

# Terms and Conditions

The Customer's attention is brought specifically to the limitation of liability provisions set out at paragraph 9 of these Conditions.

## 1. DEFINITIONS AND INTERPRETATION

1.1 The following terms shall have the following meanings in this Contract:

**Affiliate:** means, in relation to a party, each and any subsidiary or holding company of that party and each and any subsidiary of a holding company of that party.

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

**Business Hours:** the period from 9:00 am to 5:00 pm on any Business Day.

**Charges:** the charges payable by the Customer for the supply of the Services, made up of the Installation Fee and Licensing Fee, and any other charges that may be agreed by the parties from time to time.

**ClearVUE.Zero Services:** means:

(a) the energy consumption monitoring services provided by the Supplier to the Customer via the ClearVUE.Zero Software and Website; and

(b) any agreed supplementary services, as more particularly described in the Scope of Services.

**ClearVUE.Zero Software:** the web-based applications provided by the Supplier as part of the ClearVUE.Zero Services.

**Contract:** this contract for the supply of Services, incorporating the Order Form and the Conditions.

**Contract Date:** the date on which the Contract is signed by all parties.

**Conditions:** these terms and conditions as amended from time to time in accordance with paragraph 15.3, and references to **paragraphs** shall be to the paragraphs of these Conditions.

**Confidential Information:** means all confidential information (however recorded or preserved) disclosed by either party in connection with this Contract, including (in relation to the Supplier): the Software, details of the Services, the results of any performance tests of the Services and any other information that is proprietary or confidential to the Supplier.

**Control:** has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression **change of Control** shall be construed accordingly.

**Customer:** the customer engaging the Supplier for the Services, as more particularly set out in the Order Form.

**Customer Data:** the data inputted by the Customer, or the Supplier on the Customer's behalf, for the purpose of using the ClearVUE.Zero Services or facilitating the Customer's use of the ClearVUE.Zero Services.

**Customer Infrastructure:** any plant, machinery, electrical circuits and circuit boards, and other equipment situated at the Premises under the possession or control of the Customer that must be worked upon by the Supplier and/or the Customer for the purpose of the Installation Services.

**Disaster Recovery Policy:** the Supplier's disaster recovery policy, available upon request, as such document may be amended by the Supplier in its sole discretion from time to time.

**Embedded Software:** the software embedded in the Hardware.

**EULA:** the end user licence agreement through which the ClearVUE.Zero Software is licensed to the Customer by NGP EMS, a copy of which can be found here: <https://clearvue.business/go/eula>.

**Extended Term:** shall have the meaning set out in paragraph 2.3.

**Go-Live Date:** the date on which the ClearVUE.Zero Services are fully onboarded and operational, as confirmed in the Go-Live Email.

**Go-Live Email:** the email, sent by the Supplier to the Customer, confirming the Go-Live Date and the Initial Term.

**Hardware:** energy consumption monitoring equipment to be installed at the Customer's Premises in accordance with the Scope of Services.

**Initial Term:** the initial term of this Contract, as set out in the Order Form and confirmed in the Go-Live email.

**Installation Date:** the date on which the Installation Services commence.

**Installation Fee:** the fee payable by the Customer to the Supplier for the Installation Services, as more particularly set out in the Order Form and as may be amended as provided for in the Contract.

**Installation Services:** the installation of the Hardware into the Customer's Premises, as more particularly described in the Scope of Services.

**Intellectual Property Rights:** patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks 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.

**Licence Term:** the period commencing on the Go-Live Date and continuing until the end of the Term.

**Licensing Fee:** the license fee payable by the Customer to the Supplier for the ongoing use of the ClearVUE.Zero Services, as more particularly set out in the Order Form and as may be amended as provided for in the Contract.

**NGP EMS:** has the meaning given in paragraph 7.6.

**Order Form:** the order form as agreed between the Customer and the Supplier, which sets out the commercial details of the Contract and which incorporates the Conditions.

**Premises:** the site or sites at which the Hardware is to be installed, as set out in the Order Form and/or Technical Document.

**Purpose:** the Supplier providing, and the Customer receiving, the Services as set out in the Contract.

**Representative:** shall mean in relation to each party and its Affiliates: (a) its officers and employees; (b) its professional advisors or consultants; (c) its contractors and sub-contractors; and (d) any other person to whom the Disclosing Party (as defined in paragraph 8.1) agrees in writing that Confidential Information may be disclosed to.

**Scope of Services:** the description of the Services to be provided by the Supplier to the Customer as set out in the Order Form and the Technical Document.

**Services:** the services, including the Installation Services and the ClearVUE.Zero Services, to be supplied by the Supplier to the Customer as set out in the Scope of Services.

