

General

Terms & Conditions

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PARTIES TO THE AGREEMENT

1.1 This Agreement is made between Lanmark Ltd (hereinafter referred to as “the Supplier”) of Roxby House, 20 – 22 Station Road, Sidcup, DA15 7EJ and the Company or Organisation stated on the Suppliers Account Application Form (hereinafter referred to as “the Client”) of registered address stated on the Suppliers Account Application Form.

This agreement outlines the General Terms and Conditions under which the Supplier will provide specific Services (collectively referred to as “Products or Service(s)”) to the Client or its affiliates.

Definitions

“Agreement” incorporates the following documents by reference: (i) these General Terms and Conditions (ii) Product specific terms of use and Service Level Agreements (SLA’s). When we use the term “Agreement” in any of these documents, we are referring collectively to i, ii and any Third Party Providers subscribed services terms and conditions.

“Authorised Order Form” means a signed supplier Order form or authorised Client Purchase Order for services or written acceptance via post or email of a quotation or proposal.

“Business Day” means Mon – Fri 9:00 am – 5:30 pm.

“Data Protection Legislation:” (i) unless and until the GDPR is no longer directly applicable in the UK, the General Data Protection Regulation ((EU) 2016/679) and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then (ii) any successor legislation to the GDPR or the Data Protection Act 1998.

“Disclosing party” means the party who has disclosed confidential information to the other party.

“Intellectual property rights” mean the registered or non-registered ownership of patents, trademarks, registered design, know-how or copyright.

“Key personnel” means persons employed directly or indirectly by the Supplier who have a key role in the delivery of the services to the Client.

“Non-standard services” means those services which are customised to meet the requirements of the Client.

“Professional fees” means the remuneration or compensation, other than reimbursable expenses, due to the Supplier for the provision of Services.

“Project Timeline” means the total time in days a project will be in effect. This is calculated from the first published project plan or Statement of Works.

“Receiving party” means the party who has received confidential information from the other party.

“Services” means all Professional services, Subscription services, Cloud services, Third Party Providers services directly provided or resold under agreement by the Supplier.

“VAT” Value added tax chargeable under English Law for the time being and any similar additional tax.

INVOICES AND PAYMENT TERMS

2.1 INVOICES

The Supplier will submit invoices to the Client for products on confirmed delivery and professional services on signed completion of works.

Contractual services such as IT support will be invoiced on a monthly, quarterly or annual basis in advance.

The Supplier will submit invoices to the Client for reimbursable expenses monthly in arrears. Copy receipts and other relevant supporting documentation will be made available on request.

2.2 PAYMENT TERMS

All fees and expenses are to be paid to the Supplier, in the currency of the invoice, by telegraphic transfer of funds to the account designated by the Supplier. The Supplier reserves the right to demand Direct Debit payments for contractual services if applicable. All invoices relating to Supplier stated projects are subject to the following staged payment terms Stage (a) 50% paid in full and cleared funds in advance or 100% of hardware and software costs (whichever the greater), Stage (b) 40% on project completion if project is no longer than 90 consecutive days and Stage (c) the balance on project sign off. If a project timeline is greater than 90 consecutive days then Stage (b) payment of 40% will be paid in four 10% parts on quarterly dates calculated from the total project timeline.

All invoices excluding Supplier stated projects are payable within 30 days end of month. Any amounts disputed in good faith may be deducted from the invoice and the remainder must be paid by the due date. The disputed amount should be notified in writing to the Supplier within seven (7) days of receipt of the invoice giving the reasons for withholding payment. Upon receipt of the Client's dispute notice, the Supplier and Client will work together in good faith to resolve such disputes in a prompt and mutually acceptable manner. The Client agrees to pay any disputed amounts within five (5) days once the issues have been resolved.

2.3 TAXES

The amounts stated on the invoice are exclusive of VAT which the Client agrees to pay at the applicable UK rate.

2.4. INTEREST FOR LATE PAYMENT

If the invoice is not settled within 30 days end of month (and the amount is not in dispute as set out in Clause 2.2), the Supplier may add interest to such late payment at the rate of 2.5% per annum above the base rate of Barclays Bank PLC, compounded monthly.

