

AGREED TERMS

1. DEFINITIONS & INTERPRETATION

1.1 The following definitions and rules of interpretation apply in this agreement.

Aggregated Data means data, including Customer Data, which has been Anonymised and that is tracked across time and which is not confined to one Customer or Authorised User.

Anonymised means data that is not likely, acting reasonably and having regard to other data available, to identify a living individual from the anonymised information.

Authorised Representative means a director, company secretary or other nominated representative of the Customer, duly authorised to bind the Customer to these Terms and/or the Licence Agreement, as such authorised representative is more particularly detailed in the Customer Agreement.

Authorised Users means those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Services, as further described in condition 7.4.

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

Charges means the Purchase Price together with the Service Fees.

Cloud means the delivery of the Services over the internet.

Contract means the contract between the Supplier and the Customer for the supply of Equipment and/or Services comprising the Customer Agreement, the Purchase Order and these Terms.

Customer means the entity who purchases the Equipment and/or Services from the Supplier.

Customer Agreement means the agreement entered into by the Customer and the Supplier for the supply of Equipment and/or Services in accordance with these Terms.

Customer Data means the data, including any Personal Data, inputted by the Customer, Authorised Users or the Supplier on the Customer's behalf for the purpose of using the Services or facilitating the Customer's use of the Services and for which the Customer is responsible.

Data Protection Legislation means the UK Data Protection Legislation and (for so long as and to the extent that the law of the EU has legal effect in the UK) the General Data Protection Regulation ((EU) 2016/679) and any other directly applicable EU Regulation relating to data protection and privacy.

Documentation means the documents provided by the Supplier for the Software, in either printed text or machine readable form, including, where necessary, technical documentation, program specification and operations manual.

Effective Date means the last date of signing of the Customer Agreement.

Equipment means the equipment (or any part of it) provided by the Supplier to the Customer in accordance with these Terms and as set out in the Purchase Order.

Hosting Service means the hosting service the Supplier provides (via a subcontract with a third party provider) to enable Authorised Users to access and use the Services.

Initial Service Term means the term that is more particularly described and detailed in the Customer Agreement.

Licence Agreement means the licence agreement for Software, which requires to be accepted by an Authorised Representative of the Customer before first using the Software.

Normal Business Hours means 9.00 am to 5.00 pm local UK time, each Business Day.

Operator Card means the card provided by the Supplier to the Customer to enable the Equipment to identify Authorised Users and permit access by the Authorised Users to the Services.

Password means the alphanumerical code provided by the Supplier to the Customer and its Authorised Users to enable access to the Services.

Personal Data has the meaning given in the Data Protection Legislation.

Purchase Order means the Customer's order for the supply of Equipment and/or Services.

Purchase Price means the price for the Equipment as set out in the Purchase Order or, if no price is quoted, the price set out in the Supplier's published price list at the date of the order.

Renewal Period means the period described in condition 16.1.

Services means the services, including data services and the provision of the Hosting Service, provided by the Supplier to the Customer in accordance with these Terms as more particularly described in the Purchase Order.

Service Fees means the fees payable by the Customer to the Supplier for the Services as set out in the Purchase Order.

Service Term has the meaning given in condition 16.1 (i.e. the Initial Service Term together with any subsequent Renewal Periods).

Software means the software which enables the use of the Services.

Specification means the data sheets for the Equipment, which data sheets are available via the Supplier's website www.reactec.com;

Supplier means Reactec Limited registered in Scotland with company number SC221428.

Terms means these terms and conditions as amended from time to time in accordance with condition 19.

UK Data Protection Legislation means any data protection legislation from time to time in force in the UK including the Data Protection Act 1998 and the Data Protection Act 2018 or any successor legislation.

Virus means any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

- 1.2 Condition, schedule and paragraph headings shall not affect the interpretation of these Terms.
- 1.3 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality). A reference to a party includes its successors and permitted assigns.
- 1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision shall include all subordinate legislation made under that statute or statutory provision.
- 1.7 A reference to writing or written includes fax and e-mail.
- 1.8 References to conditions and schedules are to the conditions and schedules of these Terms; references to paragraphs are to paragraphs of the relevant schedule to these Terms.

