

# Terms and Conditions for the Supply of Services

Please read these Terms and Conditions for the Supply of Services carefully, as they set out our and your legal rights and obligations in relation to our services.

## 1. Definitions and interpretation

### 1.1 In the Agreement:

“**Affiliate**” means a company, firm or individual that Controls, is controlled by, or is under common Control with the relevant company or firm;

“**Agreement**” means the agreement between the Supplier and the Customer incorporating these Terms and Conditions for the Supply of Services and the Proposal, and any amendments to it from time to time.

“**Business Day**” means any week day, other than a bank or public holiday in England;

“**Background Materials**” means all works and materials in existence before the date of the Agreement (excluding Customer Materials);

“**Business Hours**” means between 09:00 and 17:00 on a Business Day;

“**Charges**” means the charges specified in the Sales Estimate / Proposal and/or the Supplier's Hourly Rate multiplied by the number of man-hours spent by the Supplier's personnel performing the Services plus the Expenses payable by the Customer to the Supplier, which may be varied in accordance with Clause [7];

“**Confidential Information**” means:

- (a) any information supplied (whether supplied in writing, orally or otherwise) by one party to the other party marked as “confidential”, described as “confidential” or reasonably understood to be confidential;
- (b) the terms (but not the existence) of the Agreement; and

“**Control**” means:

- (a) the legal power to directly or indirectly control the management of a company, firm or other entity;
- (b) the right to select the majority of the directors (or their equivalent) of a company, firm or other entity; and/or

(c) ownership of more than 50% of the voting shares in a company;

and “**Controlled**” will be construed accordingly;

“**Customer**” means the customer for Services under the Agreement as specified in the Proposal / in the Supplier's order confirmation;

“**Customer Materials**” means works and materials provided by the Customer to the Supplier for incorporation into the Deliverables;

“**Customer Representatives**” means the persons specified as such in the Proposal;

“**Deliverables**” means the deliverables specified in the Proposal;

“**Effective Date**” means the earlier of:

(a) the date when the Supplier sends to the Customer its written confirmation that the Agreement is agreed; or

(b) the date when the Supplier begins supplying the Services to the Customer;

“**Expenses**” means the following expenses reasonably necessary for, and incurred exclusively in connection with, the performance of the Supplier's obligations under the Agreement:

(a) travel expenses;

(b) accommodation expenses;

(c) subsistence expenses; and

(d) [other expenses];]

“**Force Majeure Event**” means an event, or a series of related events, that is outside the reasonable control of the party affected (including power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars);

“**Hourly Rate**” means the Supplier's [standard] hourly labour rate as [specified in the Proposal / published on the Supplier's website on the Effective Date / notified by the Supplier to the Customer] and varied in accordance with Clause [7];

**“Intellectual Property Rights”** means all intellectual property rights wherever in the world, whether registrable or unregistrable, registered or unregistered, including any application or right of application for such rights (and the “intellectual property rights” referred to above include copyright and related rights, moral rights, database rights, confidential information, trade secrets, know-how, business names, trade names, domain names, trademarks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs);

**“Minimum Term”** means the period specified as such in the Proposal;

**“Personal Data”** has the meaning given to it in the Data Protection Act 1998;

**“Premises”** means the premises of the Customer where the Services will be provided, in whole or part, by the Supplier, as [specified in the Proposal / agreed by the Supplier and the Customer in writing];

**“Proposal”** means a proposal document issued by the Supplier to the Customer detailing the scope of the Services and other matters relating to the Agreement;

**“Services”** means the services supplied by the Supplier to the Customer under the Agreement, details of which are set out in the Proposal;

**“Supplier”** means Piran Technologies, a limited company incorporated in England and Wales (registration number 5242318) having its registered office at Unit 10, Barncoose Industrial Estate, Wilson Way, Redruth, Cornwall, TR15 3RQ;

**“Supplier Representatives”** means the persons specified as such in the Proposal;

**“Term”** means the term of the Agreement; and

**“Year”** means a period of 365 days (or 366 days if there is a 29 February during the relevant period) starting on 01<sup>st</sup> January or on any anniversary of the Effective Date.

- 1.2 In the Agreement, a reference to a statute or statutory provision includes a reference to:
- (a) that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and

(b) any subordinate legislation made under that statute or statutory provision.

1.3 The Clause headings do not affect the interpretation of the Agreement.

1.4 In the Agreement, “persons” include companies, partnerships, limited liability partnerships, unincorporated associations and trusts.

