) to clause 11 (General) (inclusive).

**Contract:** the contract between you and us for the supply of the Services and/or Goods in accordance with the Contract Details, these Conditions and the Specification.

**Customer Materials:** all materials, equipment and tools, drawings, specifications and data supplied by you to us.

**Deliverables:** any documents, products and materials developed by us or our agents, subcontractors and personnel as part of or in relation to the Services in any form.

**Goods:** goods (or any part of them) we supply to you which are ancillary to the provision of the Services, including but not limited to any replacement parts required to carry out repair and maintenance services.

**Intellectual Property Rights:** patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, 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.

**Services:** the services, including without limitation any Deliverables, to be provided by us pursuant to the Contract, as described in the Specification.

**Services Start Date:** the day on which we are to commence provision of the Services, as set out in the Contract Details.

**Specification:** the specification for the Services annexed to these Conditions.

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

#### 1.2 Interpretation:

- (a) References to “**you**” in these Terms shall be references to the Customer set out in the Contract Details. References to “**we**”, “**us**” or “**our**” in these Conditions shall be references to the Supplier set out in the Contract Details.
- (b) A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time. A reference to a statute or statutory provision includes any subordinate legislation made from time to time under that statute or statutory provision.
- (c) Any words following 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, description, definition, phrase or term preceding those terms.

- (d) A reference to **writing** or **written** includes email.

### 2. Commencement and term

- 2.1 The Contract shall commence on the date when it has been signed by both parties and shall continue, unless terminated earlier in accordance with its terms, until either party gives to the other not less than [one] months’ written notice to terminate, [expiring on or after the [first] anniversary of the Services Start Date.]
- 2.2 The Conditions will apply to the Contract and will apply in substitution for, and to the exclusion of, any terms purported to apply by you.

### 3. Supply of services

- 3.1 We shall supply the Services to you from the Services Start Date in accordance with the Contract.
- 3.2 In supplying the Services, we shall:
  - (a) perform the Services with reasonable care and skill;
  - (b) use reasonable endeavours to perform the Services in accordance with the service description set out in the Specification;
  - (c) ensure that the Deliverables, and all goods, materials, standards and techniques used in providing the Services are of satisfactory quality and are fit for purpose;
  - (d) observe all reasonable health and safety rules and regulations and security requirements that apply at any of your premises and have been communicated to us, provided that we shall not be liable under the Contract if, as a result of such observation, we are in breach of any of our obligations under the Contract; and
  - (e) take reasonable care of all Customer Materials in our possession and make them available for collection by you on reasonable notice and request, always provided that we may destroy the Customer Materials if you fail to collect the Customer Materials within a reasonable period after termination of the Contract.

### 4. Customer's obligations

- 4.1 You shall:
  - (a) co-operate with us in all matters relating to the Services;
  - (b) provide, for us, our agents, subcontractors, consultants and employees, in a timely manner and at no charge, access to your premises, office accommodation, data and other facilities as required by us; and
  - (c) provide, in a timely manner, such information as we may require, and ensure that it is accurate and complete in all material respects.
- 4.2 If the performance of our obligations under the Contract is prevented or delayed by any act or omission of you, your agents, subcontractors, consultants or employees, we shall:
  - (a) not be liable for any costs, charges or losses sustained or incurred by you that arise directly or indirectly from such prevention or delay;
  - (b) be entitled to payment of the Charges despite any such prevention or delay; and
  - (c) be entitled to recover any additional costs, charges or losses we sustain or incur that arise directly or indirectly from such prevention or delay.

### 5. Goods

- 5.1 We shall deliver the Goods to the location (**Delivery Location**) where the Services to which the Goods relate are to be carried out. Delivery

of the Goods shall be completed on the Goods' arrival at the Delivery Location.

- 5.2 We agree that on installation the Goods shall: (a) conform with their description; (b) be free from material defects in design, material and workmanship; (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and (d) be fit for any purpose held out by us.
- 5.3 Subject to clause 5.4, if: (a) you give notice in writing within a reasonable time of discovery that some or all of the Goods do not comply with clause 5.2; and (b) we are given a reasonable opportunity of examining such Goods, we shall, at our discretion, repair or replace the defective Goods, or refund the price of the defective Goods in full.
- 5.4 We shall not be liable for the Goods' failure to comply with clause 5.2 if: (a) you make any further use of such Goods after giving a notice in accordance with clause 5.3; (b) the defect arises because you failed to follow our oral or written instructions as to the use or maintenance of the Goods or (if there are none) good trade practice; (c) you alter or repair such Goods without our written consent; (d) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; (e) the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory standard.
- 5.5 Except as provided in this clause 5, we shall have no liability to you in respect of the Goods' failure to comply with clause 5.2. The terms of the Contract shall apply to any repaired or replacement Goods supplied by us under clause 5.3.

