

**Merlin Open Systems**  
**Standard Terms and Conditions of Supply**  
**- applicable to all agreements to supply the Services**

**1. INTERPRETATION**

1.1 Definitions: In these Terms and Conditions:-

"**Fees**" means all fees, charges and other amounts payable by the Customer to the Supplier for the Services;

"**Intellectual Property Rights**" means all or any registered or unregistered intellectual property rights in any part of the world, including patents, design rights, copyrights, database rights, topography rights, know-how, rights in inventions and ideas, and rights to confidence, together with any right to apply for any such intellectual property rights and the benefit of any applications for any such intellectual property rights;

"**Programs**" means software programs designed by and written by the Supplier whether as part of the Services or otherwise;

"**Services**" means the services to be provided by the Supplier to the Customer;

"**VAT**" means value added tax.

1.2 References: In this Agreement, unless otherwise stated: a reference to a "**person**" includes a reference to a company or other body corporate, association, partnership or individual; a reference to a "**third party**" is to a person who is not a party to the Agreement; the singular shall include the plural and vice versa; a reference to a gender is to every gender; a reference to a "**Term**" is a reference to a term or condition of these Terms and Conditions; a reference to a statute, statutory instrument, regulation, order or licence is a reference to that statute, statutory instrument, regulation, order or licence as substituted, varied or re-enacted from time to time; a reference to any document or agreement is to that document or agreement as substituted, varied or amended from time to time; a reference any "**materials**" includes any reports, accounts and other documents, information and data; and a reference to "**use**" includes to copy, edit, use, translate, install, run, adapt, modify, reproduce and make.

1.3 Headings: The headings in these Terms and Conditions are for convenience only and shall not affect the construction or interpretation of the Agreement.

**2. SERVICES**

The Supplier shall provide the Services to the Customer subject to the Customer providing to the Supplier all data and other information reasonably required by the Supplier to provide the Services.

**3. SUPPLIER'S GENERAL OBLIGATIONS**

3.1 Standard: The Supplier shall perform the Services with reasonable care and skill.

3.2 Not Agent: The Supplier is not the agent of the Customer.

3.3 No Warranty: The Supplier does not warrant that the operation of any Programs will be uninterrupted or error free.

3.4 Exclusion: Subject to Term 3.1 all conditions, warranties, terms and undertakings express or implied statutory or otherwise in respect of the performance of the Services or any Programs are hereby excluded.

**4. CUSTOMER'S GENERAL OBLIGATIONS**

4.1 General Assistance: The Customer shall use all reasonable endeavours to facilitate the provision of the Services by the Supplier.

4.2 Access to Premises: The Customer shall provide the Supplier with access to any premises of the Customer for the purpose of performance of the Services.

4.3 Provision of Information: The Customer shall provide to the Supplier any data and information which the Supplier reasonably requires for the provision of the Services.

4.4 Computer and other facilities: The Customer shall make available to the Supplier free of charge such use of equipment which the Supplier reasonably requires for the provisions of the Services.

**5. FEES**

5.1 Entitlement: In consideration of the provision of the Services by the Supplier, the Customer shall pay the Fees in accordance with these Terms and Conditions.

5.2 Payment Terms: The Supplier shall submit to the Customer a statement of the Fees payable by the Customer and the Customer shall pay the Fees set out in that statement within 28 days.

5.3 Value Added Tax: All sums due to the Supplier are stated exclusive of value added tax. Where value added tax is payable, it shall be charged in accordance with the law and at the rates in force at the time of making the relevant taxable supply and shall be payable only against receipt of a valid value added tax invoice, and upon issue of an appropriate VAT registration number.

5.4 Interest: The Supplier reserves the right to charge the Customer interest in respect of the late payment of any sums due to it (as well after as before judgement) at the rate of 3 per cent above the base rate from time to time of HSBC Bank plc from the due date therefor until payment.

**6. LATE COMPLETION**

Essence of time: For the avoidance of doubt time shall not be of the essence and the Supplier shall incur no liability to the Customer in respect of any failure to complete the Service by any agreed completion date.

**7. TERMINATION**

7.1 Termination rights of either party: A party may terminate the Agreement immediately by notice to the other party if any of the following events occur in relation to the other party:-

(a) *Breach:* the other party commits a material breach of the Agreement which is incapable of remedy, or a remediable breach of the Agreement and fails to remedy that breach within 30 (thirty) days after notice of the breach, or a series of persistent breaches of the same provision of the Agreement and commits a similar breach within 30 (thirty) days after notice of the breaches; or

(b) *Insolvency:* the other party shall be dissolved, liquidated or wound up, or have a petition for winding up presented against it which is not withdrawn in 30 (thirty) days, or pass a resolution for voluntary winding up, or have a petition for the appointment of an administrator presented against it, or have a receiver or administrative receiver appointed to the whole or any part of its undertaking or assets, or convene any meeting of its creditors or make an arrangement or otherwise compound or compromise with its creditors, or cease or threatens to cease trading, or suffer any similar event in any jurisdiction relevant to that party.

7.2 Consequences of Termination: Upon expiry or termination of the Agreement for any reason:-

(a) all rights, authorities and obligations of the parties under the Agreement shall cease, but without prejudice to any accrued rights, obligations, remedies or liabilities of either party, or any rights or obligations which give effect to or are expressly or impliedly intended to come into effect on or continue after expiry or termination; and

(b) the following terms of these Terms and Conditions shall survive expiry or termination: terms [7, 8, 9, 10 and 12].

