

Terms and Conditions

Version 1.1

Table of Contents

Contents

1. Introduction.....	1
2. Definitions.....	1
3. Quotes and Ordering.....	3
4. Charges and Payment	3
5. Delivery and Acceptance.....	5
6. Your Responsibilities.....	6
7. Warranties	8
8. Intellectual Property and Confidentiality	9
9. Limitation of Liability	10
10. Termination	12
11. Data Protection – GDPR.....	14
12. Confidentiality.....	15
13. General Conditions	15

Terms and Conditions

1. Introduction

These Terms and Conditions ("**Terms**") govern the provision of Products, Software, and Services by any companies under the parent company Kookaburra Technologies Limited ("**We**," "**Us**," "**Our**", or "**Flywheel**") to the Client ("**You**" or "**Your**"). By engaging Our Services, You agree to be bound by these Terms, which, together with any applicable Statements of Work and Cover Sheets, form the Agreement between You and Us.

2. Definitions

In these Terms, the following definitions apply:

- 2.1. **"Agreement": A contract between You and Us for the supply of Products, Software, and Services**, comprising these Terms, any applicable Statements of Work, Cover Sheets, and any other documents expressly incorporated.
- 2.2. "Applicable Laws": All applicable laws, statutes, regulations, and codes from time to time in force.
- 2.3. "Approved Products List": A list of the hardware and software that is within the scope of Services that we support. To be in scope, hardware on this list must be in date and in warranty
- 2.4. "Authorised Users": Your employees, agents, and independent contractors who are authorised by You to use the Services.
- 2.5. "Business Day": A day other than a Saturday, Sunday, or public holiday in England and Wales.
- 2.6. "Business Hours": 9.00 am to 5.00 pm local UK time, each Business Day.
- 2.7. "Charges": The fees payable by You for the supply of the Products, Software, and Services, as set out in the Agreement.
- 2.8. "Commencement Date": The date the Agreement comes into effect.
- 2.9. "Confidential Information": All information that is proprietary or confidential and is either clearly labelled as such or identified in clause 30.
- 2.10. "Contract Year": A period of 12 months commencing on the Commencement Date or any anniversary of it.
- 2.11. "Cover Sheet": A document specifying the details of the Products, Software, and Services to be provided, including Charges and any special terms.
- 2.12. "Customer Data": Any data provided by You to Us for the purpose of using the Services or facilitating the provision of the Services.
- 2.13. "Customer Materials": All documents, information, items, and materials in any form provided by You to Us in connection with the Services.
- 2.14. "Data Protection Laws": As defined in clause 29.1.
- 2.15. "Deliverables": Any output of the Services to be provided by Us to You and any other documents, products, and materials provided by Us in relation to the Services.
- 2.16. "Developed Materials": Any materials developed by Us specifically for You in the course of providing the Services.
- 2.17. "Force Majeure Event": As defined in clause 31.1.
- 2.18. "Goods": The products supplied by Us to You as set out in the Agreement.
- 2.19. "Intellectual Property Rights": Patents, rights to inventions, copyright and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill, and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights.
- 2.20. "Personal Data": As defined in the Data Protection Laws.
- 2.21. "Products": The Goods and Software supplied by Us to You.
- 2.22. "Services": The services, including any Deliverables, to be provided by Us under the Agreement as set out in the Statement of Work or Cover Sheet.
- 2.23. "Software": Any software provided by Us as part of the Services, including any Developed Materials.
- 2.24. "Statement of Work": A document describing the Services to be provided, including any specifications and timelines.

- 2.25. "Third Party Agreements": Agreements with third-party providers as detailed in clause 7.10.
- 2.26. "We," "Us," "Our": Kookaburra Technologies Limited, Flywheel group of companies.
- 2.27. "You," "Your": The client receiving Products, Software, and Services from Us.
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3. Quotes and Ordering

- 3.1. Any quotes provided are valid for 14 days unless otherwise specified.
- 3.2. All quotes are subject to availability of Products and Services at the time of acceptance.
- 3.3. We reserve the right to withdraw or revise a quote at any time before acceptance.
- 3.4. You must provide a Purchase Order or written confirmation to proceed with any order.
- 3.5. The Agreement is formed when We accept Your Purchase Order in writing.
- 3.6. Purchase Orders must include sufficient information to process the order, including details of the Products and Services required, or to reference a specific quote We have sent You.
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4. Charges and Payment

4.1. Consideration for Services

4.1.1. In consideration for the provision of the Products, Software, and Services under the Agreement, You shall pay the Charges in accordance with this clause and any additional terms set out in the Agreement.