1.5 The ejusdem generis rule is not intended to be used in the interpretation of the Agreement; it follows that a general concept or category utilised in the Agreement will not be limited by any specific examples or instances utilised in relation to such a concept or category.

## **2. Appointment and Term**

2.1 The Customer appoints the Supplier as its supplier of the Services during the Term.

2.2 The Agreement will come into force on the Effective Date and will continue in force indefinitely, unless and until terminated in accordance with Clause [15] / for a fixed period of 5 Years, after which it will terminate automatically, unless previously terminated in accordance with Clause [15]].

## **3. Services**

3.1 The Supplier will supply the Services to the Customer in accordance with the terms of the Agreement.

3.2 The Supplier will use reasonable endeavours to meet any timetable for the provision of the Services agreed in writing with the Customer / set out in the Proposal; but the time for delivery of the Services will not be of the essence of the Agreement.

3.3 The Supplier may sub-contract the provision of the Services without the prior written consent of the Customer; providing that if the Supplier does sub-contract the provision of Services, the Supplier will remain liable to the Customer for the performance of the sub-contracted obligations.

3.4 In the performance of the Services at the Premises, the Supplier shall comply with all reasonable health, safety and security policies and regulations advised by the Customer to the Supplier.

3.5 The Supplier will not take any action or do anything which would or would be likely to damage the reputation or goodwill of the Customer, or bring the Customer into disrepute.

#### **4. Deliverables**

4.1 The Supplier will deliver the Deliverables to the Customer in accordance with the terms of the Agreement.

4.2 The Supplier will use reasonable endeavors to meet any timetable for the delivery of the Deliverables agreed in writing with the Customer / set out in the Proposal; but the time for delivery of the Deliverables will not be of the essence of the Agreement.

4.3 Within 3 Business Days following delivery of the Deliverables, the Customer will run acceptance tests to determine whether the Deliverables supplied by the Supplier:

- (a) meet the specification of the Deliverables set out in the Proposal
- (b) operate without defect or error; and
- (c) are of a good professional standard.

4.4 Acceptance of Deliverables supplied to the Customer will occur upon the earlier of:

- (a) the Customer informing the Supplier that the tests under Clause [4.3] have been passed; or
- (b) the period specified in Clause [4.3] passing without the Customer giving a written notice of rejection of the Deliverables to the Supplier.

4.5 If the Customer rejects Deliverables supplied by the Supplier, the Customer will allow the Supplier a further reasonable period (of no less than 30 Business Days) to remedy the problems, following which the Customer will repeat the acceptance tests.

#### **5. Customer obligations**

5.1 The Customer will provide to, or procure for, the Supplier any:

- (a) support and advice;
- (b) information and documentation;
- (c) third party co-operation;
- (d) licences of third party software; and
- (e) governmental, legal or regulatory licences, consents or permits;

reasonably necessary to enable the Supplier to discharge its obligations under the Agreement.

5.2 The Customer will:

- (a) provide to the Supplier prompt access to the Premises upon request;
- (b) be responsible for ensuring the health and safety of the Supplier's personnel, agents and subcontractors whilst they are at the Premises;
- (c) maintain the Premises in good order for the supply of Services, and in accordance with all applicable laws;
- (d) inform the Supplier of all health and safety rules and regulations and any reasonable security requirements that apply at the Premises; and
- (e) maintain reasonable insurance cover for the Supplier's personnel, agents and subcontractors whilst they are working on Premises (including reasonable public liability insurance);

or, where the Premises are occupied by a third party, the Customer will use reasonable endeavours to seek to ensure that the third party will comply with the preceding provisions of this Clause 4.2 as if the third party were the Customer.

5.3 The Customer will not take any action or do anything which would or would be likely to damage the reputation or goodwill of the Supplier, or bring the Supplier into disrepute.

## 6. Project management

- 6.1 The Customer will ensure that all instructions in relation to the Agreement will be given by a Customer Representative to a Supplier Representative, and the Supplier:
- (a) may treat all such instructions as the fully authorised instructions of the Customer; and
  - (b) will not comply with any other instructions in relation to the Agreement without first obtaining the consent of a Customer Representative.
- 6.2 The parties will hold project management meetings at either the customer or suppliers site, and by telephone and via the internet:
- (a) during the Term; and
  - (b) at the reasonable request of either party.
- 6.3 A party requesting a project management meeting to be held in person will give to the other at least 10 Business Days' notice of the meeting.
- 6.4 Wherever necessary to enable the efficient conduct of business, the Customer will be represented at the project management meetings by at least one Customer Representative and the Supplier will be represented at the project management meetings by at least one Supplier Representative.

