

1. INTERPRETATION

The definitions and rules of interpretation in this condition apply in these conditions.

1.1 Definitions:

Authorised Users: those employees and independent contractors of the Customer who are entitled to use the Software through the Hosting Services under this agreement, as further described in clause 5.2(a).

Business Day: any day which is not a Saturday, Sunday or public holiday in the UK.

Contract Details: the Customer's order and Telemisis' acceptance of it in accordance with condition 3.3.

Customer: the person, firm or company who purchases Equipment from Telemisis.

Customer Data: the data inputted into the information fields of the Software by the Customer, by Authorised Users, or by Telemisis on the Customer's behalf.

Equipment: the equipment agreed in the Contract to be purchased by the Customer from Telemisis (including any part or parts of it).

Hosting Services: the services that Telemisis provides to allow Authorised Users to access and use the Software, including hosting set-up and ongoing services, as described in Schedule 4.

Maintenance and Support: repair or replacement of the Equipment, any error corrections, updates and upgrades that Telemisis may provide or perform with respect to the Software and Hosting Services, as well as any other support or training services provided to the Customer under this agreement, all as described in Schedule 6.

Normal Business Hours: 9.00 am to 5.00 pm local UK time, each Business Day.

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and neighbouring and related rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the

right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Platform: the online platform known as SitePro which can be accessed via web browser or a mobile app.

Services: the Hosting Services and/or Maintenance and Support as applicable, given the context in which the term **Services** is used.

Software: any operating system installed on the Equipment.

VAT: value added tax chargeable under English law for the time being and any similar additional tax.

Virus: any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

Vulnerability: a weakness in the computational logic (for example, code) found in software and hardware components that, when exploited, results in a negative impact to confidentiality, integrity, or availability, and the term **Vulnerabilities** shall be construed accordingly.

1.2 Condition, Schedule and paragraph headings shall not affect the interpretation of this Contract.

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- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this Contract under that statute or statutory provision.
- 1.8 A reference to **writing** or **written** includes faxes and email.
- 1.9 References to conditions and Schedules are to the conditions and Schedules of this Contract and references to paragraphs are to paragraphs of the relevant Schedule.
- 1.10 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. APPLICATION OF CONDITIONS

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

3. BASIS OF SALE

- 3.1 Any quotation is valid for a period of 30 days only, and Telemisis may withdraw it at any time by notice to the Customer.
- 3.2 Each order or acceptance of a quotation for Equipment by the Customer shall be deemed to be an offer by the Customer subject

to these conditions. The Customer shall ensure that its order is complete and accurate.

- 3.3 A binding contract shall not come into existence between Telemisis and the Customer unless and until Telemisis issues a written order acknowledgement to the Customer, or Telemisis delivers the Equipment to the Customer (whichever occurs earlier).
- 3.4 Telemisis may deliver the Equipment by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the applicable Contract. Each instalment shall be a separate Contract and no cancellation or termination by either party of any one Contract relating to an instalment shall entitle the Customer to repudiate or cancel any other Contract or instalment.
- 3.5 No order which has been acknowledged by Telemisis may be cancelled by the Customer, except with the agreement in writing of Telemisis and provided that the Customer indemnifies Telemisis in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by Telemisis as a result of cancellation.

4. QUANTITY AND DESCRIPTION

- 4.1 The quantity and description of the Equipment shall be as set out in Telemisis' acknowledgement of order or on the Contract Details.
- 4.2 All samples, drawings, descriptive matter, specifications and advertising issued by Telemisis, and any descriptions or illustrations contained in Telemisis' catalogues or brochures are issued or published for illustrative purposes only and they do not form part of the Contract.
- 4.3 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by Telemisis shall be subject to correction without any liability on the part of Telemisis.
- 4.4 Telemisis reserves the right (but does not assume the obligation) to make any changes in the specification of the Equipment which are required to conform with any applicable legislation or, where the Equipment is to be supplied to the Customer's specification, which do not materially affect their quality or performance. Where Telemisis is not the manufacturer of the Equipment, Telemisis

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shall use reasonable endeavours to transfer to the Customer the benefit of any warranty or guarantee given by the manufacturer to Telemisis.

4.5 Telemisis' employees, contractors and agents are not authorised to make any representations or contractually binding statements concerning the Equipment.

5. HOSTING SERVICES, MAINTENANCE AND SUPPORT

5.1 Telemisis shall perform the Hosting Services and Maintenance and Support services. The Service Level Arrangements shall apply with effect from the start of the month after the Configuration Services have been satisfactorily completed.