2. BASIS OF CONTRACT

- 2.1 A Purchase Order constitutes an offer by the Customer to purchase Equipment and/or Services in accordance with the Customer Agreement and these Terms.
- 2.2 A Purchase Order shall only be deemed to be accepted when the Customer issues written acceptance of the Purchase Order.
- 2.3 Any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions of the Equipment or illustrations or descriptions of the Services contained in the Supplier's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Equipment described in them. They shall not form part of the Contract or have any contractual force.
- 2.4 These Terms apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.5 These Terms shall apply to the supply of both Equipment and Services except where application to one or the other is specified.

A. EQUIPMENT TERMS AND CONDITIONS

3. DELIVERY OF EQUIPMENT

3.1 The Supplier may deliver the Equipment by separate instalments. Each instalment shall be invoiced and paid for in accordance with the provisions of the applicable Purchase Order. Each instalment shall be a separate contract and no cancellation or termination by either party of any one instalment shall entitle the Customer to repudiate or cancel any other instalment.

3.2 No Purchase Order which has been accepted by the Supplier may be cancelled by the Customer, except where such cancellation is confirmed in writing by the Supplier and provided that the Customer indemnifies the Supplier in full against all loss (including without limitation loss of profit), costs (including without limitation the cost of all labour and materials used), damages, charges and expenses incurred by the Supplier as a result of cancellation.

3.3 The Supplier shall use its reasonable endeavours to deliver the Equipment on the date or dates specified in the Purchase Order, but any such date is approximate only. If no dates are so specified, delivery shall be within a reasonable time of acceptance of the Purchase Order. Time is not of the essence as to the delivery of the Equipment and the Supplier is not in any circumstances liable for any delay in delivery, however caused.

3.4 Delivery shall be made during Normal Business Hours. The Supplier may levy additional charges for any deliveries made outside Normal Business Hours or outside the United Kingdom at the Customer's request.

3.5 The Customer shall be responsible (at the Customer's cost) for preparing the Customer's premises for: (i) the installation of the Equipment; and/or (ii) the provision of training by the Supplier. The Customer shall be responsible for the provision of all necessary access and facilities reasonably required to install the Equipment and (if applicable) provide training to the Customer. If the Supplier is prevented from carrying out installation and/or training on the specified date because no such preparation has been carried out, the Supplier may levy additional charges to recover its loss arising from this event.

3.6 The Customer shall test and inspect the Equipment on delivery to ensure that it corresponds with the requirements of the Purchase Order. The Customer shall be deemed to have accepted the Equipment when the Customer has had seven days from the delivery date to inspect it.

3.7 The Supplier shall be responsible for any damage, shortage or loss in transit to the Equipment, provided that (i) the Customer notifies it to the Supplier (or its carrier, if applicable) within three days of delivery of the Equipment; and (ii) the Equipment has been handled in accordance with the Supplier's stipulations. Any remedy under this condition 3.7 shall be limited, at the option of the Supplier, to the replacement or repair of any Equipment which is proven to the Supplier's satisfaction to have been lost or damaged in transit.

3.8 Where the Supplier agrees to provide and the Customer agrees to purchase further Equipment other than the Equipment detailed in the first Purchase Order, such agreement shall be embodied in a further Purchase Order. Each order for further Equipment shall be

made under, and shall incorporate, these Terms (as the same may be varied or otherwise amended from time to time).

4. QUANTITY AND DESCRIPTION

4.1 The quantity and description of the Equipment shall be as set out in the Purchase Order. The Supplier shall use reasonable endeavours to ensure that the Equipment shall correspond in all material respects to any applicable Specification.

4.2 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Supplier shall be subject to correction without any liability on the part of the Supplier.

4.3 The Supplier reserves the right (but does not assume the obligation) to make any changes in the specification of the Equipment which are required to conform with any applicable legislation. Where the Supplier is not the manufacturer of ancillary Equipment, the Supplier shall use reasonable endeavours to transfer to the Customer the benefit of any warranty or guarantee given by the manufacturer to the Supplier.