4.1.2. **All sums payable under the Agreement:**

- 4.1.2.1. Are exclusive of Value Added Tax (VAT) or any relevant local sales taxes, which shall be added to Our invoices at the appropriate rate.
- 4.1.2.2. Shall be paid in full without any set-off, counterclaim, deduction, or withholding, except as required by law.

4.2. Invoicing

4.2.1. Unless stated otherwise in an Agreement or agreed in writing:

- 4.2.1.1. Charges for Products shall be invoiced upon delivery.
- 4.2.1.2. Charges for Software shall be invoiced upon delivery.
- 4.2.1.3. Charges for Services shall be invoiced monthly in advance where the amount is known or agreed, and in arrears in all other cases.

4.3. Payment Terms

4.3.1. You shall pay each invoice submitted by Us, within **14 days** of the invoice date, unless otherwise specified in the Agreement to the bank account nominated in writing by Us.

- 4.3.2. Payments shall be made via Direct Debit unless otherwise agreed. Payments not made via Direct Debit may attract an additional administration charge at Our discretion.
- 4.3.3. If You fail to make any payment due to Us by the due date for payment:
 - 4.3.3.1. Interest shall accrue on the overdue sum from the due date until payment at a rate of **4% per annum above the Bank of England's base rate**, but at **4% per annum** if the base rate is below 0%.
 - 4.3.3.2. We may suspend delivery of the Products, Software, and Services until payment has been made in full.
- 4.3.4. We reserve the right to modify, withdraw, add to, or alter the scope or terms of the Services or Plans without prior notice.

4.4. Charge Increases

- 4.4.1. After the first year, We may increase the Charges of your service, except for fixed rate projects. We may increase Charges due to:
 - 4.4.1.1. Increases in Our own costs and expenses beyond Our reasonable control.
 - 4.4.1.2. An annual adjustment by the greater of the Retail Price Index (RPI) inflation rate or 2%.

4.5. Rates

- 4.5.1. All rates and quoted amounts are exclusive of VAT or other applicable taxes unless stated otherwise.
- 4.5.2. Payment for Goods and Services shall be in accordance with the rates detailed in the applicable Plan and the Rate Schedule effective during the provision.
- 4.5.3. We reserve the right to vary any rate or the Rate Schedule (except for fixed pricing within any Plan) without prior notice.
- 4.5.4. Call-out fees may be added to the rates at Our discretion, depending on the location of Service provision.
- 4.5.5. We may charge a Return/Cancellation fee to cover administrative costs due to returns, refunds, or cancellations after acceptance.
- 4.5.6. You shall reimburse Us for reasonable out-of-pocket expenses related to the Services, including travel and accommodation, upon presentation of receipts.
- 4.5.7. We may invoice Goods and Services separately or combine them into a single charge, at Our discretion.
- 4.5.8. Charges based on time increments will be rounded up to the next whole increment.
- 4.5.9. We may adjust Our rates to reflect increased underlying costs associated with providing Goods or Services.
- 4.5.10. Support Services are provided for Products within their useful age as listed in the Approved Products List. Older hardware may incur additional charges.

4.6. Payment for Hardware

- 4.6.1. If the project involves hardware:
- 4.6.2. Hardware costs are payable upon delivery to Your site unless otherwise agreed.
- 4.6.3. Payment terms for hardware are **14 days** from the invoice date.

4.7. Subcontracting

- 4.7.1. We may subcontract any or all of Our obligations under the Agreement but will remain responsible for the performance of the subcontracted obligations.

5. Delivery and Acceptance

5.1. Risk and Title

- 5.1.1. Risk in Products: Risk in the Products shall pass to You on delivery, subject to the terms of any Third Party Agreements.
- 5.1.2. **Title to Products**: Title to the Products shall not pass to You until We receive payment in full for the Products and all other sums due under the Agreement.

