

## Standard Terms and Conditions

### 1 Introduction

1.1 These terms and conditions are divided into three sections.

Section 1(General) applies to all orders.

Section 2 applies where Triangle supplies Equipment,

Section 3 applies where Triangle provides Services

## SECTION 1 GENERAL

### 2 Definitions

2.1 In these terms and conditions unless the context shall otherwise require the following words and expressions shall have the following meanings:

"Agreement" means the agreement for supply of Equipment and/or Services between Triangle and the Customer consisting of these terms and conditions, the SOW (if any), the Quotation, Customer's order, Triangle' order acknowledgment and any other document that Triangle and the Customer agree in writing forms part of the agreement.

"Assumption" means any assumption (by whatever name called) which Triangle has made in calculating the Charges and which is stated in the Quotation or the SOW.

"Charges" means those charges payable by Customer as stated in a Quotation or set out in a SoW.

"Confidential Information" (a) this Agreement; (b) all written information that is either designated by a Party as confidential prior to the other Party obtaining access thereto, or information that should reasonably be expected to be treated as confidential by the recipient whether or not such information is designated as confidential; and (c) all other information disclosed by one Party to the other Party, whether before or after the Commencement Date, relating to the trade secrets, operations, processes, plans, intentions, product information, know-how, designs, market opportunities, transactions, clients, affairs and/or business of that Party or its customers or Affiliates

"Customer" means the person, firm or company who purchases Equipment or Services from Triangle.

"Customer Dependency" means any obligation of the Customer stated in a SOW where the timely fulfilment of such obligation is necessary for Triangle to perform the Services either within any time periods stated in the SOW or at all.

"Data Protection Legislation" means the General Data Protection Regulation (EU) 2016/679 the Data Protection Acts 1988-2018 and the European Communities (Electronic Communications Networks and Services) (Privacy and Electronic Communities) Regulations 2011 and any other national implementing law or regulation relating to the processing of personal data and to privacy, as such legislation shall be amended, revised or replaced from time to time

"Deliverables" means the items, documents, products, reports, copy, drawings, photographs and/or other materials specifically created or developed by or on behalf of the Supplier or its Staff and expressly required to be provided to the Client Group under a SOW

"Equipment" means any equipment (including any part or parts of it) that Triangle is to supply to the Customer in accordance with the Agreement.

"Intellectual Property Rights" means patents, rights to inventions, trademarks, rights in get-up and trade dress, service marks, logos, trade names, domain names, rights in Confidential Information (including know-how and trade secrets), copyright and neighbouring and related rights, rights in designs, goodwill and the right to sue for passing off or unfair competition, and all rights, future rights or forms of protection of a similar nature or having equivalent or similar effect to any of them and any other intellectual property rights which may subsist anywhere in the world, whether registered or not, and including all applications for the same, and rights to apply for and be granted renewals or extensions of, and rights to claim priority from, such rights, and all goodwill associated therewith

"Triangle" means Triangle Computer Services Limited; (registered in Ireland No: 309657) Registered Office: Colm House, 91 Pembroke Road, Dublin 4, whichever is stated in the quotation or proposal.

"Triangle Group" means Triangle and any company which is a subsidiary or a holding company of Triangle, or any company which is a subsidiary of any such holding company, and all companies which in the future become subsidiaries of Triangle or of any such holding company; 'holding company' and 'subsidiary' having the meanings given to them in section 7 and 8 of the Companies Act, 2014.

"Manufacturer or Third Party Delivered Maintenance Services" means such services that are sold by Triangle but delivered by the Manufacturer or a Third Party directly to the Customer. Such services will be subject to that Manufacturer or Third Party's terms and conditions and may require a separate agreement between Customer and the Manufacturer or Third Party.

"Manufacturer Support" means any support services provided in respect of Equipment by the manufacturer of the Equipment as a mandatory feature.

"Personal Data" has the meaning given in the Data Protection Act 2018.

"Pre-existing Materials" means materials which existed before the commencement of the Services.

"Sites" means the premises of the Customer, or of a third party, to which the Equipment is to be delivered and/or at which Services are to be performed.

"Charges" means the price of the Equipment and/or Services as stated in the Quotation.

"Quotation" means a written document issued by Triangle which sets out the Charges and any terms, in addition to these terms, upon which Triangle may sell the Equipment and/or Services to the Customer.

"Response Time Objective" means the time taken from the customer contact to the initial technical response, based on priority level. The Response Time Objective will be based on priority level, as stated in the Quotation.

"Services" means any services that Triangle is to provide to the Customer in accordance with the Agreement.

“Software” means any operating system or other software (whether proprietary to Triangle or not) installed on the Equipment or otherwise supplied by Triangle.

“Statement of Work or SOW” means a statement of work entered into pursuant to this agreement.

“Third Party Software” means Software that is not proprietary to Triangle and which is installed on the Equipment or otherwise supplied by Triangle.

“Working Day” means a day other than a Saturday, Sunday or public holiday in Ireland.

“Working Hours” means 09:00 to 17:30 hours on a Working Day.

2.2 In this Agreement, unless the context requires otherwise:

- (a) references to a recital, clause, schedule or annex are to a recital, clause, schedule or annex of this Agreement, references in a schedule or annex to a paragraph are to a paragraph of that schedule or annex to this Agreement, a reference to a clause or paragraph number is, unless otherwise specified, a reference to all its sub-clauses or sub-paragraphs and references to a schedule include the annex and other attachments to that schedule, in each case unless specified otherwise;
- (b) words importing the singular include the plural and vice versa and words importing a gender include every gender;
- (c) words denoting persons include individuals and bodies corporate, partnerships, unincorporated associations and other bodies (in each case, wherever resident and for whatever purpose) and vice versa;
- (d) references to this Agreement or any other document are to this Agreement or that document as in force for the time being and as amended, supplemented, varied, modified, renewed or replaced or extended from time to time in accordance with the requirements of this Agreement or that document (as the case may be);
- (e) the headings to clauses, schedules, annexes and paragraphs are inserted for convenience only and shall be ignored in interpreting this Agreement;
- (f) the words “other,” “include,” “includes,” “including” and “in particular” shall not limit the generality of any preceding words, and any words that follow them shall not be construed as being limited to the same class as the preceding words where a wider construction is possible;
- (g) a reference to any applicable laws shall unless otherwise stated include all subordinate legislation (as defined in accordance with the Interpretation Act 2005) and shall be as the same is in force at the Commencement Date and as may from time to time thereafter be amended, re-enacted or replaced;
- (h) a reference to an Irish legal term (including action, remedy, judicial proceeding, legal document, legal status, body, Applicable Law or any other legal concept or thing) shall be deemed to include a reference to that term which most closely approximates

to the relevant Irish legal term existing anywhere in the world to the extent required to give full force and effect to the relevant provision of this Agreement;

