

Definitions

Affiliate means any entity which is controlling, controlled by, or under common control with a party as defined under section 2:24b of the Netherlands Civil Code (Burgerlijk Wetboek), including without limitation any natural persons controlling relevant legal entities.

Agreement means a contract between Company and Client, formed on the acceptance by Company of the Client's order, as comprised in clause 2(a).

Applications means the software applications (if any) set out in an Order Document, which may include software applications proprietary to Company as well as third party software applications.

Bank means any bank which Company may from time to time bank with.

Client means the person or entity named as the applicant on the Credit Application made to Company. If there is no Credit Application, "Client" means the person or entity requesting the Supply from Company or its authorised agent.

Credit Application means a credit application form completed by the Client and submitted to Company requesting a Supply on credit.

Claims includes a claim, notice, demand, action, proceeding, litigation, investigation, judgment, order, settlement sum, damage, loss, cost, expense or liability however arising, whether present, unascertained, immediate, future or contingent, whether based in contract, tort or statute and whether involving Company, the Client or a third party.

Company means Imdex Global B.V. and includes any Affiliates and subsidiaries.

Consequential Loss means any one or more of the following: loss of revenue; loss of profits; loss of opportunity to make profits; loss of business; loss of business opportunity; loss of use or amenity, or loss of anticipated savings; special, exemplary or punitive damages; and any loss which does not directly and naturally flow in the normal course of events from the occurrence of the event giving rise to the liability for such loss, whether or not such loss was in the contemplation of the parties at the time of entry into this agreement, including any of the preceding types of loss arising from an interruption to a business or activity.

Credit Facility means a credit facility provided by Company to the Client permitting the Client to pay amounts due to Company for the Supply after the Supply has been Delivered.

Delivery (or Delivered (as the case may be)) means delivery of the Supply in accordance with clause 6.5.

Desktop Software means an application proprietary to the Company as well as a third party application that runs stand alone on a desktop or laptop computer and includes but is not limited to REFLEX XRF Connect, REFLEX SProcess, REFLEX GMIT5 and all future desktop applications that may be offered by the Company in the future.

Fee means the fee payable by the Client for the Supply as set out in a quotation or an Order Document (as applicable).

General Terms and Conditions means these general terms and conditions provided by Company and as may be amended

and published on the Company website or as notified to Client from time to time.

Goods means any item of whatsoever nature which is supplied, sold or hired by Company.

Intellectual Property Rights means all rights in any knowledge of secret processes, technical knowhow, techniques, discoveries, inventions, ideas, research, engineering and manufacturing methods, practices, systems, formulae, drawings, designs, specifications, manuals, trade secrets and special purpose computer programmes, financial, marketing and other confidential information and data subsisting in or relating to a Supply or Company's business.

Order Document means a document prepared by Company detailing the Goods to be rented, the scope of any Services, Applications, and Desktop Software to be provided (if any), plus any other additional information required.

Personal Data has the meaning attributed to it under Privacy Law.

Personnel means in relation to a party, any Affiliates, employee, officer, agent, contractor or professional adviser of that party.

Proposal means any document prepared by Company which outlines a proposed Company solution for a Client and includes a quotation.

Privacy Law means any privacy and data protection legislation and regulations applicable to the Applicant, including but not limited to the General Data Protection Regulation, as amended from time to time.

Services means any other services provided by Company to the Client other than the sale, hire or supply of the Goods, including but not limited to engineering and technical work, data management, consulting services, the assembly, disassembly or installation of the Goods, instructing the Client, its Personnel or any other person in the use or operation of the Goods or operating or supplying an operator for the Goods.

Special Terms and Conditions means the special terms and conditions provided by Company and as may be amended and published on the Company website or as notified to Client from time to time, which apply when the Supply involves the hire of Goods or the provision of Services, Applications or Desktop Software.

Supply means the provision of Goods (whether sold, supplied or hired to the Client) or Services, Applications and/or Desktop Software.

1. Application

1.1 These terms and conditions will apply where Company performs a Supply for a Client, or other person at the direction of the Client, along with any other terms and conditions as provided in clause 2(a) and agreed to in writing by the parties, to form the Agreement.

1.2 Company may amend the terms of the Agreement from time to time by giving the Client notice in writing of the amendments at least 1 month prior to the amendments taking effect.

1.3 Any terms or conditions put forward by a Client in respect of a Supply (whether in a purchase order or otherwise), will not be applicable, unless specifically agreed to by Company in writing. In any event, the terms of the Agreement will prevail.

1.4 If the Client does not wish to receive a Supply on the terms of the Agreement, as amended from time to time, the Client must notify Company within seven days of notification of the amendment, otherwise the Client will be deemed to have accepted the Supply on the terms of the Agreement as amended.

2. Formation and precedence

(a) The following may be comprised in an Agreement:

- (i) the Order Document;
- (ii) the Special Terms and Conditions;
- (iii) the Proposal (if applicable);
- (iv) the General Terms and Conditions; and
- (v) any other document forming part of an Agreement as agreed to in writing by the parties.

(b) In the event of any conflict or inconsistency between one or more of the documents comprised in an Agreement, the provisions of the earlier mentioned document in clause 2(a) will prevail to the extent of that inconsistency.

3. Quotation

Any quotation issued by Company is not an offer to Supply and may be withdrawn or varied at any time prior to a related order being accepted by Company in accordance with clause 4. A quotation will only be valid for 30 days from its date of issue, unless extended in writing by Company. All prices quoted by Company relate to the Supply on the terms of the Agreement.

4. Orders and Acceptance of orders

The Client may request Company to perform a Supply in accordance with the terms of the Agreement by providing an order to Company. Company may accept or reject an order in whole, or in part in its absolute discretion and will notify the Client if the order or part of the order is not accepted. The performance of a Supply by Company for the Client is evidence of acceptance of the order.