5.2 In relation to Authorised Users:

- (a) the Customer shall maintain a written list of current Authorised Users of the Software, and the Customer shall provide such list to Telemisis as may be reasonably requested by Telemisis from time to time;
- (b) the Customer shall ensure that each Authorised User keeps a secure password for their use of the Software/Platform, that such password is changed on a regular basis and that each Authorised User keeps their password confidential;
- (c) Telemisis may audit the Software/Platform regarding the name and password for each Authorised User. Such audit may be conducted no more than once per quarter, at Telemisis' expense, and shall be exercised with reasonable prior notice, in a manner so as to not substantially interfere with Customer's normal conduct of business; and
- (d) if such audit reveals that passwords have been provided to individuals who are not Authorised Users, and without prejudice to Telemisis' other rights, the Customer shall promptly disable such passwords and shall not issue any new passwords to such individuals.

5.3 In relation to the Software and Platform:

- (a) Telemisis hereby grants to the Customer on and subject to the terms and conditions of this agreement a non-exclusive, non-transferable licence to allow Authorised Users to access the Software and Platform through the Hosting Services and to use the Software and Platform solely for the Customer's business purposes;
- (b) the Customer shall not store, distribute, introduce or transmit through the Hosting Services:
 - (i) any Virus,
 - (ii) any Vulnerability; or
 - (iii) any material that is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; facilitates illegal activity; depicts sexually explicit images; or promotes unlawful violence, discrimination based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activities;
- (c) the rights provided under this condition 5.3 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer;
- (d) the Customer shall not:
 - (i) attempt to copy, duplicate, modify, create derivative works from or distribute all or any portion of the Software and Platform except to the extent expressly set out in this agreement or as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties; or
 - (ii) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software and Platform, except as may be allowed by

any applicable law which is incapable of exclusion by agreement between the parties; or

- (iii) access all or any part of the Software and Platform or Hosting Services in order to build a product or service which competes with the Software and/or the Services
- (iv) use the Software and Platform or Hosting Services to provide services to third parties; or
- (v) transfer, temporarily or permanently, any of its rights under this agreement, or
- (vi) attempt to obtain, or assist third parties in obtaining, access to the Software, other than as provided under this condition 5.3(d); and

- (e) the Customer shall use reasonable endeavours to prevent any unauthorised access to, or use of, the Software and Platform and notify Telemisis promptly of any such unauthorised access or use.

6. TELEMISIS' OBLIGATIONS

6.1 Telemisis undertakes that the Services will be performed with reasonable skill and care.

6.2 The undertaking at clause 6.1 shall not apply to the extent of any non-conformance which is caused by use of the Software or Platform contrary to Telemisis' instructions or modification or alteration of the Software or Platform by any party other than Telemisis or Telemisis' duly authorised contractors or agents. If the Software or Platform does not conform with the foregoing undertaking, Telemisis will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 6.1. Notwithstanding the foregoing, Telemisis does not warrant that the Software or Platform and Services will be free from

Vulnerabilities or that the Customer's use of the Software, Platform or the Services will be uninterrupted or error-free.

- 6.3 Telemisis shall hold Customer Data for a maximum of 12 months at which point it will be deleted/destroyed. It shall be the Customer's responsibility to download/back-up its Customer Data on a regular basis if it wants to continue to access the Customer Data beyond the 12 month period. In the event of any loss or damage to Customer Data during the 12 month period mentioned above, the Customer's sole and exclusive remedy against Telemisis shall be for Telemisis to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by Telemisis. Telemisis shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by Telemisis to perform services related to Customer Data maintenance and back-up for which Telemisis shall remain fully liable).

7. CUSTOMER'S OBLIGATIONS AND CUSTOMER DATA

7.1 The Customer shall:

- (a) provide Telemisis with:
 - (i) all necessary co-operation in relation to this agreement; and
 - (ii) all necessary access to such information as may be required by Telemisis in order to render the Services, including but not limited to Customer Data, security access information and software interfaces to the Customer's other business applications;
- (b) provide such personnel assistance, as may be reasonably requested by Telemisis from time to time.
- (c) without affecting its other obligations under this agreement, comply with all applicable laws and regulations with respect to its activities under this agreement; and