- (i) all periods which are expressed to commence and end between two dates shall be inclusive of such dates; and
- (j) references to a Party shall, except where the context requires otherwise, include its successors in title and permitted assigns.

2.3 If and to the extent of any inconsistency or conflict between any of the clauses, schedules, annexes and any document otherwise attached or incorporated into this Agreement, the order of priority for the purposes of construction is in descending order:

- (a) any document which the parties agree in writing form part of this Agreement;
- (b) Master Service Agreement agreed by the parties
- (c) the SOW;
- (d) these terms and conditions;
- (e) the order acknowledgement;
- (f) the order;
- (g) the Quotation.

### 3 Quotations

3.1 All Quotations are valid for fourteen (14) days from date of the Quotation, unless otherwise stated in writing on the Quotation. All Quotations are subject to these terms and conditions.

3.2 In addition to the Quotation Triangle may, but is not obliged to, issue a SOW containing details of the Services and any applicable exclusions, activities, outputs and Assumptions.

3.3 Unless the Quotation specifies that the Charges are fixed Triangle may at any time before it has accepted the Customer's order withdraw the Quotation and re-quote to reflect any increase in the cost to Triangle which is due to any foreign exchange fluctuation or alteration of duties.

### 4 Conditions

4.1 These terms and conditions shall apply to the exclusion of any standard terms or conditions of the Customer, whether appearing in an order or in any other document issued by the Customer and notwithstanding any statement to the contrary appearing in such standard terms or conditions. Pre-printed, standard, or posted terms and conditions in any media (including terms where acquiescence requires only a mouse click) shall not be incorporated into nor construed to amend the terms of this Agreement.

### 5 Basis of Sale

5.1 Each order or acceptance of a Quotation by the Customer shall be deemed to be an offer by the Customer subject to these terms and conditions. Subject to clause 5.2 a binding contract shall come into existence between Triangle and the Customer when Triangle issues a written order acknowledgement to the Customer, the parties sign a SOW or Triangle delivers the Equipment or supplies the Services to the Customer (whichever occurs earlier).

5.2 Notwithstanding clause 5.1 a written order acknowledgment shall not create a contract between

Triangle and the Customer if any Assumption on which the Quotation is based proves to be untrue and the Quotation expressly allows Triangle to re-quote in such circumstances.

5.3 Subject to clause 33, no order which has been acknowledged by Triangle may be cancelled by the Customer, except with the agreement in writing of Triangle and provided that the Customer indemnifies Triangle 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 Triangle as a result of cancellation.

## 6 Charges

6.1 Triangle shall charge and the Customer shall pay the Charges in Euro, or such other currency as agreed, without deduction, set off or counterclaim. The Customer shall also reimburse Triangle for all reasonable and proper expenses incurred by Triangle in connection with the supply of Equipment or provision of Services including but not limited to travel and accommodation expenses. Where an expenses policy is included or referred to in the SOW expenses will be charged by Triangle as set out in that policy. The Charges or expenses for which the Customer is liable under this Agreement, shall become due thirty (30) days after the date of Triangle' invoice for the same.

6.2 Where the order includes both Equipment and Services the Agreement shall be deemed to be a separate agreement for the supply of Equipment and the Supply of Services. Any default or delay by Triangle in the supply of Equipment shall not relieve the Customer of its obligation to take and pay for Services and any default or delay by Triangle in the supply of Services shall not relieve the Customer of its obligation to take and pay for Equipment.

6.3 If the Customer fails to pay the Charges in full by the due date Triangle may, without prejudice to any other right or remedy available to Triangle:

- 6.3.1 Terminate the Agreement or suspend any further deliveries of Equipment (whether ordered under the same contract or not) to the Customer;
- 6.3.2 Appropriate any payment made by the Customer to such of the Equipment or Services (or the Equipment or Services supplied under any other contract between the Customer and Triangle) as it thinks fit (despite any purported appropriation by the Customer);
- 6.3.3 Suspend all Services until payment has been made in full;
- 6.3.4 Make a storage charge for any undelivered Equipment at its current rates from time to time.

6.4 If the Customer fails to pay the Charges in full by the due date Customer shall indemnify Triangle against all costs and expenses (including any legal costs and expenses on a full indemnity basis) incurred or sustained by Triangle in recovering sums due in each case without prejudice to any other rights or remedies available to Triangle.

6.5 All sums payable to Triangle under the Agreement shall, notwithstanding any other provision of the Agreement, become due immediately:

- 6.5.1 on its termination by a notice in writing served by Triangle under clause 8.1 or 8.2; or
- 6.5.2 If Triangle commences legal proceedings to recover any sums due from Customer under this Agreement.

6.6 All Fees and payments to be made under this Agreement are stated exclusive of any VAT applicable, which shall be paid by the Customer at the rate and in the manner prescribed by law from time to time. The Fees include all other taxes, duties and levies, and no such other taxes, duties or levies shall be payable by the Customer.