5. Payment

5.1 The Client must make all payments to Company free from any set-off, defence, counter-claim or re-coupment of any kind whatsoever. Client may not suspend due payments to Company.

5.2 Company will submit to the Client an invoice for the Supply or any part thereof Delivered, or to be Delivered, and the full amount of each invoice together with any additional charges, costs and expenses (if any) will be paid by the Client to Company by the later of:

- (a) where Company has agreed in writing to extend credit to the Client, the date for payment as specified by the agreed credit terms notified in writing by Company to the Client;
- (b) the date for payment as specified in the invoice;
- (c) 7 days from the date of Delivery; and
- (d) such other date as agreed between the parties in writing.

5.3 Company reserves the right to issue an invoice for partial Deliveries and Deliveries delayed at the request of the Client.

5.4 If the Client makes a payment to Company at any time whether in connection with a Supply or otherwise, Company may apply the payment to any part of the amounts owed by the Client to Company, as Company sees fit.

5.5 Company may, in its absolute discretion, offset any amount due from Company to the Client against any amount due from

the Client to Company, or which will in the future be due from the Client to the Company, whether in connection with the Supply or otherwise.

5.6 Where Company agrees to extend credit to the Client, the Client must make payments when so required to ensure the total amount outstanding from time to time remains within the credit limit determined by Company.

5.7 Company may, with the prior written consent of the Client, increase the Fee every 12 months from the first of July and at such other times agreed between the parties.

6. Delivery

6.1 The time within which Company may advise the Client that it will make Delivery of the Supply will be regarded as a best estimate, but will not be guaranteed and may be subject to extension to cover delays caused by or contributed to by weather, industrial action, manufacturers or suppliers, fire or any other cause beyond the control of Company and no responsibility, liability or Claim will be accepted by Company for the consequences of any such delay(s).

6.2 If, as a result of causes stated in clause 6.1, Company determines that it will not be able to deliver all or part of the Supply within a reasonable timeframe, either party may terminate the relevant Agreement without any liability in relation to the Agreement and in respect of the termination.

6.3 Delivery of the Supply may be effected as a whole, or in separate parts with prior agreement of the parties.

6.4 If the Client requests Company to delay Delivery of any or all of the Goods, Company may agree to store the Goods, with such storage to be at the Client's expense.

6.5 Where applicable, Company will deliver the Goods to the Client in accordance with the Agreement or, if not specified or otherwise agreed by Company in writing, by delivering the Goods ex works (as that term is defined in the Incoterms 2010) or such other location as nominated by Company acting reasonably (**Delivery Point**).

6.6 If the Delivery Point is Company's premises, the Client must remove the Goods from the Delivery Point within 14 days of the date of Delivery.

7. Inspection

7.1 The Client must inspect the Supply immediately on Delivery.

7.2 Subject to clause 8, no Claim for shortages or damages or defective Supply may be made against Company unless written notice of such claim is received by Company within 3 days after Delivery. Upon such notice Company reserves the right to rectify any shortage or damages or defective Supply at its own expense and within reasonable time after notification by the Client.

7.3 Subject to clause 8, if the Client fails to notify Company in accordance with clause 7.2, the Client will be deemed to have accepted the Supply.

8. Warranties and Exclusions

8.1 Subject to any warranties which are implied by law and cannot otherwise be excluded, Company excludes all other warranties, guarantees, terms, conditions or liability in relation to the Supply.

8.2 The Client agrees that it has made its own enquiries as to the suitability of the Supply (or any part of the Supply) for the Client's intended use and the Client has not relied upon any statement, representation or information provided by or on behalf of Company in respect of the Supply (including the use of the Supply).

9. Limitation of liability

9.1 To the extent that Company's liability cannot be excluded by law, Company's liability with respect to the Supply will be limited to any one or more of the following as determined by Company in its absolute discretion:

- (a) the cost of replacing the Goods or resupplying the Services; or
- (b) the cost of having the Goods repaired or Services resupplied.

9.2 Nothing in these terms and conditions shall limit or exclude either party's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- (b) wilful intent or gross negligence of a party or its senior management;
- (c) any matter in respect of which it would be unlawful for a party to exclude or restrict liability.

9.3 Subject to clause 8 and clause 9.1 and 9.2, Company's total potential liability arising out of or in connection with its performance of its obligations pursuant to the Agreement or in respect of the Supply, including without limitation any negligent acts or omissions, is limited as follows:

- (a) Company shall have no liability to the Client for any Consequential Loss; and
- (b) Company's total aggregate liability for any and all loss or damage, however arising, is capped at the lower of :
 - (i) the VAT exclusive aggregate price paid by the Client to Company under the Agreement for the specific Supply that gave rise to the loss or damage in question; or
 - (ii) the amount of €50,000.

9.4 The Client agrees to take all reasonable steps to mitigate any loss or damage it suffers or incurs.

10. Indemnity

10.1 The Client indemnifies and holds Company harmless from and against all liabilities, losses, damages, costs or expenses incurred or suffered by Company and from and against all Claims made against Company, arising in either case as a result of, or which has been contributed to by:

- (a) the Client's breach of any of its obligations under the Agreement;
- (b) the Client's failure to comply with any laws, rules, standards, or regulations applicable to the Agreement or the Supply;
- (c) the Client's failure to keep any Goods which are the property of Company safe and secure;
- (d) any use of the Goods contrary to any instructions or warnings given by Company or the manufacturer of the Goods;
- (e) any other negligence or any breach of duty by the Client;
- (f) any compliance or adherence by Company with any instruction by the Client; or
- (g) any reliance by Company on any representation by the Client.

10.2 The parties agree and acknowledge that, for the purposes of clause 10.1, a reference to the Client includes the Client's agents, employees, directors, representatives and contractors and any person or party who uses the Supply or claims an interest in the Goods as a result of a transaction with, or otherwise with the permission of, the Client.