4.4 The Supplier's employees, contractors and agents are not authorised to make any representations or contractually binding statements concerning the Equipment.

5. RISK AND TITLE

5.1 The Equipment shall be at the risk of the Supplier until delivery to the Customer at the place of delivery specified in the Purchase Order.

5.2 Ownership of the Equipment shall pass to the Customer on the later of completion of delivery and when the Supplier has received in full in cleared funds all sums due to it in respect of the Equipment.

5.3 Until ownership of the Equipment has passed to the Customer under condition 5.2, the Customer shall:

5.3.1 hold the Equipment in trust on behalf of the Supplier;

5.3.2 maintain the Equipment (at no cost to the Supplier) in satisfactory condition and store the Equipment so that it remains readily identifiable as the Supplier's property;

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

5.3.4 keep the Equipment insured on the Supplier's behalf for its full price against all risks with a reputable insurer.

5.4 The Customer's right to possession of the Equipment before ownership has passed to it shall terminate immediately if any of the circumstances set out in condition 16.3 arise or if the Customer encumbers or in any way charges the Equipment, or if the Customer fails to make any payment to the Supplier on the due date.

5.5 The Customer grants the Supplier, its agents and employees an irrevocable licence at any time to enter any premises where the Equipment is or may be stored in order to inspect it, or

where the Customer's right to possession has terminated, to remove it. All costs incurred by the Supplier in repossessing the Equipment shall be borne by the Customer.

5.6 On termination of the Contract for any reason, the Supplier's (but not the Customer's) rights in this condition 5 shall remain in effect.

6. WARRANTY

6.1 The Supplier warrants to the Customer that for a period of 12 months from the date of delivery the Equipment is free from material defects in workmanship and materials. The Supplier undertakes (subject to the remainder of this condition 6) at its option, to repair or replace Equipment (other than consumable items) which is found to be defective as a result of faulty materials or workmanship within twelve months of delivery.

6.2 The Supplier shall not in any circumstances be liable for a breach of the warranty contained in condition 6.1 unless:

6.2.1 the Customer gives written notice of the defect to the Supplier within seven days of the time when the Customer discovers or ought to have discovered the defect; and

6.2.2 after receiving the notice, the Supplier is given a reasonable opportunity of examining such Equipment and the Customer (if asked to do so by the Supplier) returns such Equipment to the Supplier's place of business at the Customer's cost for the examination to take place there.

6.3 The Supplier shall not in any circumstances be liable for a breach of the warranty in condition 6.1 if:

6.3.1 the Customer makes any use of Equipment in respect of which it has given written notice under condition 6.2.1;

6.3.2 the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Equipment or (if there are none) good trade practice; or

6.3.3 the Customer alters or repairs the relevant Equipment without the written consent of the Supplier.

6.4 Any repaired or replacement Equipment shall be under warranty for the unexpired portion of the twelve month period.

6.5 The Supplier shall not in any circumstances be liable for any damage or defect to the Equipment caused by: (i) improper use of the Equipment; (ii) use of the Equipment outside its normal application; or (iii) exceptional use of the Equipment, which exceptional use shall be deemed to be use of the Equipment out with the Specification if applicable and/or the parameters of use as may be detailed in a data sheet, which the Customer may request from the Supplier in writing or as such data sheet is otherwise made available via the Supplier's website from time to time.

6.6 The warranty in condition 6.1 does not apply to any (a) Services, (b) Software, (c) Documentation, (d) consumables or (e) hardware or services manufactured or provided by a third party.

B. Services Terms and Conditions

7. SERVICES

7.1 The Supplier shall, during the Service Term, provide the Services and make available the Documentation to the Customer on and subject to these Terms. The Customer agrees to accept the terms of the Licence Agreement upon first use of the Software by the Customer and acknowledges that access to the Software is integral to the provision of the Services. The Customer hereby warrants and undertakes that an Authorised Representative of the Customer shall sign or otherwise accept the Licence Agreement prior to the Customer commencing use of the Software and the Services.