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- (d) carry out all other Customer responsibilities set out in this agreement or in any of the Schedules in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, Telemisis may adjust any timetable or delivery Schedule set out in this agreement as reasonably necessary.
- 7.2 The Customer shall own all rights, title and interest in and to all of the Customer Data that is not personal data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of such Customer Data.
- 8. PRICES**
- 8.1 All prices shall be as stated in the Contract Details. All prices are exclusive of delivery, packaging, packing, shipping, carriage, insurance, VAT and other charges and duties.
- 8.2 Telemisis reserves the right, by giving notice to the Customer at any time before delivery, to increase the price of such of the Equipment as has not been delivered to reflect any increase in the cost to Telemisis which is due to market conditions or any factor beyond the control of Telemisis (including any foreign exchange fluctuation, currency regulation, alteration of duties, change in legislation, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Equipment which is requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give Telemisis adequate information or instructions.
- 9. PAYMENT**
- 9.1 Subject to any special terms agreed in writing between the Customer and Telemisis, Telemisis may invoice the Customer for the price of the Equipment on or at any time after delivery of the Equipment, unless:
- (a) the Equipment is to be collected by the Customer; or
 - (b) the Customer wrongfully fails to take delivery of the Equipment,
- and in either case Telemisis shall be entitled to invoice the Customer for the price at any time after Telemisis has notified the Customer that the Equipment is ready for collection.
- 9.2 The terms of payment shall be:
- (a) in the case of Equipment, within 30 days of the date of Telemisis' invoice, whether or not delivery has taken place or title in the Equipment has passed to the Customer; and
 - (b) the Monthly Fee as set out in the Contract Details within 30 days of the date of invoice. In default of any reference, Monthly Fees are payable in advance and upon signature of the Contract Details, Telemisis will invoice for months 1 & 2.
- 9.3 Where requested, the Customer will establish and maintain a monthly standing order or direct debit payable to Telemisis. Failure to do so, where requested, will be a breach of these conditions.
- 9.4 Telemisis shall invoice the Customer monthly as of the last day of each month for all Services performed by Telemisis during that month. If Telemisis has not received payment within five days after the due date, and without prejudice to any other rights and remedies of Telemisis:
- (a) Telemisis shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid;
 - (b) It may suspend access to the Platform; and
 - (c) interest shall accrue on a daily basis on such due amounts at an annual rate equal to 4% over the then current base lending rate of the Bank of England from time to time (but at 3% a year for any period when that base rate is below 0%), commencing on the due date and continuing until fully paid, whether before or after judgment.
- 9.5 Time for payment of the price shall be of the essence of the Contract.
- 9.6 If the Customer fails to make payment in full on the due date, the whole of the balance of the price of the Equipment then outstanding shall become immediately due and payable and, without prejudice to any other right or remedy available to Telemisis, Telemisis shall be entitled to:

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- (a) terminate the Contract or suspend any further deliveries of Equipment (whether ordered under the same contract or not) to the Customer;
 - (b) appropriate any payment made by the Customer to such of the Equipment (or the Equipment supplied under any other contract between the Customer and Telemisis) as it thinks fit (despite any purported appropriation by the Customer);
 - (c) charge interest at the rate set out above. Telemisis reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998;
 - (d) suspend all further manufacture, delivery, installation or warranty service until payment has been made in full;
 - (e) stop any Equipment in transit.
- 9.7 All sums payable to Telemisis under the Contract shall become due immediately on its termination, despite any other provision of the Contract. This condition 9.7 is without prejudice to any right to claim for interest under the law, or any right under the Contract.
- 9.8 Telemisis may, without prejudice to any other rights it may have, set off any liability of the Customer to Telemisis against any liability of Telemisis to the Customer.
- ### 10. CONNECTIVITY AND SIMS
- 10.1 The Equipment comes complete with a SIM card that will allow the Software to transfer Customer Data from the Equipment to the Platform where Authorised Users will be able to view such Customer Data as part of the Services.
- 10.2 SIM cards are provided with a maximum of 5 megabytes of data per month inclusive of the Monthly Fee. Charges will be applicable for each megabyte used by the Equipment above this inclusive amount.
- 10.3 Typical usage by the Equipment is 2-3 megabytes per month and accordingly, Telemisis reserve the right to temporarily deactivate the Sim card to establish with the Customer whether the excess usage was intended but the Customer shall remain liable for any excess and Telemisis shall be under no obligation to deactivate the Sim card.
- 10.4 The Customer acknowledges that connection of the SIM card will be to a third party mobile telecommunications provider.
- 10.5 The Customer also accepts that the telecommunications signal can be influenced by a number of factors outside of the control of Telemisis including but not limited to:
- (a) Adverse weather;
 - (b) Mobile mast failure;
 - (c) Failure of the network;
 - (d) Location of the Equipment and prevention or distortion of the mobile signal by transmission through materials; and
- accordingly, Telemisis does not and cannot guarantee that the SIM card will be connected at all times or that it will be able to access a connection to the Platform.
- ### 11. DELIVERY OF EQUIPMENT AND ACCEPTANCE
- 11.1 Telemisis shall use its reasonable endeavours to deliver the Equipment on the date or dates specified in Telemisis' acknowledgement of order, but any such date is approximate only. If no dates are so specified, delivery shall be within a reasonable time of acceptance of the order. Time is not of the essence as to the delivery of the Equipment and Telemisis is not in any circumstances liable for any delay in delivery, however caused.
- 11.2 The Equipment may be delivered by Telemisis in advance of the quoted delivery date on giving reasonable notice to the Customer.
- 11.3 Delivery shall be made during Normal Business Hours on a Business Day. Telemisis may levy additional charges for any deliveries made outside such hours at the Customer's request.
- 11.4 The Customer shall be responsible (at the Customer's cost) for preparing the delivery location for the delivery of the Equipment
- 11.5 The Customer shall be deemed to have accepted the Equipment when the Customer has had 2 days to inspect it after delivery and has not exercised in writing its right of rejection in accordance with condition 14.
- 11.6 Telemisis shall be responsible for any damage, shortage or loss in transit, provided that the Customer notifies it to Telemisis (or its carrier, if applicable) within three days of delivery or the proposed delivery date of the Equipment and that the Equipment has been