FEES

3.1. PROFESSIONAL FEES

The professional fees payable for performing either the Standard Services or the Non-standard Services are to be in accordance with the Suppliers Published Rate Card.

Out of hours rates are 1.5 times standard rate excluding Sunday's and Bank Holiday's which are two (2) times standard rate.

Where travel outside of the M25 boundary is required, travel is calculated from the point of origin to destination. Delays of any kind (public/charted transport delays, cancellations or malfunctions) are billable at the published rate if travel time occurs out of the standard service hours we reserve the right to apply out of hours rates.

3.2. REIMBURSABLE EXPENSES

Reimbursable expenses means agreed "out of pocket" expenses reasonably incurred by the Supplier in performing its obligations under this Agreement. Any additional expenses shall only be payable subject to prior express written agreement from the Client.

CLIENT DUTIES AND RESPONSIBILITIES

4.1. APPROVALS AND INFORMATION

The Client will respond promptly and in any case within five (5) working days, to any Supplier request in writing to provide direction, information, approvals, authorisations or decisions that are reasonably necessary for the Supplier to perform its Services. The Client shall provide product and service purchase authorisation using a Purchase Order, a signed Order Form or email confirmation.

4.2. INSURING SUPPLIER'S EQUIPMENT

The Client will keep, maintain the Supplier's Equipment in good condition and ensure Suppliers Equipment is fully insured. The Client shall not dispose of or use the Supplier's Equipment other than in accordance with the Supplier's written instructions or authorisation, The Client shall be liable to pay the Supplier, all reasonable costs, charges or losses sustained or incurred by the Supplier (including any direct, indirect or consequential loss of profit and loss of reputation, loss or damage to property and those arising from injury or death of any person and loss of opportunity to deploy resources elsewhere) that arise directly or indirectly from the Client's fraud, negligence, failure to perform or delay in the performance of any of its obligations under this agreement, subject to the Supplier confirming such costs, charges and losses to the client in writing.

4.3. INSURING SUPPLIER'S ONSITE ENGINEER

The Client shall provide insurance during the period that the engineer is rendering services at the Client's premises to cover such engineer against death or personal injury caused by the Client's negligence.

4.4. RESPONSIBILITY

If a Client entrusts an engineer with money, securities, valuables or negotiable documents or access to any such item then provided that the Supplier complies with its other performance obligations under this Agreement, this will be at the sole risk of the Client.

PROCUREMENT, WARRANTIES AND REMEDIES

5.1. TITLE

Title of goods does not pass to the Client until payment is received in full by the Supplier.

5.2. DELIVERY DATES

Unless expressly guaranteed by us in writing all delivery dates are subject to change without notice.

5.3. DELIVERY

5.3.1. Risks of loss, breakage and all damage and all other risks shall pass to the Client at the time the Products are handed over to the transportation company.

5.3.2. At the time of delivery, the Client must check that the quantity of Products matches the quantity set out on the proof of delivery ("POD") and that the exterior of the Products are in good condition. The Client must then indicate this on the POD and sign the POD accordingly. If an over shipment of the Products has occurred the Client must also notify the Supplier as soon as possible and in any event within five (5) working days of the delivery. The Client must not sign the POD "unchecked" or "unexamined" or any such similar wording.

5.3.3. A signed POD by or on behalf of the Client shall be conclusive evidence of delivery and (except to the extent that any damage or discrepancy is noted on the POD) that it was received in good order and condition and accordingly no claims shall be bought in respect of the delivery claiming the contrary.

5.3.4. The Client must inspect the Products immediately after delivery is complete. If any Products are damaged, incorrect or not delivered, the Client must notify the Supplier within five (5) working days of the delivery or expected delivery. For the avoidance of doubt, the Client is still required to notify the Supplier as set out in this clause 5.3.4 notwithstanding anything noted by the Client on the POD. If a POD is required, this must be requested within fourteen (14) days of the date of the invoice.

5.3.5. In the event of any Drop Ship delivery, the Client shall ensure that the End User complies with the Client's obligations set out above in clauses 5.3.2, 5.3.3, 5.3.4 and 5.3.6.