7.2 During the Service Term the Supplier shall use commercially reasonable endeavours to make the Services available except for:

7.2.1 planned maintenance carried out during the maintenance window of 8.00pm to 12.00am UK time or such other maintenance window as may be stipulated by the Supplier in advance; and

7.2.2 unscheduled maintenance performed outside Normal Business Hours, provided that the Supplier has used reasonable endeavours to give the Customer notice in advance.

7.3 Subject to the Customer paying the Service Fees in accordance with the Contract, the Supplier hereby grants to the Customer a non-exclusive, non-transferable right to permit the Authorised Users to use the Services during the Service Term solely for the Customer's internal business operations.

7.4 In relation to the Authorised Users, the Customer undertakes that:

7.4.1 each Authorised User shall keep secure and confidential (i) their Password; and (ii) their Operator Card, for their use of the Services and shall not permit any other person, including but not limited to, any other Authorised User to use either their Password and/or their Operator Card;

7.4.2 it shall be responsible for managing the access rights of Authorised Users to the Services;

7.4.3 it shall permit the Supplier to audit the Services in order to establish (i) the Equipment being utilised by the Customer and/or the Authorised Users in conjunction with the Data Service; and (ii) the name and email address of each Authorised User who has access rights to the Services. Such audit may be conducted at any time by the Supplier's monitoring of the Services;

7.4.4 if any of the audits referred to in condition 7.4.3 reveal that the Customer has underpaid Service Fees, then without prejudice to the Supplier's other rights, the Customer shall pay to the Supplier an amount equal to such underpayment as calculated in accordance with the price for the Services set out in the Supplier's published price list within 10 Business Days of the date of the relevant audit.

7.5 The Customer shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that:

- 7.5.1 is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
- 7.5.2 facilitates illegal activity;
- 7.5.3 depicts sexually explicit images;
- 7.5.4 promotes unlawful violence;
- 7.5.5 is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
- 7.5.6 in a manner that is otherwise illegal or causes damage or injury to any person or property;

and the Supplier reserves the right, without liability or prejudice to its other rights, to disable the Customer's access to the Services if the Customer or any Authorised User breaches the provisions of this condition.

7.6 The Customer shall not:

- 7.6.1 access all or any part of the Services in order to build a product or service which competes with the Services and/or the Documentation;
- 7.6.2 use the Services to provide Services to third parties;
- 7.6.3 license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services available to any third party except the Authorised Users, or
- 7.6.4 attempt to obtain, or assist third parties in obtaining, access to the Services, other than as provided under this condition 7.

7.7 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, in the event of any such unauthorised access or use, shall promptly notify the Supplier.

7.8 The rights provided under this condition 7 are granted to the Customer only and shall not be considered granted to any subsidiary or holding company of the Customer.

7.9 The Customer's use of the Services shall be subject always to the Customer accessing the Software by entering into the Licence Agreement. The Supplier shall have no liability whatsoever to the Customer in relation to the provision of the Services in the event that the Customer does not accept the terms of the Licence Agreement.

8. SUPPLIER'S OBLIGATIONS

8.1 The Supplier undertakes that the Services will be performed with reasonable skill and care.

8.2 Notwithstanding condition 7.2 and 8.1, the Supplier:

- 8.2.1 does not warrant that the Customer's use of the Services and/or the Documentation will be uninterrupted or error-free; or that the Services and/or the Documentation

and/or the information obtained or reports created by or data available to the Customer through the Services will meet the Customer's requirements;

- 8.2.2 is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services and/or the Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities; and
- 8.2.3 shall not in any circumstances be liable for any damage or defect to the Services caused by use outside their normal application.
- 8.3 These Terms shall not prevent the Supplier from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are the same as or similar to those provided under these Terms.
- 8.4 The Supplier warrants that to the best of its knowledge it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under these Terms.