#### **6. Title and risk**

The risk in the Goods shall pass to you on completion of delivery. To the extent that upon delivery and installation, Goods are irrevocably incorporated into another product, title to such Goods shall pass to you on installation of those Goods. Otherwise, title to Goods shall not pass to you until we receive payment in full (in cash or cleared funds) for the Goods.

#### **7. Intellectual property**

- 7.1 We (and our licensors) shall retain ownership of all Supplier IPRs. You (and your licensors) shall retain ownership of all Intellectual Property Rights in the Customer Materials.
- 7.2 We grant to you, or shall procure the direct grant to you of, a fully paid-up, worldwide, non-exclusive, royalty-free, licence to copy the Supplier IPRs for the purpose of receiving and using the Services and the Deliverables in your business during the term of the Contract.
- 7.3 You grant to us a fully paid-up, worldwide, non-exclusive, royalty-free, non-transferable licence to copy and modify the Customer Materials for the term of the Contract for the purpose of providing the Services to you in accordance with the Contract.

#### **8. Charges and payment**

- 8.1 In consideration for the provision of the Services, you shall pay us the Charges in accordance with this clause 8. In consideration for the provision of any Goods, you shall pay us the price of such Goods as notified by us from time to time.
- 8.2 All amounts payable by you exclude amounts in respect of value added tax (**VAT**), which you shall additionally be liable to pay to us at the prevailing rate (if applicable), subject to receipt of a valid VAT invoice.
- 8.3 We shall submit invoices for the Charges plus VAT if applicable to you [monthly in arrear, on or after the [NUMBER] day of each month].
- 8.4 You shall pay each invoice due and submitted to you by us, within [30] days of receipt, to a bank account nominated in writing by us.

8.5 If you fail to make any payment due under the Contract by the due date for payment, then, without limiting our remedies under clause 10 (Termination):

- (a) you shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each day at 4% a year above Royal Bank of Scotland's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- (b) we may suspend all Services and/or supply of Goods until payment has been made in full.
- 8.6 All amounts due under the Contract from you to us shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

#### **9. Limitation of liability**

- 9.1 Nothing in the Contract shall limit or exclude our liability for: (a) death or personal injury caused by its negligence, or the negligence of its personnel, agents or subcontractors; (b) fraud or fraudulent misrepresentation; (c) breach of the terms implied by section 11B of the Supply of Goods and Services Act 1982 (title and quiet possession); or (d) any other liability which cannot be limited or excluded by applicable law.
- 9.2 Subject to clause 9.1, we shall not be liable to you, whether in contract, delict (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for: (a) loss of profits; (b) loss of sales or business; (c) loss of agreements or contracts; (d) loss of anticipated savings; (e) loss of use or corruption of software, data or information; (f) loss of or damage to goodwill; and (g) any indirect or consequential loss.
- 9.3 Subject to clause 9.1, our total liability to you, whether in contract, delict (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract shall be limited to the actual Charges paid by you.

#### **10. Termination**

- 10.1 Without affecting any other right or remedy available to it, either party to the Contract may terminate it with immediate effect by giving written notice to the other party if:
- (a) the other party commits a material breach of any term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of [10 Business Days] after being notified in writing to do so;
- (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- (d) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 10.2 Without affecting any other right or remedy available to it, we may terminate the Contract with immediate effect by giving written notice to you if: (a) you fail to pay any amount due under the Contract on the due date for payment; or (b) there is a change of control (as defined in section 1124 of the Corporation Tax Act 2010) of you.
- 10.3 On termination of the Contract for whatever reason:

- (a) you shall immediately pay to us all of our outstanding unpaid invoices and interest and, in respect of Goods and/or Services supplied but for which no invoice has been submitted, we may submit an invoice, which shall be payable immediately on receipt;
- (b) any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect; and
- (c) termination or expiry of the Contract shall not affect any of the rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

## 11. General

11.1 **Force majeure.** Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.

### 11.2 Assignment and other dealings.

- (a) You shall not assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with any or all of your rights and obligations under the Contract without our prior written consent.
- (b) We may at any time assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with any or all of our rights under the Contract.

### 11.3 Confidentiality.

- (a) Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 11.3(b).
- (b) Each party may disclose the other party's confidential information:
  - (i) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 11.3; and
  - (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (c) Neither party shall use any other party's confidential information for any purpose other than to perform its obligations under the Contract.

### 11.4 Entire agreement.

- (a) The Contract 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.
- (b) Each party acknowledges that in entering into the Contract it does not rely on and shall have no remedies in respect of any statement,

representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Contract.

11.5 **Variation.** No variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

### 11.6 Waiver.

- (a) A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.
- (b) A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

11.7 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

### 11.8 Notices.

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be: delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or sent by email to the address specified in [SPECIFY RELEVANT DOCUMENT OR PLACE].
- (b) A notice or other communication shall be deemed to have been received: if delivered by hand, on signature of a delivery receipt; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; or, if sent by email, on the next Business Day after transmission.
- (c) This clause shall not apply to the service of any proceedings or other documents in any legal action.

11.9 **Governing law.** The Contract, 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 Scots law.

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