5.3.6. The Supplier may deliver the Products in instalments. Each instalment is treated as a separate delivery.

5.3.7. If the Client cannot accept delivery the Supplier may at its option: (a) store and insure the goods at the Client's expense and risk or (b) sell the goods at the best price reasonably obtainable and (after deducting reasonable storage insurance and selling costs) pay to the Client any excess over the sale price or charge the Client for any shortfall or (c) re-arrange delivery provided that the Supplier may charge the Client for the additional delivery costs incurred.

5.4. RETURNS POLICY

If equipment supplied by us is returned to us in good and saleable condition with all original packaging and documentation within seven days of delivery, we will make a refund of the price paid by the Client (excluding delivery charges) less an administrative fee of 30% with a £25 minimum charge for all returns.

QUALITY OF SERVICE

The Supplier warrants that Services will be performed (a) in a professional manner using all due care and skill; (b) in accordance with applicable industry standards; (c) in a timely and efficient manner using appropriately skilled personnel of the Supplier; and (d) in compliance with applicable laws and regulations.

6.1. INDEMNIFICATION

If, as a result of the Supplier's negligence, the Client or Client's employees suffer injury or property damage, the Supplier will reimburse the Client for that portion of any damage for which the Supplier is found to be liable.

6.2. THIRD PARTY CLAIMS

The Supplier warrants that any works authorship written by the Supplier's personnel and any Services supplied under this Agreement will not infringe any third party copyrights, patents, trademarks, database rights or trade secrets. If a third party takes action against the Client or makes a claim against the Client due to any infringements or alleged infringements of this nature, then the Supplier will, at its own expense, indemnify and hold the Client harmless against any such claims, actions, expenses, demands, damages and costs or arrange to defend the Client in relation to such proceedings (securing the Client to its reasonable satisfaction) and in such circumstances the Supplier will pay all costs, expenses (including reasonable legal expenses) and damages incurred in defending such a claim and awarded in final settlement.

The Supplier is not responsible for any infringements to third-party copyrights, patents or trade secrets where the Client has made amendments to original documents and similar works prepared by the Supplier without the express approval of the Supplier, or where the Client fails to use the most recent versions of such works that have been delivered by the Supplier.

6.3. REMEDIES FOR BREACHES

In the event of any defective performance from the Supplier or failure to furnish the agreed levels of Service, the Supplier will restore the Service to good operating condition on an urgent basis using all reasonable available resources.

6.4. FORCE MAJEURE

Neither party will be liable for any failure or delay in its performance under this Agreement due to circumstances beyond its reasonable control which the exercise of reasonable diligence could not have avoided including acts of war, acts of God, earthquake, flood or other severe weather related circumstances, riot, embargo, or sabotage, provided that the party unable to perform (a) gives the other party prompt written notice of the reasons for such delay and its estimated duration if possible; and (b) uses all reasonable endeavours to cure the circumstances giving rise to such delay or failure (including procuring alternative sources of supply). The party so delayed or prevented from performing shall immediately recommence performance in the event that such circumstances cease to affect it.

6.5. PASS THOROUGH

If applicable, the Supplier warrants that it will pass through any and all Third Party manufacturers warranties and Third Party Service Provider's terms and conditions to the Client. Where the Supplier resells a Third Party Service that requires the Supplier to sign and agree to Third Party Providers terms and conditions the Client will be bound to all Third Party Providers service terms and conditions.

INTELLECTUAL PROPERTY RIGHTS & CONFIDENTIALITY

7.1. INTELLECTUAL PROPERTY RIGHTS

The Supplier acknowledges the intellectual property rights (including copyrights, database rights, trademarks, patents and other proprietary rights whether registered or not) of the Client, including rights in Client information, data and other materials on the Client's systems and servers and information supplied by the Client to the Supplier under this Agreement ("Client Materials") remain at all times vested in the Client (or its licensors). No title, right or interest in such Client Materials or any part of them shall vest in or transfer to the Supplier under this Agreement.