C. GENERAL TERMS AND CONDITIONS

9. CUSTOMER DATA

- 9.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This condition 9.1 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation. Schedule 1 sets out the scope, nature and purpose of processing by the Supplier, the duration of the processing, the types of Personal Data and the categories of Data Subjects (as defined in the Data Protection Legislation).
- 9.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the controller and the Supplier is the processor (where 'controller' and 'processor' have the meanings set out in the Data Protection Legislation).
- 9.3 Without prejudice to the generality of condition 9.1 above, the Customer warrants and undertakes:
 - (a) that it has appropriately informed data subjects of how their Personal Data may be processed under the Contract;
 - (b) that it has all necessary and appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Supplier for the duration and purposes of the Contract in accordance with all applicable Data Protection Legislation;
 - (c) that Personal Data may be lawfully processed by the Supplier under the terms of the Customer Agreement;
 - (d) to have in place a secure method of transfer, when transferring Personal Data to the Supplier to safeguard against accidental loss, destruction or damage to the Personal Data.

The Customer shall indemnify the Supplier against all losses, liabilities, fines, damages, costs and expenses incurred or suffered by the Supplier as a result of the Customer's breach of conditions 9.2 and 9.3. The total liability of the Customer to the Supplier arising under the indemnity in this condition 9.3 shall not exceed £10,000,000.

9.4 Without prejudice to the generality of condition 9.1 above, the Supplier shall in relation to any Personal Data processed by it in the performance of its obligations under the Contract:

- (a) process Personal Data in accordance with this Agreement, the Customer's written instructions from time to time unless the Supplier is required by the laws of the European Union applicable to the Supplier to process Personal Data ("Applicable Laws"). Where the Supplier is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, the Supplier shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Supplier from so notifying the Customer;
- (b) have in place such technical and organisational measures as are reasonably necessary and appropriate to safeguard against the unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures;
- (c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;
- (d) assist the Customer, at the Customer's cost, in responding to any request from a Data Subject (as defined in the Data Protection Legislation) and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with regulators, pertaining to matters under the Contract;
- (e) notify the Customer without undue delay on becoming aware of a Personal Data breach;
- (f) at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of this Agreement unless the Supplier is required by Applicable Law to store the Personal Data; and
- (g) maintain records and information to demonstrate its compliance with this condition 9 and allow for reasonably requested audits by the Customer on reasonable notice.

9.5 The Customer acknowledges and agrees that the Supplier may process, or permit the processing of, Personal Data outside the European Economic Area subject to the following conditions:

- (a) the Supplier has provided appropriate safeguards in relation to the transfer;

- (b) the data subject(s) has enforceable rights and effective legal remedies; and
- (c) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred.

9.6 The Customer consents to the Supplier appointing sub-contractors as third-party processors of Personal Data under the Contract. The Supplier confirms that it has entered into written agreements substantially on those third-parties standard terms of business. As between the Customer and the Supplier, the Supplier shall remain fully liable (to the extent the Supplier itself is liable under the Contract) for all acts or omissions of any third party processor appointed by it pursuant to this condition 9.6.

9.7 The Customer agrees that: (i) all intellectual property rights in the Aggregated Data are the property of the Supplier or its licensors as the case may be and the Customer shall have no rights in or to the Aggregated Data; and (ii) the Supplier may utilise the Aggregated Data as the Supplier shall see fit, including the sale, licence, publication or other distribution of the Aggregated Data. Notwithstanding condition 9.4, the Customer acknowledges and agrees to the Supplier processing the Personal Data for the purposes of creating Aggregated Data.

9.8 Save for the Aggregated Data as described in condition 9.7, the Customer shall own all right, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy, quality, appropriateness and intellectual property ownership or right to use of the Customer Data. Further, the Customer may elect to use or not to use the Customer Data at the Customer's sole risk.