## 8. LIABILITY

- 8.1 Consequential and other Loss: Subject to Term 8.3 below the Supplier shall not be liable to the Customer for loss of profits or goodwill or any type of special, indirect or consequential loss (including loss or damage suffered by the Customer as a result of an action brought by a third party) even if such loss were reasonably foreseeable or the Supplier had been advised of the possibility by the Customer.
- 8.2 Limitation of Liability: The Supplier's aggregate liability to the Customer in relation to any claim in respect of the Services whether for negligence, breach of contract, misrepresentation (other than fraudulent misrepresentation) or otherwise shall not exceed £100,000.
- 8.3 Death and Personal Injury: Nothing in the Agreement shall exclude or limit the Supplier's liability for death or personal injury resulting from its own negligence or the negligence of its employees.
- 8.4 Customers notice: Except in the case of a default arising under term 8.3 above the Supplier shall have no liability to the Customer in respect of any act or omission unless the Customer shall have served notice of the same upon the Supplier within three months of the date it became aware of the act or omission or the date when it ought reasonably to have become so aware.
- 8.5 Right to remedy: The Customer hereby agrees to afford the Supplier not less than thirty days in which to remedy any default hereunder.
- 8.6 No further rights or remedies: Nothing in this Term 8 shall confer any right or remedy upon the Customer to which it would not otherwise be legally entitled.

## 9. CONFIDENTIALITY

- 9.1 Confidential Information: All information made available to or disclosed by one party to the other party for the purposes of or in connection with the Services including information concerning its present activities or future plans or actual or potential business dealings or products, and these terms and conditions ("**Confidential Information**") shall be regarded as and maintained confidential.
- 9.2 Permitted Uses: The Supplier shall be entitled to use Confidential Information of the Customer to perform the Services.
- 9.3 Security: Each party agrees to take all reasonable steps to keep the Confidential Information of the other party safe and secure and to prevent any unauthorised access, taking, use or copying of that Confidential Information.
- 9.4 Disclosure: Each party agrees not to disclose Confidential Information of the other party to any person, except:
- to any sub-contractor, sub-licensee or employee who reasonably needs to use that Confidential Information for the purpose permitted under Term 9.2;
  - to any consultants or other professional advisers of that party, any insurer of that party, or any lender, bank or other financial institution from whom that party is seeking or obtaining or has obtained finance;
  - to any person to whom disclosure is required by any applicable law, or the rules of any recognised stock exchange or regulatory body, or any written request of any taxation authority; and
  - to any person where it is required in connection with a sale or other disposition of shares in that party or the whole or substantially the whole of the business and assets of that party.
- 9.5 Excluded Information: This Term 9 shall not apply to Confidential Information of a party which:-
- is or falls into the public domain otherwise than as a result of a breach of these Terms and Conditions by the other party; or
  - the other party can show was in its possession or known to it prior to that Confidential Information being made available or disclosed to it, or was acquired from a source other than the disclosing party, and was not to the best of its knowledge previously acquired in confidence from the disclosing party or a third party who was under an obligation of confidentiality to the

disclosing party; or

- was developed by the other party independently of the Confidential Information and not in the performance of the Agreement.

## 10. INTELLECTUAL PROPERTY RIGHTS

- 10.1 New Rights: The copyright and all other intellectual property rights and confidential information in any Programs shall vest in the Supplier.
- 10.2 Licence by the Customer: The Customer grants to the Supplier an irrevocable royalty free, non-exclusive licence in respect of the Intellectual Property Rights in any materials supplied to the Supplier for the purposes of the Services, to use the same for the purposes of supplying the Services.
- 10.3 Licence by the Supplier: The Supplier grants to the Customer an irrevocable, royalty-free, non-exclusive licence in respect of the Intellectual Property Rights in any Records and materials supplied to the Customer as part of the Services to use the same for the purposes of obtaining the full benefit of and making full use of the Services in its business.

## 11. FORCE MAJEURE

- 11.1 Force Majeure Effects: If either party is prevented, hindered or delayed from or in performing any of its obligations by a circumstance of Force Majeure then:-
- that party's obligations shall be suspended for so long as the Force Majeure continues to the extent that party is so prevented, hindered or delayed;
  - as soon as reasonably possible after commencement of the Force Majeure that party shall notify the other party of the occurrence, when it commenced, and the effects; and
  - that party shall use reasonable endeavours to mitigate the effects of the Force Majeure upon the performance of its obligations.
- 11.2 Definition of Force Majeure: For the purposes of Term 11.1, "**Force Majeure**" shall mean any event or circumstance beyond the reasonable control of a party including acts of God, terrorism, war, hostilities (whether war be declared or not), invasion, revolution, riot, civil commotion, or the act of any Government Agency, or strikes, lock-outs or other industrial actions or trade disputes of whatever nature, or fire, flood, and storm, but shall not include a strike by or a lock-out relating to or other industrial action involving the employees of a party.

## 12. MISCELLANEOUS

- 12.1 Sub-contracting: The Supplier shall be entitled to sub-contract the whole or any part of its obligations hereunder without the prior written consent of the Customer.
- 12.2 No Partnership: These Terms shall not operate so as to create a partnership or joint venture of any kind between the parties.
- 12.3 Third Party Rights: It is not intended that any provision of these Terms shall be enforceable by any third party. These Terms may be amended, superseded or cancelled and any of its terms or conditions may be waived without the consent of any third party.
- 12.4 Variations: No variation or amendment of those Terms shall be binding on the parties unless it is recorded in a written agreement which is signed by an authorised representative of each party.
- 12.5 Waiver: The failure to exercise or delay in exercising any right or remedy under these Terms shall not constitute a waiver of the right or remedy or a waiver of any other rights or remedies. A waiver by either party of any Term or breach thereof in any instance shall not be considered to be a waiver of any such Term for the future or of any subsequent breach thereof.
- 12.6 Governing Law: These Terms shall be governed by and construed in accordance with the laws of England and Wales, and the parties hereby submit to the exclusive jurisdiction of the English courts.