## 7. Charges and payment

- 7.1 The Customer will pay the Charges to the Supplier in accordance with the provisions of this Clause [7].
- 7.2 The Supplier may issue an invoice for the Charges to the Customer from time to time during the Term / on or after the dates set out in the Proposal / at any time after the relevant Services have been delivered to the Customer.
- 7.3 The Customer will pay the Charges to the Supplier within 30 days of the date of issue/receipt of an invoice issued in accordance with Clause [7.2].
- 7.4 All amounts payable under the Agreement are exclusive of all sales, value-added, withholding and other taxes and duties which will be payable by the Customer

(except for taxes payable on the Supplier's net income, which will be payable by the Supplier).

- 7.5 Charges must be paid by bank transfer or by cheque (using such payment details as are notified by the Supplier to the Customer from time to time).
- 7.6 If the Customer does not pay any amount properly due to the Supplier under or in connection with the Agreement, the Supplier may:
- (a) charge the Customer interest on the overdue amount at the rate of 8% per year above the base rate of HSBC Bank Plc from time to time (which interest will accrue daily until the date of actual payment, be compounded quarterly, and be payable on demand); or
  - (b) claim interest and statutory compensation from the Customer pursuant to the Late Payment of Commercial Debts (Interest) Act 1998.
- 7.7 The Supplier may elect to vary the Charges / Hourly Rate by giving to the Customer not less than 30 days' written notice of the variation expiring at the end of any Year of the Agreement, providing that any such variation shall not result in the Charges / Hourly Rate increasing by more than the increase, during the 12 month period immediately preceding the notice of variation, in the Retail Prices Index (all items) published by the UK Office for National Statistics.
- 7.8 The Customer will reimburse the Supplier in respect of the Expenses and the Supplier may invoice in respect of Expenses at any time after the relevant Expenses have been incurred by the Supplier, providing that the Supplier must obtain the Customer's prior written consent before incurring Expenses exceeding £500 during any month.
- 7.9 The Supplier will:
- (a) ensure that the personnel providing the Services complete records of their time spent providing those Services;
  - (b) collect and collate evidence of all Expenses;
  - (c) retain such records and evidence during the Term and for a period of 6 months following the end of the Term; and
  - (d) supply such records and evidence to the Customer within 10 Business Days following receipt of a written request to do so.

## **8. Warranties**

- 8.1 The Customer warrants to the Supplier that it has the legal right and authority to enter into and perform its obligations under the Agreement.
- 8.2 The Supplier warrants to the Customer that:
- (a) it has the legal right and authority to enter into and perform its obligations under the Agreement.
  - (b) the Services will be performed with reasonable care and skill.
- 8.3 All of the parties' liabilities and obligations in respect of the subject matter of the Agreement are expressly set out in the terms of the Agreement. To the maximum extent permitted by applicable law, no other terms concerning the subject matter of the Agreement will be implied into the Agreement or any related contract.

## **9. Intellectual Property Rights**

- 9.1 The Supplier hereby grants to the Customer a non-exclusive license under the Intellectual Property Rights in the Deliverables / the products of the Services (excluding the Customer Materials) to copy, reproduce, distribute, publish, export, adapt, edit and translate the Deliverables / the products of the Services for internal business use.
- 9.2 The Supplier warrants that the Deliverables / the products of the Services (excluding the Customer Materials), and their use by the Customer in accordance with the terms of the Agreement, will not infringe the UK Intellectual Property Rights of any third party.
- 9.3 Subject to the Customer's compliance with Clause [9.4], the Supplier hereby indemnifies and undertakes to keep indemnified the Customer against any losses, damages, claims, obligations, liabilities, costs and expenses (including legal fees and costs and expenses incurred in investigating, preparing, defending or prosecuting any litigation, claim, proceeding or demand) arising out of or in connection with any breach by the Supplier of the warranty in Clause [9.2].
- 9.4 The Customer will:

- (a) upon becoming aware of an actual or potential IPR Infringement Claim, notify the Supplier;
- (b) provide to the Supplier reasonable assistance in relation to the IPR Infringement Claim;
- (c) allow the Supplier the exclusive conduct of the IPR Infringement Claim and all related disputes, proceedings, negotiations and settlements; and
- (d) not admit liability in connection with any IPR Infringement Claim or settle any IPR Infringement Claim without the prior written consent of the Supplier.]

## **10. Limitations of liability**

10.1 Nothing in the Agreement will exclude or limit the liability of either party for:

- (a) death or personal injury caused by that party's negligence;
- (b) fraud or fraudulent misrepresentation on the part of that party; or
- (c) any other liability which may not be excluded or limited under applicable law.