5.2. Your Obligations Before Title Passes: Until title passes, You shall:

- 5.2.1. Not remove, deface, or obscure any identifying mark or packaging on or relating to the Products.
- 5.2.2. Maintain the Products in satisfactory condition and keep them insured on Our behalf for their full price against all risks.
- 5.2.3. **Failure to Insure**: If You fail to insure the Products under Our title, or are leased to You, We may procure insurance and invoice You for the costs.
- 5.2.4. **Prohibition on Pledging Products**: You shall not pledge or charge the Products before title has passed to You.

5.3. Delivery Obligations

- 5.3.1. **Delivery Dates**: Any delivery dates are estimates only, and time shall not be of the essence.
- 5.3.2. **Availability for Delivery**: You must be available to accept delivery during Business Hours unless otherwise agreed.
- 5.3.3. **Failure to Accept Delivery**: If You fail to accept delivery, risk passes to You at the time delivery was attempted.

5.4. Acceptance of Deliverables

- 5.4.1. **Inspection and Testing**: You shall inspect and test Deliverables promptly upon delivery.
- 5.4.2. **Notification of Defects**: If Deliverables do not conform to agreed criteria, You must notify Us within **5 Business Days**.
- 5.4.3. **Deemed Acceptance**: Failure to notify Us within this period constitutes acceptance of the Deliverables.

5.5. Software Delivery and Acceptance

- 5.5.1. **Delivery Methods**: Software may be supplied physically or remotely.
- 5.5.2. **Inspection of Software Media**: You must inspect Software media upon delivery and notify Us of any issues within **5 Business Days**.
- 5.5.3. **Price Adjustments**: If the supplier raises Software costs by more than 3%, We will notify You one month before passing on those costs.

5.5.4. **Deemed Acceptance:** Failure to notify Us of defects constitutes acceptance.

5.6. Licence and Use of Software and Deliverables

5.6.1. **Licence Grant:** We grant You a non-exclusive, non-transferable licence to use the Software and Deliverables during the term of the Agreement.

5.6.2. **Your Obligations:** You shall:

5.6.2.1. Use the Software and Deliverables only for internal business purposes.

5.6.2.2. Not sub-license, translate, adapt, or modify the Software or Deliverables without Our consent.

5.6.2.3. Not share access credentials without Our consent.

5.6.2.4. Maintain reasonable security measures to safeguard the Software and Deliverables.

5.6.2.5. Permit Us to audit Your use to ensure compliance.

5.6.2.6. Not access, store, distribute, or transmit any Viruses or unlawful material.

5.6.2.7. Not attempt to copy, modify, duplicate, create derivative works from, or reverse engineer the Software.

5.7. Our Rights

5.7.1. **Repossess Goods:** Until title passes, We may recover or resell the Goods, and You grant Us access to Your premises to do so.

5.7.2. **Fiduciary Bailee:** You hold the Goods as Our fiduciary bailee and must keep them separate from other goods.

6. Your Responsibilities

6.1. Access to Systems, Sites, and People

6.1.1. **General Cooperation:** You shall cooperate with Us in all matters relating to the Agreement.

6.1.2. **Authorised Representatives:** You shall appoint authorised representatives who have the authority to bind You on matters relating to the Agreement.

6.1.3. **Provision of Access:** You agree to provide Us with access to Your equipment, systems, premises, and personnel as reasonably required.

6.1.4. **Installation of Software:** You shall allow Us to install software on Your systems for access, monitoring, and control purposes.

6.1.5. **Health and Safety Compliance:** You shall inform Us of all health and safety and security requirements at Your premises.

6.1.6. **Site Readiness:** If installation services are required, You shall ensure that the site is ready and accessible.

6.1.7. **Authorisations:** You shall authorise Us to liaise directly with third parties as reasonably required.

6.1.8. **Access Rights:** You consent to Us accessing Your information technology systems as required for the provision of the Services.

6.1.9. **Compliance with Security Policies:** We shall comply with Your security policies when accessing Your systems, provided such policies have been supplied to Us.