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handled in accordance with Telemisis' stipulations. Any remedy under this condition 11.6 shall be limited, at the option of Telemisis, to the replacement or repair of any Equipment which is proven to Telemisis' satisfaction to have been lost or damaged in transit.

12. RISK AND PROPERTY

12.1 The Equipment shall be at the risk of Telemisis until delivery to the Customer at the place of delivery specified in Telemisis' acknowledgement of order. Telemisis shall off-load the Equipment at the Customer's risk.

12.2 Ownership of the Equipment shall pass to the Customer on the later of completion of delivery (including off-loading), or when Telemisis has received in full in cleared funds all sums due to it in respect of the Equipment.

12.3 Until ownership of the Equipment has passed to the Customer under condition 12.2, the Customer shall:

- (a) hold the Equipment on a fiduciary basis as Telemisis' bailee;
- (b) store the Equipment (at no cost to Telemisis) in satisfactory conditions and separately from all the Customer's other equipment or that of a third party, so that it remains readily identifiable as Telemisis' property;
- (c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Equipment; and
- (d) keep the Equipment insured on Telemisis' behalf for its full price against all risks with a reputable insurer to the reasonable satisfaction of Telemisis, ensure that Telemisis' interest in the Equipment is noted on the policy, and hold the proceeds of such insurance on trust for Telemisis and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.

12.4 The Customer's right to possession of the Equipment before ownership has passed to it shall terminate immediately if any of the circumstances set out in condition 19 arise or if the Customer encumbers or in any way charges the Equipment, or if the

Customer fails to make any payment to Telemisis on the due date.

12.5 Until ownership of the Equipment is transferred to the Customer in accordance with condition 12.2, the Customer grants Telemisis, its agents and employees an irrevocable licence at any time to enter any premises where the Equipment is or may be stored in order to inspect it, or where the Customer's right to possession has terminated, to remove it. All costs incurred by Telemisis in repossessing the Equipment shall be borne by the Customer.

12.6 On termination of the Contract for any reason, Telemisis' (but not the Customer's) rights in this condition 12 shall remain in effect.

12.7 Telemisis may appropriate payments by the Customer to such Equipment as it thinks fit, notwithstanding any purported appropriation by the Customer to the contrary, and may make such appropriation at any time.

13. EXPORT TERMS AND COMPLIANCE WITH POLICIES

13.1 Where the Equipment is supplied for export from the United Kingdom, the provisions of this condition 13 shall (subject to any contrary terms agreed in writing between the Customer and Telemisis) override any other provision of these conditions.

13.2 The Customer shall be responsible for complying with any legislation governing:

- (a) the importation of the Equipment into the country of destination; and
- (b) the export and re-export of the Equipment,

and shall be responsible for the payment of any duties on it.

