

These Terms and Conditions set out the basis on which Broadberry will provide Products and Services to the Customer.

Please read and understand all these terms and conditions. Your attention is particularly drawn to the provisions of clause 13 (Limitation of liability).

## 1. Interpretation

The following definitions and rules of interpretation apply in these Conditions.

### 1.1 Definitions:

**Authorised Users:** Customer's personnel whom Broadberry agree are entitled to attend or access Materials subject to any applicable Broadberry terms and conditions.

**Broadberry:** Broadberry Data Systems Limited registered in England and Wales with company number 02882275 whose registered office is at Belmont House, Belmont Road, Uxbridge, England, UB8 1HE.

**Broadberry Premises:** Broadberry's warehousing facility at Unit 5 Curo Park, Frogmore, St Albans AL2 2DD, or as otherwise stated by Broadberry.

**Business Day:** a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

**Consultancy:** consultancy services for the purpose of providing inter alia, guidance, information or advice.

**Contract:** the contract between Broadberry and the Customer for the supply of Products and/or Services in accordance with these Terms and Conditions.

**Customer:** the person or firm who purchases the Products and/or Services from Broadberry.

**Delivery Address:** in the location for delivery in accordance with clause 4.1.

**Delivery Date:** the delivery date as notified by Broadberry to the Customer.

**Force Majeure Event:** has the meaning given to it in clause 17.

**Hardware:** all or any part of the computer hardware and other goods including all equipment, accessories, spares, supplies and related documentation supplied by Broadberry.

**Intellectual Property Rights:** patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Invoice:** the invoice prepared by Broadberry and issued to the Customer.

**Licence Agreement:** the terms and conditions governing the supply of Software, whether Broadberry's own software or third-party software which Broadberry is authorised to supply to the Customer.

**Materials:** any materials or documents provided by Broadberry or on Broadberry's behalf in connection with the Services, including hard copy documents, CDs, DVDs, online publications, videos and recordings.

**Order:** the Customer's order for the supply of Products and/or Services, as set out in the Customer's purchase order form or the Customer's written acceptance of Broadberry's quotation (including any applicable Statement of Work), as the case may be.

**Parties:** refers to the Customer and Broadberry collectively.

**Price:** the total price for the Products and Services as specified in the Invoice.

**Products:** Broadberry's Hardware and Software products including inter alia any configuration of Hardware and/or Software.

**Services:** the services, including the deliverables, supplied by Broadberry to the Customer as set out in the Statement of Work.

**Software:** any software, including operating system, utility or applications software supplied by Broadberry in machine readable object, printed, interpreted or any other form whatsoever and either incorporated with Hardware or separately supplied, including related documentation.

**Statement of Work (or SoW):** the description or specification for Products and/or Services as agreed between Broadberry and the Customer.

**Terms and Conditions:** these terms and conditions as amended from time to time in accordance with clause 18.8.

**Training:** training services supplied by Broadberry as part of the Services.

**VAT:** value added tax or any equivalent tax chargeable in the UK or elsewhere.

## 1.2 Interpretation:

- (a) A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes its successors and permitted assigns.
- (c) A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.
- (d) Any words following the terms including, include, in particular, for example or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.
- (e) A reference to writing or written includes email but not fax.
- (f) A reference to Products includes goods and services, unless the context otherwise requires, and in the case of any conflict or ambiguity Broadberry may decide at its discretion.
- (g) A reference to a time of day is a reference to the time in London, the United Kingdom.

## 2. Basis of contract

- 2.1 The Order constitutes an offer by the Customer to purchase Products and/or Services in accordance with these Terms and Conditions, which are deemed accepted by the Customer by submitting an Order, regardless of whether the Customer signs a separate copy of these Terms and Conditions.
- 2.2 The Order shall only be deemed accepted, and the Contract formed, when Broadberry issues written acceptance of the Order. Submission of a pro forma invoice by Broadberry shall not constitute acceptance of an Order.
- 2.3 Any samples, drawings, descriptive matter or advertising issued by Broadberry and any descriptions of the Products or illustrations or descriptions of the Services contained in Broadberry's brochures, websites, or any other media are issued or published for the sole purpose of giving an approximate idea of the Products and Services described in them. They shall not form part of the Contract nor have any contractual force.
- 2.4 These Terms and Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing. These Terms and Conditions supersede all previous versions of these Terms and Conditions.
- 2.5 If these Terms and Conditions are incorporated by reference into any other form of agreement between Broadberry and the Customer and that other agreement is currently in effect at the time the Contract is made, so that the Contract constitutes a contract for the purposes of that agreement, the terms and conditions of the agreement will prevail in the event, but only to the extent, of any conflict of meaning with these Terms and Conditions.