6.2. Provision of Information and Materials

- 6.2.1. **Accuracy of Information:** You shall provide all necessary documents and materials, ensuring they are accurate and complete.
- 6.2.2. **Compliance with Laws:** You shall comply with all Applicable Laws in relation to the Agreement.
- 6.2.3. **Licences and Consents:** You shall obtain and maintain all necessary licences and consents required.
- 6.2.4. **Customer Equipment:** You shall ensure that all Customer Equipment is in good working order and suitable for the purposes for which it is used.

6.3. Use of Products, Software, and Services

- 6.3.1. **No Unauthorised Transfer:** You shall not transfer or provide the Products, Software, or Services to any third party without Our prior written consent.
- 6.3.2. **Network Stability:** You shall not undertake activities that may destabilise or negatively impact Your network or Our ability to provide the Services.
- 6.3.3. **Software Licences:** You are responsible for storing all Software licences in a safe location.
- 6.3.4. **Ownership of Custom Software:** Copyright in custom software remains Our property unless otherwise agreed in writing.

6.4. Customer Default

- 6.4.1. **Definition of Customer Default:** Any act or omission by You or failure to perform relevant obligations ("**Customer Default**") which prevents or delays Our performance.
- 6.4.2. **Our Rights in Case of Customer Default:**
 - 6.4.2.1. We shall not be liable for any costs or losses sustained by You arising directly or indirectly from Our failure or delay to perform due to Customer Default.
 - 6.4.2.2. You shall reimburse Us on written demand for any costs or losses sustained arising directly or indirectly from Customer Default.

6.5. Non-Solicitation of Clients and Employees

- 6.5.1. **Non-Solicitation Agreement:** You agree not to offer employment to or hire any of Our employees involved in providing the Services during the term of the Agreement and for a period of two years thereafter.
- 6.5.2. **Liquidated Damages:** If You breach this clause, You shall pay Us 100% of the employee's total annual salary as liquidated damages.

6.6. Lodging of Service Requests

- 6.6.1. **Service Request Process:** You agree to follow Our process for lodging Service Requests as communicated to You.

6.7. Third Party Agreements

- 6.7.1. **Compliance with Third Party Agreements:** You understand that certain Products, Software, and Services may be subject to Third Party Agreements, which You must comply with.

6.7.2. **Liability for Third Party Agreements:** You are responsible for any breach of Third Party Agreements caused by Your actions or omissions.

7. Warranties

7.1. Mutual Warranties

7.1.1. **Authority to Enter Agreement:** Each Party warrants that it has the power and authority to enter into and perform the Agreement, which constitutes valid and binding obligations on it in accordance with its terms.

7.2. Your Use of Products, Software, and Services

7.2.1. **Compliance with Manufacturer's Terms:** Your use and enjoyment of the Products, Software, and Services shall be subject at all times to the terms and conditions of the original manufacturers, providers, and developers thereof, including without limitation any licences or other limitations imposed on the use of the same. You agree to be bound by such terms and conditions and to only use the Products, Software, and Services in accordance with the relevant specifications and guidelines provided under such terms and conditions (as may be amended from time to time).

7.3. Exclusions of Warranties

7.3.1. **No Liability for Certain Defects:** Subject to **Section 9**, We shall not be liable under or in connection with the Agreement for:

- 7.3.1.1. Any defect arising from fair wear and tear, wilful damage, negligence, failure to follow instructions (whether oral or in writing), misuse, modification, or any adjustment or repair not carried out by Us or with Our approval.
- 7.3.1.2. Any losses arising from third-party viruses, worms, time bombs, trojan horses, and other malicious code, files, scripts, agents, or programs; computer attacks; or malicious acts (including attacks on or through the internet, any internet service, or telecommunications provider) that are outside of Our control and scope of the Support Services.
- 7.3.1.3. The Products, Software, or Services meeting Your particular requirements or being of satisfactory quality or fit for Your required purpose.
- 7.3.1.4. The performance or non-performance of any Products or Software that are manufactured or produced by third parties.

7.3.2. **Exclusion of Other Warranties:** To the maximum extent permitted by Applicable Law, other than as expressly set out in the Agreement, all other representations, warranties, and conditions (whether express or implied) are excluded.