14. WARRANTY

14.1 Telemisis warrants to the Customer that the Equipment is free from defects of workmanship and materials. Telemisis undertakes (subject to the remainder of this condition 14), at its option, to repair or replace Equipment (other than consumable items) which is found to be defective as a result of faulty materials or workmanship during the Term set out in the Contract Details. The Monthly Fee includes the costs of this additional warranty period

14.2 Telemisis shall not in any circumstances be liable for a breach of the warranty in condition 14.1 if:

- (a) the Customer makes any use of Equipment in respect of which it has given written notice; or

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- (b) the defect arises because the Customer failed to follow Telemisis' oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Equipment or (if there are none) good trade practice;
- (c) the Equipment is damaged in any way by the Customer or through abuse, misuse or accident;
- (d) the Customer has not paid the Monthly Fee; or
- (e) the Customer alters or repairs the relevant Equipment without the written consent of Telemisis.
- 14.3 Telemisis shall not in any circumstances be liable for any damage or defect to the Equipment caused by improper use of the Equipment or use outside its normal application.
- 15. REMEDIES**
- 15.1 Any liability of Telemisis for non-delivery of the Equipment shall in all circumstances be limited to replacing the Equipment within a reasonable time or issuing a credit note at the pro rata contract rate against any invoice raised for such Equipment.
- 15.2 If Telemisis' performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer (other than by reason of a Force Majeure Event under condition 20), the Customer shall in all circumstances be liable to pay to Telemisis all reasonable costs, charges or losses sustained by it as a result, subject to Telemisis notifying the Customer in writing of any such claim it might have against the Customer in this respect.
- 15.3 In the event of any claim by the Customer under the warranty given in condition 14.1, the Customer shall notify Telemisis in writing of the alleged defect. Telemisis shall have the option of testing or inspecting the Equipment at its current location or moving it to Telemisis' premises (or those of its agent or subcontractor) at the cost of Customer. If the Customer's claim is subsequently found by Telemisis to be outside the scope of the warranty in condition 14, the costs of transportation of the Equipment, investigation and repair shall be borne by the Customer.
- 16. LIMITATION OF LIABILITY**
- 16.1 The following provisions set out the entire financial liability of Telemisis (including any liability for the acts or omissions of its employees, agents and subcontractors) to the Customer in respect of:
- (a) any breach of the Contract however arising; and
- (b) any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including negligence) arising out of or in connection with the Contract.
- 16.2 All warranties, conditions and other terms implied by statute or common law are excluded from the Contract to the greatest extent permitted by law.
- 16.3 Nothing in these conditions excludes or limits the liability of Telemisis for:
- (a) death or personal injury caused by Telemisis' negligence; or
- (b) fraud or fraudulent misrepresentation.
- 16.4 Subject to condition 16.2 and condition 16.3:
- (a) Telemisis shall not in any circumstances be liable, whether in tort (including for negligence or breach of statutory duty however arising), contract, misrepresentation (whether innocent or negligent) or otherwise for:
- (i) loss of profits; or
- (ii) loss of business; or
- (iii) depletion of goodwill or similar losses; or
- (iv) loss of anticipated savings; or
- (v) loss of goods; or
- (vi) loss of use; or
- (vii) loss or corruption of data or information; or
- (viii) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.

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- (b) Telemisis' total liability in contract, tort (including negligence and breach of statutory duty however arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the price payable for the Equipment and the price paid for the Services during the 6 months preceding the date on which the claim arose.

17. INTELLECTUAL PROPERTY RIGHTS

- 17.1 If Telemisis manufactures the Equipment, or applies any process to it, in accordance with a specification submitted or prepared by the Customer or any other information provided by the Customer, the Customer shall indemnify and keep indemnified Telemisis against all losses, damages, costs, claims, demands, liabilities and expenses (including consequential losses, loss of profit and loss of reputation, and all interest, penalties and legal and other professional costs and expenses) awarded against or incurred by Telemisis in connection with, or paid or agreed to be paid by Telemisis in settlement of, any claim for infringement of any third party Intellectual Property Rights which results from Telemisis' use of the Customer's specification or such other information. The indemnity shall apply whether or not the Customer has been negligent or at fault and does not limit any further compensation rights of Telemisis.
- 17.2 The Customer acknowledges that all Intellectual Property Rights used by or subsisting in the Equipment are and shall remain the sole property of Telemisis or (as the case may be) third party rights, owner.
- 17.3 Telemisis shall retain the property and copyright in all documents supplied to the Customer in connection with the Contract and it shall be a condition of such supply that the contents of such documents shall not be communicated either directly or indirectly to any other person, firm or company without the prior written consent of Telemisis.
- 17.4 Telemisis' Intellectual Property Rights in and relating to the Equipment shall remain the exclusive property of Telemisis, and the Customer shall not at any time make any unauthorised use of such Intellectual Property Rights, nor authorise or permit any of its agents or contractors or any other person to do so.