- 2.6 Any quotation given by Broadberry shall not constitute an offer, and is only valid for a period of 15 calendar days from its date of issue, unless otherwise specifically stated in the quotation, and is subject to availability of any Products and/or Services quoted.
- 2.7 The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Terms and Conditions.
- 2.8 No Order accepted by Broadberry may be cancelled by the Customer without Broadberry's prior written consent and may incur a restocking fee. The Customer shall indemnify Broadberry 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 Broadberry as a result of such cancellation. The Customer understands that the return of Products for credit refund is at Broadberry's discretion and accepts that in certain cases return of Products would not be possible.

### 3. Products

- 3.1 The Products are described in Broadberry's quotation as modified by any applicable SoW or otherwise as described in the Order or SoW.
- 3.2 To the extent that the Products are to be manufactured or configured in accordance with a SoW supplied by the Customer, the Customer shall indemnify Broadberry against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by Broadberry arising out of or in connection with any claim made against Broadberry for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with Broadberry's use of the SoW. This clause 3.2 shall survive termination of the Contract.
- 3.3 Broadberry reserves the right to amend the Order or SoW if required by any applicable statutory or regulatory requirement, and Broadberry shall notify the Customer in any such event.
- 3.4 When computer equipment is connected to a public network, i.e., a switchboard or telephone network, certain regulations of the telecommunications provider apply. It is the sole responsibility of the Customer to ensure compliance with all such regulations.

### 4. Delivery of Products

- 4.1 Broadberry shall deliver the Products EXW Broadberry Premises (Incoterms® 2020 Rules), or such other location and terms as the Parties may agree as confirmed in writing by Broadberry at any time before Broadberry notifies the Customer that the Products are ready.
- 4.2 Broadberry may require the Customer to provide authorisation in writing of any change of Delivery Address.
- 4.3 Any Delivery Dates quoted for delivery of the Products are approximate only, and the time of delivery is not of the essence. While Broadberry will use all reasonable endeavours to meet the Delivery Date, it will not be liable for any loss or damage (including loss of use, loss of contract or loss of profits) incurred by the Customer as a result of any failure to deliver on such particular date. Any estimated delivery times will not start until the earlier of receipt of any payment due or the issue of a sales order (SO) number to the Customer.
- 4.4 Requests by the Customer to change the Delivery Address must be notified to Broadberry no later than 5 working days prior to the date quoted for delivery of the Products, and are subject to approval by Broadberry (at its sole discretion). Any additional costs arising in relation to a change of Delivery Address are the responsibility of the Customer and Broadberry is not liable for any delays or damages resulting from any change of Delivery Address.
- 4.5 If Broadberry fails to deliver the Products, the Customer's sole and exclusive remedy shall be to recover from Broadberry the reasonable direct costs incurred in obtaining replacement goods of similar description and quality in the cheapest

available market, subject to a cap equal to the price of the Products that were not delivered. Broadberry shall have no liability for any failure to deliver the Products to the extent that such failure is caused by a Force Majeure Event, the Customer's failure to provide adequate delivery instructions, or any other Customer Default relevant to the supply of the Products. In any event, Broadberry's liability under this clause shall not exceed the cap set out in Clause 13.7.

- 4.6 If the Customer fails to take delivery of the Products tendered in accordance with the Contract, then except where such failure or delay is caused by a Force Majeure Event or by Broadberry's failure to comply with its obligations under the Contract in respect of the Products:
- (a) delivery of the Products shall be deemed to have been completed at 9.00 am on the Delivery Date; and
  - (b) Broadberry shall store the Products until actual delivery takes place, and charge the Customer for all related costs and expenses (including insurance and transportation charges).
- 4.7 If ten Business Days after the Delivery Date the Customer has not accepted actual delivery of them, Broadberry may resell or otherwise dispose of part or all of the Products and, after deducting reasonable storage and selling costs and charge the Customer any shortfall below the price of the individual Products.
- 4.8 Broadberry may deliver the Products by instalments, which may be invoiced and paid for separately at the discretion of Broadberry. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 4.9 The Customer shall inspect the Products on delivery and shall within 1 Business Day of delivery notify Broadberry of any alleged shortage in quantity, damage or failure to comply with description or sample. If the Customer fails to notify Broadberry within such time the Products shall be conclusively presumed to be in accordance with the Contract.
- 4.10 If the Products are not in accordance with the Contract the sole remedy of the Customer shall be limited to Broadberry making good any shortage by replacing such Products or if Broadberry shall elect, by refunding a proportionate part of the Price.
- 4.11 The Customer shall be solely responsible for the proper disposal of any packaging materials associated with the Products purchased from Broadberry. Broadberry shall not be held liable for any costs, fines, or penalties incurred by the Customer due to improper disposal of packaging materials. Packaging should be recycled where possible.