**Software:** the ClearVUE.Zero Software and the Embedded Software.

**Supplier:** means CLEARVUE.BUSINESS LIMITED (company number 11168859) with registered address at Baltic Place East Tower, South Shore Road, Gateshead, NE8 3AE.

**Term:** the period commencing on the Contract Date and continuing until the end of the Initial Term or Extended Term as the case may be, unless terminated as provided for in the Contract.

**Technical Document:** means the technical information document, provided by the Supplier to the Customer and setting out the technical details of the Services to be provided, as may be amended in accordance with the terms of this Contract.

**Virus:** any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

**Website:** the document made available to the Customer by the Supplier online via <https://pro.clearvuesystems.co.uk/> or such other web address notified by the Supplier to the Customer from time to time.

1.2 Unless expressly provided otherwise in this Contract, a reference to legislation or a legislative provision:

(a) is a reference to it as amended, extended or re-enacted from time to time; and

(b) shall include all subordinate legislation made from time to time under that legislation.

1.3 Any words following the terms **including, include, in particular, for example** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.4 A reference to **writing** or **written** includes emails but not faxes.

1.5 References to the singular number includes the plural, and vice versa; and any reference to a gender shall be to all the genders.

1.6 A reference to a **party** shall be to the Customer or the Supplier (collectively, the **parties**).

## 2. TERM

2.1 The Contract shall commence on the Contract Date and shall, unless otherwise terminated as provided for in this Contract, continue until the end of the Initial Term.

2.2 Upon expiry of the Initial Term, the Contract shall thereafter automatically extend unless either party gives notice in writing to the other party, no less than 3 months before the expiry of the Initial Term, that it does not wish to extend beyond the Initial Term, in which case the Contract will expire at the end of the Initial Term.

2.3 Where no notice is served in accordance with paragraph 2.2, the Contract shall automatically extend upon expiry of the Initial Term until either party gives to the other 3 months' written notice to terminate (the **Extended Term**).

## 3. WARRANTIES

3.1 Each party warrants to the other party that it has full power and authority to enter into and perform its obligations under the Contract.

3.2 Subject to paragraph 3.3, the Supplier warrants that the Services will be performed materially in accordance with the Scope of Services and with reasonable care and skill.

3.3 The Supplier shall not be in breach of the warranty at paragraph 3.2 to the extent the infringement arises from:

(a) use of the ClearVUE.Zero Services or Hardware contrary to the Supplier's instructions;

(b) any modification or alteration of the Services, Software or Hardware by any party other than the Supplier or the Supplier's duly authorised contractors or agents; or

(c) any failure of the Supplier to perform the Services caused by the Customer's breach of this Contract.

3.4 If the Services do not conform with the warranty set out in paragraph 3.2, the Supplier will, at its option and expense, use all reasonable commercial endeavours to correct or replace any such non-conformance promptly. Such correction or replacement constitutes the

Customer's sole and exclusive remedy for any breach of the warranty at paragraph 3.2.

3.5 The Supplier shall use all reasonable endeavours to meet any performance dates specified in the Scope of Services, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

3.6 The Contract shall not prevent the Supplier from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under the Contract.

3.7 The Supplier warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under the Contract.

3.8 The warranties provided by the Supplier under this Contract are set out in this paragraph 3 and all other warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from the Contract.

3.9 The Supplier reserves the right to amend the Scope of Services and/or update the Software if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially negatively affect the nature or quality of the Services.

## 4. CUSTOMER OBLIGATIONS

4.1 The Customer shall:

(a) provide the Supplier with:

(i) all necessary co-operation in relation to this Contract; and

(ii) all information and materials (and access to such information and materials);

as may be required by the Supplier in order to provide the Services and the Customer shall ensure that any information as may be required by the Supplier (in accordance with paragraph 4(a)(ii) or otherwise) is complete and accurate in all material respects;

(b) without affecting its other obligations under the Contract, comply with all applicable laws and regulations with respect to its activities under the Contract;

(c) carry out all Customer responsibilities set out in the Contract in a timely and efficient manner;

(d) provide the Supplier, its employees, agents, consultants and sub-contractors, with access to the Customer's Premises, office accommodation and other facilities as reasonably required by the Supplier;

(e) obtain and shall maintain all necessary licences, consents, and permissions necessary for the Supplier, its contractors and agents to perform their obligations under the Contract, including without limitation the Services;

(f) keep the Hardware and all other materials, equipment, documents and other property of the Supplier (the **Supplier Materials**) at the Customer's Premises in safe custody at its own risk, maintain the Hardware and Supplier Materials in good condition until returned to the Supplier, insure the Hardware and Supplier Materials against fire, theft or malicious damage and not dispose of or use the Hardware or Supplier Materials other than in accordance with the Supplier's written instructions or authorisation;