11. Default by the Client

11.1 In the event the Client:

- (a) Breaches or is alleged to have breached the Agreement;
 - (b) threatens or is likely to become subject to any insolvency, administration or bankruptcy;
 - (c) has made any false, inaccurate or misleading statements having a material effect in relation to the making of the Agreement or any related or collateral document; or
 - (d) in Company's opinion, acting reasonably, has a material adverse change in their financial condition;
- Company may, without prejudice to any other rights:
- (e) refuse to perform a Supply except where payment in full has been received by Company prior to a Supply; and

(f) retain (where applicable) all moneys paid on account of any Supply.

11.2 If the Client defaults in paying any invoiced amount or any amount otherwise due and owing from the Client to Company, unless otherwise agreed in writing by Company, the Client shall pay the commercial statutory interest pursuant to article 6:119a of the Dutch Civil Code calculated daily from the date the amount became payable to the date of payment. The aforementioned interest shall be in addition to any other rights and remedies Company may have under the Agreement and/or applicable law.

12. Survival

(a) All obligations of the parties under an Agreement will survive the expiration or termination of the Agreement to the extent required for full observance and performance.

(b) The following clauses survive termination of the Agreement: clause 9 (Limitation of Liability); clause 10 (Indemnity); clause 11 (Default by the Client); clause 16 (Intellectual Property) and this clause 12.

13. Governing Law and Jurisdiction

13.1 The Agreement will be governed and determined in accordance with the laws of the Netherlands. The operation of the United Nations Convention on Contracts for the International Sale of Goods is hereby excluded.

13.2 Parties shall submit any dispute arising from a Supply and/or the Agreement to the competent courts in Amsterdam, The Netherlands, which shall have exclusive jurisdiction.

14. VAT

Unless otherwise agreed by Company in writing, all amounts payable in relation to the Agreement are expressed to be exclusive of VAT. On receipt of a VAT invoice from Company, the Client shall pay to Company such additional amounts in respect of VAT as are chargeable on the Supply.

15. Assignment

Either party may assign any rights or obligations pursuant to the Agreement to any other party on giving the 30 days' prior written notice in writing.

16. Intellectual Property

16.1 Title, right and interest in the Intellectual Property is and will remain the property of Company.

16.2 In dealing with the Intellectual Property, the Client must not:

(a) disclose or furnish the Intellectual Property to any other person and all reasonable precautions must be taken to protect such confidentiality;

(b) copy, distribute, transmit, display, perform, reproduce, publish, licence, modify, rewrite, allow or permit derivative works to be created from, transfer or sell the Intellectual Property; or

(c) allow copies of the Intellectual Property to be printed, published, made, reproduced or otherwise communicated without acknowledging Company's right, title and interest in the Intellectual Property.

16.3 The Client must ensure that the Intellectual Property is not subjected to any treatment which is prejudicial to the reputation of, or which would infringe the rights of Company.

17. Risk and Title

17.1 Risk in the Goods passes to the Client immediately upon Delivery and the Client must insure the Goods at its own expense from the date of Delivery.

17.2 Title in any Goods sold by Company will not pass to the Client until all amounts whatsoever payable by the Client to Company have been paid. This interest of Company in the Goods will continue in the Goods, products of the Goods and any proceeds derived from any of them.

17.3 Title in any Goods rented by Company to the Client shall at all times remain with Company.

17.4 Any payment made by or on behalf of the Client which is later avoided by the application of any statutory provisions will be deemed not to discharge Company's title in any Goods sold by Company or the Client's indebtedness to Company.

17.5 Where Goods are sold by Company to the Client without payment of the price in full being made prior to Delivery, the Client:

(a) holds the Goods on trust for Company until all amounts owed by the Client to Company have been paid in full;

(b) must keep the Goods in its possession and take good care of them and store them and mark them in a manner that identifies the Goods and clearly shows that they belong to Company; and

(c) must immediately return the Goods to Company on demand.

17.6 In the event the Client fails to return the Goods following the making of a demand, Company may take all necessary legal action to retake possession of any Goods, the payment for which has not been received.

17.7 Where Goods have been returned or repossessed under clauses 17.5 or 17.6, Company may resell the Goods to another person. Company will be entitled to retain the proceeds of any Goods sold and apply those proceeds towards the indebtedness of the Client.

17.8 The Client acknowledges that if it mixes the Goods with other products or items so that the Goods are no longer separately identifiable, the Client and Company will be owners in common of the new product.

17.9 The Client must not attempt to give or allow any security, lien, mortgage, claim or similar interest to exist or arise over the Goods in which Company retains title or any proceeds from the sale of those Goods in favour of another person (other than Company).

18. Special Obligations for ITAR Items – Country of Use (Where Applicable)

18.1 Where any Goods contain military technology or other controlled defence articles under the US International Traffic in Arms Regulations or any other export control regulations imposed by any other country or union including but not limited to Australia and the European Union (**ITAR Items**), Company will use reasonable endeavours to ensure the necessary documentation is in place in order for the relevant governing or regulatory body including but not limited to the United States of America Department of State and the Defence Export Control Office (Authority) to approve the Client and the stated country of use for an export licence in relation to the Goods which contain ITAR Items.

18.2 The Client acknowledges that the ITAR Items in the Goods are authorized by the Authority for export only to the approved country of destination for use by the approved end-user. The Client also acknowledges that the ITAR Items may not be transferred, trans-shipped on a non-continuous voyage, or otherwise disposed of in any other country, either in its original form or after being incorporated into other end-items, without the prior written approval of the Authority.

18.3 The Client acknowledges and agrees that if the Client (or a subsequent end user) wishes to transfer ownership, lease, lend or transport the Goods with the ITAR Items outside of the country approved by the Authority then the Client will require a new export license (at its sole expense) prior to such transfer.