## 5. Quality of Products

- 5.1 Where installation or Training is not included in the Price and not ordered by the Customer, the Customer will be solely responsible for this, and Broadberry disclaims all liability in this connection.
- 5.2 Where the Hardware includes data communications equipment and data transmission speeds are given in relation to any Product these are at all times subject to any conditions of the applicable telecommunications utility company relating to the use of the relevant modem at the speeds indicated and to the capacity of any of that company's equipment to which the Products are linked.
- 5.3 Where the Product is installed for use in conjunction with other products not supplied by Broadberry, the Customer will be solely responsible for ensuring that the Products are compatible with such other products, and Broadberry disclaims all liability in this connection.
- 5.4 Broadberry warrants that:
- (a) it has good title to or legal right to supply all Products supplied to the Customer; and
  - (b) for a period of one year from the Delivery Date (**Warranty Period**), the Products shall be free from material defects in materials and workmanship.
- 5.5 Broadberry will use reasonable endeavours to pass on to the Customer the benefit of any warranty or guarantee given by the manufacturer of the Products.

**5.6** Subject to clause 5.9, if:

- (a) the Customer gives notice in writing to Broadberry during the Warranty Period within a reasonable time of discovery that some or all of the Hardware do not comply with the warranty set out in clause 5.4; and
- (b) Broadberry has issued an appropriate authorisation; and
- (c) Broadberry is given a reasonable opportunity of examining such Hardware; and
- (d) the Customer (if asked to do so by Broadberry) returns such Hardware to Broadberry's place of business at the Customer's cost and risk undamaged, complete and identified in accordance with Broadberry's instructions and within 14 days of receipt of Broadberry's authorisation,

Broadberry shall use all reasonable efforts, at its option, repair or replace the defective Hardware, or refund the price of the defective Hardware in full, and any return of Hardware to the Customer as part of a valid warranty claim shall be at the cost and risk of Broadberry. All replaced Hardware will become Broadberry's property.

**5.7** Broadberry will only issue an appropriate authorisation in the event that every opportunity has been given to investigate and resolve such defect, having reasonably used all its technical resources.

**5.8** In any case where Broadberry reasonably determines that the Hardware is not defective within the terms of the warranty, the Customer will pay Broadberry all costs of handling, transportation and repairs at Broadberry's then prevailing rates.

**5.9** Broadberry shall not be liable for the Hardware's failure to comply with the warranty set out in clause 5.4 if:

- (a) the Customer makes any further use of such Hardware after giving a notice in accordance with clause 5.6; or
- (b) the defect arises because the Customer failed to follow Broadberry's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Hardware or (if there are none) good trade practice regarding the same; or
- (c) the defect arises as a result of Broadberry following any drawing, design or specification supplied by the Customer; or
- (d) the Customer alters or repairs such Hardware without the written consent of Broadberry; or
- (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
- (f) the Hardware differs from the description or the Order or SoW as a result of changes made to ensure compliance with applicable statutory or regulatory requirements.

**5.10** Except as provided in this Clause 5, Broadberry shall have no liability to the Customer in respect of any failure to comply with the warranty set out in clause 5.4.

**5.11** In the case of any return of Hardware otherwise than in compliance with the requirements of this clause 5:

- (a) Broadberry may use reasonable attempts at its sole discretion and without responsibility to the Customer to invite the Customer by written notice to:
  - (i) correct any such non-compliance and to progress a warranty claim; or
  - (ii) collect the returned Hardware at its own expense by arrangement with Broadberry; or
- (b) the return of Hardware which cannot be identified to a Customer, or failure by a Customer to carry out any correction or collection as requested by Broadberry, will be deemed as acceptance by such Customer that the returned Hardware may be treated as unsolicited goods and disposed of by Broadberry as it thinks fit (including return to stock and resale for Broadberry's sole benefit).