6.7 Triangle may issue and Customer agrees to accept invoices by email or other electronic means of communication.

## 7 Liability

7.1 Neither party excludes or limits liability to the other party for:

7.1.1 Death or personal injury due to its negligence; or

7.1.2 Fraudulent misrepresentation; or

7.1.3 Breach of the obligations implied by section 12 Sale of Goods Act 1893 (as inserted by Section 10 of the Sale of Goods and Supply of Services Act, 1980) ; or

7.1.4 Any other liability which may not be excluded by law.

7.2 Triangle' liability for a breach of warranty will be limited to:

7.2.1 in the case of Equipment supplied, to any one of the following (as Triangle may determine);

(a) The replacement of the Equipment or the supply of equivalent Equipment;

(b) The repair of the Equipment,

(c) The payment of the reasonable costs of replacing the Equipment or of acquiring equivalent Equipment; or

(d) The payment of the reasonable cost of having the Equipment repaired; and

7.2.2 In the case of Services supplied the supplying of the Services again.

7.3 Subject to clause 7.1, the total liability of Triangle in respect of loss or damage to any property arising out of or under this Agreement shall not exceed €1,000,000 (one million euro) in aggregate;

7.4 Subject to clauses 7.1 and 7.3, the total liability of Triangle in respect of any or all events giving rise to any loss or damage arising out of or related to the supply of Equipment or the provision of Services (other than Maintenance Services) shall not exceed a sum equal to the amount of the Charges payable by the Customer for the Equipment or Services in respect of which the loss or damage arose or €1,000,000 (one million euros) whichever is the lesser.

7.5 Subject to clauses 7.1 and 7.3, the total liability of Triangle in respect of any or all events giving rise to any loss or damage which is not limited by clause 7.4 or clause 7.4 shall not exceed a sum equal to the amount of the Charges payable by the Customer under this Agreement or €1,000,000 (one million euros) whichever is the lesser.

7.6 Subject to clause 7.1, Triangle will not be liable for any loss of profits, revenues, business, goodwill, anticipated savings, data or any special, indirect, consequential or economic loss, howsoever arising (in negligence or otherwise), in relation to or otherwise in connection with the Equipment or Services, this Agreement or any act or omission by Triangle.

7.7 If for any reason the exclusion of liability in clause 7.6 above is void or unenforceable, Triangle' total liability for all loss or damage under this Agreement shall be as provided in clause 7.5.

7.8 No action (including mediation or litigation) may be brought under this Agreement more than two years after the circumstances giving rise to the action have come, or with reasonable diligence should have come, to the notice of the party bringing the action.

## 8 Termination

- 8.1 A Party (**first party**) shall at any time be entitled to terminate this Agreement in whole or in part at any time by written notice to the other Party (**second party**) if:
- (a) an encumbrancer takes possession of, or a receiver is appointed over any of, the property or assets of the second party;
  - (b) the second party makes any voluntary arrangement with its creditors or becomes subject to a petition to appoint an examiner;
  - (c) the second party goes into liquidation (except for the purposes of amalgamation or reconstruction, on terms previously approved in writing by the first party, and in such manner that the company resulting therefrom effectively agrees to be bound by or assume the obligations imposed on the second party under this Agreement);
  - (d) anything analogous to any of the foregoing under the law of any jurisdiction occurs in relation to the second party; or
  - (e) the second party ceases, or threatens to cease, to carry on business;
  - (f) the second party suffers a Change of Control without the prior written consent of the first party, such consent not to be unreasonably withheld, delayed or conditioned; or
  - (g) the first party reasonably apprehends that any of the events mentioned above is about to occur in relation to the second party and notifies the second party accordingly.
- 8.2 In addition Customer shall at any time be entitled to terminate any individual SOW in whole or in part immediately (or as of a date specified in the notice of termination) by written notice to the Supplier if:
- (a) the Supplier has committed a material breach of a term of this Agreement and the breach is not capable of remedy or, if the breach is capable of remedy, the breach has not been remedied within thirty (30) days from the date of receiving written notice from Customer specifying the breach and requiring it to be remedied; or
  - (b) the financial position of the Supplier deteriorates to such an extent that the capability of the Supplier adequately to fulfill its obligations under this Agreement has been placed in jeopardy;
- unless otherwise expressly stated, termination of a SOW will not be deemed a termination of the Agreement or any other SOW.
- 8.3 The Supplier shall have the right to serve on the Customer a written notice (**Initial Notice**) referring to this clause 19 in the event that the Customer has failed to pay undisputed invoiced Fees and which have been due and payable for a period in excess of thirty (30) days detailing the undisputed invoiced Fees. If the relevant Fees in the Initial Notice remain undisputed and unpaid for a period in excess of ten (10) days following receipt by the Customer of the Initial

Notice then the Supplier may serve a notice addressed for the attention of the Customer's Company Secretary stating the Supplier's intention to terminate the affected SOW and attaching the Initial Notice and specifically referring to this clause 19 (**Final Notice**). If the Customer fails to pay such undisputed invoiced amounts within fifteen (15) days of issuance of the Final Notice the Supplier may, unless and at any time until the Customer pays such undisputed invoiced amounts detailed in the Initial Notice, serve notice on the Customer to terminate the affected SOW specified in the Final Notice, with immediate effect.

8.4 Suspension: If the Supplier suspends the performance of any its obligations pursuant to its rights under this Agreement and such suspension continues for a continuous period of 30 days (or an aggregate period of 45 days in any Year), the Supplier may terminate this Agreement, any SOW (or any part of the Services affected by the suspension) by giving written notice of termination to the Customer.

8.5 In addition the Supplier shall at any time be entitled to terminate any individual SOW in whole or in part immediately (or as of a date specified in the notice of termination) by written notice to the Supplier if:

- (a) The Customer has committed a material breach of a term of this MSA and/or the relevant SOW and the breach is not capable of remedy or, if the breach is capable of remedy, the breach has not been remedied within thirty (30) days from the date of receiving written notice from the Supplier specifying the breach and requiring it to be remedied; or
- (b) The Supplier has notified the Customer in writing that the Supplier has a good faith, reasonable belief that any member of the Client Group or its users has committed breach of the Supplier's or its licensors' IP Rights; or those IP Rights relating to the Deliverables and the breach is not capable of remedy or, if the breach is capable of remedy, the breach has not been remedied within ten (10) days from the date of receiving written notice from the Supplier specifying the breach and requiring it to be remedied.

