

# TERMS & CONDITIONS

## 1 DEFINITIONS

- 1.1 “Ingenyx” means Ingenyx Ltd whose registered office is at 2 Longchamp Close, Langshott, Horley, RH6 9GD.
- 1.2 “Contract” means the contract between Ingenyx and the Customer as described in Clause 2.2.
- 1.3 “Charges” means the charges payable by the Customer to Ingenyx in respect to the Support Services or Other Services, as set out overleaf.
- 1.4 “Commencement Date” means the date specified overleaf on which the Support Services or Other Services are to begin.
- 1.5 “Customer” means the person or company named overleaf who has entered into the Contract.
- 1.6 “Data” means all data processed by Ingenyx or provided to Ingenyx for processing as part of the Support Services or Other Services.
- 1.7 “Delivery Date” means the date specified overleaf on which Products are to be delivered to the Customer or, where such Products are to be installed by Ingenyx on the Customer’s premises, the date on which completion of the installation has been carried out as notified to the Customer.
- 1.8 “Expenses” means travel, accommodation and sustenance costs incurred by Ingenyx’s personnel for the purposes of attending the Customer’s premises to carry out the Support Services or Other Services.
- 1.9 “Other Services” means services, if any, to be provided by Ingenyx not comprised in Support Services, as set out overleaf and, where the context allows, Amended Services and/or Additional Services as described below.
- 1.10 “Products” means those goods, if any, to be supplied by Ingenyx as set out overleaf.
- 1.11 “Price” means the price for the Products including carriage, packing and VAT.
- 1.12 “Schedule” means the schedule issued by Ingenyx setting out additional detail and conditions of the Support Services or Other Services.
- 1.13 “Service Levels” means the levels of performance relating to the Services or Other Services as set out in the Schedule.
- 1.14 “Services” means Support and/or Other Services.
- 1.15 “Support Services” means the support services, if any, in respect to the software operated by the Customer as described overleaf.
- 1.16 “System” means the Customer’s equipment on which the Other Services are to be provided or in respect to software running on which the Support Services are provided.
- 1.17 Reference in these terms and conditions to any matter set out “overleaf” shall include that matter as set out in the Schedule, and vice versa.

## **2. CONTRACT**

- 2.1 At the request of the Customer ,Ingenyx will supply a quotation for the supply of Products and/or the provision of Services required by the Customer. Acceptance of the quotation must be made by the Customer in writing by way of a purchase order. No contract shall exist between Ingenyx and the Customer however until Ingenyx has issued an acknowledgement of the Customer's purchase order.
- 2.2 The Contract shall comprise Ingenyx's quotation, Customer's purchase order, Ingenyx's acknowledgement, the Schedule (if any), any document expressly referred to in any of the foregoing and these terms and conditions to the exclusion of any other terms or conditions proposed by the Customer (including those contained or referred to in its purchase order). Any specific terms set out in the quotation, acknowledgement or Schedule shall, in the event of conflict with these terms and conditions, take precedence.

## **3. Delivery of Products**

- 3.1 Delivery of Products shall be effected when the Products are made available for despatch at Ingenyx's premises (whether or not Ingenyx then despatches the Products on behalf of the Customer) or, where the Products are to be installed, at the premises stated in the Customer's purchase order.
- 3.2 Ingenyx shall use its reasonable endeavours to meet any date agreed for delivery but in any event time of delivery shall not be of the essence.
- 3.3 The quantity and description of Products shall be set out in Ingenyx's quotation. Ingenyx may make any changes in the specification of the Products which do not materially affect their quality or performance provided the Products comply to Ingenyx's specification.

## **4. Acceptance of Products**

- 4.1 Unless the Customer notifies Ingenyx within 5 working days of delivery of Products that they are defective or otherwise not in accordance with the Contract, the Customer shall be deemed to have accepted the Products and shall not be entitled to reject them.

## **5. Title to and Risk of Loss of Products**

- 5.1 Risk of damage to or loss of Products shall pass to the Customer upon delivery. Title in Products however shall not pass to the Customer until Ingenyx has received in cash or cleared funds payment of the Price in full.
- 5.2 If the Customer shall fail to pay for Products on the due date, Ingenyx shall be entitled to enter upon the premises of the Customer and remove the Products.

## **6. Price and Payment for Products**

- 6.1 The Price shall be that stipulated in Ingenyx's published price list or quotation current at the date of Customer's purchase order. In the event of any increase in the cost of labour or overheads, or any increase in taxes or duties, or any variation in exchange rates, Ingenyx may increase the Price payable under the Contract upon written notice. The Customer shall in that case have the right to cancel the order and receive back any monies that have been paid.