**5.12** The warranty set out in these Terms and Conditions shall be for the benefit only of the Customer and not for any end user of the Products or other third party.

## **6. Title and risk**

**6.1** The risk in the Products shall pass to the Customer on completion of delivery.

- 6.2 No title or ownership of any Software supplied under the Contract and licensed to the Customer under any Licence Agreement is transferred to the Customer.
- 6.3 Title to the Hardware shall not pass to the Customer until the earlier of:
- (a) receipt by Broadberry of payment in full (in cash or cleared funds) for the Products and any other goods and services that Broadberry has supplied to the Customer in respect of which payment has become due including any interest, VAT, and other sums payable, in which case title to the Products shall pass at the time of payment of all such sums; and
  - (b) resale of the Products by the Customer, in which case title to the Hardware resold shall pass to the Customer at the time specified in clause 6.5.
- 6.4 Until title has passed to the Customer, the Customer shall hold the Products on a fiduciary basis and:
- (a) store the Products (at no cost to Broadberry) separately from all other items held by the Customer so that they remain readily identifiable as Broadberry's property;
  - (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Products;
  - (c) maintain the Products in satisfactory condition and keep them insured against all risks for their full price on Broadberry's behalf from the date of delivery;
  - (d) notify Broadberry immediately if it becomes subject to any of the events listed in clause 15.1(a) to clause 15.1(c); and
  - (e) give Broadberry such information as Broadberry may reasonably require from time to time relating to:
    - (i) the Products; and
    - (ii) the ongoing financial position of the Customer.
- 6.5 Subject to clause 6.6, the Customer may resell or use the Products in the ordinary course of its business (but not otherwise) before Broadberry receives payment for the Products. However, if the Customer resells the Products before that time:
- (a) it does so as principal and not as Broadberry's agent; and
  - (b) title to the Products shall pass from Broadberry to the Customer immediately before the time at which resale by the Customer occurs; and
  - (c) the Customer shall account to Broadberry for the proceeds of sale or otherwise of the Products, whether tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate from any monies or property of the Customer and third parties and in the case of tangible proceeds properly stored, protected and insured.
- 6.6 At any time before title to the Hardware passes to the Customer, Broadberry may:
- (a) by notice in writing, terminate the Customer's right under clause 6.5 to resell the Products or use them in the ordinary course of its business; and
  - (b) require the Customer to deliver up all Products in its possession that have not been resold, or irrevocably incorporated into another product and if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Products are stored in order to recover them, notwithstanding that they may contain software and data. All costs incurred by Broadberry in repossessing the Products shall be borne by the Customer.
- 6.7 The Customer shall not be entitled to pledge, create a lien over or in any way charge by way of security for any indebtedness any of the Products which remain the property of Broadberry, but if the Customer does so all moneys owing by the Customer to Broadberry shall (without limiting any other right or remedy of Broadberry) forthwith become due and payable.
- 6.8 Broadberry's rights under this clause 6 shall continue until full payment is received and title has passed to the Customer.

## 7. Supply of Services

- 7.1 Warranty and technical support services are subject to the terms set out in Broadberry's Warranty Services document: (<https://www.broadberry.co.uk/Warranty-Terms.pdf>). Any additional Hardware warranty and support services are described on the Invoice.
- 7.2 All Services provided by Broadberry will be set out in a Statement of Work. The SoW will outline an exhaustive list of deliverables agreed between Broadberry and Customer. The signed SoW's terms and conditions shall prevail over these Terms and Conditions.
- 7.3 Broadberry shall supply the Services to the Customer in accordance with the Statement of Work in all material respects.
- 7.4 Broadberry shall use its reasonable endeavours to:
- (a) ensure that the Services are supplied within a reasonable time frame, subject to limitations provided in the Statement of Work, and any dates shall be estimates only and time shall not be of the essence for the performance of the Services;
  - (b) ensure that the Services are supplied with reasonable skill and care.
- 7.5 Broadberry reserves the right to amend the Statement of Work if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and Broadberry shall notify the Customer in any such event.
- 7.6 Broadberry may, at its own discretion, appoint a suitably qualified and skilled engineer or consultant to perform the Services as agreed in the SoW. If a designated engineer or consultant is unable to provide the Services due to illness or injury, Broadberry shall advise the Customer of that fact as soon as reasonably practicable and may appoint a substitute at its own discretion.
- 7.7 The engineer or consultant shall comply with all reasonable standards of safety and comply with the Customer's health and safety procedures from time to time in force at the premises where the Services are provided, as advised to the engineer or consultant, and report to the Customer any unsafe working conditions or practices.
- 7.8 In the event that Broadberry is required to reschedule a scheduled Training session, the company reserves the right to do so by providing a minimum of three (3) days' written notice to the customer. In circumstances where the designated trainer is unable to deliver the Training due to illness or other unforeseen circumstances, Broadberry shall notify the customer at the earliest possible opportunity. In such cases, both parties will work together in good faith to agree on an alternative date for the Training. Broadberry shall not be liable for any costs or losses incurred as a result of such rescheduling.