## 9 Intellectual Property Rights

9.1 All Intellectual Property Rights and all other rights in the Deliverables shall be owned by Triangle. Triangle hereby licenses all such rights to the Customer free of charge and on a non-exclusive, worldwide basis to such extent as is necessary to enable the Customer to make reasonable use of the Deliverables and the Services as is envisaged by the parties. If Triangle terminates the Agreement under clause 8, this licence will automatically terminate.

9.2 The Customer acknowledges that the Customer's use of rights in Pre-existing Materials is conditional on Triangle obtaining a written end-user licence (or sub-licence) of such rights from the relevant licensor or licensors on such terms as will entitle Triangle to license such rights to the Customer.

9.3 Customer agrees not to directly or indirectly infringe the Intellectual Property Rights of Triangle or its suppliers and to ensure that such rights are not infringed by its employees or contractors.

## 10 Intellectual Property Rights Indemnity

10.1 Triangle agrees to indemnify the Customer from and against any damages finally awarded against the Customer in any claim, suit, action or proceeding (collectively called “Action”) brought against the Customer to the extent that such Action is based on a claim that any Equipment or Services provided by Triangle under this Agreement infringes any Intellectual Property Rights provided that:

10.1.1 The indemnity does not apply:

- (i) Where the Customer has the benefit of an indemnity against infringement of Intellectual Property Rights from the manufacturer of the Equipment;
- (ii) To Equipment that is not manufactured by Triangle or Services that are not performed by Triangle unless Triangle has the benefit of an indemnity against infringement of Intellectual Property Rights from the manufacturer of the Equipment or the provider of the Services;
- (iii) To Third Party Services or Third Party Software.

10.1.2 The Customer fully co-operates with Triangle in defending or settling the Action, does not at any time admit liability and makes its employees available to give such statements, advice and evidence as the indemnifying party may reasonably request;

10.1.3 Triangle is notified promptly in writing of any Action by the party claiming the indemnity and is given complete authority and information required for the conduct of the defence or settlement of the Action; and

10.1.4 Triangle shall have the sole control of the conduct of any Action and all negotiations for its settlement, compromise or resolution.

10.2 Triangle shall have no liability to indemnify the Customer against any Action insofar as any such Action is in respect of:

10.2.1 Any use in combination with the Equipment or Services of any item not supplied by Triangle (except where such combination, connection, operation or use is recommended, specified or approved by Triangle) where such combined use directly gives rise to the Action; or

10.2.2 Any modification carried out by or on behalf of the Customer to any product or service if such modification has not been authorised by Triangle in writing; or

10.2.3 The Customer’s unreasonable refusal to use or supply modified Equipment or Services provided pursuant to Clause 10.3; or

10.2.4 Any infringement or alleged infringement of any intellectual property right arising only by reason of Triangle compliance with the express written instructions of the Customer.

10.3 If at any time any allegation is made that any Equipment or Services infringe any patent, copyright, trade secret or other proprietary right, or if in the reasonable opinion of Triangle such an allegation is likely to be made, Triangle may at its own expense:

10.3.1 Procure the right for the Customer to continue to use the said Equipment or Services; or

10.3.2 Make such alterations modifications or adjustments to the said Equipment or Services that they become non-infringing without materially reducing performance or function; or

10.3.3 Replace the said Equipment or Services with non-infringing substitutes which are substantially their equal in performance and function; or

10.3.4 If none of the above is practicable refund the price of the said Equipment or Services

10.4 The Customer agrees to indemnify Triangle from and against any claim, suit, action or proceeding brought against Triangle and based on a claim that any items provided by the Customer to Triangle under this Agreement infringes any Intellectual Property Rights. The provisions of clauses 10.1.1 to 10.1.4, 10.2 and 10.3 shall apply mutatis mutandis.

## 11 Publicity

11.1 Customer agrees that Triangle may use the name of the Customer and details of Deliverables, Equipment and Services supplied by Triangle to the Customer for marketing purposes including: using the Customer's name on lists of Triangle's customers; announcing new Orders placed by or contracts awarded by the Customer and the preparation and publication of case studies both on Triangle's web site and in printed format.

11.2 Save in respect of trademarks owned by the Customer or any third parties, Intellectual Property Rights in any documents, pictures, charts or other visual or audible material (whether in physical or electronic form) created by Triangle for marketing purposes will vest in Triangle.

11.3 Customer may withdraw its consent to the use of its name by Triangle for marketing purposes by sending written notice to Triangle marked for the attention of 'Marketing'. Such withdrawal of consent will not apply to material published by Triangle before the notice of withdrawal of consent is received.

## 12 Solicitation

12.1 This clause applies if clause 53 (Temporary Agency Workers) does not apply. The Customer shall not, without the prior written consent of Triangle, at any time from commencement of the Agreement to the expiry of twelve months after the completion of the Services, solicit or entice away from Triangle or employ or attempt to employ any person who is, or has been, engaged as an employee or sub-contractor of Triangle and engaged in the provision of the Services.

## 13 Notices

13.1 Any notice given by a party under this Agreement shall:

13.1.1 be in writing and in English;

13.1.2 be signed by, or on behalf of, the party giving it; and

13.1.3 be sent to the relevant party at the party's registered office or at such other address as may be notified for the purpose of the service of notices hereunder.

13.2 Notices may be given, and are deemed received:

13.2.1 by hand: on delivery;

13.2.2 by pre-paid Recorded Signed For post: at 9.00 am on the second Working Day after posting;

13.2.3 by pre-paid International Signed For post: at 9.00 am on the seventh Working Day after posting; or

13.2.4 by email: only if sent to the email address designated for the receipt of notices by the receiving party (which in the case of Triangle is [secretary@triangle.ie](mailto:secretary@triangle.ie)) on receipt of a manual or automated acknowledgment of receipt if sent during Working Hours (or if outside Working Hours at 9 a.m. on the next Working Day following its transmission).