10.2 Subject to Clause [10.1] and without prejudice to the express indemnities in the Agreement, each party's liability to the other party under or in connection with the Agreement or any collateral contract, whether in contract or tort (including negligence), will be limited as follows:

- (a) neither party will be liable for any:
  - (i) loss of profits, income or anticipated savings;
  - (ii) loss or corruption of any data, database or software;
  - (iii) reputational damage or damage to goodwill;
  - (iv) loss of any commercial opportunity; or
  - (v) indirect or consequential loss or damage];

- (b) neither party will be liable for any losses arising out of a Force Majeure Event;

## **11. Data protection**

11.1 The Customer warrants that it has the legal right to disclose all Personal Data that it does in fact disclose to the Supplier under the Agreement, and that the processing of that Personal Data by the Supplier for the purposes of and in accordance with the terms of the Agreement will not breach any applicable laws (including the Data Protection Act 1998).

11.2 The Supplier warrants that:

- (a) it will act only on instructions from the Customer in relation to the processing of any Personal Data performed by the Supplier on behalf of the Customer; and
- (b) it has in place appropriate security measures (both technical and organisational) against unlawful or unauthorised processing of Personal Data and against loss or corruption of Personal Data processed by the Supplier on behalf of the Customer.]

## **12. Confidentiality**

12.1 Each party will keep confidential the Confidential Information of the other party, and will not disclose that Confidential Information except as expressly permitted by this Clause [12].

12.2 Each party will protect the confidentiality of the Confidential Information of the other party using at least reasonable security measures.

12.3 The Confidential Information of a party may be disclosed by the other party to its employees and professional advisers, provided that each recipient is legally bound to protect the confidentiality of the Confidential Information.

12.4 These obligations of confidentiality will not apply to Confidential Information that:

- (a) has been published or is known to the public (other than as a result of a breach of the Agreement);

- (b) is known to the receiving party, and can be shown by the receiving party to have been known to it, before disclosure by the other party; or
- (c) is required to be disclosed by law, or by an order (binding upon the relevant party) of a competent governmental authority, regulatory body or stock exchange.]

### **13. Publicity**

Neither party will make any public disclosure relating to the Agreement (including press releases, public announcements and marketing materials) without the prior written consent of the other party, not to be unreasonably withheld or delayed.

### **14. Force Majeure Event**

14.1 Where a Force Majeure Event gives rise to a failure or delay in either party performing its obligations under the Agreement (other than obligations to make payment), those obligations will be suspended for the duration of the Force Majeure Event.

14.2 A party who becomes aware of a Force Majeure Event which gives rise to, or which is likely to give rise to, any failure or delay in performing its obligations under the Agreement, will:

- (a) forthwith notify the other; and
- (b) will inform the other of the period for which it is estimated that such failure or delay will continue.

14.3 The affected party will take reasonable steps to mitigate the effects of the Force Majeure Event.

### **15. Termination**

15.1 Either party may terminate the Agreement at any time by giving at least 90 days' written notice to the other party expiring at any time after the end of the Minimum Term.

15.2 Either party may terminate the Agreement immediately by giving written notice to the other party if the other party:

- (a) commits any breach of any term of the Agreement, and:

- (i) the breach is not remediable; or
  - (ii) the breach is remediable, but other party fails to remedy the breach within 30 days of receipt of a written notice requiring it to do so; or
- (b) persistently breaches the terms of the Agreement.
- 15.3 Either party may terminate the Agreement immediately by giving written notice to the other party if:
- (a) the other party:
    - (i) is dissolved;
    - (ii) ceases to conduct all (or substantially all) of its business;
    - (iii) is or becomes unable to pay its debts as they fall due;
    - (iv) is or becomes insolvent or is declared insolvent; or
    - (v) convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;
  - (b) an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party;
  - (c) an order is made for the winding up of the other party, or the other party passes a resolution for its winding up (other than for the purpose of a solvent company reorganisation where the resulting entity will assume all the obligations of the other party under the Agreement);
  - (d) (where that other party is an individual) that other party dies, or as a result of illness or incapacity becomes incapable of managing his or her own affairs, or is the subject of a bankruptcy petition or order.
- 15.4 The Supplier may terminate the Agreement immediately at any time by giving written notice to the Customer if:
- (a) the Customer fails to pay in full and on time any amount due to the Supplier whether due under the Agreement or otherwise;

- (b) there is a change of Control of the Customer or any parent undertaking or holding company of the Customer; or
- (c) the Customer or any officer, partner or key employee of the Customer is convicted of any criminal offence.