## 8. Customer's obligations

- 8.1 The Customer shall:
- (a) ensure that the terms of the Order and any information it provides for the Statement of Work are complete and accurate, including the type and quality of Products requested, applicable unit prices, Delivery Address and requested delivery dates;
  - (b) co-operate with Broadberry in all matters relating to the Contract in a timely and efficient manner;
  - (c) provide Broadberry, its employees, agents, consultants and subcontractors, with such facilities, access to premises, information and materials as Broadberry may reasonably require in order to fulfil the Contract, and ensure that such information is complete and accurate in all material respects;
  - (d) obtain and maintain all necessary licences, permissions and consents which may be required for the Contract in a timely manner and as required for the Contract;
  - (e) comply with all applicable laws, including health and safety laws;
  - (f) ensure that all Products supplied under the Contract are and will continue to be compliant with any CE, safety, and other applicable laws and regulations in the jurisdiction of intended and actual use.



- 8.2 If Broadberry's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer, including but not limited to the provision of incomplete, inaccurate, or erroneous information ("Customer Default"):
- (a) Without limiting or affecting any other right or remedy available to it, Broadberry shall have the right to:
    - (i) suspend performance of the Services until the Customer remedies the Customer Default;
    - (ii) extend any agreed timeframes for performance of the Services by a period equivalent to the delay caused by the Customer Default; and
    - (iii) recover from the Customer any additional costs incurred as a direct or indirect result of the Customer Default.
  - (b) Broadberry shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Broadberry's failure or delay to perform any of its obligations as set out in this clause 8.28.2.
  - (c) The Customer shall reimburse Broadberry on written demand for any costs, expenses, or losses sustained or incurred by Broadberry arising directly or indirectly from the Customer Default, including but not limited to additional costs required to rectify discrepancies, errors, or omissions in the information or decisions provided by the Customer.
9. **Charges and payment**
- 9.1 The price for Products:
- (a) shall be the price set out in the Order; and
  - (b) shall, unless otherwise stated, be exclusive of all costs and charges of packaging, insurance, transport of the Products, which shall be invoiced to the Customer in addition as applicable.
- 9.2 The charges for Services shall be the price set out in the Order or, if no price is quoted, the charges shall be calculated in accordance with Broadberry's current fee rates from time to time.
- 9.3 Broadberry reserves the right to increase the price of the Products or Services, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Products to Broadberry that is due to:
- (a) any factor beyond the control of Broadberry (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
  - (b) any request by the Customer to change the delivery date(s), quantities or types of Products or Services ordered, or the SoW; or
  - (c) any delay caused by any instructions of the Customer in respect of the Products or Services or failure of the Customer to give Broadberry adequate or accurate information or instructions in respect of the Products or Services.
- 9.4 Broadberry reserves the right at its discretion to request a guarantee or other security for payment on terms satisfactory to Broadberry and may exercise its right to obtain payment under such guarantee or security.
- 9.5 Broadberry's standard payment terms are Prepayment unless otherwise stated in the Order. Acceptance of an Order is subject to prior payment of any pro forma invoice for all or part of the Price submitted by Broadberry. No Products or Services or support/repair/warranty services will be delivered until payment of any outstanding account balance is received in cleared funds unless other terms have been agreed in writing.
- 9.6 Invoices and pro forma invoices are due immediately upon receipt. The Customer shall pay each Invoice and pro forma invoice submitted by Broadberry in full and in cleared funds to a bank account nominated in writing by Broadberry, and time for payment shall be of the essence of the Contract.
- 9.7 The contents of an Invoice, including inter alia the Price, shall, in the absence of manifest error, be deemed to have been accepted by the Customer unless the Customer has notified Broadberry in writing within 2 Business Days of receipt of the Invoice that the relevant Invoice is disputed.
- 9.8 All amounts payable by the Customer under the Contract are exclusive of value-added tax (VAT), which shall be charged in accordance with applicable law. Where any taxable supply for VAT purposes is made under the Contract by Broadberry to



the Customer, the Customer shall, on receipt of a valid VAT invoice from Broadberry, pay such additional amounts in respect of VAT as are legally chargeable on the supply of the Services or Goods. This clause shall not apply where the Customer is VAT-exempt or otherwise not liable to pay VAT under applicable VAT legislation.