18.4 Should the Client breach any of the terms and conditions contained in clauses 18.1 to 18.3 then Company may, without limitation to any other right of Company, withhold service, repairs, support, training and/or further supply of the Goods with ITAR Items to the Client.

19. Privacy

19.1 Both parties agree to comply with the Privacy Laws as amended from time to time, in relation to any and all Personal Data exchanged in connection with an Agreement.

19.2 If any Personal Data is processed under the Agreement, parties shall enter into a separate data processing agreement which will govern such processing of Personal Data.

Special Terms:

1. Application

These terms and conditions will apply where Company rents Goods or provides one or more Services, Applications or Desktop Software (a Product Solution) to the Client, in addition to the General Terms and Conditions.

2. Order Document

2.1 Order Document Content

If the Client requests a Product Solution, Company will issue the Client with an Order Document. Each Order Document:

- (a) must be agreed to in writing by both parties;
- (b) incorporates the terms of the Agreement;
- (c) will endeavour to specify the following:
 - (i) any Goods to be hired, along with any additional terms and conditions of hire;
 - (ii) a description of the Services;
 - (iii) any Applications or Desktop Software to be licensed by the Client;
 - (iv) any pricing (**Fee**) and the applicable payment schedule; and
 - (v) any specific terms and conditions.

2.2 Order Document Variations

- (a) The parties may by mutual agreement, agree to any variations or revisions to the Order Document, whether requested by Company or the Client.
- (b) Any changes to an Order Document are to be made in writing.
- (c) Both parties agree to work together to enable both parties to assess the impact of any requested changes on the cost, timing or any other aspect of the Services.

2.3 Proposal

- (a) Company may provide the Client with a Proposal, outlining the intended relationship between Company and the Client.
- (a) If Company provides the Client with a Proposal, the Client is required to sign and return the Proposal to Company, or accept the Proposal by email, and Company will then issue the Client with an Order Document.

2.4 Term

- (a) The Order Term will be specified in each Order Document.
- (b) A party may terminate an Order Document in accordance with clause 15.3.

3. Rental of Goods

3.1 Rental

If applicable, the Client agrees to rent the Goods from Company on the terms of the Agreement and for the duration as set out in the Order Document, beginning from the Rental Commencement Date.

3.2 Delivery

- (a) Unless otherwise agreed with Company: (i) the Client will, at its own cost, take delivery of the Goods at Company's premises as specified in the Order Document and return the Goods to the same premises; and (ii) delivery of the Goods will be taken to have occurred on and from the Rental Commencement Date.
- (b) If requested by the Client, Company may, at the Client's sole expense (including freight and insurance), deliver the Goods to an address nominated by the Client **(Site)**.
- (c) If Client fails to accept the Goods on receipt at the Site for any reason other than in the case of a shortage of or defective Goods, Client will pay Company as and by way of liquidated damages the sums Client would have been liable to pay under the Agreement had Client accepted the Goods and then immediately returned them to Company under clause 15.4, notwithstanding any other rights and remedies Company may have under the Agreement and/or applicable law.
- (d) Within 7 days of receipt of the Goods at the Site, if Client does not wish to rent the Goods on the terms of the Agreement for whatever reason, Client must: (i) notify Company of its refusal; and (ii) return the Goods to Company, within 7 days of receipt, and, if the return is for any reason other than for a shortage of or defective Goods, Client will pay Company as and by way of liquidated damages the sums Client would have been liable to pay under the Agreement had Client accepted the Goods and then immediately returned them to Company under clause 15.4, notwithstanding any other rights and remedies Company may have under the Agreement and/or applicable law.
- (e) Client agrees that unless it notifies Company and returns the Goods in accordance with clause 4.2(d) then it has agreed to rent the Goods on the terms of the Agreement.

3.3 Return

- (a) The Client acknowledges that it is the Client's responsibility to ensure that the Goods do not contain any Client Technology or any other Client Data and is required to remove any of the foregoing from the Goods prior to the return of the Goods to Company, or the provision of the Goods to a third party on behalf of Company.
- (b) When returning the Goods the Client agrees not to ship the Goods by post and to use the nominated courier of Company and to pack the Goods in accordance with Company's instructions.
- (c) The Client must return the Goods in good working order, and in good repair (fair wear and tear excepted).
- (d) Any accessories or components provided by Company to the Client, whether part of a survey kit or otherwise, which are not returned within 7 days of the termination or expiration of an Agreement will be charged and invoiced to the Client at the rates set out in the list price provided by Company from time to time, or as otherwise stated in the respective Order Document.

3.4 No option to purchase Goods

The Client acknowledges that no option, proviso or representation, express or implied, written or oral has been made by or on behalf of Company to the Client that the Goods may be purchased from Company by the Client or any Affiliate or nominee of the Client at any time.

3.5 Additional Rental Fees

The Client acknowledges and agrees that the following fees may be payable on any Goods rented from Company:

- (a) coverage, as may be applicable;
- (b) service charge(s), regarding the servicing of Goods on the return of Goods to Company;
- (c) repair charge(s), regarding the repair of Goods either during the Order Term or on the return of the Goods to Company;

- (d) consumable fees for consumable items provided to the Client which is required for use of the Goods; and
- (e) any other amount due pursuant to an Agreement, including by not limited to freight charges and enforcement costs incurred by Company, in relation to Goods rented by the Client, the requirements of which will be set out in an Order Document.

3.6 Risk and title

- (a) The risk in respect of the Goods (including, but not limited to risk of any Loss, theft, damage or destruction) will pass to the Client at the earlier of:
 - (i) when the Goods are placed at the disposal of the Client;
 - (ii) upon the Client's possession of the Goods; or
 - (iii) upon delivery of the Goods to the Client and if transport is by the Client's carrier, delivery is deemed to have taken effect at time of pickup from Company's premises.
- (b) The Client acknowledges and agrees that:
 - (i) the Client holds and retains the Goods as Company's agent and as bailee; and
 - (ii) Company may take all necessary legal action to retake possession of any Goods at the end of the rental or where the Client breaches the Order Document and fails to rectify such breach within a reasonable period.

