

# Ward Solutions

## Terms & Conditions

**Ward Solutions Ltd**

Unit 2054, Castle Drive,  
Citywest Business Campus,  
Dublin 24

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## 1. Interpretation

1.1 In these terms and conditions, the following definitions apply:

**"Affiliate"** of a party means any entity which directly or indirectly owns or controls, is directly or indirectly owned or controlled by, or under common ownership or control with, that party.

**"Client"** means the legal entity identified on the relevant PO, Quote, SOW or SLA.

**"Client Primary Contact"** means the client's primary contact as stipulated in the SOW/SLA and/or Quote.

**"Confidentiality Agreement"** means, if applicable, the confidentiality agreement, in Ward's standard format, entered into between the Parties.

**"Contract"** means together the relevant Quote, PO, SOW, the Confidentiality Agreement and the Data Processing Agreement, where relevant, and the Terms.

**"Data Protection Legislation"** means the Data Protection Acts 1988 – 2003 (as amended by the European Communities (Electronic Communications Networks and Services) (Privacy and Electronic Communications) Regulations 2011) and from 25 May 2017 the General Data Protection Regulations ("GDPR") and all applicable laws and regulations in Ireland relating to the processing of Personal Data and privacy.

**"Data Protection Agreement"** means, if applicable, in Ward's standard format, entered into between the Parties in accordance with Article 28 of GDPR.

**"Default"** means any breach of the obligations of Ward (including but not limited to fundamental breach) or any default, act, omission negligence or misstatement of Ward, its employees, agents or sub-contractors in connection with or in relation to the subject matter of a SOW/SLA and/or Quote and in respect of which Ward is liable to the Client and **"Defaults"** means more than one Default.

**"Deliverables"** means the Products and/or Services, as the case may be.

**"Due Date"** means thirty (30) days (or such other shorter period as may be specified in the SOW/SLA and/or Quote, from time to time) from the date of an invoice raised by Ward in respect of Deliverables the subject of a SOW/SLA and/or Quote.

**"Escalation Path"** has the meaning ascribed to it in the SOW or SLA, as applicable.

**"Force Majeure Events"** means any cause or causes beyond the reasonable control of either Party including without limitation (i) an act or omission of the other Party, (ii) acts of God, (iii) acts of Government, (iv) an act or omission of a civil military authority of a state or nation, (v) terrorist action, or from (vi) war, (vii) riot, (viii) embargo or civil disturbance, (ix) default of suppliers or subcontractors, (x) strikes, lockout or labour dispute or (xi) from inability to secure, or delay in securing, materials, supplies, transportation or energy (xii) failure of a utility service or transport network, or (xiii) breakdown of plant or equipment and each is a **"Force Majeure Event"**.

**"Hire Purchase Agreement"** means where applicable the hire purchase agreement, in Ward's standard format, entered into between the Client and Ward in relation to the hire purchase of Products.

**"Insolvency Event"** means in respect of either Party, that the Party is unable to pay its debts as they fall due or becomes insolvent or an order is made or a resolution is passed for the liquidation, administration, winding-up or dissolution of the Party (otherwise than for the purposes of a solvent amalgamation or reconstruction) or a liquidator, administrator, examiner or trustee or similar officer is appointed over of all or part of the assets of the Party or the Party enters into or proposes any composition or arrangement with its creditors generally or anything analogous to the foregoing occurs in any applicable jurisdiction.

**"Intellectual Property Rights"** means patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), 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.

**"Leasing Agreement"** means where applicable the leasing agreement, in Ward's standard format, entered into between the Client and Ward in relation to the Leasing of Products.

**"Normal Work Hours"** means the hours between 9am and 5:30pm local time excluding weekends and public holidays (as observed in the Republic of Ireland) and the hours between 5:30pm and 9am local time.

**"Normal Work Day"** shall comprise of seven and a half hours during Normal Work Hours (exclusive of any applicable statutory rest periods). A Normal Work Day includes time spent travelling to the location to perform the Services or install the Products.

**"Parties"** means Ward and the Client and **"Party"** means either Ward or the Client, as the case may be.

**"Personal Data"** shall have the meaning given in the Data Protection Legislation.

“**PO**” means a purchase order form provided by the Client in respect of the Deliverables described in a SOW/SLA or Quote or where the Client does not have a purchase order system, confirmation in writing from a duly authorised representative of the Client that the Client wishes to proceed with the SOW/SLA or Quote.

“**Products**” means any software (including where applicable any Third Party Software), hardware (including where applicable any Third Party Hardware) or other products and related materials and documentation to be provided by Ward to the Client as specified in a SOW/SLA and/or Quote.

“**Quote**” means the quotation document (as may be later updated in writing including email) in respect of Deliverables to be provided by Ward to the Client.

“**Report**” means any report to be issued by Ward to the Client pursuant to a SOW/SLA and/or Quote.

“**Services**” means the services (if any) to be provided by Ward to the Client, as specified in a SOW/SLA and/or Quote.

“**SLA**” means the service level agreement, in Ward’s standard format, that may be entered into between the Parties in respect of Services to be provided by Ward to the Client.

“**SOW**” means the statement of works, in Ward’s standard format, that may be entered into between the Parties in respect of Deliverables to be provided by Ward to the Client.

“**Terms**” means the standard terms and conditions of business of Ward set out in this document.

“**Third Party Hardware**” means the hardware supplied by a Third Party Supplier to Ward and supplied to the Client as part of the Deliverables.

“**Third Party Product**” means the Third Party Hardware and/or the Third Party Software.

“**Third Party Services**” means services provided by a Third Party Supplier to Ward and supplied to the Client as part of the Services.

“**Third Party Software**” means software supplied by a Third Party Supplier to Ward and supplied to the Client as part of the Deliverables.

“**Third Party Supplier**” means the party that supplies the Third Party Products and/or Third Party Services.

“**Ward**” means Ward Solutions Limited a company incorporated in Ireland with registered number 316165, whose registered office is at Unit 2054, Citywest Business Campus, Dublin 24.