15.5 The Customer may terminate the Agreement immediately at any time by giving written notice to the Supplier if:

- (a) there is a change of Control of the Supplier or any parent undertaking or holding company of the Supplier; or
- (c) the Supplier or any officer, partner or key employee of the Supplier is convicted of any criminal offence.

## 16. Effects of termination

16.1 Upon termination all the provisions of the Agreement will cease to have effect, save that the following provisions of the Agreement will survive and continue to have effect (in accordance with their terms or otherwise indefinitely): Clauses [1, 7.6, 7.9, 9.1, 9.3, 9.4, 10, 12, 16, 17 and 19].

16.2 Termination of the Agreement will not affect either party's accrued rights (including accrued rights to be paid) as at the date of termination.

16.3 Within 30 days of the termination of the Agreement, the Customer will:

- (a) return to the Supplier or dispose of as the Supplier may instruct all documents and materials containing Confidential Information of the Supplier; and
- (b) irrevocably delete from its computer systems all Confidential Information of the Supplier.

16.4 Within 30 days of the termination of the Agreement, the Supplier will:

- (a) return to the Customer or dispose of as the Customer may instruct all documents and materials containing Confidential Information of the Customer; and

- (b) irrevocably delete from its computer systems all Confidential Information of the Customer.

## 17. Non-solicitation

Neither party will, without the other party's prior written consent, either during the term of the Agreement or within 6 months after the date of effective termination of the Agreement, engage, employ or otherwise solicit for employment any employee or contractor of the other party who has been involved in the Agreement or the performance of the Agreement.

## 18. Notices

- 18.1 Any notice given under the Agreement must be in writing (whether or not described as "written notice" in the Agreement) and must be delivered personally, sent by post, or sent by fax or email, for the attention of the relevant person, and to the relevant address, fax number or email address given below (or as notified by one party to the other in accordance with this Clause).

The Supplier

*[addressee, address, fax, and if necessary email address]*

The Customer

*[The addressee, address, fax and email address given in the Proposal]*

- 18.2 A notice will be deemed to have been received at the relevant time set out below (or where such time is not within Business Hours, when Business Hours next begin after the relevant time set out below):
  - (a) where the notice is delivered personally, at the time of delivery;
  - (b) where the notice sent by post, 48 hours after posting; and
  - (c) where the notice sent by fax [or email], at the time of the transmission (providing the sending party retains written evidence of the transmission).

## 19. General

- 19.1 No breach of any provision of the Agreement will be waived except with the express written consent of the party not in breach.

- 19.2 If a Clause of the Agreement is determined by any court or other competent authority to be unlawful and/or unenforceable, the other Clauses of the Agreement will continue in effect. If any unlawful and/or unenforceable Clause would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the Clause will continue in effect (unless that would contradict the clear intention of the parties, in which case the entirety of the relevant Clause will be deemed to be deleted).
- 19.3 Nothing in the Agreement will constitute a partnership, agency relationship or contract of employment between the parties.
- 19.4 The Agreement may not be varied except by a written document signed by or on behalf of each of the parties.
- 19.5 Either party may freely assign their rights and obligations under the Agreement without the other party's consent to any Affiliate of the assigning party or any successor to all or substantial part of the business of the assigning party from time to time. Save as expressly provided in this Clause or elsewhere in the Agreement, neither party may without the prior written consent of the other party assign, transfer, charge, license or otherwise dispose of or deal in the Agreement or any rights or obligations under the Agreement.
- 19.6 Each party agrees to execute (and arrange for the execution of) any documents and do (and arrange for the doing of) any things reasonably within that party's power, which are necessary to enable the parties to exercise their rights and fulfil their obligations under the Agreement.
- 19.7 The Agreement is made for the benefit of the parties, and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree any amendment, waiver, variation or settlement under or relating to the Agreement are not subject to the consent of any third party.
- 19.8 Subject to Clause [10.1]:
- (a) the Agreement will constitute the entire agreement between the parties in relation to the subject matter of the Agreement, and supersedes all previous agreements, arrangements and understandings between the parties in respect of that subject matter;

- (b) neither party will have any remedy in respect of any misrepresentation (whether written or oral) made to it upon which it relied in entering into the Agreement; and
- (c) neither party will have any liability other than pursuant to the express terms of the Agreement.

19.9 The Agreement will be governed by and construed in accordance with the laws of England and Wales; and the courts of England will have non-exclusive jurisdiction to adjudicate any dispute arising under or in connection with the Agreement.