3.7 Loss or damage

The Client acknowledges and agrees that:

- (a) it will be liable for the full cost, including freight charges, in relation to any repairs or recalibration required to be made to the Goods as a result of the Client's use, negligence, misuse or abuse;
- (b) it must pay to Company a reasonable calibration and refurbishing fee if ownership labels, calibration seals or anti-tamper notices affixed to the Goods are removed or defaced;
- (c) if the Goods are stolen, lost by Client or lost in transit (each a Casualty Occurrence) or if the Goods are damaged to an extent which in Company's opinion renders repair impractical or uneconomic (Write Off), then Client must pay to Company the value of the Goods determined by Company as set out in the list price provided by Company from time to time or as stated in the Order Document (Agreed Value);
- (d) if any part or parts of the Goods suffer a Casualty Occurrence or a Write Off, then Client must pay to Company the proportion of the Agreed Value in regard to that part or those parts. Company will determine the proportion of the Agreed Value in regard to that part or those parts by reference to the proportion of the value, utility or other relevant measure of the Goods which has suffered the Casualty Occurrence or Write Off and will inform Client in writing of the basis of its calculation;
- (e) if the Goods are damaged (excluding normal wear and tear) but are not a Write Off, then Client will indemnify Company for all loss and damage caused, including but not limited to the costs of ensuring that the Goods are restored to a condition satisfactory to Company;
- (f) the amount required to be paid under clauses 4.7(c), 4.7(d) or 4.7(e) must be paid by Client to Company on the next payment date after the Casualty Occurrence or Write Off or the last day of the Order Term, whichever occurs first;
- (g) upon payment of the Agreed Value as required under clauses 4.7(c) or 4.7(d) the Agreement will terminate in respect of the Goods or the part or parts of the Goods which suffered the Casualty Occurrence or Write Off. The Agreement will continue in respect of the remainder of the Goods (if any) at a revised rent calculated by Company having regard to the proportion of the value, utility or other relevant measure of the Goods which has not suffered the Casualty Occurrence or Write Off. The revised rent will be advised by Company to Client in writing.
- (h) any termination of the Agreement under clause 4.7(g) will not prejudice any right or remedy of Company in respect of any antecedent breach by Client under the Agreement;
- (i) if the Goods are damaged or lost, Client must continue to pay the Fees until the Goods have been repaired or the Agreed Value is paid by the Client; and

(j) if the Goods are damaged or lost, Client must: (i) notify Company within 7 days of such loss and damage occurring, and in the event of full loss, give details of all or any action taken to recover the Goods and actions taken to report the loss including the filing of a police report (as the case may be); and (ii) return to Company within 7 days any accessories to the Goods lost or damaged, otherwise Company shall be entitled to invoice Client for the accessories at the list price published by Company in accordance with clause 4.3(d).

3.8 Insurance

The Client acknowledges and agrees that the Client may be required to hold and maintain insurance coverage in respect of the Goods.

4. Coverage

(a) Any requirements, conditions and cost of coverage provided by Company (or its sub-contractors or agents) will be set out in the Order Document or as otherwise provided by Company to the Client.

(b) When hiring certain Goods the Client may be given the option of paying a cover charge to cover against the risk of down hole loss or damage to the Goods (Cover Charge). If applicable, the Cover Charge rate will be stated on the Order Document and will be payable in instalments as agreed in writing with Company.

(c) If applicable, Clients who wish to elect to pay the Cover Charge must notify Company in writing and Company shall reflect this decision on the Order Document.

(d) If applicable, Company reserves the right to refuse to accept an election for a Cover Charge if:

(i) any debt remains outstanding by Client to Company; or

(ii) a claim has already been made in respect to any Goods rented by Client.

(e) If applicable, and if the Client elects to pay the Cover Charge over Goods, Company agrees to release Client from any requirement to indemnify Company for any loss and damage which occurs to those Goods (including accessories hired) while in use down hole, on the following conditions:

(i) if the Goods are lost down a hole, Client must make reasonable attempts to retrieve the Goods and Client must return any accessories to the Goods lost to Company to mitigate the loss. Company will not indemnify Client for any accessories or Goods which have not been lost or damaged, but which are not returned to Company;

(ii) Client must notify Company in writing of any loss or damage of the Goods, within 14 days of such loss or damage occurring; and

(iii) the loss or damage must not have been caused by:

(A) Client opening, tampering or using the Goods in a manner which is inconsistent with its intended use;

(B) Client utilising the Goods with any associated running gear when damage to the running gear existed;

(C) Client failing to operate or maintain the Goods in accordance with any operating instructions provided by Company; or

(D) Client continuing to use the Goods when damage to the Goods exists.

(f) If any Goods which have been reported lost down hole are subsequently retrieved or found by Client, Client will be responsible for the Fee in respect of the Goods for the period between the date the Goods were declared lost and the date the Goods are subsequently found or retrieved.

5. Services

5.1 Services

(a) If requested, Company agrees to provide the Services to the Client in accordance with the terms of the Agreement and as otherwise set out in the respective Order Document.

(b) Company agrees to provide the Services to the Client at the Site(s), as set out in the Order Document.

5.2 Relationship

The parties' relationship is one of principal and independent contractor, not employer and employee, agency or partnership.

5.3 Scope

(a) The parties agree that the precise scope of the Services provided by Company will be as set out in the respective Order Document.

(b) If the Client wishes to add any additional Services it must enter into a separate Order Document in relation to those Services.

(c) Subject to any terms that may be set out in the Order Document, Company is not subject to the direction or control of the Client as to the manner in which the Services are completed.

5.4 Outside Scope

Any services provided to the Client by Company which are not expressly included in the Services (Additional Services) and have not been included in the Fee, will be charged to the Client in accordance with Company's Rate Card, unless otherwise agreed to by the parties in writing.