“**Ward Materials**” has the meaning set out in clause 8.6.

“**Ward Property**” has the meaning set out in clause 15.3.

1.2 Unless the context otherwise requires:

- 1.2.1 each gender includes the others;
- 1.2.2 the singular includes the plural and vice versa;
- 1.2.3 references to the Contract includes these Terms, the Order and its schedule (if any);
- 1.2.4 references to persons include individuals, unincorporated bodies, government entities, companies and corporations;
- 1.2.5 clause headings do not affect their interpretation;
- 1.2.6 general words are not limited by example; and
- 1.2.7 references to any legislation will be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

## 2. **Scope of Agreement**

2.1 These Terms, the Confidentiality Agreement (where applicable), the Data Protection Agreement (where applicable), the Leasing Agreement and/or the Hire Purchase Agreement (where applicable) and the relevant Quote/ SOW/ SLA and PO constitute the entire agreement between the parties in relation to the provision of Deliverables to the Client and supersede all previous agreements, understandings and arrangements between them, whether in writing or oral in respect of its subject matter. These Terms supersede any inconsistent terms and conditions appearing on any of the Quote/SOW/SLA or PO documents or correspondence exchanged by the Parties and exclude any other terms that the Client seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. No amendment or modification of these Terms shall be valid or binding on the Parties unless made in writing and signed on behalf of each of the Parties by their respective duly authorised officers or representative.

2.2 These Terms supersede any previous terms and conditions that Ward may have had with the Client. These Terms are subject to review and amendment from time to time. The up to date version will be available on our website [here](#) and a link to the up-to-date version will be provided in the relevant Quote/ SOW/ SLA. It is a matter for the Client to ensure that they are aware of the particular Terms that govern any Quote/SOW/SLA and any amendments that may have been made to the Terms since the Client previously entered into a Contract with Ward.

2.3 A SOW/SLA and/or Quote will be completed by the Parties each time the Client requires Deliverables from Ward. The Client must then raise a PO in respect of the Deliverables, which will be deemed to be an

offer to purchase Deliverables from Ward on these Terms and accepted by Ward either in writing or by it commencing to carry out the Services or provide the Products on which date a legally binding contract shall come into existence between the Parties in respect of the Deliverables.

- 2.4 In the event of any conflict, inconsistency or ambiguity between the terms and conditions of these Terms and a PO/SOW/SLA and/or Quote, these Terms shall prevail over those of the PO/SOW/SLA and/or Quote unless the SOW/SLA and/or Quote explicitly states otherwise. For the avoidance of doubt, no terms or conditions endorsed on, delivered with, or contained in the Client's PO, purchase conditions, confirmation of order, supplier acceptance forms, specification or other document will form part of the Contract except to the extent that Ward otherwise explicitly agrees in writing.
- 2.5 The Client acknowledges that it has not entered into the Contract or any documents pursuant to in reliance on, and shall have no remedies in respect of, any statement, promise, representation, assurance or warranty made or given that is not expressly set out in the Contract. No party shall have any claim for innocent or negligent misrepresentation on the basis of any statement in the Contract.
- 2.6 Any samples, drawings, descriptive matter or advertising issued by Ward, and any descriptions or illustrations contained in Ward's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.
- 2.7 Any Quote given by Ward shall not constitute an offer, and is only valid for a period of thirty (30) days from its date of issue. Quotations will be deemed to be an invitation to treat by Ward to supply Services and/or Products on and subject to these Terms.

### 3. **Payment**

- 3.1 The Client shall pay Ward the fees for the Deliverables as provided in the SOW/SLA or Quote. Such payment will be without set-off or counter claim, free and clear of and without deduction or withholding of any kind imposed in any jurisdiction unless the Client is compelled by law to deduct or withhold any such amounts, in which case it will pay to Ward such additional amount as will ensure that Ward is paid the full amount it would have received but for such deduction or withholding. The fees are exclusive of value added tax, customs duties or levies which will be charged in addition and paid by the Client at the rate and in the manner for the time being prescribed by law.
- 3.2 If the SOW/SLA or Quote provides that Ward will charge fees to the Client for the Deliverables to be provided under that SOW/SLA or Quote at a daily rate, Ward reserves the right to invoice per hour for actual hours performed that cumulatively equal less than one Normal Work Day. The hourly billing rate will be calculated by dividing the daily rate for one Normal Work Day by seven and a half hours except where the SOW provides otherwise.
- 3.3 For Services performed outside Normal Work Hours or in addition to a Normal Work Day, Ward reserves the right, at its option, to charge overtime rates or in the case of time and material based Services, reduce the number of time and material days available by the applicable overtime rates. If applicable, the overtime rates will be as specified in each individual SOW/SLA or Quote or, if not set out therein, at Ward's then current overtime rates will apply.
- 3.4 The Client shall reimburse Ward its actual out of pocket expenses as reasonably incurred by Ward in connection with the performance of the Contract.
- 3.5 Ward reserves the right, at its option, to charge for days booked, or in the case of time and material based Services to reduce the number of time and material days available by the applicable number of days booked, in the event of the Client cancelling such booked days with less than three (3) days' notice.
- 3.6 Ward reserves the right, at its option, to charge for additional costs, from time to time, resulting from certain acts of the Client, which delay or disrupt Ward's progress with providing the Deliverables, including, but not limited to, due to incomplete instructions, late information, postponement, changes to Client's personnel. Any such variation in costs will be discussed with the Client as soon as possible. In addition, where the provision of the Services by Ward is delayed or disrupted by the Client for more than 4 weeks, notwithstanding the terms of the SOW/SLA regarding when Ward will raise an invoice, Ward shall be entitled to raise an invoice for the entirety of the Services at any time after the four weeks have passed.
- 3.7 The SOW/SLA or Quote shall specify when Ward will raise an invoice for the respective Deliverables the subject of that SOW/SLA or Quote. The Client shall pay invoiced amounts on or prior to the Due Date.
- 3.8 Time of payment is of the essence. If any sum payable by the Client to Ward under a SOW/SLA or Quote is not discharged by the Due Date, all sums due and owing to Ward under any other SOW/SLA or Quote with the Client becomes immediately due and payable. In addition, Ward reserves the right until such time as the outstanding amount has been paid in full, without prejudice to any other remedy to:-