13.3 All references to time are to the local time at the place of deemed receipt.

#### 14 Force Majeure

14.1 Neither party will be liable for any act, omission, or failure to fulfil its obligations under this Agreement if such act, omission or failure arises from any cause reasonably beyond its control including acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental action after the date of this Agreement, acts or omissions of the other party, fire, communication line failures, power failures, earthquakes or other disasters (called "Force Majeure").

14.2 The party unable to fulfil its obligations due to Force Majeure will immediately:

14.2.1 Notify the other in writing of the reasons for its failure to fulfil its obligations and the effect of such failure; and

14.2.2 Use all reasonable endeavours to avoid or remove the cause and perform its obligations.

14.3 Where a Force Majeure event continues for more than 4 consecutive weeks, either party may immediately terminate this Agreement on written notice to the other.

#### 15 Cost of Compliance with Law

15.1 If the direct cost to Triangle of the performance of this Agreement shall be increased or reduced by reason of the making after the commencement of this Agreement of any relevant law or any relevant order, regulation or bye-law having the force of law that shall be applicable to the Agreement (other than any tax upon profits or revenue), the amount of such increase or reduction shall be notified to Customer and shall take effect upon proof by Triangle of the amount of any such increase or reduction, which increase or reduction shall be added to or deducted from the Charges stated in Clause 6.

#### 16 Know-How

16.1 Nothing herein shall be so construed as to prevent Triangle from using data processing techniques, ideas, know-how and the like gained during the performance of the Services in the furtherance of its normal business, to the extent that this does not result in a disclosure of confidential information or infringement of any valid Intellectual Property Rights of the Customer.

### 17 **Confidentiality**

17.1 Subject to clause 17.2, each Party shall keep Confidential Information of the other Party confidential and shall not, without the prior written consent of other Party:

- (a) make public or disclose to any person other than the disclosing Party any information relating to this Agreement or any Confidential Information of the disclosing party; nor
- (b) use any Confidential Information of the disclosing party for any purpose other than as required for the observance or performance of the Services and this Agreement,

and, in giving written consent, the disclosing party may impose such terms and conditions as it considers necessary. Clause 15.1(a) shall not prohibit disclosure of Confidential Information of the disclosing party to the extent the recipient needs to disclose it to its Staff in

order to perform its obligations under this Agreement. However, the recipient shall ensure that such Staff comply with this clause 15.

17.2 Clause 17.1 shall not apply to any Confidential Information to the extent that:

- (a) such Confidential Information is in the public domain at the Commencement Date, or at a later date comes into the public domain, where such Confidential Information has not come into the public domain through a breach of this Agreement;
- (b) the recipient can show that such Confidential Information was known to it before receipt and had not previously been obtained under an obligation of confidence;
- (c) the recipient obtains or has available such Confidential Information from a source other than the disclosing party without breaching any obligation of confidence;
- (d) such Confidential Information is required to be disclosed pursuant to any Applicable Laws; or
- (e) the recipient can show such Confidential Information was independently developed by it without the aid of any personnel who have or have had access to the disclosing party's Confidential Information.

17.3 If the Party receiving Confidential Information is requested or becomes legally compelled to disclose any of the Confidential Information, it shall provide the disclosing Party with prompt written notice. Except as otherwise set forth in this Agreement, all Confidential Information supplied by the disclosing Party shall remain the property of the disclosing Party.

17.4 Where a Party who has disclosed Confidential Information so requests and in any event upon the expiry or termination of this Agreement or (if later) the completion of delivery of any Termination Assistance, each Party that has received Confidential Information of the other Party shall upon written request:

- (a) return to the other Party, in a form capable of delivery, anything containing or recording that Confidential Information; and/or destroy that Confidential Information;
- (b) certify in writing that any such Confidential Information not returned has been destroyed or made permanently unusable,

save where continuing use or disclosure of such Confidential Information is necessary in order for that Party to exercise its rights under this Agreement or where the relevant Party is required to maintain such Confidential Information by Applicable Laws.

17.5 Notwithstanding any other provision of this clause but subject to clause 16, a Party may disclose Confidential Information to its solicitors, auditors, insurers, accountants or regulators, for the purposes of reporting to or seeking advice from the relevant party. Such Party shall ensure that every person to whom disclosure is made pursuant to this clause 15.5:

- (a) uses such Confidential Information solely for such purposes; and

(b) complies with clause 17 to the same extent as if it were a party to this Agreement.

17.6 Each Party shall at all times ensure that all Confidential Information of the disclosing party in the possession or control of that Party is kept secure and shall take all reasonable steps to prevent any unauthorised access to such Confidential Information.

## 18 **Data Protection**

18.1 In this clause 18 “data controller”, “data processor”, “data subject”, “personal data” and “processing” shall have the meanings given in the Data Protection Legislation. The term “Client’s Personal Data” shall mean all personal data controlled by the Customer for the purpose of supplying the Services or Deliverables. Both parties will comply with all applicable requirements of Applicable Data Protection Laws. Neither Party shall transfer Personal Data to a country outside the European Economic Area (the “EEA”). This clause 16 is in addition to, and does not relieve, remove or replace, a Party's obligations or rights under Data Protection Laws.

18.2 Each of the Parties acknowledge that the Customer is the data controller in respect of the Client’s Personal Data. Should the determination in this clause 16.2 change, the Parties shall use all reasonable endeavours to make any changes that are necessary to this Agreement.