The Client acknowledges the intellectual property rights (including copyrights, database rights, trademarks, patents and other proprietary rights whether registered or not) of the Supplier including information supplied by the Supplier to the Client under this Agreement ("Supplier Materials") remain at all times vested in the Supplier (or its licensors). No title, right or interest in such Suppliers Materials or any part of them shall vest in or transfer to the Client under this Agreement.

7.2. CONFIDENTIALITY

Each party, when Receiving Party, agrees to keep confidential all confidential information of the Disclosing Party that is disclosed to it or that it has access to as a result of performing this Agreement.

7.3. COURT ORDERS

If the Receiving Party received a Court Order to divulge any confidential information belonging to the Disclosing Party, then the Receiving Party is permitted to release such information to the court in accordance with any Court Order so served.

7.4. DATA PROTECTION

7.4.1. In so far as required, both parties agree that they will comply with all applicable requirements of the Data Protection Legislation.

This clause 7.4 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

7.4.2. The parties acknowledge that for the purposes of the Data Protection Legislation, the Client is the data controller and the Supplier is the data processor (where Data Controller and Data Processor have the meanings as defined in the Data Protection Legislation). Schedule 1 sets out the scope, nature and purpose of processing by the Supplier, the duration of the processing and the types of personal data (as defined in the Data Protection Legislation, Personal Data) and categories of Data Subject.

7.4.3. Without prejudice to the generality of clause 7.4.1, the Client will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Supplier for the duration and purposes of this agreement.

7.4.4. Without prejudice to the generality of clause 7.4.1, the Supplier warrants and undertakes that it shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under this agreement:

7.4.4.1. process that Personal Data only on the written instructions of the Client unless the Supplier is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Supplier to process Personal Data (Applicable Laws). Where the Supplier is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, the Supplier shall promptly notify the Client of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Supplier from so notifying the Client;

7.4.4.2. ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Client, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

7.4.4.3. ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and

7.4.4.4. not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Client has been obtained and the following conditions are fulfilled:

7.4.4.4.1. the Client or the Supplier has provided appropriate safeguards in relation to the transfer;

7.4.4.4.2. the data subject has enforceable rights and effective legal remedies;

7.4.4.4.3. the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and

7.4.4.4.4. the Supplier complies with reasonable instructions notified to it in advance by the Client with respect to the processing of the Personal Data;

7.4.4.5. assist the Client, at the Client's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

7.4.4.6. notify the Client without undue delay on becoming aware of a Personal Data breach;

7.4.4.7. at the written direction of the Client, delete or return Personal Data and copies thereof to the Client on termination of the agreement unless required by Applicable Law to store the Personal Data; and

7.4.4.8. maintain complete and accurate records and information to demonstrate its compliance with this clause 7.4.

7.4.5. The Client consents to the Supplier appointing a third-party processor of Personal Data under this agreement where the third

party processor has incorporating terms which are substantially similar to those set out in this clause 7.4. The Supplier shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 7.4.5.

7.4.6. Either party may, at any time on not less than 30 days' notice, revise this clause 7.4 by replacing it with any applicable controller to processor standard clauses or similar terms forming party of an applicable certification scheme (which shall apply when replaced by attachment to this agreement).

7.4.7. Each party agrees to indemnify and keep indemnified and defend at its own expense the other party against all costs, claims, damages or expenses incurred by the other party or for which the other party may become liable due to any failure by the first party or its employees or agents to comply with any of its obligations under this clause 7.4.

7.5. DESTRUCTION OF DATA AND RECORDS OR RETURN ON TERMINATION

Upon termination of this Agreement, the receiving party, at the option of the disclosing party, will return or destroy all confidential information belonging to the other party except as required otherwise by law, regulation or bona fide internal policies.

LEGAL COMPLIANCE AND RESOLUTION OF DISPUTES

8.1. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of England and Wales. In the event of any dispute or action, the parties hereby submit to the exclusive jurisdiction of the English court.

8.2. EXPORT CONTROL

Both Supplier and Client agree to comply fully with all relevant export laws and regulation of the country or countries where their offices are located.