5.5 Subcontractors

Company can delegate the performance of any of the Services to any of its subcontractors, at its discretion, provided that it contractually obliges those subcontractors to confidentiality obligations which are at least as onerous as the obligations of confidentiality in clause 11.3 and the Company remains liable to the Client for the performance of the Services.

5.6 Service limitations

The Client acknowledges and agrees that:

(a) Company's ability, and obligation, to provide the Services is subject to the Client complying with its obligations under clause 9.1 and any other limitation or exclusion set out in the Agreement;

(b) unless otherwise agreed in writing, the cost of consumables, replacement parts, hardware, software, network upgrades and any associated services are outside the scope of the Services and are the full responsibility of the Client;

(c) unless otherwise agreed in writing, any server upgrades, network device maintenance and upgrades and software maintenance and upgrades are outside the scope of the Services;

(d) Company cannot promise that the Services will be uninterrupted, error-free, or completely secure; and

(e) there are risks inherent in internet connectivity that could result in the loss of the Client's privacy, Confidential Information and property.

5.7 Access

Company may access and use Client Data for the purposes of testing and developing the Services, provided that it is on anonymous basis and not attributable to Client.

6. Applications and Desktop Software

(a) If applicable, Company grants to the Client a licence to certain Applications or Desktop Software the details of which will be set out in an Order Document.

(b) The Client acknowledges and agrees that the Applications and Desktop Software may be subject to additional terms and conditions, and the Client must comply with those terms and conditions notified to it from time to time (including, but not limited to, the terms and conditions of terms of insurance in respect of the Goods and Third Party Licenses).

(c) Applications may be provided to the Client as a service via an internet portal accessible application using login details applicable to the Licensee. The Client agrees to treat those login details as Confidential Information.

7. Third Party Content

The Client acknowledges and agrees that:

- (a) Third Party Content may be utilised in connection with an Agreement (including as part of the Applications, the Desktop Software, the Services or the Additional Services);
- (b) Third Party Content may be subject to Third Party Licences;
- (c) it must fully comply with the terms and conditions of all Third Party Licences notified to the Client from time to time; and
- (d) Company has no control over the content or performance of any Third Party Content.

8. Obligations and covenants

8.1 General obligations and covenants

The Client must, and must ensure its Personnel, in addition to any other Client obligations set out in the applicable Order Document):

- (a) provide Company with all reasonable information and access to its premises, Sites, computer and network systems in order for Company to provide the Services in accordance with the terms of the Agreement;
- (b) if required, provide adequate conditions for Company's personnel at the Client's premises and Sites, including, but not limited to, workspaces, heating, lighting, ventilations, electric current and outlets, internet and long-distance telephone access;
- (c) promptly notify Company of any event or incidents that is likely to or will impact on the provision of the Services or any other obligation of Company (including but not limited to any Exceptional Circumstances);
- (d) hold all licenses and authorisations (including import, export and radiation source licences) required by Law anywhere in the world where the Client imports, possesses or uses the Goods, Applications or Desktop Software;
- (e) if applicable, at all times keep and maintain the Goods properly serviced, in proper working order and condition, including but not limited to regular required maintenance of any diesel engines and lubrication to bearings and ensure that records are maintained for the operational time of the Goods and make those records available to Company within 2 days of receiving a request to do so;
- (f) keep the Goods at the premises authorised by Company unless written permission has been obtained from Company to relocate the Goods elsewhere;
- (g) use the Goods, Applications and Desktop Software carefully and properly and comply in all respects with the instructions and recommendations of Company;
- (h) permit Company and its Personnel, to enter the premises of the Client at all reasonable times in order to inspect the Goods;
- (i) keep the Goods in a safe place;
- (j) not modify or repair the Goods, Applications or Desktop Software without written consent from Company;
- (k) not use the Goods, Applications or Desktop Software for any illegal purpose and must comply in all respects with all applicable Laws reasonably necessary for the safe and lawful operation of the Goods, Applications and Desktop Software;
- (l) not place, or allow to be placed, on the Goods any plates or marks that are inconsistent with the ownership of Company;
- (m) notify any person seizing or claiming an interest in the Goods of the ownership of Company and must give immediate written notice to Company of such seizure or claim;
- (n) not without Company's prior written consent: (i) agree, attempt, offer or purport to sell, assign, sublet, lend, pledge, mortgage, let on hire or otherwise part with or attempt to part with the personal possession of or otherwise deal with the Goods; or (ii) allow any encumbrance, charge or lien of any kind to arise or remain on the Goods or any part of the Goods; or

- (iii) conceal or alter the Goods or make any addition to the Goods except as requested by Company;
- (o) promptly notify Company of any event that is likely to or will impact on the condition or operation of the Goods or the provision of the Services, Applications or Desktop Software;
- (p) take sole responsibility for Client Data including back-ups; and
- (q) comply with any reasonable direction of Company in relation to the Agreement.

8.2 Acknowledgement on Outputs

The Client must acknowledge on all Outputs (and any accompanying documentation) that:

- (a) such Outputs are confidential; and
- (b) Company will not be liable in any way for any Loss arising from any error, inaccuracy, incompleteness or other defect in the Outputs.

9. Fee and Payment

9.1 Payment

The Client agrees to pay Company all Fees under the Agreement.

9.2 Expenses

The Client acknowledges and agrees that, in addition to the Fees, the Client may be required to pay for any expenses incurred by Company including but not limited to reasonable travel, including flights, and accommodation expenses, as set out in the Order Document. Company agrees to provide the Client with a copy of such expenses, on request.

9.3 Late or non payment of invoices

If the Client defaults in paying an invoiced amount or any amount otherwise due and owing from the Client to Company and fails to rectify such default within 14 days of receiving a notice from the Company to do so, Company may do any one or more of the following:

- (a) request the return of the Goods or enter the premises of the Client to collect the Goods (as otherwise provided by clause 15.5);
- (b) restrict or suspend the provision of the Services, Applications or Desktop Software; or
- (c) terminate the Agreement or all applicable Agreements.