9.9 If the Customer fails to make a payment due to Broadberry under the Contract by the due date, then, without limiting Broadberry's remedies under clause 15, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 9.9 will accrue each day at 8% a year above the Bank of England's base rate from time to time, but at 8% a year for any period when that base rate is below 0%.

9.10 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

## 10. Intellectual property rights and Licensing

10.1 All Software is supplied to the Customer only under the terms and conditions of the appropriate Licence Agreement (whether or not this has been signed and/or returned to Broadberry). No part of the Software may be copied, reproduced or utilised in any form by any means without the prior written approval of Broadberry.

10.2 It is the sole responsibility of the Customer to comply with all terms and conditions of any Licence Agreement and the Customer is hereby notified that any failure to comply with such terms and conditions may result in the revocation of such Licence Agreement.

10.3 Software is warranted in accordance with the terms of any Licence Agreement governing its supply.

10.4 All Intellectual Property Rights in or arising out of or in connection with the Products and the Services including the Materials (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by Broadberry or its licensors, as applicable.

10.5 All operating instructions, manuals and other documentation referencing the Products and supplied by Broadberry are subject to Intellectual Property Rights and shall not be copied or disclosed to any third party without the prior express written consent of Broadberry.

10.6 Subject to payment of the Price and the terms of any applicable Licence Agreement, Broadberry grants or shall procure the grant, to the Customer and Authorised Users, of a fully paid-up, worldwide, non-exclusive, royalty-free licence during the term of the Contract to use the Materials (excluding materials provided by the Customer) for the purpose of receiving and using the Training and Consultancy Services for their educational and non-commercial purposes.

10.7 The Customer shall not sub-license, assign or otherwise transfer the rights granted by clause 10.6.

10.8 The Customer grants Broadberry a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the Customer to Broadberry for the term of the Contract for the purpose of providing the Products and Services to the Customer.

## 11. Data protection

11.1 The following definitions apply in this clause 11:

(a) **Controller, Processor, Data Subject, Personal Data:** as defined in the Data Protection Legislation.

(b) **Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the UK including the UK General Data Protection Regulation and where applicable the EU General Data Protection Regulation, the Data Protection Act 2018 (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (*SI 2003/2426*) and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a party.

11.2 To the extent Broadberry Processes any Personal Data as part of performing its obligations under this Agreement:

- (a) the Customer acknowledges that it is the Controller of the Personal Data, and that Broadberry is acting on the Customer's behalf as a Processor of the Personal Data;
- (b) Broadberry:
  - (i) will keep the Personal Data reasonably confidential and reasonably secure from disclosure to unauthorised third parties; and
  - (ii) will Process that Personal Data only in accordance with the instructions of the Customer (and Processing necessary to comply with this Agreement shall be deemed to be an instruction).
- (c) The Customer will obtain and maintain all appropriate notifications and consents under Data Protection Legislation in order to allow Broadberry to Process the Personal Data that it is required to Process as part of performing its obligations under this Agreement without such Processing contravening the Data Protection Legislation.

**11.3** Both Parties will comply with all applicable requirements of the Data Protection Legislation. This clause 11 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.

**11.4** Without prejudice to the generality of clause 11.2, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to Broadberry and/or lawful collection of the Personal Data by Broadberry on behalf of the Customer for the duration and purposes of the Contract.

**11.5** Either party may, at any time on not less than 30 days' notice, revise this clause 11 by replacing it with any applicable controller to processor standard clauses or similar terms adopted under the Data Protection Legislation or forming part of an applicable certification scheme (which shall apply when replaced by attachment to the Contract).

**11.6** Subject to the terms of this clause 11, Broadberry uses the services of credit insurance agencies and cheque guarantee companies, and therefore Customer details may be divulged as required by such companies. This information will be stored in their databases and may be exchanged with other credit reference agencies.

## **12. Confidentiality**

**12.1** Each party undertakes that it shall not at any time notwithstanding termination or expiry of the Contract, disclose to any person any confidential information concerning the business, assets, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 12.2.