7.4. Our Warranties

7.4.1. **Compliance with Agreement:** We warrant to You that:

- 7.4.1.1. We will perform the Services in accordance with the Agreement.
- 7.4.1.2. The Services will conform with all relevant descriptions and specifications provided to You by Us.

7.4.1.3. The Services will be provided in accordance with all applicable legislation in force from time to time and any of Your policies provided to Us (to the extent they are reasonable).

7.4.2. **Warranty Extension:** Where a third party's warranty provided under clause 8.2.1 has expired or terminated, We shall offer You the option to purchase warranty cover for the remaining Term and any Renewal Terms; such warranty purchase costs shall be included within the Charges.

7.5. Reliance on Manufacturer's Warranty

7.5.1. **Claims Under Manufacturer's Warranty:** You are expected to rely on the warranties provided by the manufacturer for Goods supplied by Us and handle claims covered by those warranties directly with the manufacturer.

7.5.2. **No Claim for Manufacturer's Default:** You indemnify and hold Us harmless for any manufacturer default or breach of warranties regarding Goods supplied by Us.

8. Intellectual Property and Confidentiality

8.1. Ownership of Intellectual Property

8.1.1. **Our Intellectual Property:** Nothing in the Agreement shall provide You with any right, title, or interest in or to the Intellectual Property Rights of Us, Our licensors, or any manufacturer or provider of the Products, Software, or Services (including the Developed Materials), unless stated otherwise.

8.1.2. **Ownership of Our Underlying IPR:** Ownership of the Supplier Underlying IPR (including Developed Materials and Deliverables) shall remain vested in Us or Our licensors.

8.1.3. **Ownership of Your Underlying IPR:** Ownership of the Customer Underlying IPR shall remain vested in You or Your licensors.

8.1.4. **Ownership of Custom Software:** Copyright in custom software remains Our property unless otherwise agreed.

8.2. Licences Granted

8.2.1. **Licence to Use Developed Materials:** We grant You a royalty-free, non-exclusive licence to load, execute, store, transmit, display, modify, and otherwise use the Developed Materials.

8.2.2. **Licence to Use Our Underlying IPR:** We grant You and Your Authorised Users a revocable, royalty-free, transferable, non-exclusive licence during the term of the Agreement to use any Supplier Underlying IPR and Deliverables that are not Developed Materials provided to You solely in connection with Your receipt of any Services.

8.2.3. **Licence to Use Your Underlying IPR:** You grant Us a revocable, royalty-free, non-exclusive licence to use the Customer Underlying IPR, Customer Equipment, and Customer Materials to the extent necessary to provide the Services.

8.2.4. **Restrictions on Use of Our Intellectual Property:** This licence does not grant title or ownership rights in Our intellectual property or related intellectual property

to You. You may not transfer, sell, or dispose of any of Our proprietary items without Our prior written consent.

- 8.2.5. **Confidentiality of Software Source Code:** If software source code is delivered under this licence, You agree to keep it strictly confidential. If software object code is delivered, You will not copy or modify the software or attempt to create source code from Our intellectual property.

8.3. Use of Company Name and Logos

- 8.3.1. **Consent for Marketing Use:** Subject to Your prior written consent, You grant Us the right to use Your company name, logos, and emblems for the purpose of providing the Services and in connection with Our marketing campaigns and PR activities, including describing the nature of the Products, Software, and Services provided to You on Our website, or in mutually agreed press releases.

8.4. Indemnities

- 8.4.1. **Your Indemnity to Us:** You indemnify Us against all claims, demands, actions, costs, expenses, damages, and losses arising out of or in connection with any claim alleging that:

- 8.4.1.1. You have failed to obtain or comply with an appropriate licence, sub-licence, consent, Intellectual Property Right, or other permission associated with technology, software, components, or data (including any Third Party IPR) provided under the Agreement.
- 8.4.1.2. Any unauthorised use or modification of the Products, Software, and Services by You or a third party.