Notice of cancellation must be received in writing by Ingenyx within seven days of delivery of the notice of price increase to the Customer.

## **7 Support Services**

- 7.1 Where the Customer has purchased Support Services, Ingenyx agrees with effect from the Commencement Date to support the Customer software specified overleaf in accordance with the Service Levels.
- 7.2 The Support Services shall commence on the Commencement Date for an initial period of twelve (12) months and (subject to earlier termination as provided herein) shall automatically renew for further periods of twelve (12) months on each anniversary of the Commencement Date unless either party serves written notice on the other at least thirty (30) days prior to the renewal date that such renewal should not take place.
- 7.3 Notwithstanding the commencement of the Support Services, it shall be a condition precedent of Ingenyx having to comply with any of its obligations hereunder (except in respect to System security) that the Customer shall have in place (and use reasonable endeavours to keep in place for the period of this Agreement) a valid support and maintenance agreement with the relevant supplier, manufacturer or authorised agent in respect of each item of hardware comprised in the System ("Hardware Support Agreement"). In the event that any Hardware Support Agreement for any particular part of the System should expire or terminate for any reason, Ingenyx shall discuss in good faith with the Customer what level of Support Services, if any, can continue to be supplied by Ingenyx until such Hardware Support Agreement is renewed or replaced but Ingenyx shall not otherwise be obliged to continue the Support Services.

## **8. Charges for Support Services**

- 8.1 The annual fee comprised in the Charges for the Support Services shall be invoiced on the issue of Ingenyx's acknowledgement of Customer's purchase order and thereafter, where the Support Services are renewed, shall be invoiced on each anniversary of the Commencement Date. Annual fees and other Charges shall be payable by the Customer within 30 days of the receipt of Ingenyx's invoice. Where Ingenyx has carried out Out-of-Hours Work (as defined in the Schedule) or Additional Services, the invoice in respect thereto shall be issued on completion of the Out-of-Hours Work or Additional Services.
- 8.2 Ingenyx shall only be entitled to vary the Charges with the prior written consent of the Customer. Notwithstanding the foregoing, Ingenyx shall notify the Customer in writing at least sixty (60) days prior to the expiry of the initial period or any subsequent 12-month period of any general increase in Ingenyx's rates which will apply in the following 12-month period. If the Customer does not then terminate the Contract in accordance with Clause 7.2, the increased rates shall apply for the following 12-month period.

## **9. OTHER SERVICES PROVIDED**

- 9.1 Ingenyx will provide the Other Services, if any, set out overleaf on the dates agreed between Ingenyx and the Customer. In the event that the Customer wishes to alter the Other Services (any such alteration being referred to as an 'Amended Service') then it shall make a written request to Ingenyx setting out its requirements. Subject to agreement with the Customer for any increase in the Charges as a result of an Amended Service, Ingenyx shall use its reasonable endeavours to implement the Customer's request.

## **10. Charges for Other Services**

- 10.1 Charges for Other Service shall be as set out overleaf. Ingenyx shall be entitled to levy additional Charges in the manner set out below if the Customer requires advice, guidance or services other than those specified overleaf or in the Schedule ("Additional Services"). The Customer shall make such request for Additional Services in writing to Ingenyx who shall confirm in writing the willingness of Ingenyx to perform the same and the additional Charges in respect thereof. The Customer shall give written confirmation of its acceptance of the additional Charges and Ingenyx shall not levy additional Charges without first obtaining such written consent.
- 10.2 Charges and any additional Charges (which shall be at the minimum rate specified overleaf or such other rate as is reasonable given the nature of the Additional Services) shall be levied monthly in arrears and shall be payable by the Customer together with Value Added Tax thereon) within 30 days of receipt of Ingenyx's invoice.

## **11. CANCELLATIONS OR POSTPONEMENT OF OTHER SERVICES**

- 11.1 Ingenyx will only cancel or postpone the performance of Services under exceptional circumstances and will use reasonable endeavours to give the Customer as much notice as possible. In such circumstances Ingenyx's sole liability for cancellation or postponement will be to reschedule the installation as near to the original installation dates as possible.
- 11.2 Where Services comprise an installation which cannot be completed due to issues beyond Ingenyx's reasonable control, the installation will be charged at the rates specified in the quotation. Any further time required to complete the installation will be re-scheduled and charged according to Ingenyx's then current standard charges and procedures. Ingenyx will inform the Customer as soon as possible if the installation cannot continue and the Customer will have the option to cancel the remaining time allocated or provide other tasks for Ingenyx to perform at the same location. In either case the remaining days will be charged at the agreed rate.
- 11.3 Where a Customer requests a postponement or cancellation of an installation, Ingenyx will use reasonable endeavours to reassign any reserved days to other tasks and if this is possible there will be no charge for such postponement or cancellation. If such reassignment cannot be made, the following cancellation charges shall apply: (a) If cancellation takes place less than 10 working days before first day of scheduled installation: 100% of the relevant charge; or (b) If cancellation takes place more than 10 working days of first day of scheduled installation: No charge will be made.
- 11.4 Notice of cancellation or postponement must be given as soon as possible by the Customer in writing, and made initially by fax or by E-mail to Ingenyx.