18.3 Provided that the Customer complies with its Data Protection obligations, the Supplier agrees that to the extent that it processes any Client’s Personal Data, it shall:

- (a) carry out processing in accordance with the Customer’s written instructions from time to time, including as set out in this Agreement, unless required to do otherwise by law;
- (b) ensure that any personnel authorised to process the Customer’s Personal Data shall be subject to a binding duty of confidentiality in respect of such data;
- (c) implement required technical and organisational measures to protect the Customer’s Personal Data against unauthorised or unlawful processing and accidental destruction, damage or loss, so as to allow the Customer to comply with its obligations under the Data Protection Legislation;
- (d) save as provided in the SOW, not subcontract any processing of Client’s Personal Data without the Customer’s prior written consent. Such consent shall be given where obligations in relation to the processing of Client’s Personal Data that are the same as those imposed on the Supplier under this Agreement are imposed by contract on the sub-processor. The Supplier shall remain liable to the Customer for any processing of Client’s Personal Data conducted by a sub-processor appointed by the Supplier in accordance with this clause 18.3(d); and
- (e) provide such information and such reasonable assistance to the Customer to allow the Customer to comply with its obligations under the Data Protection Legislation, including assisting the Customer to:

- (i) comply with its own security obligations;
- (ii) discharge its obligations to respond to requests for exercising data subjects' rights;
- (iii) comply with its obligations to inform data subjects about serious personal data breaches;
- (iv) carry out privacy impact assessments and audit privacy impact assessment compliance; and
- (v) consult with the applicable supervisory authority following a privacy impact assessment.

18.4 In order that the Supplier can comply with its obligations under this clause 18, the Customer agrees that it

- (a) will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of Personal Data to the Supplier and lawful collection of the same by the Supplier for the duration and purposes of this Agreement;
- (b) consents to, all actions taken by the Supplier in connection with the processing of the Supplier's Personal Data, provided these are in compliance with the then-current version of the Supplier's privacy policy that shall be provided by the Supplier in writing to the Customer.

18.5 Each Party shall notify the other Party without undue delay after becoming aware of any accidental, unauthorised or unlawful destruction, loss, alteration, or unauthorised disclosure of, or access to the other Party's Personal Data.

18.6 The Supplier shall notify the Customer without undue delay if it receives from any data subject whose personal data forms part of the Customer's Personal Data:

- (a) any communication seeking to exercise rights conferred on the data subject by the Data Protection Legislation; or
- (b) any complaint or any claim for compensation arising from or relating to the processing of the Customer's Personal Data.

18.7 Unless required to do so by a competent authority, neither Party shall not make any payment or any offer of payment to any data subject in response to any complaint or any claim for compensation arising from or relating to the processing of Personal Data, without the prior written agreement of the other Party.

## 19 **General**

19.1 This Agreement may be executed in any number of counterparts and by the different Parties in different counterparts, including electronic counterparts, and all such counterparts shall be deemed to constitute one and the same instrument.

- 19.2 Except as expressly provided in this Agreement, no Party shall represent that it has any power, right or authority to act as agent for the other Party or otherwise bind the other Party or assume, create or incur any liability or obligation of any kind, express or implied, against, in the name of or on behalf of the other Party.
- 19.3 Nothing in this Agreement, express or implied, shall create or be deemed to create a partnership or joint venture or relationship of employer and employee between the Parties, or as appointing any party as the agent or employee of any other party. No party shall hold out any other party as its partner or joint venture. Except, and to the extent, that this Agreement expressly states otherwise, no party may incur any expenses or negotiate on behalf of any other party or commit any other party in any way to any person without that other party's prior written consent.
- 19.4 Every provision contained in this Agreement is severable and distinct from every other provision, and if at any time any one or more of such provisions is, or becomes, invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining such provisions will not be affected in any way.
- 19.5 Save as expressly provided otherwise, no delay or omission of any Party in exercising any right under this Agreement will impair that right, or be construed as a waiver of that right, nor will any single or partial exercise of any right preclude any further exercise of that right, or the exercise of any other rights. The rights and remedies provided in this Agreement are cumulative and not exclusive of any other rights or remedies provided under this Agreement.
- 19.6 Each Party shall (and shall use reasonable endeavours at its own cost to ensure that any necessary third parties shall) do, execute and perform such further acts, things, deeds and documents as may from time to time be required to give full legal and practical effect to this Agreement.
- 19.7 Each Party shall bear its own costs incurred in the negotiation, preparation and completion of this Agreement. The Agreement is a result of arm's length negotiations between the Parties, both of whom were represented by counsel or had adequate opportunity to seek counsel or be represented by counsel. Therefore, this document is the product of both Parties. To this effect, no part of this document should be construed against either party as the drafter. Each Party waives any potential claim of ignorance as to the terms and conditions of the Agreement.
- 19.8 This Agreement shall not be varied or amended unless agreed in writing and signed by duly authorised representatives of both Parties. Each Party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Agreement. Each Party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Agreement. Handwritten or typed changes made to the face of any documents comprising the Agreement shall have no effect unless initialed by both Parties.
- 19.9 This Agreement represents the entire agreement between the Parties and supersedes any previous agreements, written or oral, express or implied, between the Parties or any of them, relating to its subject matter.

19.10 Each Party acknowledges that in entering into this Agreement it has not relied on any warranty, representation, collateral contract or assurance (written or oral, express or implied) by the other Party to this Agreement or by any other person that is not set out in this Agreement or the documents referred to in it. Nothing in this clause shall limit or exclude liability for any representations made fraudulently.

## 20 **Governing Law and Jurisdiction**

20.1 This Agreement and any dispute or claim arising out of or in connection with it, or its subject matter or formation, whether of a contractual or non-contractual nature, shall in all respects be governed by and be construed in accordance with the laws of Ireland.

20.2 Any disputes arising in connection with this Agreement shall be referred to the decision of a single arbitrator to be agreed upon between the parties or in default of agreement for 14 days to be appointed at the request of any party by the President for the time being of the Incorporated Law Society of Ireland in accordance with and subject to the provisions of the Arbitration Act-2010 or any statutory modification or re-enactment thereof for the time being in force (and the award of such arbitrator shall be final and binding on the parties). The language of the proceedings shall be English and the place of the proceedings shall be Dublin, Ireland.

Subject to this clause 20.2, both parties submit to the exclusive jurisdiction of the courts of Ireland.

## SECTION 2 SALE OF EQUIPMENT

### 21 Quantity and Description

21.1 The quantity and description of the Equipment shall be as set out in Triangle' acknowledgement of order or (if there is no acknowledgment of order) Quotation.