- 3.8.1 charge interest on such overdue sum on a day to day basis from the Due Date until paid in full at the rate as provided under the European Communities (Late Payment in Commercial Transactions) Regulations 2012 (S.I. No. 580 of 2012); and/or
  - 3.8.2 suspend the provision of the Services until such time as payment is received; and/or
  - 3.8.3 require the immediate return, at the Client's expense, of any Products. In these circumstances the Client acknowledges that Ward may attend at the location of the Products without notice to the Client to collect the Products and the Client agrees to so return the Products to Ward.
- 3.9 Title to the Products will only pass to the Client when Ward has received payment in full for the Products, or, in the event that any Product is leased, rented or licenced by the Client, the ownership of such Product shall be governed by the terms of the relevant leasing agreement, hire purchase agreement or licence agreement, as applicable. Notwithstanding the foregoing, the Client assumes the risk of loss or damage to the Products upon delivery and agrees to insure the Products and that the interest of Ward or the Third Party Supplier in respect of the Products, as applicable, is noted on the policy of insurance. The Client shall pay for all costs of repair and replacement of the Products due to an accident or misuse, abuse, neglect of the Products or the failure to correctly install, use or maintain such Products, fair wear and tear excepted. The Client hereby indemnifies Ward and/or the Third Party Supplier for any loss or damage suffered by Ward and/or the Third Party Supplier due to a failure of the Client to comply with its obligations under this clause 3.9.
- 3.10 Ward may provide credit at its sole discretion. Ward may set and vary credit limits and revoke credit from time to time and withhold all further supplies of Deliverables if the Client exceeds such credit limit or fails to pay fees for the Deliverables in accordance with the Contract and the SOW/SLA and/or Quote.
4. **Confidentiality**
- 4.1 The terms of each SOW/SLA and/or Quote are confidential.
- 4.2 A party ("**receiving party**") shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party ("**disclosing party**"), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall provide that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The provisions of this clause will not apply to:
- 4.2.1 any information which was in the public domain at the date of the Contract;
  - 4.2.2 any information which comes into the public domain subsequently other than as a consequence of any breach of the Contract or any related agreement;
  - 4.2.3 any information which is independently developed by the other party without using information supplied by the first party; or
  - 4.2.4 any disclosure required by law or a governmental or regulatory authority or otherwise by the provisions of the Contract.
- 4.3 In the event that a confidentiality agreement has not already been entered into between Ward and the Client Ward's **confidentiality agreement** will form part of the Contract.
- 4.4 This clause 4 shall survive termination of the Contract.
5. **Provisions of Services**
- 5.1 Ward will use due skill care and diligence in accordance with industry standards to provide the Deliverables to the Client in accordance with the Contract. In the event that Ward does not comply with its obligations under this clause 5.1 Ward will re-perform the Services or if Ward is unable to perform/re-perform the Services the Client shall be entitled to recover the fees paid for the Services or the part of the Services that have not been performed.
- 5.2 Whilst Ward will use its reasonable endeavours to meet any milestone dates set out in SOW/SLA, PO and/or Quote, such dates are approximate only and time of performance is not of the essence.
- 5.3 The Supplier will not be liable for any delay in or failure of performance of the Deliverables (including any failure to achieve any milestone or other date) so far as caused by an event of Force Majeure or the Client's failure to perform its obligations under the Contract.
- 5.4 Acceptance by the Client of the Deliverables (or any part thereof) shall be conclusive evidence that the Client has examined and tested the Deliverables and has determined that such Deliverable complies with any applicable specification.
- 5.5 Ward may make any changes to the Deliverables:

- 5.5.1 needed to comply with applicable law or safety requirements; or
- 5.5.2 which do not materially affect the nature or quality of the Deliverables; and will notify the Client of such changes.

**6. Reports, Penetration Testing and Access**

- 6.1 In the event that the SOW/SLA or Quote provides for a Report to be furnished by Ward to the Client, Ward will initially issue the Client with a draft of the Report. If the Client requires amendments to the draft Report Ward will amend the Report where possible with the Client's feedback strictly on the basis that (i) the feedback is received within seven (7) working days of the draft Report being issued by Ward to the Client Principal Contact and (ii) the feedback is specific and valid and received from the Client Principal Contact in one written communication.
  - 6.2 Ward will then issue its final Report incorporating the Client feedback, where possible. No further updates will be made to the Report. If the Client requires further amendments to the Report, these will need to be the subject of a separate SOW/SLA or Quote.
  - 6.3 The Report shall remain the property of Ward until all fees due and owing by the Client under the SOW/SLA or Quote under which the Report has been commissioned are discharged. If the Client does not discharge all fees due by it for the Report by the Due Date, Ward may in its discretion require the return of the Report (and all copies made thereof) and the Client agrees to immediately return the Report on such request and further agrees that it shall not implement any recommendations therein. If the Client proceeds to implement any recommendations in these circumstances, the Client acknowledges that it is in breach of the Intellectual Property Rights of Ward and that Ward may take whatever action it considers necessary in respect of the breach.
  - 6.4 The Report is confidential to the Client and may not be furnished to any third parties without the prior written consent of Ward. If Ward does furnish such consent, it will be strictly on the basis that the Client obtains from that third party written confirmation that it will hold Ward harmless from any liability arising to the third party for anything contained in the Report. The Report may only be copied for the internal use of the Client.
  - 6.5 If the Services include penetration testing (or similar testing, e.g. vulnerability testing) by Ward on the client's systems or sites, the Client agrees to provide the necessary written authorisation(s) to such testing before the testing commences. In addition, the Client acknowledges that while Ward will use reasonable endeavours to avoid any damage to, or failure of, the systems or sites of the Client or those of a third party, there is a risk that the testing could cause loss, direct or indirect, as a result of any such damage or disruption caused as a result of such testing to the Client or a third party. The Client acknowledges that Ward will have no liability whatsoever for any loss, direct or indirect, caused as a result of any such damage or disruption.
  - 6.6 In providing the Services, Ward may from time to time use various platforms/databases. In the event that the Client or its personnel are provided with access to such platforms/databases, the Client shall ensure that any access detail/passwords are kept secure and shall further ensure that access is limited to those authorised by the Client to access these platforms/databases for the purposes such access was granted. The Client shall promptly notify Ward should it become aware of any unauthorised access, copying, reproduction, modification or distribution of the information in these platforms/databases and fully cooperate with Ward to remedy the issue as soon as reasonably practicable. Ward reserves the right to amend, extend or withdraw without notice any part or all of such service.
- 7. Third Party Products and Services**
- 7.1 The Client acknowledges and accepts that Ward is not the manufacturer/supplier of the Third Party Products and/or the Third Party Services and that Ward shall not be liable for any loss or damage whatsoever suffered by the Client arising from the Third Party Products and/or the Third Party Services. Ward does not make/give any warranty whatsoever in respect of the Third Party Products and/or the Third Party Services. For the avoidance of doubt, any obligations whatsoever on Ward under the Contract regarding the Products or the Services shall not extend to Third Party Products and/or Third Party Services nor shall they extend to the installation thereof where the Third Party Products are being installed by the Third Party Supplier and/or the Client.
  - 7.2 If the Quote and/or the SOW and/or the SLA provides for Ward to procure such Third Party Products and/or the Third Party Services for the Client i.e. the Third Party Products will be licensed to/owned directly by the Client, the Client acknowledges that it will discharge the price thereof to Ward and Ward will procure same from the Third Party Supplier on behalf of the Client.
    - (i) However, the agreement in relation to these Products and/or Services will be directly between the Client and the Third Party Supplier.

