



Information Technology Services Terms and Conditions

The Supplier (as defined below) provides its customers with various information technology services. The Customer (as defined below) wishes to engage the Supplier to deliver the Services (as defined below).

The Supplier has agreed to deliver the Services and the Customer has agreed pay for such Services subject to these Conditions.

1. Agreed Terms

Interpretation

In these Conditions the following definitions apply:

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.

Business Hours: the period from 9.00 am to 5.00 pm on any Business Day.

Confidential Information: means any and all confidential information, (whether in oral, written or electronic form) including technical or other information imparted in confidence or disclosed by one party to the other or otherwise obtained by one party relating to the other's business, finance or technology, know-how, Intellectual Property Rights, assets, strategy, products and customers, including without limitation information relating to management, financial, marketing, technical and other arrangements or operations of any person, firm or organisation associated with that party.

Conditions: means the Supplier's terms and conditions for the supply of Services set out in this document.

Contract: means the agreement between the Supplier and the Customer for the supply of Services, incorporating these Conditions and the Order as set out in the Engagement Letter, and including all its schedules, attachments, annexures and any agreed statement of work.

Engagement Letter: means the Supplier's engagement letter issued to the Customer detailing the Customer's Order for the supply of Services.

Customer: the person, firm or company who purchases Services from the Supplier.

Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the retained EU law version of the General Data Protection Regulation ((EU) 2016/679) (UK GDPR), the Data Protection Act 2018 (and regulations made thereunder) or any successor legislation, and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications).

Data Subject: has the meaning set out in the UK GDPR.

Deliverables: all products and materials developed by the Supplier in relation to the Project in any media, including computer programs, data, diagrams, reports and specifications (including drafts).

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, trade names, rights in domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered, and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.

Order: means the Customer's order for the supply of Services, as set out in the order form attached to the Engagement Letter.

Personal Data: has the meaning set out in the UK GDPR.

Personal Data Breach: has the meaning set out in the UK GDPR.

Pre-existing Materials: materials which existed before the commencement of the Project.

Project: the project as described in the Project Plan.

Project Milestone: any date by which a part of the Project is estimated to be completed, as set out in the Project Plan.

Project Plan: the plan set out in the Order (or otherwise agreed between the parties) describing the Project and setting out the estimated timetable (including any Project Milestones) and responsibilities of each of the parties for, or in connection with, the provision of the Services by the Supplier in accordance with the Contract.

Services: the services to be provided by the Supplier as set out in the Order.

Supplier: Xerini Limited.

VAT: value added tax imposed by the Value Added Tax Act 1994 or any similar tax chargeable in the UK or elsewhere.

1.2 Condition and paragraph headings shall not affect the interpretation of these Conditions.

1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

- 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 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.8 A reference to **writing** or **written** includes email.
- 1.9 Any words following the terms **including, include, in particular, for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. **Application of conditions**

- 2.1 These Conditions shall:
 - (a) apply to and be incorporated in the Contract; and
 - (b) prevail over any inconsistent terms or conditions contained in, or referred to in, the Customer's purchase order, confirmation of order, or specification, or implied by law, trade custom, practice or course of dealing.
- 2.2 No addition to, variation of, exclusion or attempted exclusion of any term of the Contract shall be binding on the Supplier unless in writing and signed by a duly authorised representative of the Supplier.

3. **Effect of Engagement Letter**

- 3.1 The Engagement Letter constitutes an offer by the Supplier to supply the Services in accordance with these Conditions. Accordingly, the execution of the Engagement Letter by the Customer shall establish a contract for the supply and purchase of those Services on these Conditions. Any of the Customer's standard terms and conditions (if any) attached to, enclosed with, or referred to in, the Engagement Letter shall not govern the Contract.

4. **Supplier's Obligations**

- 4.1 The Supplier shall use reasonable endeavours to manage and complete the Project, and to deliver the Deliverables to the Customer, in accordance with the Project Plan.

- 4.2 The Supplier shall use reasonable endeavours to meet the performance dates specified in the Project Plan, but any such dates shall be estimates only and time shall not be of the essence of the Contract.

5. **Customer's obligations**

- 5.1 The Customer shall:

- (a) co-operate with the Supplier in all matters relating to the Project;
- (b) provide in a timely manner such access to the Customer's premises and data, and such office accommodation and other facilities, as is requested by the Supplier;
- (c) provide in a timely manner such information as the Supplier may request, and ensure that such information is accurate in all material respects; and
- (d) be responsible (at its own cost) for preparing the relevant premises for the supply of the Services if applicable.

- 5.2 If the Supplier's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer or the Customer's agents, subcontractors or employees, the Customer shall in all circumstances be liable to pay to the Supplier on demand all reasonable costs, charges or losses sustained or incurred by it, subject to the Supplier confirming such costs, charges and losses to the Customer in writing. Such losses shall include, without limitation, any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property, injury to or death of any person and loss of opportunity to deploy resources elsewhere.