**12.2** Each party may disclose the other party's confidential information:

- (a) to its employees, officers, representatives, contractors or subcontracts or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 12; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

**12.3** No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

## **13. Limitation of liability**

**13.1** The limits and exclusions in this clause reflect the insurance cover Broadberry has been able to arrange, and the Customer is responsible for making its own arrangements for the insurance of any excess liability.

**13.2** References to liability in this clause 13 include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

**13.3** Neither party may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.

**13.4** Nothing in the Contract limits any liability which cannot legally be limited, including liability for:

- (a) death or personal injury caused by negligence;
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); and
- (d) defective products under the Consumer Protection Act 1987.

**13.5** Broadberry will indemnify the Customer for direct physical injury or death caused solely either by defects in the Products or by the negligence of its employees acting within the course of their employment and the scope of their authority.

**13.6** Broadberry will indemnify the Customer for direct damage to property caused solely either by defects in the Products or by the negligence of its employees acting within the course of their employment and the scope of their authority. The total liability of Broadberry under this sub-clause 13.6 will be limited to £5,000,000 for any one event or series of connected events.

**13.7** Subject to clause 13.4, Broadberry's total liability to the Customer shall not exceed the greater of

- (a) the Price; or
- (b) the total of all sums paid by the Customer and all sums payable under the Contract in respect of goods and services actually supplied by Broadberry, whether or not invoiced to the Customer.

**13.8** The following types of loss are wholly excluded from Broadberry's liability:

- (a) loss of profits;
- (b) loss of sales or business;
- (c) loss of agreements or contracts;
- (d) loss of anticipated savings;
- (e) loss of use or corruption of software, data or information;
- (f) loss of or damage to goodwill; and
- (g) indirect or consequential loss.

**13.9** Broadberry has given commitments as to compliance of the Products and Services with relevant specifications, and the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

**13.10** The Products are designed for standard commercial use and are not intended to be installed or used in hazardous or life-threatening environments or for the potentially life-endangering applications, including but not limited to environments or applications involving safety critical systems in the nuclear industry or the control of aircraft in the air. The Customer undertakes not to use or supply the Products for any of these purposes and agrees to indemnify and hold Broadberry harmless from and against all liabilities and related costs arising out of the use of any of the Products for any of these purposes.

**13.11** This clause 13 shall survive termination of the Contract.

## **14. Export and Re-export**

**14.1** Notwithstanding any other provision in these Terms and Conditions, some or all of the Products may be delivered subject to Broadberry or its suppliers obtaining the required export licence or other authorisation from a relevant government, agency or department. Regardless of any disclosure made by the Customer to Broadberry of any ultimate destination of any products, the Customer agrees not to re-export, transmit transfer or engage in or permit oral exchanges or visual inspections, whether directly or indirectly, of any of the Products to any third party without first obtaining the required export licence or other authorisation from the United States Department of Commerce or other agency or department of the United States Government or from the United Kingdom Government.

**14.2** The Customer shall be responsible for complying with any legislation governing the importation of the Products into the country of destination; and the export and re-export of the Products, and shall be responsible for the payment of any duties on it.

**14.3** The Customer shall indemnify, defend, and hold harmless Broadberry, its affiliates, directors, officers, employees, and agents from and against any and all claims, liabilities, costs, expenses, damages, or losses (including, without limitation, legal fees and expenses) arising out of or in connection with any breach by the Customer of this clause 14, including but not limited to any failure to obtain the necessary licences or authorisations, any unauthorised re-export, transfer, or disclosure of the Products, or any failure to comply with applicable export control and importation laws.

## **15. Termination**

**15.1** Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

- (a) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- (b) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- (c) the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.

**15.2** Without affecting any other right or remedy available to it, Broadberry may terminate the Contract with immediate effect by giving written notice to the Customer if:

- (a) the Customer fails to pay any amount due under any contract with Broadberry on the due date for payment; or
- (b) any information obtained through Broadberry's Know Your Customer (KYC) checks, whether conducted before or during the term of the Contract, reveals that Broadberry is legally or regulatorily prohibited from doing business with the Customer, or that continuing to do business with the Customer would pose a material risk of non-compliance with applicable laws, regulations, or Broadberry's internal compliance policies.

