

CRUCIAL SOLUTIONS NE LIMITED: TERMS AND CONDITIONS

1. INTERPRETATION

1.1 “Crucial” means Crucial Solutions NE Limited (registration number 11170988) of 56 Hutton Close, Crowther Industrial Estate, Washington, Tyne & Wear, NE38 0AH.

1.2 “Agreement” means the written agreement that sets out the specific details of the Work to be performed by Crucial for the Client.

1.3 “Client” means the business so described in the Agreement.

1.4 “Products” means hardware, equipment, supporting documentation and other items supplied by Crucial under the Agreement.

1.5 “Work” means the services to be performed by Crucial as described in the Agreement (which may include the supply of Products).

1.6 “Terms” means these standard terms of business including any special conditions supplemental to these Terms that may be agreed between Crucial.

1.7 “Services” means the provision of services offered by Crucial.

1.8 Words in the singular include their equivalent in the plural, and vice versa.

1.9 Writing (such as “in writing”) includes (but is not limited to) email.

2. STANDARD OF CARE

2.1 Crucial shall, subject to these Terms, carry out the Work with the reasonable skill and care to be expected of a professional consultant in the performance of similar work, in accordance with relevant standards current at the time. All other warranties, obligations or representations, express or implied, by statute or otherwise, are excluded to the fullest extent permitted by law.

2.2 Crucial shall, subject to these Terms, carry out the supply of Services with the reasonable skill and care to be expected of a professional consultant in the performance of similar work, in accordance with relevant standards current at the time. All other warranties, obligations or representations, express or implied, by statute or otherwise, are excluded to the fullest extent permitted by law.

2.3 All delivery dates or times for the performance of Work are given in good faith but are indicative only and shall not be of the essence of the Agreement.

3. PRODUCTS

3.1 **THIRD PARTY SOFTWARE** Where the Work and or Services involves the supply of software that is owned by a third party the Client agrees to comply with the terms of any licence supplied by the third party and to indemnify Crucial against any losses, damages or expenses incurred by Crucial as a result of any failure to so comply.

3.2 **HARDWARE** Where the Work and or Services involves the supply of hardware or other equipment Crucial shall arrange that supply on behalf of the Client from the hardware manufacturer

or retailer. The Client acknowledges that the hardware or other equipment is supplied only with the benefit of the manufacturer's warranty.

3.3 LIABILITY FOR THIRD PARTY PRODUCTS The Client acknowledges and agrees that all warranties and representations, express or implied, by statute or otherwise, on the part of Crucial in respect of third party Products are expressly excluded including, but not limited to, any warranties with regard to satisfactory quality or fitness for any particular purpose.

3.5 SUPPLY OF SERVICES Crucial agrees to provide the Services to the Client and the Client agrees to receive the Services for the Period as set out in the Agreement.

3.5.1 The Services are provided at the Client's request and the Client accepts that it is responsible for verifying that the requirements for the Services set out in the Agreement are suitable for its own needs.

3.5.2 If there is any deficiency or failure by Crucial in the provision of the Services the Client will allow Crucial a reasonable time period within which Crucial must correct such deficiency or failure. If Crucial is unable to correct that deficiency or failure within the time period provided, the Client may pursue any rights or remedies available to it.

3.6 CHANGE OF SUPPLY OF SERVICES Crucial reserves the right to change, adapt, modify, alter the supply or provision of service and where possible will endeavor to give the Client as much notice as possible.

3.7 ACCEPTANCE Save as may be agreed otherwise with the Client, Crucial will run such commissioning tests as it considers necessary to ensure that any Product supplied is installed correctly. The Client will be deemed to have accepted the Products with effect from the first to occur of the following:

3.7.1 successful completion of the tests; **3.7.2** the expiry of 14 days after delivery without the Client notifying Crucial in writing of the failure of such tests; or **3.7.3** use of the Product by the Client for its business.

4. PRICE AND PAYMENT

4.1 The fee rates, costs, expenses, lump sum price and any uplift or interest payable for the Work and or supply of services (which are together referred to as the price) shall be as set out in the Agreement.

4.2 The price shall be exclusive of VAT and other taxes and duties (which shall be paid by the Client at the rate that is current at the date of invoice).

4.3 Payment is due either within 30 days commencing on the date of the relevant invoice, or, if Crucial so requires, on or before supply, or as otherwise indicated in the Agreement.

4.4 If the Client fails to make any payment on or before the due date then, without prejudice to any other right or remedy available, Crucial shall have the right to:

4.4.1 treat the Agreement as having been cancelled by the Client and cease any Work and or supply of services for which payment has not been made;

4.4.2 deduct from, or set-off against, any monies due to the Client any sums owed by the Client to Crucial;

4.4.3 charge the Client interest on the unpaid amount from day to day at the annual rate of 5% over the base rate set by Bank of England from the first day after due date until payment is received in full.