- (ii) The Client agrees that the Third Party Product and any upgrade to the Third Party Product will be installed within 21 days of receipt of the Third Party Product or such other period of time dictated by the Third Party Supplier. Any delay in the installation of the Third Party Product caused by the Client may result in additional costs to the Client regardless of whether the Third Party Product is being installed by the Client/Ward or the Third Party Supplier. In addition, any modifications to be made to the Third Party Product notified to the Supplier either by the Third Party Supplier or Ward must be made within 30 days of the notification of the modifications.
  - (iii) Warranties, if any, provided by the Third Party Supplier in respect of the Third Party Products and/or the Third Party Services is a matter between the Client and the Third Party Supplier. If a warranty is provided to the Client by a Third Party Supplier, it is a matter for the Client to satisfy itself in this regard and to acquaint itself with the limitations of any such warranties.
  - (iv) The Client may not reverse assemble, reverse compile, otherwise translate or reverse engineer, lease, sell, sub-licence or assign the licence of any of the Third Party Products or any copy of them.
  - (v) Where a licence of a Third Party Product is provided to the Client acknowledges that the ownership and all of the Intellectual Property Rights in the Third Party Product will remain with the Third Party Supplier.
  - (vi) In using the Third Party Products the Supplier must at all times use them in accordance with Data Protection Law and privacy laws generally and the intellectual property rights of third parties. It is a matter for the Client at all times to satisfy itself that any Third Party Products and/or Third Party Services comply with the Data Protection Legislation (or the equivalent legislation if the Client is situated in a jurisdiction other than Ireland) and if relevant the Client's internal data protection policies. Ward does not in any way warrant the compliance of Third Party Products and/or Third Party Services with the Data Protection Legislation or any Client internal data protection policies.
- 7.3 Where Ward utilises the Third Party Products/Third Party Services as part of a managed service to the Client, the Client understands that unless agreed otherwise in writing, it will not own nor have a licence to use the Third Party Products as the Third Party Products will be licensed to/owned by Ward. Notwithstanding the foregoing however the terms of clause 7.1, 7.4, 7.5, 7.6, 7.8 and 7.9 will apply to the Third Party Products/Third Party Services. In addition, the Client acknowledges that where any Third Party Products/ Third Party Services that Ward uses as part of the managed service which it provides to the Client are no longer available to Ward, Ward will seek to replace them with an alternative Third Party Product/Third Party Services. The decision in relation to the replacement Third Party Products/Third Party Services will rest solely with Ward and the consent of the Client to the replacement Third Party Products/Third Party Services will not be required. However, in the event that Ward in its sole discretion is unable to source an equivalent replacement Third Party Product/Third Party Service and Ward is therefore unable to continue to provide the managed service, Ward shall be entitled to terminate the Contract with immediate notice to the Client.
- 7.4 The Client accepts that Ward is dependent upon the manufacture and supply of the Third Party Products and the Third Party Services from the Third Party Supplier and therefore all times and dates for delivery are intended to be estimates and time is not of the essence in relation thereto.
- 7.5 The Client undertakes to comply with all terms and conditions including, but not limited to, end user agreements and licences governing the use of the Third Party Products and/or the Third Party Services. The Client's acceptance of these Terms includes acceptance of any such licences. In the event that you are purchasing an IBM Product then you specifically agree to comply with IBMs Machine Code licence agreement, current versions of which are available at the following URL: [http://www.ibm.com/servers/support/machine\\_warranties/support\\_by\\_product.html](http://www.ibm.com/servers/support/machine_warranties/support_by_product.html), or by contacting Ward. It is a matter for the Client to familiarise itself with any such agreements governing the use of the Third Party Products and/or Third Party Services and to raise any queries it has in relation to these agreements directly with the Third Party Supplier. In the event that Ward is installing Third Party Products and/or Third Party Services on the Client's systems on behalf of the Client, the Client hereby authorises Ward to agree to the terms and conditions governing the Third Party Products and/or Third Party Services on such installation on its behalf and agrees to be bound by the terms and conditions. The Client hereby indemnifies and agrees to keep indemnified Ward against any cost, charge, damages or expenses or liability incurred by Ward arising as a result of a failure by the Client to comply with the terms and conditions of any such agreements.