- 17.5 In relation to the Software and Platform nothing contained in these conditions shall be construed as an assignment of any Intellectual Property Rights in the Software, Platform or user manuals; and

18. CONFIDENTIALITY AND TELEMISIS' PROPERTY

- 18.1 The Customer shall keep in strict confidence:
- (a) all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Customer by Telemisis or its agents; and
 - (b) any other confidential information concerning Telemisis' business or its products which the Customer may obtain.
- 18.2 The Customer shall restrict disclosure of such confidential material to such of its employees, agents or subcontractors as need to know the same for the purpose of discharging the Customer's obligations to Telemisis, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Customer.
- 18.3 All materials, equipment and tools, drawings, specifications and data supplied by Telemisis to the Customer shall at all times be and remain the exclusive property of Telemisis, but shall be held by the Customer in safe custody at its own risk and maintained and kept in good condition by the Customer until returned to Telemisis, and shall not be disposed of or used other than in accordance with Telemisis' written instructions or authorisation.
- 18.4 This condition 18 shall survive termination of the Contract, however arising.

19. TERMINATION

- 19.1 Without prejudice to any other right or remedy available to Telemisis, Telemisis may terminate the Contract or suspend any further deliveries under the Contract without liability to the Customer and, if the Equipment has been delivered but not paid for, the price shall become immediately due and payable notwithstanding any previous Contract or arrangement to the contrary if:
- (a) the Customer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts

- as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- (b) the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
- (c) the Customer applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;
- (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer;
- (e) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Customer (being a company, partnership or limited liability partnership);
- (f) the holder of a qualifying floating charge over the assets of the Customer (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;
- (g) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the Customer;
- (h) a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Customer's assets and such attachment or process is not discharged within 14 days;
- (i) any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in condition 19.1(a) to condition 19.1(h) (inclusive);
- (j) the Customer suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
- (k) the Customer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this agreement is in jeopardy.
- 19.2 Any provision of this Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this Contract shall remain in full force and effect.
- 19.3 Termination or expiry of this Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
- ### 20. FORCE MAJEURE
- 20.1 Telemisis reserves the right to defer the date of delivery, or to cancel the Contract or reduce the amount of Equipment ordered, if it is prevented from or delayed in carrying on its business by acts, events, omissions or accidents beyond its reasonable control (**Force Majeure Event**), including:
- (a) strikes, lock-outs or other industrial disputes (whether involving the workforce of Telemisis or any other party);
- (b) failure of a utility service or transport or telecommunications network;
- (c) act of God, war, riot or civil commotion;
- (d) malicious damage;
- (e) compliance with any law or governmental order, rule, regulation or direction; and
- (f) accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.
- ### 21. WAIVER

CONDITIONS OF SALE



21.1 No failure or delay by a party to exercise any right or remedy provided under this Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

22. RIGHTS AND REMEDIES

22.1 The rights and remedies provided under this Contract are in addition to, and not exclusive of, any rights or remedies provided by law.

23. SEVERANCE

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

23.2 If any provision or part-provision of this agreement is deemed deleted under condition 23.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

24. ENTIRE AGREEMENT

24.1 This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

24.2 Each party acknowledges that, in entering into this Contract, it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Contract.

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

24.4 Nothing in this condition shall limit or exclude any liability for fraud.

25. ASSIGNMENT

25.1 The Customer shall not, without the prior written consent of Telemisis, assign, transfer, charge, subcontract or deal in any

other manner with all or any of its rights or obligations under the Contract.

25.2 Telemisis may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

26. THIRD PARTY RIGHTS

26.1 No one other than a party to this Contract, their successors and permitted assignees, shall have any right to enforce any of its terms.

27. NOTICES

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

- (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- (b) sent by fax or email to its main fax number or email address.

27.2 Any notice or communication shall be deemed to have been received:

- (a) if delivered by hand, at the time the notice is left at the proper address;
- (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; and
- (c) if sent by fax or email at the time of transmission.

27.3 This condition does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

27.4 If deemed receipt under condition 27.2 would occur outside business hours in the place of receipt, it shall be deferred until business hours resume. In this condition 27.4, business hours mean 9.00 am to 5.00 pm during a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

27.5 A notice given under this agreement is not valid if sent by email.

28. GOVERNING LAW



CONDITIONS OF SALE

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

29. JURISDICTION

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