9.4 Obligation to pay not affected by licensing and training

The Client acknowledges and agrees that all licenses, authorisations and training in relation to Goods, Applications and Desktop Software are the sole responsibility of the Client and that the Fee must be paid to Company under the terms of this clause 9 even if the Client (or its Personnel):

- (a) does not have all required licences or authorisations referred to in clause 9.1(d); or
- (b) has not completed the required training.

10. Intellectual Property Rights

10.1 Client Technology and Client Data

No rights of ownership to Client Technology and Client Data are transferred under the Agreement and all such rights remain the sole property of the Client.

10.2 Company Technology

No rights of ownership to the Intellectual Property Rights created, owned or licensed by Company are transferred under the

Agreement. All Company Technology remains the sole property of Company (or its third party licensors, as the case may be). Any Intellectual Property Rights created in the course of Company performing its obligations under the Agreement including but not limited to the Services, will be owned by (and assigned to) Company.

10.3 Prohibited activities

- (a) Each party must not do or permit or omit to do any act which infringes the Intellectual Property Rights of the other party (or its licensors).
- (b) The Client acknowledges and agrees, as a fundamental condition of the Agreement, that:
 - (i) the Goods must not be dismantled, tampered with or opened up in any way except in accordance with the Company field guide issued with the Goods; and
 - (ii) it must not engage in, or permit, reverse engineering of the Goods, Applications or Desktop Software (or all of them).
- (c) The Client also acknowledges and agrees that any information derived from a breach of clause 11.3(b) is deemed Confidential Information of Company.

11. Confidential Information

- (a) Each party must keep the other party's Confidential Information, confidential.
- (b) A party must not, without the prior written approval of the other party, disclose the other party's Confidential Information.
- (c) Each party must take all reasonable steps to ensure that its Personnel engaged for the purposes of the Agreement, do not make public or disclose the other party's Confidential Information.

12. Liability

12.1 Exclusion

- (a) The parties agree that Company will not be liable for loss of Client Data or for the Client's reliance on any Client Data or other data obtained or produced in connection with the Agreement (including any Loss incurred, or any disclosure made to any stock exchange, based on such reliance).
- (b) The Client agrees not to make any claim against the third party provider of the hosting services.
- (c) Company will not be liable for any pollution or contamination emanating from or caused by the Goods.

12.2 Limitation of liability

If Company is liable under (or in connection with) an Agreement, then irrespective of anything else in the Agreement or at Law, Company's cumulative liability (whether under contract, tort, equity, statute or otherwise) in the aggregate (to the fullest extent permitted by Law) will in no event exceed the sum of the Fees paid by the Client to Company under the Agreement.

13. Indemnity

The Client agrees to indemnify Company (and to hold Company harmless and keep indemnified) in relation to any and all Loss Company (or its Affiliates) incurs (or will incur) as a result of (or in connection with):

- (a) the Client's (or its Personnel's) use of the Goods, Applications or Desktop Software;
- (b) Company seizing or storing the Goods; or
- (c) a person being injured or killed or property being damaged by the Goods or its use, due to the negligence or wilful misconduct of the Client.

14. Suspension and termination

14.1 Suspension

Company may temporarily suspend (in part or in whole) the provision of the Product Solution to the Client if:

- (a) Company is required by Law to do so;
- (b) such suspension is pursuant to clause 10.3 (late payment of invoice);
- (c) there is an attack on the Reflex HUB or the Reflex HUB is accessed or manipulated by a third party without consent;
- (d) the Client is in breach of any of its obligations under an Agreement; or
- (e) there is another event for which Company reasonably believe that the suspension of provision of the Services or the Applications to the Client is necessary to protect the Reflex HUB, Company network or other customers.

14.2 Effect of suspension

Suspension in accordance with clause 15.1 will not affect any right which accrue prior to, or after, suspension of the Client's obligations under the Agreement.

14.3 Termination

- (a) Company has the right to terminate an Order Document during the Order Term in respect of all, or any specified part, of the Product Solution, where the Client has breached any of its obligations under the Agreement and fails to remedy such breach within 14 days of receiving written notice to remedy the breach.
- (b) Client may only terminate an Order Document pursuant to these terms and conditions or the General Terms and Conditions. Client has the right, subject to the conditions set out in clause 15.4 (if applicable) and clause 15.5, to terminate an Order Document during the Order Term in respect of all, or any specified part, of the Supply on any date (proposed termination date).

14.4 Termination in relation to rental of Goods

- (a) Where Goods are being rented, the Order Document may only be terminated or partially terminated under clause 15.3(b) if: (i) on or prior to the proposed termination date, Client returns the Goods or the specified part of the Goods, at Client's expense, and in the condition required by clause 9.1(e), to Company at the specified address; or (ii) the Goods have been lost, and Company has been notified in accordance with clause 4.7(j).
- (b) Where the Agreement is terminated under this clause 15.4 as to part only of the Goods, Company will, acting reasonably, determine the amount due for the purposes of clause 15.4(a) and the revised rent in respect of the remainder of the Goods by reference to the proportion of the value, utility or other relevant measure of the part of the Goods to which termination applies.

14.5 Consequences of termination or expiration

Upon termination or expiration of an Order Document:

- (a) Client must immediately on or prior to the termination or expiration date (as the case may be) deliver any Goods, at Client's expense, to the address specified by Company from time to time or as stated in the Order Document;
- (b) if the Client does not comply with clause 15.5(a), Company may take all necessary legal action to retake possession of any Goods;
- (c) any Services or Additional Services will cease;
- (d) any licence to an Application or Desktop Software will terminate;
- (e) all money due by the Client to Company under any Order Document must be paid in full;
- (f) where applicable, Client Data will be deleted from Company servers after a period of 12 months from the date of expiration or termination; the Client may request data to be deleted prior to this period or request for ongoing storage which will be charged on a per Mb basis.