- 7.6 Ward shall not be responsible for any loss suffered by the Client due to the discontinuance by the Third Party Supplier of any Third Party Products and/or Third Party Services. The Client acknowledges that any decision to discontinue Third Party Products and/or Third Party Services is a matter for the Third Party Supplier.
- 7.7 The Client understands that Third Party Products and Third Party Services are generally subject to automatic renewal on the yearly anniversary of the purchase by the Client of the Third Party Products and/or the Third Party Services. Therefore, the Client must proceed on the basis that the Third Party Products or Third Party Services which it is purchasing from Ward is subject to automatic renewal unless the Client queries this with Ward and receives confirmation in writing from Ward that the Third Party Product and/or Third Party Service is not subject to automatic renewal. In the event that the Client does not wish to renew the Third Party Products and/ or Third Party Services it must give Ward ninety (90) days written notice prior to the renewal date of its decision not to renew the Third Party Products and/or Third Party Services otherwise Ward may (but is not obliged to) confirm the renewal of the Third Party Products and/or Third Party Services to the Third Party Supplier and will issue an invoice to the Client on renewal. There is no obligation on Ward to contact the Client in relation to the renewal of the Third Party Product and/ or Third Party Service but in the event that Ward does so contact the Client and does not hear from the Client within seven (7) days with confirmation of the Client's decision regarding the renewal of the Third Party Product and/or Third Party Service Ward may at its absolute discretion cancel the Third Party Products and/or Third Party Services and Ward shall have no liability whatsoever for any consequences suffered by the Client as a result of the non- renewal of the Third Party Products and/or Third Party Services.
- 7.8 Where applicable, the Client understands that Ward will need to share Personal Data that has been made available to it by the Client with the Third Party Supplier in connection with the supply or support of the Third Party Products and/or Third Party Services as are necessary for the performance of the Contract.
- 7.9 If a SOW/SLA provides for Ward to provide support in relation to any Third Party Products and/or Third Party Services then the obligations of Ward under the SOW/SLA in relation to the provision of support will at all times be conditional on the agreement of the Third Party Supplier to the provision by Ward of the support for the Third Party Products and/or Third Party Services. In the event that the Third Party Supplier withdraws its agreement to Ward providing the support detailed in the SLA/SOW then Ward's obligations under the SOW and/or the SLA will automatically terminate as they relate to such support without any liability whatsoever on the part of Ward.
- 8. Client Obligations and Licence**
- 8.1 The Client shall ensure that, throughout the term of the Contract, Ward shall, in a timely manner, be provided with access to all necessary knowledge, information, facilities, assistance and personnel of the Client as requested by Ward/ the Third Party Supplier to enable Ward/ the Third Party Supplier to comply with its obligations under the SOW/SLA and/or Quote (ensuring that information is complete and accurate).
- 8.2 The Client must follow the instruction of Ward and/or a Third Party Supplier in relation to the use of any Product.
- 8.3 In the event that the Client is returning a Product to Ward and/or a Third Party Supplier for any reason the Client agrees to securely erase from any Product all data, including without limitation, the following: i) Personal Data; and ii) confidential or proprietary information and other data. If removing or deleting Personal Data is not possible, the Client agrees to transform such information (e.g., by making it anonymous) so that it no longer qualifies as Personal Data under applicable law (ii) any programmes not provided by Ward and/or the Third Party Supplier on the Product. The Client understands that the Product may be shipped outside of the EEA when it is returned to Ward/the Third Party Supplier.
- 8.4 The Client shall provide such access for any employees or subcontractors of Ward/ the Third Party Supplier to the Client's premises as may be required for the purpose of the provision of the Deliverables by Ward/ the Third Party Supplier in accordance with any SOW/SLA and/or Quote.
- 8.5 If applicable, the Client shall prepare the Client's premises for the supply of Deliverables.
- 8.6 The Client shall obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Products are to be installed and/or the Services are to start to the extent necessary to enable Ward and/or the Third Party Supplier to provide the Products and/or the Services. If a third party exerts a claim against Ward and/or the Third Party Supplier because you have failed to obtain these licences and/or approvals you agree to reimburse Ward and/or the Third Party Supplier for any costs or damages that Ward and/or the Third Party Supplier may reasonable incur in connection with such claim.