9. Limitation of Liability

9.1. Exclusion of Liability for Death or Personal Injury

- 9.1.1. Nothing in the Agreement shall exclude or limit either Party's liability for death or personal injury caused by its negligence, for fraud, or any other matter that cannot be excluded or limited by law.

9.2. Exclusions of Certain Types of Loss

- 9.2.1. Subject to clause 10.1 and any Data Protection Laws related breaches, We shall not be liable, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for:

- 9.2.1.1. Loss of profits or revenue.
- 9.2.1.2. Loss of sales or business.
- 9.2.1.3. Loss of agreements or contracts.
- 9.2.1.4. Loss of anticipated savings.
- 9.2.1.5. Loss of or damage to goodwill.
- 9.2.1.6. Loss of use or corruption of software, data, or information.
- 9.2.1.7. Any costs of substitute goods, services, or deliverables.
- 9.2.1.8. Any indirect or consequential loss.

9.3. Limitation of Our Liability

9.3.1. Subject to clause 10.1, Our total aggregate liability to You, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Agreement in any Contract Year shall be limited to 100% of the Charges received by Us in that Contract Year.

9.4. Limitation of Your Liability

9.4.1. Subject to clauses 10.1 and 10.2, Your total aggregate liability to Us, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Agreement in any Contract Year shall be limited to 100% of the Charges received by Us in that Contract Year.

9.5. Other Limitations

9.5.1. Save as explicitly provided herein and as permitted by law, any implied terms, conditions, or warranties concerning the quality, fitness for purpose, condition, description, assembly, manufacture, design, or performance of Goods or Services are expressly excluded.

9.5.2. You indemnify and hold Us harmless from any claim arising directly or indirectly from program or data loss or damage suffered by You or any third party due to the supply of Goods or Services by Us. You acknowledge Your sole responsibility for backing up programs and data.

9.5.3. You indemnify and hold Us harmless against any claim for indirect or consequential losses or expenses suffered by You or any third party, including loss of turnover, profits, business, or goodwill.

9.5.4. You indemnify and hold Us harmless for any loss or damage incurred if We fail to meet delivery dates or cancel or suspend the supply of Goods or Services.

9.5.5. Except as expressly stated herein, We are not liable for any kind of loss or damage suffered by You, including negligence on Our part, in connection with the Goods or Services provided.

9.6. Limitation Options

9.6.1. Where legislation implies a condition or warranty that cannot be excluded but can be limited, Our liability is limited to, at Our discretion: (a) Replacing Goods. (b) Repairing Goods. (c) Paying the cost of replacement or repair. (d) Paying the cost of acquiring equivalent Goods or Services.

9.7. Application of Laws

9.7.1. These Terms do not exclude, restrict, or modify the application of any UK legislation applicable to Goods or Services that cannot be excluded, restricted, or modified.

9.8. Severance

9.8.1. Unlawful, invalid, or unenforceable provisions may be severed without prejudicing the validity and enforceability of the remaining provisions.

10. Termination

10.1. Termination by Us

- 10.1.1. We may terminate the Agreement (in whole or in part) with immediate effect by giving written notice if:
- 10.1.1.1. You suspend or threaten to suspend payment of Your debts or are unable to pay Your debts as they fall due.
 - 10.1.1.2. You commence negotiations with creditors to reschedule debts or make a compromise or arrangement.
 - 10.1.1.3. A petition is filed, notice given, resolution passed, or order made for Your winding up.
 - 10.1.1.4. An application is made for the appointment of an administrator over You.
 - 10.1.1.5. A receiver is appointed over Your assets.
 - 10.1.1.6. A creditor attaches or takes possession of Your assets, and such attachment is not discharged within **10 Business Days**.
 - 10.1.1.7. Any event occurs that has an effect equivalent to the events mentioned above.
 - 10.1.1.8. You suspend or cease carrying on all or a substantial part of Your business.
 - 10.1.1.9. You fail to pay any amount due under the Agreement on the due date and remain in default for **10 Business Days** after being notified.
- 10.1.2. We may terminate the Agreement upon **90 days'** written notice to You.

10.2. Termination by You

- 10.2.1. Should You wish to terminate the Agreement before the end of the commitment term, You agree to pay all remaining payments up until the end of the commitment term, as detailed in **Section 12 (Termination and Payment Obligations)**.