14.6 Survival

- (a) All obligations of Client under an Agreement will survive the expiration or termination of the Agreement to the extent

required for full observance and performance.

(b) The following clauses survive termination of the Agreements: clause 11 (Intellectual Property Rights); clause 11.3 (Confidentiality); clause 13 (Liability); clause 14 (Indemnity); clause 15.5 (Consequences of Termination) and this clause 15.6.

15. Force Majeure

15.1 Suspension of obligations

If a party (**Affected Party**):

(a) is prevented from, or delayed in, performance an obligation (other than an obligation of the Client to pay money) by an event of Exceptional Circumstance; and

(b) the Affected Party as soon as possible after the event of Exceptional Circumstance notifies the other party providing particulars of:

(i) the event of Exceptional Circumstance;

(ii) the anticipated period of delay; and

(iii) the action (if any action is reasonably possible) the Affected Party intends to take to mitigate the effect of the delay, then those obligations of the Affected Party are suspended for the duration of the event of Exceptional Circumstance.

15.2 Obligation on other party

The party which is not the Affected Party must use all reasonable endeavours to remove or mitigate its Loss arising from, and the effects of, the event of Exceptional Circumstance.

16. Notices

Any notice to be given or made pursuant to the Agreement shall be in writing in the English language and may be signed by the authorised agent of the party giving the same and may be served either:

(a) personally; or

(b) by delivering the same by registered post to a party at its registered office or business premises or at any other address of which prior notification shall have been given by the addressee prior to the dispatch of the said notice and any notice given by post shall be deemed to have been received by the addressee at the expiration of two (2) Business Days after the same has been properly posted; or

(c) by electronic mail, when the sender's computer reports that the message has been delivered to the electronic mail address of the addressee as provided on the party's website or as notified by one party to the other party from time to time; but if delivery is made after 5pm on a Business Day, then it must be treated as being received on the next Business Day.

17. Miscellaneous

17.1 Severability

If a provision of the Agreement is illegal, invalid, unenforceable or void in a jurisdiction it is severed for that jurisdiction and the remainder of the Agreement has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected.

17.2 Application of indemnities

Subject to any other provision of the Agreement, the indemnities in the Agreement are continuing obligations, independent from the other obligations under the Agreement and continue after the Agreement ends. It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity.

17.3 Taxes

Client must pay all taxes which may be payable or determinable in connection with the execution, delivery, performance of the Agreement or any payment or receipt contemplated by it.

18. Definitions

Capitalised terms used but not defined herein have the meanings assigned to them in the General Terms and Conditions. Otherwise, the following terms have the meanings set out below:

Client Data means all data:

- (a) collected and stored by the Goods in the course of the Client's use; or
- (b) uploaded to an Application by the Client, as well as any Outputs.

Client Technology means the Intellectual Property Rights of the Client which are demonstrated to be created independently of an Agreement and the Company Technology.

Company Technology means all Intellectual Property Rights owned by Company, or licensed to Company by a third party, including but not limited to the Applications, Desktop Software, Goods and any Intellectual Property Rights created in the course of providing the Services.

Confidential Information means, in relation to each party (for the purposes of this definition, Discloser), all information disclosed by or on behalf of the Discloser, concerning or relating to:

- (a) is by its nature confidential;
 - (b) is designated as confidential by the Discloser;
 - (c) the recipient knows or ought to know is confidential,
- but excluding any such information:
- (d) which is publicly known;
 - (e) which is disclosed to the other party without restriction by a third party (other than the Discloser) and without any breach of confidentiality by that third party; or
 - (f) which is developed independently by other party without reliance on any of the confidential information.

Exceptional Circumstances means a circumstance beyond the reasonable control of the parties which results in a party being unable to observe or perform on time an obligation under an Agreement. Such circumstances include, but are not limited to, the following:

- (a) adverse changes in government regulations;
- (b) any disaster or act of God, lightning strikes, atmospheric disturbances, earthquakes, floods, storms, explosions, fires and any natural disaster;
- (c) acts of war, acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage and revolution, cyber attacks, viruses or malware, data loss as a result of the actions of a third party;
- (d) strikes or industrial disputes;
- (e) materials or labour shortage; and/or
- (f) acts or omissions of any third party network providers (such as internet, telephony or power provider).

Law means any statute, rule, regulation, proclamation, order in council, ordinance, local law or by-law, whether:

- (a) present or future; or

(b) state, federal or otherwise.

Loss or Losses means any loss (including Consequential Loss), claims, actions, liabilities, damages, expenses, diminution in value or deficiency of any kind whether direct, indirect or consequential.

New IP means any and all Intellectual Property Rights created in the course of, or in connection with an Agreement.

Output means any information, data, calculations, assessment, summary, dashboards, activity feeds or reports produced by any Applications or Services as a result of the Client's use of any Applications or Services.

Order Term means the duration of the Services, the rental of the Goods or the licence of the Application, as set out in an Order Document.

Rate Card means the rates for the Additional Services, as otherwise provided to the Client from time to time.

Rental Commencement Date means the date the rental of the Goods commenced, as otherwise set out in an Order Document.

Site means: (a) in the case of Goods, the location for delivery and collection (as the case may be) of the Goods or any other place at any time or from time to time where Company believes on reasonable grounds that the Goods are located; or (b) in the case of Services the location where the on-site Services will be provided; as set out in an Order Document.

Third Party Content means any Intellectual Property Rights owned by a third party (other than an Affiliate of a party), and which is embodied or included in the rights licensed under an Agreement, including but not limited to any third party Applications, as set out in an Order Document.

Third Party Licences means the terms imposed by a third party in relation to Third Party Content.