

The Customer's attention is particularly drawn to the provisions of clause 10 (Limitation of liability).

1. Interpretation

The following definitions and rules of interpretation apply in this agreement:

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.

Commencement Date: has the meaning given in clause 2.2.

Conditions: these terms and conditions as amended from time to time in accordance with clause 14.8.

Contract: the contract between the Supplier and the Customer for the supply of Goods and/or Services in accordance with these Conditions.

Customer: the person or firm who purchases the Goods and/or Services from the Supplier.

Customer's Premises: the premises of the Customer in respect of which the Services are required to be rendered.

Force Majeure Event: has the meaning given to it in clause 13.

Goods: the goods (or any part of them) detailed in the Goods section of the Supplier's quotation.

Order: the Customer's order for the supply of Goods and/or Services, as set out in the Supplier's quotation accepted in writing by the Customer.

Services: the services supplied by the Supplier to the Customer as detailed in the Project Summary.

Service Specification: the description or specification for the Services detailed in the Project Summary section of the Supplier's quotation.

Supplier: Riven Associates Ltd registered in England and Wales with company number 04675573.

Supplier Materials: has the meaning given in clause 7.17.1(g).

1.2 Interpretation:

- (a) A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes its personal representatives, successors and permitted assigns.
- (c) 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 includes all subordinate legislation made under that statute or statutory provision.

- (d) 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.
- (e) A reference to writing or written includes email but not fax provided that in the case of the email, the email has typed in and not only automatically inserted in the sender's signature section at the end, the senders name.

2. Basis of Contract

- 2.1 The Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Conditions.
- 2.2 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order at which point and on which date the Contract shall come into existence (Commencement Date).
- 2.3 Any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions of the Goods 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 Goods described in them. They shall not form part of the Contract or have any contractual force.
- 2.4 These Conditions 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 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 30 Business Days from its date of issue.
- 2.6 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

3. Goods

- 3.1 The Goods are described in the Order in the Goods section of the Supplier's quotation.
- 3.2 So far as the Good comprise a third party's software that software is supplied by the Supplier on the same terms and conditions as would apply if that third party had supplied the software itself to that Customer save for price and terms of payment and the Supplier having notified the Customer in the Supplier's quotation as to where those terms and conditions can be viewed online, the Customer is deemed to have full knowledge of the same.

4. Quality of Goods

- 4.1 The Supplier warrants that for a period of 12 months from the date of the installation and commissioning of the Goods (warranty period),] the Goods shall:
 - (a) conform in all material respects with the Goods as detailed in the Goods section of the



Supplier's quotation;

- (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 the Supplier.
- 4.2 Subject to clause 4.3, the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full if:
- (a) the Customer gives notice in writing during the warranty period within five (5) Business Days of discovery that some or all of the Goods do not comply with the warranty set out in clause 4.1; and
 - (b) the Supplier is given a reasonable opportunity of examining such Goods.
- 4.3 The Supplier shall not be liable for the Goods' failure to comply with the warranty in clause 4.1 if:
- (a) 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 Goods or (if there are none) good trade practice;
 - (b) the Customer alters or repairs such Goods without the written consent of the Supplier; or
 - (c) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions.
- 4.4 Except as provided in this clause 4, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 4.1.
- 4.5 The terms of these Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

5. Title and Risk

- 5.1 The risk in the Goods shall pass to the Customer on completion of delivery of the same to the Customer's Premises.
- 5.2 Title to the Goods shall not pass to the Customer until the Supplier receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Supplier has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums.
- 5.3 Until title to the Goods has passed to the Customer, the Customer shall:
- (a) store any of the Goods which have not been integrated into an IT system as separate goods from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
 - (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery;



- (d) notify the Supplier immediately if it becomes subject to any of the events listed in clause 11.3(b) to clause 11.3(d); and
 - (e) give the Supplier such information relating to the Goods as the Supplier may require from time to time.
- 5.4 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 11.3(b) to clause 11.3(d), then, without limiting any other right or remedy the Supplier may at any time enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

6. Supply of Services

- 6.1 The Supplier shall supply the Services to the Customer in accordance with the Services Specification in all material respects.
- 6.2 The Supplier shall use all reasonable endeavours to meet any performance dates for the Services agreed between the Supplier and the Customer in writing, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 6.3 The Supplier reserves the right to amend the Services Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.
- 6.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

7. Customer's Obligations

- 7.1 The Customer shall:
- (a) ensure that the terms of the Order and any information it provides in the Project Summary are complete and accurate;
 - (b) co-operate with the Supplier in all matters relating to the Services;
 - (c) provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier to provide the Services;
 - (d) provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
 - (e) prepare the Customer's premises for the supply of the Services;
 - (f) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
 - (g) keep all materials, equipment, documents and other property of the Supplier (Supplier Materials) at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or



authorisation; and

- (h) comply with any additional obligations as set out in the Project Summary.
- 7.2 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (Customer Default):
- (a) without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
 - (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 7.2; and
 - (c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

8. Charges and Payment

- 8.1 The price for Goods:
- (a) shall be the price set out in the Order in respect of the Goods; and
 - (b) shall be exclusive of all costs and charges of packaging, insurance, transport of the Goods.
 - (c) In the event the Goods include a software program or a replacement therefor in respect of which licence fees are payable on a monthly or other periodic basis, the licence fees payable in respect of that program will be invoiced by the Supplier as agent for the software program proprietor and will be payable by the Customer to the Supplier in its said agency capacity on the payment dates notified by the Supplier to the Customer. The Supplier will hold the Customer indemnified against any claim for such licence fees from the relevant software program proprietor.
- 8.2 The charges for Services shall be the price set out in the Order in respect of the Services.
- 8.3 In respect of Goods or Services, the Supplier shall invoice the Customer on completion of the Services.
- 8.4 The Customer shall pay each invoice submitted by the Supplier:
- (a) within 15 days of the date of the invoice or in accordance with any credit terms agreed by the Supplier and confirmed in writing to the Customer; and
 - (b) in full and in cleared funds to a bank account nominated in writing by the Supplier, and time for payment shall be of the essence of the Contract.
- 8.5 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a



valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.