10.3. Assistance Upon Termination

- 10.3.1. We will assist You in the orderly termination of services, including the timely transfer of services to another provider.
- 10.3.2. You agree to pay Us for rendering such assistance at Our normal rates as outlined in Our current Rate Schedule.

10.4. Payment Obligations Upon Early Termination

- 10.4.1. You acknowledge and agree that termination of the Agreement before the expiration of the contracted term is subject to the terms set forth herein.
- 10.4.2. If You terminate the Agreement prior to the completion of the contracted term, You shall be liable to pay all remaining fees and charges associated with the unexpired portion of the contract.
- 10.4.3. You shall also be liable to pay out the remaining or unexpired portions of all other agreements and contracts with Us.
- 10.4.4. Such payment obligation is absolute and unconditional, and You agree to remit the remaining contract fees promptly upon termination.
- 10.4.5. In the event that a notice of termination is given to Us, We reserve the right at Our discretion, to withhold services, products, information including access

details, or any other item in the agreements until payment has been made to clear all fees, charges, penalties or other payments.

10.5. Calculation of Remaining Contract Fees

10.5.1. For determining the remaining contract fees, any discounts or special pricing provided shall be null and void upon termination, and standard rates shall apply.

10.6. Payment Terms

10.6.1. You shall make payment of the remaining contract fees within **14 days** of the effective date of termination, **unless at Our discretion, we notify You** that payment is to be made before the date of termination, at which time it will be due as notified.

10.6.2. Failure to make timely payment constitutes a material breach, entitling Us to pursue all available legal remedies.

10.7. Liquidated Damages

10.7.1. The Parties agree that the remaining contract fees represent a reasonable estimate of the damages incurred by Us due to early termination.

10.7.2. You acknowledge that these fees serve as liquidated damages and not as a penalty.

10.8. Maintenance Surcharge for Partial Termination

10.8.1. If You terminate specific managed services while keeping other contracts in place, a monthly maintenance surcharge shall apply to all surviving contracts.

10.8.2. The surcharge will be calculated based on the nature and extent of the managed services retained.

10.9. Survival of Obligations

10.9.1. Notwithstanding the termination of the Agreement, Your payment obligations under this Section shall survive until full satisfaction of the remaining contract fees.

10.10. Obligations Upon Termination

10.10.1. Upon termination or expiry of the Agreement for any reason:

10.10.1.1. You shall immediately pay Us all outstanding unpaid invoices and interest. For any Products, Software, and Services supplied but not yet invoiced, We may submit an invoice payable immediately.

10.10.1.2. You shall return all of Our Equipment. Until returned, You are solely responsible for its safekeeping, including adequate insurance.

10.10.1.3. Any provision of the Agreement intended to survive termination shall remain in full force and effect.

10.11. Accrued Rights

10.11.1. Termination or expiry does not affect any rights, remedies, obligations, or liabilities that have accrued up to the date of termination.

10.12. Post-Termination Support

- 10.12.1. Should You require reasonable support after termination, such support shall be provided by Us and charged on a time and materials basis in accordance with Our then-current rates, provided all outstanding amounts are settled.

11. Data Protection – GDPR

11.1. Definitions

- 11.1.1. **Data Protection Laws:** Refers to the Data Protection Act 2018 ("DPA"), the General Data Protection Regulation 2016/679 ("GDPR"), the Privacy (Electronic Communications) Regulations 2003, the Data Protection (Charges and Information) Regulations 2018, and all applicable laws relating to the processing of personal data and privacy.
- 11.1.2. **Information Commissioner:** Has the meaning given in the DPA.
- 11.1.3. **Personal Data:** Has the meaning given in the DPA.

11.2. Compliance with Data Protection Laws

- 11.2.1. Both Parties agree to comply with all applicable requirements of the Data Protection Laws.

11.3. Roles of the Parties

- 11.3.1. The Parties acknowledge that for the purposes of the Data Protection Laws, You are the controller and We are the processor.

11.4. Your Obligations

- 11.4.1. You warrant that You have all necessary rights and consents to enable lawful transfer of Personal Data to Us.