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- 8.7 The Client grants Ward/Third Party Supplier (where relevant) a temporary, revocable right and licence to access the systems operated by the Client and such items, materials, information or Personal Data on the Client systems as required by Ward/the Third Party Supplier to provide Deliverables to the Client pursuant to the SOW/SLA and/or Quote.
- 8.8 The Client shall keep and maintain all materials, equipment, documents and other property of Ward ("**Ward Materials**") at the Client's premises in safe custody at its own risk, maintain Ward Materials in good condition (fair wear and tear excepted) until returned to Ward, and not dispose of or use Ward Materials other than in accordance with Ward's written instructions or authorisation.
- 8.9 If Ward/Third Party Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Client or failure by the Client to perform any relevant obligation ("**Client Default**"):
- 8.9.1 Ward/the Third Party Supplier shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Client remedies the Client Default, and to rely on the Client Default to relieve it from the performance of any of its obligations to the extent the Client Default prevents or delays Ward's performance of any of its obligations under the Contract;
- 8.9.2 Ward/ the Third Party Supplier shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from Ward's failure or delay to perform any of its obligations as set out in this clause 8.7; and
- 8.9.3 the Client shall reimburse Ward/the Third Party Supplier on written demand for any costs or losses sustained or incurred by Ward/the Third Party Supplier arising directly or indirectly from the Client Default.
- 8.10 The Client will also co-operate fully with Ward and follow Ward's reasonable instructions in relation to the performance of the Services.
- 8.11 The Services are provided at the Client's request and the Client is responsible for verifying that the Services are suitable for its own needs.
- 8.12 The Client shall pay for all costs of repair and replacement of the Products due to an accident, or misuse, abuse, neglect of the Products of the failure to correctly install, use or maintain such products, fair wear and tear excepted.
- 8.13
- (i) The Client agrees to create, retain, and provide to Ward, or to the Third Party Supplier and its auditors, accurate written records, system tool outputs, and other system information sufficient to provide auditable verification that your use of the Third Party Products supplied is in compliance with the terms of this Contract and any agreements/licences governing the use of the Third Party Products. The Client is responsible for: (i) ensuring that it does not exceed the Client's authorised use of each such Third Party Product; and (ii) remain in compliance with the terms of this Contract and any agreements/licences governing the Third Party Products.
  - (ii) Upon reasonable notice, Ward and/or the Third Party Supplier may verify the Client's compliance with the terms of this Contract and any agreement/licences governing the Third Party Products at all sites and for all environments in which the Client uses (for any purpose) any Third Party Products. Such verification will be conducted in a manner that minimises disruption to the Client's business, and may be conducted on the Client's premises, during normal business hours. Ward/the Third Party Supplier may use an independent auditor to assist with such verification, provided Ward/the Third Party Supplier has a written confidentiality agreement in place with such auditor. In the event that the audit is carried out by Ward the Client understands that the results of the audit may be shared with the Third Party Supplier.
  - (iii) Ward and/or the Third Party Supplier will notify the Client in writing if any verification indicates that: (i) the Client has, used any Third Party Products in excess of the authorised level of use; (ii) the Client is otherwise not in compliance with the terms of this Contract s; or (iii) the Client is otherwise not in compliance with the terms of the End User Licence Agreement or any other applicable license/agreement terms governing the use of the Third Party Product. You agree to promptly pay directly to Ward or the Third Party Supplier, as directed, the charges that Ward or the Third Party Supplier specifies in an invoice for: 1) any such excess use; 2) Third Party Product maintenance and subscription and support service for such excess use, for the lesser of the duration of such excess use or two years; and 3) any additional charges and other liabilities determined as a result of such verification.

- (iv) The rights and obligations set forth in this section 8.11 remain in effect during the period during which the Third Party Products are under your control, and for two years thereafter.

## 9. LIMITATION AND EXCLUSIONS FROM LIABILITY

- 9.1 Ward's entire liability to the Client in connection with the Deliverables is as follows:
  - 9.1.1 Ward does not limit or exclude its liability to the Client for death or bodily injury claims arising from Ward's negligence, fraud or intentional default under these Terms or a SOW/SLA or Quote;
  - 9.1.2 To the maximum extent permitted by applicable law, Ward's maximum aggregate liability for physical damage to tangible property of the Client arising from all events of negligence of Ward, whether or not connected and arising pursuant to the Contract shall not exceed the sum of one hundred thousand euro. Damage to software or data shall not constitute physical damage to tangible property;
  - 9.1.3 Subject always to clause 9.1.1 and other than set out above, Ward's liability in the case of a series of Defaults (or howsoever arising) whether or not connected, for any direct loss or damage shall not, to the maximum extent permitted by applicable law, exceed the aggregate of the fees paid to Ward under the relevant SOW/SLA and/or Quote pursuant to which the relevant Product or Services were provided on the date of the claim;
  - 9.1.4 Ward's liability is conditional on: (i) the prompt notification in writing to Ward by the Client of any claim or action; (ii) the Client allowing Ward or Ward's insurers to control the defence of any claim and the Client co-operating fully with Ward and providing Ward with reasonable assistance in the defence and any related settlement negotiations; and (iii) the Client not making any prejudicial statements, references or compromise the ability of Ward to defend the claims in any way without the written consent of Ward.
  - 9.1.5 The limitations on liability extend to any indemnities or warranties which Ward provides to the Client under these Terms or otherwise.
- 9.2 These limitations on liability in this clause 9 also apply to any sub-contractor of Ward. They are the maximum for which Ward and its subcontractors are collectively liable.
- 9.3 Subject always to Clause 9.1.1 and to the maximum extent permitted by applicable law, the Client agrees that under no circumstances is Ward liable for:
  - 9.3.1 Third party claims against the Client, including for losses or damages;
  - 9.3.2 Corruption to, loss of, damage to, or use of Client records or data or software;
  - 9.3.3 loss of (or failure to realise) profits, revenue, a contract or business opportunity, goodwill or anticipated savings, ex gratia payments, the costs of any third parties engaged by Client, the costs of taking emergency measures including engaging third parties, or any other form of pure economic loss, whether such loss is direct or indirect, or for any punitive (including fines), indirect, consequential or special loss or damage even if Ward is informed of the possibility of such loss or damage occurring, and in each case, however, arising.
- 9.4 Any condition, warranty or other term which might but for these Terms have effect between Ward and the Client or which would otherwise be implied into or incorporated into these Terms (including without limitation, the implied terms of merchantable quality, conformance, merchantability or fitness for purpose and any term implied by s39 of the Sale of Goods and Supply of Services Act 1980), whether by statute, common law or otherwise are hereby expressly excluded.
- 9.5 Ward shall not be liable for any delay in performance or breach of any of its obligations under the Contract to the extent that any such delay or breach is due to a failure or delay by the Client in (i) complying with any of its obligations under the Contract; and or (ii) submitting to Ward information, instructions, or any other approvals which Ward requires in order to carry out its obligations under the Contract.
- 9.6 Ward shall not be liable for breach of these Terms directly or indirectly occasioned by or resulting from compliance with any regulatory action taken or decision made by any competent authority in respect of these Terms, any provision of these Terms or the subject matter of these Terms or if any provision of these Terms is held to be void or unenforceable by such authority and/or the equivalent arises in relation to a SOW/SLA or Quote.
- 9.7 The Client indemnifies and agrees to keep indemnified Ward for any claims whatsoever brought against Ward by a third party for loss or damage suffered by a third party, whether direct or indirect, resulting from the Deliverables.
- 9.8 This clause 9 shall survive termination of the Contract.