- 8.6 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies under clause 11 (Termination), the Customer 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 8.6 will accrue each day at 5% a year above the Bank of England's base rate from time to time.
- 8.7 All amounts due under the Contract 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. Confidentiality

- 9.1 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 9.2.
- 9.2 Each party may disclose the other party's confidential information:
- (a) 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 9; and
 - (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 9.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

10. Limitation of liability: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

- 10.1 Nothing in the Contract limits any liability which cannot legally be limited, including but not limited to liability for:
- (a) death or personal injury caused by negligence;
 - (b) fraud or fraudulent misrepresentation; and
 - (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 10.2 Subject to clause 10.1, the Supplier's total liability to the Customer shall not exceed the price paid or payable by the Customer for the Goods and/or Services comprised in the Contract. The Supplier's total liability includes liability in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract.



- 10.3 This clause 10.3 sets out specific heads of excluded loss:
- (a) Subject to clause 10.1, the types of loss listed in clause 10.3(b) are wholly excluded by the parties.
 - (b) The following types of loss are wholly excluded:
 - (i) Loss of profits.
 - (ii) Loss of sales or business.
 - (iii) Loss of agreements or contracts.
 - (iv) Loss of anticipated savings.
 - (v) Loss of use or corruption of software, data or information.
 - (vi) Loss of or damage to goodwill.
 - (vii) Indirect or consequential loss.
- 10.4 The Supplier has given commitments as to compliance of the Goods and Services with relevant specifications in clause 4 and clause 6. In view of these commitments, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from this agreement.
- 10.5 Unless the Customer notifies the Supplier that it intends to make a claim in respect of an event within the notice period, the Supplier shall have no liability for that event. The notice period for an event shall start on the day on which the Customer became, or ought reasonably to have become, aware of the event having occurred and shall expire one (1) month from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.
- 10.6 This clause 10 shall survive termination of the Contract.

11. Termination

- 11.1 In the event that the Customer wishes to cancel the Order, the Customer must notify the Supplier in writing within 24 hours of the Commencement Date and such cancellation will only be valid if it is acknowledged, confirmed and accepted by the Supplier in writing. In the event of cancellation being accepted by the Supplier the Customer will be liable to pay such sum as equates to the greater of:
- (a) the price/value of the Goods and any Services provided up to the date of cancellation (including but not limited to any goods, materials or services supplied or ordered by the Supplier in connection with this Contract, loss of profit and all ancillary cancellation or termination fees payable by the Supplier to any third party; and
 - (b) 50% of the value of the Contract.
- 11.2 In the event the Customer wishes to amend or postpone the Order, the Customer must notify the Supplier in writing within 24 hours of the Commencement Date, and such amendment or postponement will only be valid if it is acknowledged, confirmed and accepted by the Supplier in writing. The Supplier has the right to accept such amendment, or postponement or (at its sole discretion) to treat the Order as cancelled. If the Supplier accepts the amendment or postponement the Customer will within 14 days from the date of receipt of an invoice for the same



pay to the Supplier all costs associated with such amendment or postponement (including but not limited to costs in connection with the Goods supplied and any Services carried out and any goods, materials or services supplied or ordered by the Supplier in connection with this Contract, loss of profit and all ancillary amendment and postponement fees payable by the Supplier to any third party).

- 11.3 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- (a) the other party commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within twenty-one (21) days after receipt of notice 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.
- 11.4 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 the Contract on the due date for payment.
- 11.5 Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and the Supplier if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 11.3(b) to clause 11.3(d), or the Supplier reasonably believes that the Customer is about to become subject to any of them.

12. Consequences of Termination

12.1 On termination of the Contract:

- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services and Goods supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- (b) the Customer shall return all of the Supplier Materials or Goods which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with



this Contract.

12.2 Termination of the Contract shall not affect any rights, remedies, obligations and 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 Contract which existed at or before the date of termination.

12.3 Any provision of the Contract that expressly or by implication is intended to have effect after termination shall continue in full force and effect.

13. 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 (a **Force Majeure Event**).

14. General

14.1 Assignment and other dealings

- (a) The Supplier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
- (b) The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Supplier.

14.2 Notices.

- (a) Any notice or other communication given to a party under or in connection with this agreement shall be in writing and shall be:
 - (i) 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
 - (ii) sent by email to the email address specified in the Order.
- (b) Any notice or communication shall be deemed to have been received:
 - (i) if delivered by hand, at the time the notice is left at the proper address; and
 - (ii) 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; and
 - (iii) if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 14.2(b)(iii), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

14.3 **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.

- 14.4 **Waiver.** 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 right or remedy. 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.
- 14.5 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.
- 14.6 **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.
 - (c) Nothing in this clause shall limit or exclude any liability for fraud.
- 14.7 **Third parties rights.**
- (a) Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
 - (b) The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.
- 14.8 **Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).
- 14.9 **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 the law of England and Wales.
- 14.10 **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 the Contract or its subject matter or formation.