6. **Change control**

- 6.1 The parties shall meet as required from time to time to discuss matters relating to the Project. If either party wishes to change the scope of the Services, it shall submit details of the requested change to the other in writing.

- 6.2 If either party requests a change to the scope or execution of the Services, the Supplier shall, within a reasonable time, provide a written estimate to the Customer of:

- (a) the likely time required to implement the change;
- (b) any variations to the Supplier's charges arising from the change;
- (c) the likely effect of the change on the Project Plan; and
- (d) any other impact of the change on the terms of the Contract.

- 6.3 If the Supplier requests a change to the scope of the Services, the Customer shall not unreasonably withhold or delay consent to it.

- 6.4 If the Customer wishes the Supplier to proceed with the change, the Supplier has no obligation to do so unless and until the parties have agreed in writing on the necessary variations to its charges, the Project Plan and any other relevant terms of the Contract to take account of the change.

7. Charges and payment

- 7.1 The Customer shall pay the Supplier the Charges as specified in the Order and in accordance with this Condition 7.
- 7.2 All payments made by the Customer under the Contract are exclusive of VAT. The Supplier shall provide the Customer with a valid VAT invoice.
- 7.3 Without prejudice to any other right or remedy that the Supplier may have, if the Customer fails to pay the Supplier on the due date the Supplier may:
- (a) charge interest on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of the Bank of England, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment; and
 - (b) suspend all Services until payment has been made in full.
- 7.4 Time for payment shall be of the essence of the Contract.
- 7.5 The Customer shall pay each invoice submitted to it by the Supplier in full, and in cleared funds, within 7 days of receipt.
- 7.6 All payments payable to the Supplier under the Contract shall become due immediately on termination of the Contract, despite any other provision. This condition is without prejudice to any right to claim for interest under the law, or any such right under the Contract.
- 7.7 All amounts due under the Contract shall be paid by the Customer to the Supplier in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law). The Supplier may, without prejudice to any other rights it may have, set off any liability of the Customer to the Supplier against any liability of the Supplier to the Customer.

8. Intellectual Property Rights

- 8.1 All Intellectual Property Rights and all other rights in the Deliverables shall be owned by the Supplier. The Supplier licenses all such rights to the Customer free of charge and on a non-exclusive, non-transferable and worldwide basis to such extent as is necessary to enable the Customer to make reasonable use of the Deliverables and the Services as is envisaged by the parties. If the Supplier terminates the Contract under condition 12.1, this licence will automatically terminate.

- 8.2 The Customer acknowledges that the Customer's use of rights in Pre-existing Materials is conditional on the Supplier obtaining a written end-user licence (or sub-licence) of such rights from the relevant licensor or licensors on such terms as will entitle the Supplier to license such rights to the Customer.

9. **Confidentiality**

- 9.1 Each party agrees that it shall use the other party's Confidential Information only in the exercise of its rights and performance of its obligations under the Contract and shall not disclose it except in accordance with this condition 9.
- 9.2 Subject to condition 9.4, each party may disclose the other party's Confidential Information to those of its employees, officers, advisers, agents or representatives who need to know it in order to exercise the disclosing party's rights or perform its obligations under the Contract, provided that the disclosing party shall ensure that each of its employees, officers, advisers, agents or representatives to whom Confidential Information is disclosed is aware of its confidential nature and complies with this condition 9 as if it were a party.
- 9.3 Subject to condition 9.4, each party may disclose any Confidential Information required by law, any court, any governmental, regulatory or supervisory authority (including any regulated investment exchange) or any other authority of competent jurisdiction.
- 9.4 To the extent any Confidential Information is personal data, such Confidential Information may be disclosed or used only to the extent such disclosure or use does not conflict with any of the provisions of condition 11.

10. **Limitation of liability**

- 10.1 The following provisions set out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents and subcontractors) to the Customer in respect of:
- (a) any breach of the Contract however arising;
 - (b) any use made by the Customer of the Services, the Deliverables or any part of them; and
 - (c) any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including negligence) arising under or in connection with the Contract.
- 10.2 All warranties, conditions and other terms implied by statute or common law are, to the greatest extent permitted by law, excluded from the Contract.
- 10.3 Nothing in these conditions excludes the liability of the Supplier:
- (a) for death or personal injury caused by the Supplier's negligence; or

- (b) for fraud or fraudulent misrepresentation.

10.4 Subject to condition 10.2 and condition 10.3:

- (a) the Supplier shall not in any circumstances be liable, whether in tort (including for negligence or breach of statutory duty however arising), contract, misrepresentation (whether innocent or negligent) or otherwise for:
 - (i) loss of profits; or
 - (ii) loss of business; or
 - (iii) depletion of goodwill or similar losses; or
 - (iv) loss of anticipated savings; or
 - (v) loss of goods; or
 - (vi) loss of contract; or
 - (vii) loss of use; or
 - (viii) wasted expenditure; or
 - (ix) loss or corruption of data or information; or
 - (x) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.
- (b) the Supplier's total liability in contract, tort (including negligence or breach of statutory duty however arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the total price paid or payable for the Services under the Contract.