(g) where the Hardware suffers damage or default, notify the Supplier immediately and, where such damage or default arises due to the acts or omissions of the Customer or a third party, the Customer shall reimburse the Supplier for the cost of any required repair or replacement of the Hardware, including but not limited to mileage costs at 45p per mile and the costs of labour at the rate of £500 per day per person;

(h) ensure that its network and systems comply with the relevant specifications set out in the EULA or as provided by the Supplier from time to time;

(i) maintain the confidentiality of security access information (including but not limited to usernames and passwords) and immediately

notify the Supplier of any unauthorised use of the ClearVUE.Zero Software or Website;

- (j) comply with the Conditions, Scope of Services and EULA in all respects;
  - (k) not access, store, distribute or transmit any Viruses, or any material during the course of its use of the ClearVUE.Zero Services that:
    - (i) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
    - (ii) facilitates illegal activity;
    - (iii) depicts sexually explicit images;
    - (iv) promotes unlawful violence;
    - (v) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
    - (vi) is otherwise illegal or causes damage or injury to any person or property,and the Supplier reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any material that breaches the provisions of this paragraph;
  - (l) be, to the extent permitted by law and except as otherwise expressly provided in the Contract, solely responsible for procuring, maintaining and securing its network connections and telecommunications links from its systems to the Supplier's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet; and
  - (m) by the dates agreed with the Supplier (or where there is no such agreement within a reasonable time of the Supplier's request), undertake and complete any works or actions as may be required by the Supplier to ensure the proper preparation of the Premises and any Customer Infrastructure, and the implementation of all network connections, telecommunications links, internet connection, power, and health and safety measures (including, if appropriate, a shutdown of all or part of the Premises) necessary for the provision of the Services at the Premises, and/or any other works or actions that may be identified by the Supplier as being reasonable and necessary for the provision of the Services at the Premises.
- 4.2 The Customer shall not use the ClearVUE.Zero Services, Software or Website in any way that would in the Supplier's reasonable opinion materially affect the use of or access to the ClearVUE.Zero Services, Software or Website of any other user of the ClearVUE.Zero Services, or would lead to the Supplier incurring additional charges from its own third party suppliers. Where the Supplier deems that the Customer is using the ClearVUE.Zero Services, Software or Website in such a way, the Supplier may at its sole option:
- (a) limit or manage the Customer's use of, or access to, the ClearVUE.Zero Services; and/or
  - (b) amend the ClearVUE.Zero Services, (including without limitation, transmission speed or access rate).
- 4.3 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):
- (a) without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
  - (b) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default; and
  - (c) the Customer shall remain liable for the Charges.

## 5. INDEMNITY

- 5.1 The Customer shall defend, indemnify and hold harmless the Supplier, its employees, consultants, agents and sub-contractors against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's breach of its obligations under the Contract or otherwise arising out of or in connection with the Customer's negligent or reckless use of the ClearVUE.Zero Services, Software and/or Website, provided that:
- (a) the Customer is given prompt notice of any such claim;
  - (b) the Supplier provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
  - (c) the Customer is given sole authority to defend or settle any relevant claim.
- 5.2 The Supplier shall defend the Customer, its officers, directors and employees against any claim that the Customer's use of the ClearVUE.Zero Services, Software or Website in accordance with the Contract infringes any United Kingdom patent effective as of the Contract Date, copyright, trade mark, database right or right of confidentiality (**IP Claim**), and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of any such IP Claim, provided that:
- (a) the Supplier is given prompt notice of any such IP Claim;
  - (b) the Customer does not make any admission, or otherwise attempt to compromise or settle the IP Claim and provides reasonable co-operation to the Supplier in the defence and settlement of such IP Claim, at the Supplier's expense; and
  - (c) the Supplier is given sole authority to defend or settle the IP Claim.
- 5.3 In the defence or settlement of any IP Claim, the Supplier may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, suspend the Services with immediate effect and terminate the Contract on 2 Business Days' notice to the Customer without any additional liability or obligation to pay liquidated or other damages or other additional costs to the Customer. The Customer shall not be obliged to pay the Charges (or relevant part thereof) during any period in which the Services are not available due to an IP Claim.
- 5.4 In no event shall the Supplier, its employees, agents and sub-contractors be liable to the Customer to the extent that:
- (a) the alleged infringement is based on a modification of the Services, Software or Website by anyone other than the Supplier;
  - (b) the alleged infringement is based on the Customer's use of the Services, Software or Website in a manner contrary to the instructions given to the Customer by the Supplier; or
  - (c) the alleged infringement is based on the Customer's use of the Services, Software or Website after notice of the alleged or actual infringement from the Supplier or any appropriate authority.
- 5.5 Subject to paragraph 9.3(b), the foregoing states the Customer's sole and exclusive rights and remedies, and the Supplier's (including the Supplier's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any Intellectual Property Right or right of confidentiality.