8.3. INFORMAL RESOLUTION

In the event of dispute, the parties will attempt to resolve any such disputes through informal negotiation and discussion. Formal proceedings should not be commenced until such informal negotiations and discussions are concluded without resolution

8.4. LIMITATION OF ACTION

With the exception of any fees and expenses due to the Supplier under this agreement neither party may bring proceedings in relation to a breach of this Agreement more than 12 months after the party entitled to bring such proceedings becomes aware of the relevant breach.

8.5. LIMITATION OF LIABILITY - *THE CLIENT'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE*

8.5.1. This clause sets out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employee's, agent's consultants and subcontractors) to the Client in respect of:

- 8.5.1.1. any breach of this agreement;
- 8.5.1.2. any use made by the client of any services or goods supplied under the agreement; and
- 8.5.1.3. and representation, statement or tortuous act or omission (including negligence) arising under or in connection with this agreement

8.5.2. Nothing in this agreement limits or excludes the liability of the Supplier:

- 8.5.2.1. for death or personal injury resulting from negligence; or
- 8.5.2.2. for any damage or liability incurred by the Client as a result of fraud or fraudulent misrepresentation by the supplier; or
- 8.5.2.3. for any liability incurred by the client as a result of any breach by the supplier of the clause as to the title or the warranty as to the quiet possession implied by section 2 of the Supply of Goods and Services Act 1982.

8.5.3. Subject to Clause 8.51 and 8.5.2

- 8.5.3.1. the Supplier shall not be liable for:
 - 8.5.3.1.1. loss of business; or
 - 8.5.3.1.2. depletion of goodwill and/or similar losses; or
 - 8.5.3.1.3. loss of goods; or

8.5.3.1.4. loss of use; or

8.5.3.1.5. loss of corruption of data or information; or

8.5.3.1.6. any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses; and

8.5.3.1.7. the Supplier's total liability in contract, tort, (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance of this agreement shall be limited to the price paid for the services.

GENERAL

9.1. NOTICES

Notices required under this Agreement are to be sent to the address and persons specified in Clause 1.1 of this Agreement. Notices are to be sent in writing by registered post, recorded post, express courier service or to be delivered personally.

9.2. ASSIGNMENT

The Client may not assign or otherwise transfer this Agreement without the prior written consent of the Supplier. In the event that consent for assignment is given, the terms of this Agreement will be binding upon the Client's successor.

9.3. SEVERABILITY

The provisions of this Agreement shall be deemed severable. And the unenforceability of any one of the provisions shall not affect the enforceability of other provisions. In the event that a provision is found to be unenforceable, the parties shall substitute that provision with an enforceable provision that preserves the original intent and position of the parties.

9.4. CHANGES TO THE AGREEMENT

9.4.1. All changes to this Agreement must be approved in writing by authorised officials of both parties. A Service description may be amended to modify, add, or remove services by a formal written agreement signed by both parties, or by an exchange of correspondence, including via electronic mail or the Supplier's ticketing system that includes the express consent of an authorised individual for each of us. The pre-printed terms on the Client's purchase order or other business forms will not become part of this Agreement.

9.4.2. This Agreement and any applicable Supplier Product Terms and Conditions may be signed in multiple counterparts, which taken together will be considered one original. Written signatures, facsimile signatures, signatures on an electronic image (such as .pdf or .jpg format), and electronic signatures shall be deemed to be original signatures.

9.5. NON-SOLICITATION

The Client acknowledges that, during the course of provision of Services, it will make, maintain and develop personal knowledge of, or influence over and valuable personal contracts with staff and contractors of the Supplier

The Client thereafter covenants with the Supplier that it will not, during the course of this agreement, or for a period of 12 months after its termination, directly or indirectly on its own behalf or on behalf of any other person, concern, undertaking firm or body solicit or endeavor to entice away from the Supplier any key personnel, officer, consultant, or service management employee of the Supplier or employ, engage, assist in or procure the employment or engagement by any other person, concern, undertaking, firm or body corporate of any such person.

In the event of any breach of this clause by the Client, the client shall, in addition to any other remedy the Supplier may have at law, pay liquidated damage to the Supplier in the sum of £50,000 (plus any applicable VAT) per employee such sum being acknowledged by the parties as a realistic pre-estimate of the loss the Supplier will suffer as a consequence of a breach of this clause.