## **12. ACCESS TO THE CUSTOMER'S SYSTEM AND PREMISES**

- 12.1 The Customer hereby grants to Ingenyx for the duration of the Services the right to access the System either remotely or by attendance at the Customer's premises where the equipment is installed.
- 12.2 The Customer shall at all times provide a safe working environment for Ingenyx's personnel visiting the Customer's premises. The Customer agrees to indemnify Ingenyx from and against all claims or liabilities (and all costs and expenses in connection therewith) in respect of any death or personal injury to any person engaged by Ingenyx in the performance of the Services while visiting the Customer's premises but only to the extent such death or

personal injury arises as a result of the negligence of the Customer, its employees, agents or authorised representatives.

- 12.3 Ingenyx shall not use any data installed on the System other than for the purposes of the Services and shall treat any data contained in the System as confidential and shall not permit the same to be disclosed to any other person without the prior written consent of the Customer or as may be required by the law.
- 12.4 The Customer warrants that it has the requisite authority to permit the access of Ingenyx to the System upon the terms and conditions of the Contract.
- 12.5 On the Commencement Date, the Customer shall provide to Ingenyx full details of the operation of the System together with all other relevant documentation.
- 12.6 Where the Customer requires Ingenyx to sign any form of agreement including but not limited to a confidentiality agreement, such request must be made provide to the arrival of Ingenyx's personnel on site.

### **13. SYSTEM SECURITY**

Ingenyx shall use all reasonable endeavours and do all such things as a competent person performing the Contract would be expected to do (and refrain from doing such things as such person would be expected to refrain from doing) to keep the System secure while performing the Contract and will not allow persons other than those directly involved in the provision of the Services to have access to the System.

### **14. REPRESENTATIVES**

Both parties shall nominate in writing one representative who shall act as the contact point and channel of communication between them. The parties shall immediately inform the other of any change of the identity of their party's representative.

### **15. Service Levels**

- 15.1 Ingenyx shall provide the Services to the Customer in accordance with the Service Levels. Interruptions to the Services will only be made with the prior agreement of the Customer and when in the reasonable opinion of Ingenyx they are necessary to improve or maintain the Services. Any such interruptions shall be scheduled so as to have the minimum impact on the Services.
- 15.2 The Customer must ensure that Ingenyx is provided with all necessary information requested by Ingenyx prior to an installation or the commencement of Services. Ingenyx will not be responsible for any loss if the Customer does not provide all necessary information requested by Ingenyx.
- 15.3 The Customer must ensure that any necessary preparation of the site for an installation has been carried out prior to Ingenyx's consultant(s) arrival on site. If such prior preparation has not been carried out either (a) the visit will be re-scheduled subject to the payment of 85% of the quotation costs for the abortive attendance, or (b) the period of the Services will be extended by a further day at additional cost at the daily rate specified in the quotation.
- 15.4 On the completion of the Services (or each part thereof), the Customer will be requested to sign a Services Acceptance Form which confirms the acceptance by the Customer of the Services provided by Ingenyx. On receipt of such form signed by the Customer, Ingenyx will invoice the Customer for either the number of days completed as shown on the Service Acceptance Form or for the project completion. In the event the Customer unreasonably refuses to sign a Services Acceptance Form, Ingenyx may deliver an invoice to the Customer which shall be immediately payable.

### **16. Warranties**

- 16.1 Subject to fair wear and tear and the due observance of any operating or similar instructions of Ingenyx, Ingenyx undertakes for a period of twelve (12) weeks from the Delivery Date to replace or at its option to repair free of charge any Products which are defective by reason of defective design, workmanship or materials. No warranty is given that the Products are suitable for any particular purpose unless expressly given in writing by Ingenyx.
- 16.2 Ingenyx warrants to the Customer that: (a) Ingenyx will provide the Services exercising reasonable care and skill and to the level of performance specified in the Service Levels; (b) Ingenyx has full power and authority to provide the Services to the Customer in accordance with the terms of the Contract; and (c) Ingenyx has all requisite registrations under the Data Protection Act 1984 ('the Act'), will maintain such registrations throughout the term of the Contract in accordance with the provisions of the Act and will comply with the provisions of the Act.
- 16.3 No statement, description, warranty condition or recommendation contained in any catalogue, price list or advertisement or communication or made verbally by any of the agents or employees of Ingenyx shall be construed to enlarge, vary or override in any way any of the above warranties.