5. CLIENT'S OBLIGATIONS

5.1 The successful and timely performance by Crucial of its obligations depends on the Client's performance of its own obligations under the Agreement including, among others, those described in this Clause 5.

5.2 The Client shall nominate a member of its staff as a contact point for Crucial and shall notify Crucial of any changes to that nomination. The nominated member of staff shall be authorised to make binding decisions on behalf of the Client and to provide all information and assistance required by Crucial for the performance of the Work.

5.3 The Client agrees that Crucial shall not be liable for and shall not be required under any circumstances (although may agree to do so at an additional charge) to diagnose or rectify any problem experienced by the Client arising from:

5.3.1 the failure by the Client to maintain its hardware and other equipment in good condition;

5.3.2 the failure by the Client to provide a suitable environment for its hardware and other equipment;

5.3.3 the failure by the Client to maintain its operating systems and applications;

5.3.4 the failure by the Client to implement recommendations made during the course of the Work or solutions to faults or problems previously advised by Crucial;

5.3.5 any breach by the Client of any of its obligations under the Agreement.

5.4 The Client undertakes to:

5.4.1 provide Crucial with all necessary information, facilities, support and, services reasonably required by Crucial for the performance of its obligations to the Client under the Agreement including without limitation at no charge to Crucial adequate office accommodation, a secure work space, telephone services, access to the applicable computers, software, hardware, enclosures, switching hardware and access to necessary areas and systems of the Client at the Client's premises

5.4.2 provide Crucial's representatives with full access to the areas in which the Services are to be performed at the Client's premises;

5.4.3 take all reasonable steps to ensure the health and safety of Crucial's representatives while they are at the Client's premises

5.4.4 ensure that its Representatives co-operate fully with Crucial in relation to the provision of the Services

6. NON-SOLICITATION

6.1 The Client will not, without the prior written consent of Crucial, approach or contact, with the intention of employing, engaging or retaining, any employee of Crucial engaged on or connected with the Work. This restriction will apply during the term of, and for one year following the expiry or termination of, the Agreement.

7. INTELLECTUAL PROPERTY RIGHTS

Copyright in, and all other intellectual property rights arising from, the Works and or supply of Services will at all times belong to Crucial, unless Crucial and the Client enter into a written agreement providing otherwise.

8. CONFIDENTIALITY, PUBLICITY AND DATA PROTECTION

8.1 Both Crucial and the Client will treat information of a confidential nature relating to the other party that it has access to under the terms of the Agreement as confidential and shall not disclose or publish such information without the written consent of the other party. This will not prevent disclosure or publication of any information that is disclosed under a duty imposed by any court, regulatory or government authority or which is not to be regarded as confidential because the information:

8.1.1 is already known to the receiving party, under no obligation of confidence, at the time of disclosure by the other party; or

8.1.2 is or comes within the public domain through no fault of the receiving party; or

8.1.3 is lawfully obtained by the receiving party from a third party on a non-confidential basis; or

8.1.4 is independently developed by the receiving party.

8.2 The Client agrees that nothing in these Terms shall be construed to prevent or restrict Crucial from disclosing or using during its business any technical knowledge, skills or expertise of a generic nature acquired by Crucial in the performance of the Agreement.

8.3 Crucial reserves the right to refer to the Client in Crucial's promotional materials as being a client of Crucial and to give an outline description of the Work and or supply of Services, this includes the use of the Client's logo or recognisable branding, but only as far as to identify the Client.

9. LIMITATION OF LIABILITY

The Client's attention is drawn to the provisions of this Clause 9 in particular.

9.1 Nothing in the Agreement shall exclude or restrict either Party's liability for fraud.

9.2 Crucial will not extend liability to Clients for any of profits, revenue, business, goodwill, loss of contracts, loss of anticipated savings, loss of production, loss of or corruption to data and any other special, indirect or consequential loss or damage whatsoever, whether sustained by the Client or any other person and even if foreseeable or if Crucial has been advised of their possibility.

9.3 All disputes, issues or claims in relation to the Work and or supply of services shall be governed by the Agreement and these Terms to the exclusion of any other liability whatsoever under the law of tort or its equivalent. In the event that Crucial is in breach of the Agreement its liability shall be determined in accordance with this Clause 9.

9.4 Crucial shall be liable to the Client only for such losses incurred by the Client that are directly attributable to the failure of Crucial to perform the Work to the standard required by Clause 2.1 above, limited:

9.4.1 in respect of damage caused to the Client's tangible property, to the sum of £250,000 in aggregate, and

9.4.2 in respect of any other loss, to a sum of £250,000 in aggregate.

9.5 No provision of the Agreement shall limit Crucial's liability for personal injury or death caused as a direct result of its negligence.

9.6 Except in the case of a claim to which Clause 9.5 applies Crucial shall have no liability to the Client in respect of any breach of the Agreement unless the Client commences proceedings within 1 year after the date on which it became aware of the breach or within 1 year after the date on which it ought reasonably to have become so aware, if earlier.