10. CUSTOMER'S OBLIGATIONS

10.1 The Customer shall:

- 10.1.1 provide the Supplier with all necessary co-operation and access to such information as may be required by the Supplier in order to provide the Equipment and Services;
- 10.1.2 comply with all applicable laws;
- 10.1.3 carry out its obligations under these Terms in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, the Supplier may adjust any agreed timetable or delivery schedule as reasonably necessary;
- 10.1.4 ensure that the Authorised Users use the Services in accordance with these Terms and the Licence Agreement and shall be responsible for any Authorised User's breach of these Terms and/or the Licence Agreement;
- 10.1.5 obtain and shall maintain all necessary licences, consents, and permissions necessary for the Supplier, its contractors and agents to perform their obligations under these Terms;
- 10.1.6 ensure that its network and systems comply with the relevant specifications provided by the Supplier from time to time;

- 10.1.7 be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to the Supplier's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet; and
- 10.1.8 be solely responsible for assessing the suitability of the operating environment for safe and proper use of the Equipment. The Supplier, insofar as is permitted at law, shall under no circumstances whatsoever be liable to the Customer whether in contract, tort (including negligence), breach of statutory duty or otherwise for loss or damage suffered in connection with the suitability of the operating environment in which the Equipment is used.

11. PROPRIETARY RIGHTS

- 11.1 The Customer acknowledges and agrees that the Supplier and/or its licensors own all intellectual property rights in or arising out of or in connection with the Equipment, the Software, the Services and the Documentation. Except as expressly stated herein, neither these Terms nor the Licence Agreement grant the Customer any rights to, or in, patents, copyright, database rights, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licences in respect of the Equipment, the Services, the Software and the Documentation.
- 11.2 The Supplier confirms that to the best of its knowledge it has all the rights in relation to the Equipment and the Services that are necessary to grant all the rights it purports to grant under these Terms.

12. CHARGES AND PAYMENT

- 12.1 The Customer shall pay to the Supplier the Charges in accordance with this condition 12.1.
- 12.2 If requested by the Supplier, the Customer shall on the Effective Date provide to the Supplier valid, up-to-date and complete credit card details or authorisation to initiate a direct debit or approved purchase order information acceptable to the Supplier and any other relevant valid, up-to-date and complete contact and billing details and, if the Customer provides:
 - 12.2.1 its credit card details to the Supplier, the Customer hereby authorises the Supplier to bill such credit card for the Charges payable in respect of the Initial Service Term in advance in accordance with the Contract.
 - 12.2.2 its approved purchase order information to the Supplier, the Supplier shall invoice the Customer quarterly or annually in advance for the applicable Charges payable in accordance with the Contract and the Customer shall pay each invoice within 30 days of the date of such invoice.
 - 12.2.3 its authorisation to initiate a direct debit on the Customer's account, the Customer shall provide details of its bank account, including sort code, account number and account name and shall duly authorise the Supplier to collect the Charges in advance by direct debit in accordance with the Contract.
- 12.3 If the Supplier has not received payment within 14 days of the due date, and without prejudice to any other rights and remedies of the Supplier:

- 12.3.1 the Supplier may, without liability to the Customer, disable the Customer's Password, account and access to all or part of the Services and the Supplier shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid;
 - 12.3.2 the Supplier may, without liability to the Customer, exercise the Supplier's rights in accordance with condition 5 hereof to acquire possession of the Equipment from the Customer; and
 - 12.3.3 interest shall accrue on a daily basis on such due amounts in accordance with the Late Payment of Commercial Debts (Interest) Act 1998, commencing on the due date and continuing until fully paid, whether before or after judgment.
- 12.4 All amounts and fees stated or referred to in these Terms:
- 12.4.1 shall be payable in pounds sterling;
 - 12.4.2 are exclusive of value added tax, which shall be added to the Supplier's invoice(s) at the appropriate rate.
- 12.5 If at any time whilst using the Services, the Supplier deems that the Customer has exceeded the amount of storage space reasonably made available to the Customer within the Cloud, the Supplier reserves the right to charge the Customer and the Customer shall pay the Supplier's then current data storage fees, notified to the Customer by Supplier in writing from time to time.
- 12.6 Thirty days before the expiry of the Initial Service Term or end of the Renewal Period (as defined in condition 16.1), the Supplier shall be entitled to seek to increase the Service Fees and, should the Customer not agree to such an increase, the Contract shall terminate at the end of the Initial Service Term or Renewal Period (as appropriate).