**15.3** Without affecting any other right or remedy available to it, Broadberry may suspend the supply of Services or all further deliveries of Products or any rights granted by License Agreements under the Contract or any other contract between the Customer and Broadberry if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 15.1(a) to clause 15.1(c), or Broadberry reasonably believes that the Customer is about to become subject to any of them. Broadberry shall be entitled to recover from the Customer all costs which it reasonably incurs as a consequence of such suspension.

## **16. Consequences of termination**

**16.1** On termination of the Contract:

- (a) the Customer shall immediately pay to Broadberry all of Broadberry's outstanding unpaid Invoices and interest and, in respect of Services and Products supplied but for which no Invoice has been submitted, Broadberry shall submit an Invoice, which shall be payable by the Customer immediately on receipt;
- (b) the Customer shall return all of the Materials and any deliverables or Products which have not been fully paid for. If the Customer fails to do so, then Broadberry may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.

**16.2** Termination or expiry of the Contract shall not affect any rights, remedies, obligations and liabilities of the Parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

- 16.3 Any provision of the Contract that expressly or by implication is intended to have effect after termination or expiry shall continue in full force and effect.
17. **Force majeure**
- 17.1 Neither party shall be in breach of the Contract or otherwise liable for any failure or delay in the performance of its obligations (except for any obligations to make payments due to the other party) if such delay or failure results from events, circumstances or causes beyond its reasonable control, including (a) acts of God; (b) flood, fire, earthquake or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order or law; (e) actions, embargoes or blockades in effect on or after the date of this Agreement; (f) action by any governmental authority; (g) national or regional emergency; (h) strikes, labour stoppages or slowdowns or other industrial disturbances; (i) epidemic, pandemic or similar, (j) collapse of buildings, fire, explosion or accident; (k) non-performance by suppliers or subcontractors; (l) interruption or failure of utility service; (a Force Majeure Event). The time for performance of such obligations shall be extended accordingly.
18. **General**
- 18.1 **Assignment and other dealings**
- (a) Broadberry may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
- (b) The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of Broadberry.
- 18.2 **Notices**
- (a) Any notice given to a party under or in connection with the Contract shall be in writing, and in English and shall be:
- (i) delivered by hand or by registered post or other next working day delivery service at its postal address as specified in the Invoice, or if not specified, at its registered office (if a company) or its principal place of business (in any other case); or
- (ii) sent by email to the following address for Broadberry: [sales@broadberry.co.uk](mailto:sales@broadberry.co.uk), and for the Customer to the email address specified on the Order, or an address substituted in writing by the party to be served.
- (b) Any notice shall be deemed to have been received:
- (i) if delivered by hand, at the time the notice is left at the proper address;
- (ii) if sent by registered post or other next working day delivery service, at 9.00 am on the second Business Day after posting;
- (iii) if sent by pre-paid airmail (providing proof of postage) on the fifth Business Day after posting; or
- (iv) if sent by email, at the time of transmission.
- (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 18.3 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision or part provision of the Contract is deemed deleted under this clause 18.3 the Parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the commercial result of the original provision.
- 18.4 **Waiver.** Failure by either party at any time to enforce any of the provisions of the Contract shall not be construed as a waiver by that party of any such provisions nor in any way affect the validity of the Contract.
- 18.5 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the Parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.

**18.6 Entire agreement.**

- (a) The Contract constitutes the entire agreement between the Parties.
- (b) Each party acknowledges that in entering into the Contract it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract.
- (c) Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.
- (d) The Customer acknowledges that the absence of a countersignature by Broadberry does not affect the applicability of these Terms and Conditions. The Customer further acknowledges that a binding Contract shall only come into existence in accordance with Clause 2.2, namely upon written acceptance of the Customer's Order by Broadberry.

**18.7 Third party rights.**

- (a) The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- (b) The rights of the Parties to rescind or vary the Contract are not subject to the consent of any other person.

**18.8 Variation.** Except as set out in these Terms and Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the Parties (or their authorised representatives).

**18.9 Governing law.** The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

**18.10 Jurisdiction.** The Parties each irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

**18.11 Acknowledgement and Acceptance.** By signing below, the Customer confirms that they have read and understood these Terms and Conditions. The Customer acknowledges that signing is not required for these Terms and Conditions to be binding, and that by placing an Order which is accepted by Broadberry in accordance with Clause 2.2, the Customer agrees to be bound by these Terms and Conditions.

Signed by \_\_\_\_\_ )  
an authorised signatory )  
for and on behalf of ) .....  
\_\_\_\_\_ )