21.2 All samples, drawings, descriptive matter, specifications and advertising issued by Triangle or the manufacturer, and any descriptions or illustrations contained in any catalogues, brochures or web sites are issued or published for illustrative purposes only and they do not form part of the Agreement.

21.3 Any typographical, clerical or other error or omission in any sales literature, web site, Quotation, price list, acceptance of offer, invoice or other document or information issued by Triangle shall be subject to correction without any liability on the part of Triangle.

21.4 Triangle' employees, contractors and agents are not authorised to make any contractually binding representations concerning the Equipment. In entering into the Agreement, the Customer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which have not been confirmed in writing by an authorised officer of Triangle. However, nothing in these conditions limits Triangle' liability for fraudulent misrepresentation.

### 22 Delivery and Risk

22.1 Triangle shall, subject to clauses 22.3 and 22.4 arrange and pay for:

- 22.1.1 Delivery of the Equipment to the Sites; and
- 22.1.2 Insurance of the Equipment until it is delivered to the Sites.

22.2 Risk in the Equipment shall pass to the Customer when the Equipment has been delivered to the Sites.

22.3 Where the Customer has paid for the Equipment in whole before delivery Triangle will not arrange or pay for insurance under clause 22.1 and the Customer is responsible for arranging and paying for any insurance that it requires.

22.4 If the Sites are outside of Ireland delivery will, unless otherwise stated in the Quotation, be Ex Works.

22.5 Triangle may make an additional charge to the Customer to cover the cost of delivery of the Equipment.

22.6 Triangle shall use its reasonable endeavours to deliver the Equipment on the date or dates specified in Triangle' 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.

22.7 Delivery shall be made during the hours of 9.00 a.m. to 5.30 p.m. Monday to Friday (excluding bank or public holidays). Triangle may levy additional charges for any deliveries made outside such hours at the Customer's request.

22.8 Triangle may deliver the Equipment by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of clause 6. 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.

22.9 If Triangle is unable to deliver Equipment to the Sites (provided that delivery may not be before the earlier of the delivery date stated in the Customer's order or in the Quotation) because Customer refuses to accept delivery or due to any other act or omission of customer;

22.9.1 Risk in the Equipment shall pass to the Customer on the date on which Triangle offers to deliver the Equipment;

22.9.2 The Customer shall bear all costs of any further delivery or attempted delivery of the Equipment;

22.9.3 Without prejudice to any other right or remedy available to it Triangle may:

- (a) Store the Equipment and make a reasonable charge for storage;
- (b) Having given reasonable prior notice to the Customer terminate the Agreement and sell the Equipment.

22.10 The Customer shall be responsible (at the Customer's cost) for preparing the Sites for the delivery of the Equipment and for the provision of all necessary access and facilities reasonably required for delivering and installing the Equipment. If Triangle is prevented from carrying out delivery or installation on the specified date because no such preparation has been carried out or because the preparation is inadequate, Triangle may levy additional charges to recover its additional costs arising from this circumstance.

22.11 Where Triangle delivers the Equipment it shall be responsible for any damage, shortage or loss in transit, provided that the Customer notifies Triangle (or its carrier, if applicable) of such damage, shortage or loss within five working days of delivery or the proposed delivery date of the Equipment and that the Equipment has been handled in accordance with Triangle' stipulations.

Any remedy under this clause 22.11 shall be limited, at the option of Triangle, to the replacement or repair of any Equipment which is proven to Triangle' satisfaction to have been lost or damaged in transit or issuing a credit note against any invoice raised for such Equipment.

## 23 Title

23.1 Ownership of the Equipment shall pass to the Customer when Triangle has received in full in cleared funds all sums due to it in respect of:

23.1.1 The Equipment; and

23.1.2 All other sums which are or which become due to Triangle from the Customer on any account.

23.2 Until ownership of the Equipment has passed to the Customer under clause 23.1, the Customer shall:

23.2.1 Hold the Equipment on a fiduciary basis as Triangle' bailee;

23.2.2 Not destroy, deface or obscure any identifying mark on or relating to the Equipment; and

23.2.3 Keep the Equipment insured for its full price against all risks to the reasonable satisfaction of Triangle, and hold the proceeds of such insurance on trust for Triangle and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.

23.3 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 clause 8.2 arise or if the Customer encumbers or in any way charges the Equipment, or if the Customer fails to make any payment to Triangle on the due date.

23.4 Triangle 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.

## 24 Invoices (Equipment)

24.1 Triangle may issue its invoice for the price of the Equipment on the date of shipment of the Equipment (whether from Triangle, the manufacturer or Triangle' supplier) for delivery to the Customer or to a third party nominated by the Customer.

24.2 Where the Quotation includes a discount for trade-in or other items of equipment to be returned to Triangle the full Charges of the Equipment will be invoiced by Triangle and is payable by the Customer and Triangle will issue a credit on receipt of the trade-in items within the times and otherwise in accordance with any terms state in the Quotation.

## 25 Warranty (Equipment)

25.1 Triangle shall pass to the Customer so far as it is legally able to do so, any warranty provision applicable to the Equipment and provided by the original manufacturer of the Equipment. Customer acknowledges that Triangle is not the manufacturer of the Equipment and is therefore unable to provide any additional warranty.

## 26 Software

26.1 The Customer acknowledges that:

- 26.1.1 Triangle gives no warranties in relation to the Third Party Software;
- 26.1.2 The licences for all Third Party Software will be between the Customer and the manufacturer and the Customer will comply with all licence terms;
- 26.1.3 The Customer is buying only the media on which the Third Party Software is recorded and the accompanying user manuals;
- 26.1.4 Nothing contained in these terms and conditions shall be construed as an assignment of any Intellectual Property Rights in the Software or user manuals.
- 26.2 Where the Customer has registered with the manufacturer or other third party to obtain support for Third Party Software (whether or not such registration was originally effected by Triangle) it is the responsibility of the Customer to maintain such registration and to give notice of any relevant changes to the manufacturer or other third party.

## 27 Manufacturer Support

27.1 Where the order includes Equipment Triangle will (unless the Customer elects to take Maintenance Services for a term of at least one year from the date of delivery of the Equipment to the Customer) charge the Customer for Manufacturer Support where provided by the manufacturer of the Equipment.