## 10. Force Majeure

- 10.1 Save for payment obligations (under clause 3 hereof), neither Party shall be liable to the other party for any delay or non-performance of any of its obligations under a SOW/SLA and/or Quote to the extent that it arises from a Force Majeure Event.
- 10.2 Subject to the Party so delaying or non-performing promptly notifying the other Party in writing of the reason for the delay or non-performance and the likely duration of the delay or non-performance, and also when it ceases to do so, the performance of the delaying or non performing Party's obligations, to the extent affected by the Force Majeure Event shall be suspended during the period that the cause persists.
- 10.3 If performance is not resumed within ninety (90) days after the notice described in clause 10.2 above, the non-delaying Party may by notice in writing terminate the Contract.

## 11 Non-Solicitation

- 11.1 During the provision of the Deliverables to the Client and for one year thereafter, the Client shall not actively solicit for hire, nor knowingly allow its employees or associates to solicit for hire, any person employed or engaged by Ward associated with the provision of the Deliverables without the prior written consent of Ward.
- 11.2 This provision shall not in any way restrict the Client's right to solicit generally in the media for required personnel, and shall not restrict employees, contractors or representatives of Ward pursuing on their own initiative employment opportunities with the Client.
- 11.3 The Parties agree that violation of this provision will subject the Client to liquidated damages consisting of an amount equal to six (6) month's salary for each employed, solicited or retained person.
- 11.4 If the period above is held by a court or tribunal of competent jurisdiction to be void or unenforceable, such provisions will apply with such modification to the relevant wording as required to make them valid and enforceable.

## 12 Data Protection and Marketing

- 12.1 For the purpose of this clause 'data controller' and 'processing' shall have the meaning given to it in the Data Protection Legislation.
- 12.2 Both parties agree to comply with their respective obligations under the Data Protection Legislation with regard to any data to be provided by the Client to Ward for the purpose of a SOW/SLA or Quote including but not limited to Personal Data, to the extent it applies to each of them.
- 12.3 Where during the provision of the Services to the Client, Ward will or may as a consequence of the Service being provided to the Client process personal data as a processor on behalf of the Client, unless an agreement has already been entered into between Ward and the Client in relation to the Services. Ward's standard [Data Protection Agreement](#) will form part of the Contract.
- 12.4 The Client acknowledges, consents and grants Ward the necessary authorisation for the use of the Client's name (or an anonymised version thereof), a reproduction of its logo (if applicable) and a brief description of Deliverables provided (provided such Deliverables are anonymised or non-confidential) in Ward's promotional and marketing materials and website.

## 13 TUPE

- 13.1 For the purposes of this clause 13, "TUPE" means where Deliverables are provided within the EU, other than solely within the UK, TUPE shall be deemed to mean the EU Council Directive 77/187 of 14 February 1997 (the "**Acquired Rights Directive**"), as amended or replaced from time to time, or any other applicable local legislation implementing the Acquired Rights Directive or similar local legislation or other legal requirement which provides for the automatic transfer of workers in connection with the transfer of a business or change in service provider.
- 13.2 The parties hereto consider and intend that the commencement of the provision of Deliverables by Ward under the Contract will not constitute a relevant transfer for the purposes of TUPE and accordingly if any employee of or any person engaged by the Client ("**Client Personnel**") assert or establish that their employment or any claim, right or liability in connection with their employment or the termination of that employment has transferred to Ward upon commencement of Deliverables pursuant to the Contract under TUPE:
  - 13.2.1 the Client shall indemnify Ward and keep Ward fully indemnified, up to the date being six (6) months after the commencement of the provision of Deliverables by Ward, against all liabilities to or in respect of or on behalf of such Client Personnel incurred by Ward arising out of the employment of or the termination of employment of such Client Personnel prior to the commencement of Deliverables by Ward and against all and any costs, expenses or damages reasonably incurred by Ward in contesting any claim in respect thereto; and

13.2.2 Ward shall be entitled to terminate that person's employment and, provided that such termination occurs within three (3) months of Ward becoming aware of the Client Personnel asserting or establishing that their employment has transferred to Ward shall be indemnified and kept indemnified by the Client in respect of all awards, losses, damages, costs, liabilities, expenses and legal fees which it may reasonably sustain arising under or in connection with that person's contract of employment and/or the termination of their employment.

13.3 The parties also consider and intend that the termination or expiry of the provision of the Deliverables by Ward under the Contract will not constitute a relevant transfer for the purposes of TUPE and accordingly if any Ward employee asserts or establishes that their employment or any claim, right or liability in connection with their employment or the termination of that employment has transferred to the Client pursuant to TUPE at any time arising from or in connection the provision of Deliverables or the termination or expiry of Deliverables Ward shall indemnify the Client up to the date being three (3) months after the termination or expiry of the provision of Deliverables by Ward, in respect of all awards, losses, damages, reasonable costs, liabilities, expenses which it may reasonably sustain arising under or in connection with that person's contract of employment and/or the termination of their employment.

#### **14 Disputes**

14.1 Any disputes arising between the Parties in relation to or in connection with the Contract shall, where applicable, initially be dealt with in accordance with the Escalation Path.

14.2 Any controversy or claim arising out of or in connection with the Contract which cannot be resolved through the Escalation Path may on the agreement of both parties be resolved by mediation or where both parties do not agree to mediation or the mediation process does not resolve the dispute between the parties shall be settled by arbitration.

14.3 The place of arbitration shall be Dublin, Ireland. The language to be used in the arbitral proceedings shall be English. The Arbitration Tribunal shall consist of a single arbitrator appointed by agreement between the Parties or, failing agreement between the Parties within thirty (30) days after a request for arbitration is made by any Party, appointed on the application of any party by the President for the time being of the Law Society of Ireland or in the event of his being unwilling or unable to do so by the next senior officer of the Law Society of Ireland who is willing and able to make the appointment. These provisions shall apply also to the appointment (whether by agreement or otherwise) of any replacement arbitrator where the original arbitrator (or any replacement) has been removed by Order of the High Court, or refuses to act, or is incapable of acting or dies. The decision of the arbitrator shall be final and binding on both parties.

#### **15 Intellectual Property**

15.1 Except for as expressly stated in this clause no Intellectual Property Rights of either party are transferred or licensed as a result of these Terms.