11.5. Our Obligations

- 11.5.1. We shall:
- 11.5.1.1. Process Personal Data only on Your documented instructions.
 - 11.5.1.2. Ensure that Our Personnel are committed to confidentiality.
 - 11.5.1.3. Implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk.
 - 11.5.1.4. Not transfer Personal Data outside the EEA without Your consent.
 - 11.5.1.5. Assist You in responding to data subject requests and in ensuring compliance with obligations under the Data Protection Laws.
 - 11.5.1.6. Notify You without undue delay upon becoming aware of a Personal Data breach.
 - 11.5.1.7. At Your choice, delete or return all Personal Data upon termination of the Agreement.
 - 11.5.1.8. Maintain records and make available information necessary to demonstrate compliance.

11.6. Sub-processing

11.6.1. You authorise Us to engage sub-processors to process Personal Data.

11.7. Ownership and Responsibility

11.7.1. You own all rights to Customer Data and are responsible for its legality and quality.

11.8. Data Loss or Damage

11.8.1. In the event of data loss or damage caused by Us, Your sole remedy is for Us to use reasonable endeavours to restore the data.

12. Confidentiality

12.1. Confidentiality Obligations

12.1.1. Each Party shall keep the other Party's Confidential Information confidential and shall not disclose it except as permitted by this clause.

12.2. Permitted Disclosures

12.2.1. A Party may disclose Confidential Information:

12.2.1.1. To its employees, officers, representatives, or advisers who need to know for the purposes of exercising the Party's rights or obligations.

12.2.1.2. As required by law, court order, or any governmental or regulatory authority.

12.3. Restrictions on Use

12.3.1. Neither Party shall use the other's Confidential Information for any purpose other than to perform its obligations under the Agreement.

13. General Conditions

13.1. Force Majeure Event

13.1.1. Neither Party shall be liable for any failure or delay in performing obligations due to a Force Majeure Event.

13.1.2. The Affected Party shall:

13.1.2.1. Notify the other Party as soon as reasonably practicable.

13.1.2.2. Use reasonable endeavours to mitigate the effect of the Force Majeure Event.

13.2. Assignment

13.2.1. You shall not assign or transfer any rights or obligations under the Agreement without Our prior written consent.

13.2.2. We may assign or transfer Our rights under the Agreement.

13.3. Variation

13.3.1. No variation of the Agreement shall be effective unless in writing and signed by both Parties.

13.4. Entire Agreement

13.4.1. The Agreement constitutes the entire agreement between the Parties.

13.4.2. Each Party acknowledges it does not rely on any statement not set out in the Agreement.

13.5. No Partnership or Agency

13.5.1. Nothing in the Agreement is intended to establish any partnership or agency relationship.

13.6. Waiver

13.6.1. A waiver of any right under the Agreement is only effective if in writing.

13.6.2. Failure to exercise any right does not constitute a waiver.

13.7. Severability

13.7.1. If any provision is invalid, it shall be modified to make it valid.

13.7.2. If modification is not possible, the provision shall be deemed deleted.

13.8. No Rights for Third Parties

13.8.1. The Agreement does not confer any rights on third parties.

13.9. Governing Law and Jurisdiction

13.9.1. The Agreement shall be governed by the law of England and Wales.

13.9.2. The courts of England and Wales shall have exclusive jurisdiction.

13.10. Dispute Resolution

13.10.1. The Parties shall attempt to resolve disputes in good faith.

13.10.2. Disputes will be first escalated to Your and Our senior representatives if not resolved.

13.11. Business Continuity and Disaster Recovery

13.11.1. You will maintain Your Business Continuity and Disaster Recovery Plan.

13.11.2. We will support You in developing relevant elements of the plan.

13.12. Notices

13.12.1. Notices shall be in writing and delivered by hand, post, or email to the addresses specified in the Agreement.

13.13. Precedence

13.13.1. Should any conflict occur between terms or conditions, the following order of precedence shall apply:

a) any Agreement

b) the coversheet

- c) appendices to the Agreements
- d) SOW (Statement of Works) or project contracts under any Agreement
- e) rate card
- f) memberships
- g) these Terms of Business

End of Terms and Conditions