27.2 Triangle' charges for Manufacturer Support are payable annually in advance within thirty (30) days after the date of Triangle' invoice for the same.

## 28 Export Control

28.1 Equipment and Software supplied to the Customer by Triangle under this Agreement is normally supplied for use or resale solely within the European Union. Customer acknowledges that the export of Equipment or Software from any country within the European Union may be subject to export control laws and regulations of the country in which the Equipment or Software was manufactured (including but not limited to the Export Administration Regulations of the United States). The Customer undertakes not directly or indirectly to export Equipment or Software, or the product of any Software, from any country within the European Union in contravention of such laws or regulations and agrees that it shall be solely responsible for obtaining and complying with any export licence or other permission that may be required by any law or regulation of the country of manufacture. The Customer shall fully indemnify Triangle against all claims, demands, actions, costs, expenses (including but not limited to legal costs and disbursements on a full indemnity basis), losses and damages arising directly or indirectly from the export by Customer of Equipment or Software from any country within the European Union in breach of the export control laws or regulations of any country.

## 29 Producer Obligations

29.1 The Customer acknowledges that Triangle is not a producer for the purposes of the European Union (Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment) Regulations 2012 SI 513/2012 (as amended by European Union (Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment) (Amendment) Regulations 2016 SI 42/2016 and the European Communities (Waste Electrical and Electronic Equipment) Regulations 2011 SI355/2011 and the Waste Management (Waste Electrical and Electronic Equipment) Regulations 2005 (SI 340/2005) and that the manufacturer is solely responsible for the producer obligations imposed by those Regulations.

## SECTION 3 SERVICES

### 30 Provision of Services

30.1 Triangle shall use reasonable endeavours to meet any performance dates specified in the SOW or Quotation, but any such dates shall be estimates only.

30.2 Triangle may make any changes to the Services:

30.2.1 Needed to comply with applicable law or safety requirements; or

30.2.2 Which do not materially affect the nature or quality of the Services;

And will notify the Customer in advance of such changes.

30.3 Where individuals are named in the SOW Triangle will use all reasonable endeavours to ensure that those personnel are made available to perform the Triangle' obligations under this Agreement but Triangle may replace any personnel who are temporarily or permanently unable to perform the Services due to ill health, holidays, termination of employment or leave of absence permitted or mandated by statute.

31 Invoices (Services)

31.1 Triangle may issue its invoice for Services monthly in arrears. Where the Services are provided for a fixed price Triangle may make an additional charge at its standard daily fee rates for additional work necessitated by any Assumptions proving to be incorrect, because of the Customer failing to fulfil or delaying the fulfilment of any Customer Dependencies, because of the inaccuracy of any information provided by Customer or under the terms of clause 32 (Customer Obligations). Subject thereto the Charges (subject to any agreed variation and any additional charges that become payable under the terms of this Agreement for expenses or otherwise) be as set out in the SOW or Quotation. Where Services are provided on a time-and-materials basis:

31.1.1 The charges payable for the Services shall be calculated in accordance with Triangle' daily fee rates as set out in the SOW or the Quotation;

31.1.2 Triangle' daily fee rates are calculated on the basis of work performed between the hours of 9.00 am and 5.30 pm Monday to Friday (excluding bank and public holidays);

31.1.3 The minimum charge is for one half of a day even if the time actually worked is less;

31.1.4 Triangle shall be entitled to make an additional charge at enhanced rates for time worked outside the hours referred to in clause 29.1.2;

31.1.5 Where required by Triangle at the end of each week the Customer shall sign a time sheet verifying the number of hours worked by Triangle personnel during that week. Failure to sign the time sheet does not absolve the Customer of its obligation to pay the charges in respect of the hours worked;

31.1.6 Any estimate contained in the SOW is for information purposes only and is not legally binding.

31.2 Where any Assumption is shown to be incorrect and this has an impact on Triangle's costs, Triangle shall be entitled to make such reasonable adjustment to the Charges as is necessary so as to place Triangle in the same financial position as it would have been in if the Assumption had been correct.

31.3 Triangle will not be required to provide or give any refund for any Services which have been ordered by the Customer but which have not been taken within twelve months of the date of the Customer's order unless the provision of the Services is delayed by the default of Triangle and the Services would otherwise have been taken within that period.

32 Warranty (Services)

32.1 Triangle warrants that it will:

32.1.1 Carry out the Services with reasonable care and skill.

32.1.2 Obtain and maintain all licences, permits and other consents required for its performance of the Services;

32.1.3 Comply with all applicable laws and regulations.

### 33 Control and Supervision of Services

33.1 Triangle and the Customer shall each designate an authorised person who shall be responsible for directing the specific activities of their respective employees and contractors and shall have sufficient authority to represent the Customer and Triangle respectively on all technical, administrative and supervisory matters arising in connection with the performance of the respective Services. Either party may replace its authorised person upon reasonable notice to the other party.

### 34 Customer Obligations

34.1 The Customer agrees:

34.1.1 To respond within reasonable timeframes to requests for information or input on relevant documents. Examples of reasonable timeframes are: Response to emails requesting information – four (4) working days; Response to design documents –seven (7) working days.

34.1.2 To provide Triangle with reasonable access to such of the Customer's employees and contractors, infrastructure topology diagrams and equipment as shall be necessary for timely completion of the Services;

34.1.3 To give not less than 10 (ten) working days' notice of any requested changes to a previously agreed timetable;

34.1.4 To provide full, safe access to and adequate working space at all Sites necessary for the proper and timely completion of the Services;

34.1.5 To provide any other facilities specified by Triangle as necessary to enable Triangle to provide the Services.

34.2 If Customer does not meet any of the above requirements and as a result Triangle incurs additional costs in the provision of the Services, Triangle shall be entitled to charge Customer for the additional time and materials incurred at Triangle' the rates stated in Triangle' Quotation or the SOW or if the SOW is on a fixed price basis at Triangle' then current list prices.