15.2 Subject to any other terms expressly agreed by the parties or as set out in these Terms, each party grants the other a royalty-free, non-exclusive, non-transferable licence (or, where relevant an appropriate sublicense) of such of its Intellectual Property Rights as are necessary to enable the other party to fulfil its obligations under the Contract or solely to the extent necessary to make use of the Deliverables supplied under the Contract but not otherwise and in the case of the Client for internal purposes only.

15.3 The Client:

15.3.1 will not use the Intellectual Property Rights of Ward or Ward Materials ( "**Ward Property**" ) for any other purpose;

15.3.2 will not modify or reverse engineer or take any similar action in relation to any propriety software of Ward (except so far as required for interoperability); and

15.3.3 may sublicense its Affiliates to use Ward Property on the terms of this clause 15, and provided that the Client is liable for any breaches by them of such terms, but will not otherwise assign, sublicense or deal with Ward Property.

15.4 For the avoidance of doubt, unless otherwise provided in a SOW or SLA, any Intellectual Property Rights which may be created by Ward during the performance of any SOW or SLA or otherwise in or arising out of or in connection with the provision of Deliverables to the Client, including, without limitation, ideas, know-how, techniques, enhancements or modifications to Ward's software source code or documentation, and any software scripts, shall be the property of Ward.

15.5 In the event that the Client does not pay all fees due and owing by it by the Due Date or breaches the Contract, Ward reserves the right to revoke any licence granted to the Client in accordance with this clause 15.

- 15.6 The Client acknowledges that, in respect of any third party Intellectual Property Rights, the Client's use of any such Intellectual Property Rights is conditional on Ward obtaining a written licence from the relevant licensor on such terms as will entitle Ward to license such rights to the Client. The Client hereby agrees to comply the terms of any such licence and hereby indemnifies and agrees to keep indemnified Ward for any loss suffered by Ward for breach of any such licence.

- 15.7 All Ward Property is the exclusive property of Ward.

## **16 Change Control Procedure**

- 16.1 At any time the Client may request and Ward may recommend changes to the scope of the Deliverables the subject of a SOW/SLA and/or Quote in accordance with the change control procedure set out in the SOW or SLA.

## **17 Termination**

- 17.1 In addition to any other remedies or rights which either Party may have at law or in equity, either Party shall be entitled to terminate the Contract:

17.1.1 by giving sixty (60) days written notice to the other Party if that other Party is in breach of its obligations under these Terms and/ or a SOW/SLA and/or Quote and does not rectify the breach within sixty (60) days of being requested to do so in writing; or

17.1.2 immediately on written notice if an Insolvency Event occurs in respect of the other Party.

- 17.2 Without limiting its other rights or remedies, Ward may terminate the Contract with immediate effect by giving written notice to the Client if:

17.2.1 the Client fails to pay any amount due under this Contract on the due date for payment and fails to pay all outstanding amounts within fourteen (14) days after being notified in writing to do so; or

17.2.2 the Client is in breach of the Contract;

17.2.3 the Client suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or

17.2.4 the Client's financial position deteriorates to such an extent that in Ward's opinion the Client's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

- 17.3 In the event of termination of the Contract for any reason, the Client will pay all outstanding amounts due to Ward (including fees and expenses) up to the date any SOW/SLA ends.

- 17.4 On termination of the Contract for any reason:

17.4.1 the Client shall immediately pay to Ward all of Ward's outstanding unpaid invoices and interest, if applicable, and, in respect of Deliverables supplied but for which no invoice has been submitted, Ward shall submit an invoice, which shall be payable by the Client immediately on receipt; and

17.4.2 the Client shall return all of Ward's Materials and any deliverables which have not been fully paid for. If the Client fails to do so, then Ward may enter the Client's premises and take possession of them. Until they have been returned, the Client shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.

- 17.5 Any termination of the Contract shall not affect any accrued rights or liabilities of either Party nor shall it affect the coming into force or the continuance in force of any provision of these Terms, which is expressly or by implication intended to come into force on or survive termination.

## **18 General**

- 18.1 **Nature of Agreement:** - Nothing in these Terms shall (i) constitute or be deemed to constitute a partnership, agency or joint venture between the Parties hereto or constitute or be deemed to constitute either Party the agent of the other for any purpose whatsoever; nor (ii) preclude Ward from providing similar or any other Products and/or Services to any other person or entity, other than the Client.

- 18.2 **Waiver:** - No delay, act or omission by either party in exercising any right or remedy will be deemed a waiver of that, or any other, right or remedy. The waiver by any Party of a breach or default of any of the provisions of these Terms or a SOW/SLA and/or Quote by the other Party, shall not be effective unless in writing and signed by the Party granting the waiver.

- 18.3 **Notice:** - Any notice or other communication given or made under these Terms shall be in writing and may be delivered to the relevant Party or sent by pre-paid registered post to the address of that Party specified in these Terms or such other address as may be notified hereunder by that Party from time to time for this purpose and will be effective notwithstanding any change of address not so notified. Unless the contrary is proved, each such notice or communication will be deemed to have been given or made and delivered, if by post 48 hours after posting, if by delivery when left at the relevant address.

- 18.4 **Assignment and other dealings:-** Ward may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or

delegate in any manner any or all of its obligations under the Contract to any third party or agent. The Client shall not, without the prior written consent of Ward, assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract.

- 18.5 **Time:** - Unless stated otherwise, time is not of the essence of any date or period specified in the Contract.
- 18.6 **Succession:** - The Contract will bind and benefit each party's successors and personal representatives.
- 18.7 **Severability:** - The finding by a court or administrative body of competent jurisdiction that a provision of the Contract is invalid or unenforceable shall not affect the validity or enforceability of the other provisions of the Contract.
- 18.8 **Governing Law and Jurisdiction:** - The Contract shall be governed by and construed by the laws of the Ireland and the Parties submit, subject to the provisions of clause 14, to the exclusive jurisdiction of the courts of the Ireland.