11. **Data protection**

- 11.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This condition 11 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation. In this condition 11, **Domestic Law** means the law of the United Kingdom or a part of the United Kingdom.
- 11.2 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 as defined in the UK GDPR).

In relation to the Customer's Personal Data, the scope, nature and purpose of processing by the Supplier, the duration of the processing and the types of personal data and categories of data subject are:

Scope of processing: To enable the Supplier to deliver the Services.

Nature of processing: Storing, analysing, transferring, copying, deleting.

Purpose of processing: To enable the Supplier to deliver the Services.

Duration of processing: Personal data shall be processed throughout the Contract term.

Types of personal data: Title, first name, surname, work email address, work telephone number, work mobile number and job title.

Categories of Data Subject: Employees and clients of the Customer.

11.3 Without prejudice to the generality of condition 11.3, the Customer will ensure that it has all necessary appropriate consents and fair processing notices in place to enable lawful transfer of the Personal Data to the Supplier for the duration and purposes of the Contract.

11.4 Without prejudice to the generality of clause 11.1, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under the Contract:

- (a) process that Personal Data only on the written instructions of the Customer unless the Supplier is required by Domestic Law to otherwise process that Personal Data. Where the Supplier is relying Domestic Law as the basis for processing Personal Data, the Supplier shall promptly notify the Customer of this before performing the processing required by the Domestic Law unless the Domestic Law prohibit the Supplier from so notifying the Customer;
- (b) ensure that it has in place appropriate technical and organisational to protect against 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) not transfer any Personal Data outside the United Kingdom unless the following conditions are fulfilled:
 - (i) the Customer or the Supplier has provided appropriate safeguards in relation to the transfer;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) 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; and

- (iv) the Supplier complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
- (d) assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (e) notify the Customer without undue delay on becoming aware of a Personal Data Breach; and
- (f) at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the Contract unless required by Applicable Law to store the Personal Data.

11.5 Either party may, at any time on not less than 30 days' notice, revise this condition 11 by replacing it with any applicable controller to processor standard clauses or similar terms forming party of an applicable certification scheme (which shall apply when replaced by attachment to the Contract).

12. Termination

12.1 Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate the Contract without liability to the other if:

- (a) the other party fails to pay any amount due under the Contract on the due date for payment and remains in default not less than seven days after being notified in writing to make such payment;
- (b) the other party commits a material breach of any other term of the Contract and (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
- (c) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- (d) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (e) the other party applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;
- (f) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a

scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

- (g) an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or an administrator is appointed, over the other party (being a company, partnership or limited liability partnership);
- (h) the holder of a qualifying floating charge over the assets of that other party (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;
- (i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- (j) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days; or
- (k) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in condition 12.1(c) to condition 12.1(j) (inclusive).

12.2 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.

12.3 Termination of the Contract shall not affect 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 Contract which existed at or before the date of termination.

13. **Force majeure**

13.1 Neither party shall be in breach of the Contract or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from events, circumstances or causes beyond its reasonable control. The time for performance of such obligations shall be extended accordingly. If the period of delay or non-performance continues for 4 weeks, the party not affected may terminate the Contract by giving 7 days' written notice to the affected party.

14. **Waiver**

14.1 A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

14.2 A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

15. **Rights and remedies**

15.1 Except as expressly provided in the Contract, the rights and remedies provided under the Contract are in addition to, and not exclusive of, any rights or remedies provided by law.

16. **Severance**

16.1 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract.

16.2 If any provision or part-provision of the Contract is deemed deleted under condition 16.1, the parties shall negotiate in good faith to amend such provision so that, to the greatest extent possible, the amended provision achieves the intended commercial result of the original provision.

17. **Entire agreement**

17.1 The Contract, the schedules and the documents annexed as appendices to the Contract or otherwise referred to herein constitute the entire agreement between the parties and supersedes and extinguishes all previous and contemporaneous agreements, promises, assurances and understandings between them, whether written or oral, relating to its subject matter.

17.2 Each party acknowledges that, in entering into this 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.

17.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

18. **Assignment**

18.1 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 this Contract.

18.2 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.

19. No partnership or agency

19.1 Nothing in the Contract is intended to or shall operate to create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

20. Third party rights

20.1 This Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract.

21. Notices

21.1 Any notice given to a party under or in connection with this contract shall be in writing and shall be:

- (a) 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).
- (b) delivered by email to the addresses specified by the parties in the Order.

21.2 Any notice shall be deemed to have been received:

- (a) if delivered by hand, at the time the notice is left at the proper address;
- (b) 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
- (c) 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 business hours means 9.00am to 5.30pm on a Business Day.

21.3 This condition 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.

22. Governing law

22.1 The Contract and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by and interpreted in accordance with the law of England and Wales.

23. **Jurisdiction**

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