9.7 Crucial shall have no liability to the Client in respect of the failure or inability of any Products to recognise, use or operate by reference to any data concerning a date.

9.8 Crucial shall have no liability to its Clients for any damage or loss caused directly or indirectly in connection with the supply of Services, the connectivity to the network, intranet or internet any software or its use, application or support.

10. TERMINATION

10.1 The Client may terminate the agreement in accordance with the provisions of the agreement.

10.2 Crucial may terminate the Agreement on 30 days' notice at any time.

10.3 Without prejudice to Crucial's rights under Clause 4.4 either party may terminate the Agreement forthwith by written notice to the other party if:

10.3.1 the other party commits a material breach of any of its obligations under the Agreement and either the breach is incapable of remedy or that party does not take any action to remedy such breach within 30 days after service on it of written notice specifying the breach; or

10.3.2 the other party becomes bankrupt or goes into liquidation (other than for the purposes of reconstruction or amalgamation) or has a receiver appointed over all or any part of its assets or an administration order is served upon it.

10.4 Proper termination of the Agreement shall not prejudice any accrued rights or remedies of either party or the application of any provision of these Terms that is expressly or by implication intended to apply on or after such termination.

10.5 On termination of the Agreement, the Client shall pay to Crucial all sums that are payable in respect of that part of the Work done and costs incurred by Crucial up to the date of termination. In addition to these sums, if the Client has terminated the Agreement under Clause 10.1 above or Crucial has terminated the Agreement under Clause 10.2 above, the Client shall also pay any sums that are reasonably incurred by Crucial in bringing the Work to an end in a prompt but orderly manner.

11. FORCE MAJEURE

11.1 Neither party shall be liable for any delay in performing, or failure to perform, its obligations under the Agreement which results from circumstances or events beyond its reasonable control. For the avoidance of doubt, this provision shall not apply to payment for the Work by the Client. If such circumstances or events occur, both parties shall use all reasonable efforts to overcome the difficulties that may arise as a result and to resume the normal progress of the Work as soon as reasonably possible, subject to Clause 11.2.

11.2 If either party shall have been delayed in, or prevented from, performing its obligations due to circumstances or events beyond its reasonable control for more than 60 days then the other party shall be entitled to terminate the Agreement by written notice to the other. In these circumstances, the Client shall nevertheless be liable to pay sums due up to the date of termination in accordance with Clause 10 above.

12. RISK AND TITLE

Risk in any Products supplied will pass to the Client upon delivery. Where title in any Products is intended to pass to the Client, it shall not do so until payment in full has been made in respect of the relevant Products.

13. WAIVER

The waiver by either party of a breach of the other party's obligations under the Agreement shall not be construed as a waiver of any succeeding breach of the same or other obligations. No delay or omission on the part of either party to exercise any right that it has or may have under the Agreement shall operate as a waiver of any such breach by the other party.

14. NOTICES

Any notice, instruction or other document to be given under the Agreement shall be delivered or sent by recorded post or electronic mail to the address of the other party set out in the Agreement and any such notice, instruction or other document shall be deemed to have been served (if sent by post) upon the signed receipt of the recorded mail and (if sent by electronic mail) at the expiration of 24 hours after transmission, providing the delivery confirmation shows it was successfully transmitted to the correct addressee, and no bounce-back or out of office notification was received.

15. INVALIDITY AND SEVERABILITY

If any provision of the Agreement is or becomes invalid or unenforceable the remaining provisions of the Agreement shall remain in force. The parties shall attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision that achieves to the greatest extent possible the legal and commercial objectives of the Agreement.

16. ASSIGNMENT AND SUB-LICENSING

16.1 The Client shall not be entitled to assign the Agreement or sublicense the use (in whole or in part) of any Products licensed to it under the Agreement without the prior written consent of Crucial.

16.2 Crucial may delegate or sub-contract the performance of any of its obligations under the Agreement to third parties without the Client's consent, provided however that Crucial shall retain

its contractual responsibility to the Client (in accordance with, and subject to the limitations set out in, the Agreement).

17. LAW AND JURISDICTION

The Agreement shall be governed by and construed in accordance with English law and each party agrees to submit to the non-exclusive jurisdiction of the English courts.

18. THIRD PARTIES

The Client acknowledges and agrees that these Terms shall not, nor do they purport to, confer on any third party a right to enforce any term of the Agreement. This provision confirms the intention of both parties for the purposes of Section 1(2) of the Contracts (Rights of Third Parties) Act 1999.

19. ENTIRE AGREEMENT

The Agreement constitutes the entire agreement between the Client and Crucial and the Client confirms that in entering into the Agreement it has not relied upon any representation, statement or undertaking not expressly recorded in the Agreement. Where any term contained in the Agreement or any attached schedule conflicts with a term in these Terms, the term in the Agreement or schedule shall apply. No variation of the Agreement will be valid unless confirmed in writing by authorised signatories of both Crucial and the Client.