13. TRAINING

- 13.1 Should a Customer request or purchase training from the Supplier in the Purchase Order or otherwise in respect of the Equipment and the Services the following provisions shall apply:
- 13.1.1 the Customer shall give the Supplier at least forty-eight (48) hours notice should it require to re-schedule any training session. In the event that the Customer cancels a training session on less than forty-eight (48) hours notice, then the Customer shall remain liable for payment and, if monies have been paid in advance the Supplier reserves the right to withhold such sums. The Supplier may decide at its sole discretion whether to offer an alternative training date;
 - 13.1.2 in the event that the Supplier cancels a training session on less than twenty-four (24) hours notice to the Customer, then the Customer shall be entitled to a re-scheduled session on the same terms and if the Customer cannot reasonably attend on an alternative date having exhausted all options, the Supplier shall refund the relevant cost for training which has already been paid; and
 - 13.1.3 in the event that the Customer changes the venue of the training session, the Customer must provide the Supplier with at least forty-eight (48) hours notice. The

Supplier may decide at its sole discretion whether to provide training at the alternative venue.

14. CONFIDENTIALITY

14.1 Each party undertakes that it shall not at any time during the Contract, and for a period of five years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party except as permitted by condition 14.2.

14.2 Each party may disclose the other party's confidential information:

14.2.1 to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out that 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 condition 14; and

14.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

14.3 No party shall make, or permit any person to make, any public announcement concerning the Contract without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed).

14.4 The Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitute the Supplier's Confidential Information.

14.5 The Supplier acknowledges that the Customer Data is the Confidential Information of the Customer.

15. LIMITATION OF LIABILITY

15.1 This condition 155 sets out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer:

15.1.1 arising under or in connection with these Terms and the Licence Agreement;

15.1.2 in respect of any use made by the Customer of the Equipment, the Documentation and the Services or any part of them; and

15.1.3 in respect of any representation, statement or delictious act or omission (including negligence) arising under or in connection with these Terms and the Licence Agreement.

15.2 Except as expressly and specifically provided in these Terms and the Licence Agreement:

15.2.1 the Customer assumes sole responsibility for results and/or reports obtained from the use of the Software, the Services and/or the Documentation by the Customer, and for conclusions drawn from such use. The Supplier shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Supplier by the Customer in connection with the Services, or any actions taken by the Supplier at the Customer's direction;

- 15.2.2 all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from these Terms; and
- 15.2.3 the Services are provided to the Customer on an "as is" basis.
- 15.3 Nothing in these Terms excludes the liability of the Supplier:
 - 15.3.1 for death or personal injury caused by the Supplier's negligence; or
 - 15.3.2 for fraud or fraudulent misrepresentation.
- 15.4 Subject to conditions 15.2 and 15.3:
 - 15.4.1 the Supplier shall not be liable whether in delict (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any storage of data, loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any reliance placed on the use of the Equipment and/or Services or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under these Terms; and
 - 15.4.2 the Supplier's total aggregate liability in contract, delict (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Charges paid by the Customer during the 12 months immediately preceding the date on which the claim arose.
- 16. TERM AND TERMINATION
 - 16.1 The Contract shall commence on the Effective Date and, unless otherwise terminated as provided in this condition 16, shall continue for the Initial Service Term and, thereafter, shall be automatically renewed for successive periods of 12 months or as otherwise stipulated in the Contract or otherwise mutually agreed by both parties in writing (each a **Renewal Period**), unless:
 - 16.1.1 either party notifies the other party of termination, in writing, at least 30 days before the end of the Initial Service Term or any Renewal Period, in which case the Contract shall terminate upon the expiry of the Initial Service Term or Renewal Period; or
 - 16.1.2 otherwise terminated in accordance with these Terms;and the Initial Service Term together with any subsequent Renewal Periods shall constitute the **Service Term**.
 - 16.2 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under these Terms on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment.
 - 16.3 Without affecting any other right or remedy available to it, either party may terminate these Terms with immediate effect by giving written notice to the other party if:

- 16.3.1 the other party commits a material breach of its obligations under these Terms which breach is irremediable or if such breach is remediable fails to remedy that breach within a period of 30 days after being notified in writing to do so;
 - 16.3.2 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;
 - 16.3.3 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
 - 16.3.4 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.
- 16.4 The Supplier may terminate these Terms at any time after the Initial Service Term without cause upon providing the Customer with at least thirty days' prior written notice to that effect.
- 16.5 On termination of these Terms for any reason:
- 16.5.1 all licences granted under these Terms or otherwise entered into by the parties in relation to the Software shall immediately terminate;
 - 16.5.2 each party shall return and make no further use of any equipment, property, and other items (and all copies of them) belonging to the other party;
 - 16.5.3 the Supplier may destroy or otherwise securely dispose of any of the Customer Data in its possession unless the Supplier receives, no later than sixty days after the effective date of termination of these Terms, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. The Supplier shall use reasonable commercial endeavours to deliver the back-up to the Customer within 30 days of its receipt of such a written request. The Customer shall pay all reasonable expenses incurred by the Supplier in returning or disposing of Customer Data; and
 - 16.5.4 any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination shall not be affected or prejudiced.

17. FORCE MAJEURE

Other than payment of the Charges, 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.

18. CONFLICT

If there is an inconsistency between any of the provisions in these Terms, the Purchase Order and the Customer Agreement, the provisions in the Customer Agreement followed by the Terms shall prevail.

19. VARIATION

Except as set out in these Terms, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).

20. WAIVER

No failure or delay by a party to exercise any right or remedy provided under these Terms or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

21. SEVERANCE

21.1 If any provision (or part of a provision) of these Terms is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

21.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

22. ENTIRE AGREEMENT

22.1 The Contract constitutes the whole agreement between the parties in relation to its subject matter and supersedes any previous arrangement, understanding or agreement between them relating to the subject matter they cover

22.2 Each Purchase Order, which is entered into shall be subject to these Terms (as these Terms may be amended from time to time in accordance with condition 19) to the exclusion of all other terms and conditions that the Customer may seek to introduce or rely upon.

23. ASSIGNATION

23.1 The Customer shall not assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

23.2 The Supplier may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

24. NO PARTNERSHIP OR AGENCY

Nothing in the Contract is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including,

but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

25. THIRD PARTY RIGHTS

A person who is not a party to the Contract shall not have any rights to enforce it, including these Terms.

26. NOTICES

26.1 Any notice required to be given under these Terms shall be in writing and shall be delivered by hand, sent by pre-paid first-class post or other next working day delivery service, or email.

26.2 A notice delivered by hand shall be deemed to have been received when delivered. A correctly addressed notice sent by pre-paid first-class post or other next working day delivery service shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by email shall be deemed to have been received at the time of transmission.

27. GOVERNING LAW

The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of Scotland.

28. JURISDICTION

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

SCHEDULE 1

Processing by the Supplier

1.1 Scope

The Supplier will process Customer Data on the Customer's behalf in order to fulfil its obligations under this Contract.

1.2 Nature

The nature of the processing will comprise collection, recording, organisation, storage, retrieval, use, disclosure by transmission, erasure or destruction.

1.3 Purpose of processing

The Equipment collects vibration exposure data which is transmitted to a cloud based analytics platform accessed via a web-based reporting tool.

1.4 Duration of the processing

Customer Data shall be processed by the Supplier for the Service Term.

2. Types of Personal Data

Personal Data fields held within the system comprise:

- RFID Mandatory Fields: Employee ID; Operator First Name; Operator Last Name; ELV limit; EAV limit.
- RFID Card additional optional fields: CSCS ID; Date of Birth; National Insurance Number;
- Online Portal data fields: all of the above fields plus vibration exposure points data.

3. Categories of data subject

The Customer shall dictate the categories of data subjects albeit the parties intend these will be certain of the Customer's employees, agents and sub-contractors.