## **16. LIMITATION OF LIABILITY**

- 16.1 The following provisions set out Ingenyx's entire liability (including any liability for the acts and omissions of its employees agents and sub-contractors) to the Customer respect of (a) any breach of its obligations arising under the Contract and (b) any representation, statement or tortious act or omission including without limitation negligence in connection with or whilst performing the Services (an "Event of Default").
- 16.2 Ingenyx's liability to the Customer for death or personal injury resulting from Ingenyx's own negligence shall not be limited.
- 16.3 Ingenyx shall not be liable to the Customer in respect of an Event of Default for loss of profits goodwill or any type of special indirect or consequential loss (including loss or damage suffered by the Customer as a result of an action brought by a third party) even if such loss was reasonably foreseeable and/or Ingenyx had been advised of the possibility of the Customer incurring the same.
- 16.4 Except in respect to any Event of Default falling within Clause 16.2, Ingenyx shall have no liability to the Customer in respect of any Event of Default unless the Customer shall have served notice of the same upon Ingenyx within twelve (12) months of the date it became aware of the circumstances giving arise to the Event of Default or the date when it ought reasonably to have become so aware.
- 16.5 Except in respect to any Event of Default falling within Clause 16.2, the Customer may not make a claim in respect to an Event of Default unless it has first given Ingenyx not less than 30 days in which to remedy the Event of Default.
- 16.6 Subject to the provisions of Clauses 16.2 to 16.5 above, Ingenyx's entire liability in respect of any Event of Default (or series of connected Events of Default) shall be limited to damages not exceeding £1,000,000.

## **17. Payment Terms and Expenses**

- 17.1 Invoices are payable within 30 days from the date of invoice and in the event that invoices are not settled within the specified period, Ingenyx reserves the right to charge interest at 3% over Barclays Bank base rate from the due date until payment, after as well as before any judgement.
- 17.2 Ingenyx shall notify the Customer of all Expenses to be incurred and shall obtain Ingenyx's written approval to such Expenses before incurring the same. Such notification and approval may be validly given if sent by e-mail. Ingenyx shall recharge at cost to the Customer all Expenses monthly in arrears.

## **18. Delay**

Neither party shall be liable for any delay or failure to perform any of its obligations (other than a payment of money) if the delay or failure results from events or circumstances outside its reasonable control, including but not limited to strikes, lock outs, accidents, war, fire or reduction in or unavailability of power at Ingenyx's premises, and the party so affected shall be entitled to a reasonable extension of time to perform its obligations.

## **19. Termination and Suspension**

- 19.1 Ingenyx shall have the right to cancel or suspend performance of the Contract if the Customer is in default of the Customer's obligations or shall there be any amounts due to Ingenyx by the Customer.
- 19.2 If Ingenyx is unable to perform its obligations due to any circumstances beyond its reasonable control as mentioned in Clause 18, Ingenyx shall be entitled on notice to the Customer, given within a reasonable time, either to terminate or suspend performance of the Contract or any part of it without liability to the Customer.

## **20. General**

- 20.1 The headings in these terms and conditions are for ease of reference only and shall not affect its interpretation or construction.
- 20.2 In the event of any of these terms and conditions or any part of them being judged illegal or unenforceable for any reason, the continuation in full force and effect of the remainder of them shall not be prejudiced.
- 20.3 Any notice required or permitted to be given by either party to the other under these conditions shall be in writing and in case of notices to Ingenyx, addressed to Ingenyx at its registered office or in the case of notices to the Customer, at the Customer's address as provided to Ingenyx.
- 20.4 The waiver by either party of a breach or default of any of the provisions of this Agreement by the other party shall not be construed as a waiver of any succeeding breach of the same or other provisions.
- 20.5 Nothing in these terms and conditions shall create any rights for third parties under the Contracts (Rights of Third Parties) Act 1999.
- 20.6 Neither Party shall be entitled to assign this Agreement or any of its rights or obligations hereunder without the prior consent of the other.

20.7 These terms and conditions shall be governed by and construed in accordance with English Law and any dispute, question or remedy howsoever arising determined exclusively by the Courts of England and Wales.