## 6. PAYMENT

- 6.1 The Customer shall pay the Charges and any other fees payable under this Contract in accordance with this paragraph 6.
- 6.2 The Supplier shall invoice the Customer in accordance with the invoicing terms set out in the Order Form.
- 6.3 The Customer shall pay any invoice submitted by the Supplier:
- (a) in accordance with the payment terms set out in the Order Form; and

- (b) in full and in cleared funds to a bank account nominated in writing by the Supplier.
- 6.4 Time for payment shall be of the essence of the Contract.
- 6.5 If the Supplier has not received payment within 30 days of the due date, and without prejudice to any other rights and remedies of the Supplier:
- the Supplier may, without liability to the Customer, disable the Customer's password, account and access to all or part of the ClearVUE.Zero Services, Software and/or the Website and the Supplier shall be under no obligation to provide any or all of the Services, Software or Website while the invoice(s) concerned remain unpaid; and
  - interest shall accrue on a daily basis on such due amounts at an annual rate equal to 4% over the Bank of England's base rate from time to time (but at 4% a year for any period when that base rate is below 0%) commencing on the due date and continuing until fully paid, whether before or after judgment.
- 6.6 All Charges and fees stated or referred to in the Contract:
- shall be payable in pounds sterling; and
  - are exclusive of value added tax, which shall be added to the Supplier's invoice(s) at the appropriate rate.
- 6.7 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).
- 6.8 The Supplier may in its sole discretion undertake a pre-installation site survey of the Premises at which the Hardware is to be installed (**Survey**). Upon completion of the Survey, the Supplier may in its sole discretion determine that the Technical Document requires amendments (including, but not limited to, as a result of safety, unsuitable proposed location for the Hardware, or resulting from a Customer request). Where the Technical Document requires such amendment, the updated Technical Document shall be provided to the Customer not less than 24 hours before the Installation Date.
- 6.9 Should the Supplier be unable to provide the Installation Services as a result of:
- the Customer's breach of the Contract; or
  - in the reasonable opinion of the Supplier the Premises are unsuitable (including, but not limited to, the presence of asbestos or lack of space or other safety issues),
- the Supplier may terminate this Contract and the Supplier shall not be entitled to payment for the Installation Fee or Licensing Fee but shall be entitled to invoice the Customer for the abortive costs the Supplier has reasonably incurred in attending at the Premises, including but not limited to mileage costs at 45p per mile and the costs of labour at the rate of £500 per day per person. The Supplier shall be entitled to set-off any amounts owed to it for such abortive costs under this paragraph against any amounts already paid by the Customer.
- 6.10 Following expiry of the Initial Term, the Supplier may adjust the Licensing Fees at any time during the Extended Term on not less than 30 days prior written notice to the Customer.
- 6.11 At any time during the Term, if:
- the Customer requests amendments to the Scope of Services; or
  - the cost to the Supplier of supplying the Services or otherwise performing its obligations under the Contract are increased due to a change in applicable law,
- the Supplier may increase the Charges by a reasonable and proportionate amount.
7. **PROPRIETARY RIGHTS**
- 7.1 The Supplier confirms that it and/or its licensors have all the rights in relation to the ClearVUE.Zero Services, Software and the Website that are necessary to grant all the rights they purport to grant under, and in accordance with, the terms of the Contract and the EULA.
- 7.2 Except as expressly stated herein, the Contract does not grant the Customer any rights to, under or in:
- any Intellectual Property Rights; or
  - any licences, in respect of the ClearVUE.Zero Services, the Software or the Website.
- 7.3 The Customer grants the Supplier a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials (including Customer Data) provided by the Customer to the Supplier from the Go-Live Date until the end of the License Term for the purpose of providing the Services to the Customer.
- 7.4 Ownership of the Hardware and Supplier Materials shall at all times remain with the Supplier and/or its licensors and nothing in the Contract shall constitute transfer of title in the same to the Customer or any other party.
- 7.5 The Customer shall own all right, title and interest in and to all of the Customer Data that is not personal data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all Customer Data.
- 7.6 The Customer acknowledges that the ClearVUE.Zero Software is owned by and licenced through NGP EMS Limited (**NGP EMS**) and the Customer must agree to the terms of the EULA in order to access and use the ClearVUE.Zero Software. Subject to agreement to the EULA by the Customer, NGP EMS shall grant the Customer a non-exclusive, non-transferable licence to use the ClearVUE.Zero Software, subject to the terms of the EULA.
8. **CONFIDENTIALITY**
- 8.1 Either party (the **Receiving Party**) may be given access to Confidential Information belonging to the other party (the **Disclosing Party**) in order to perform its obligations or exercise its rights under the Contract.
- 8.2 The Confidential Information shall not be deemed to include information that:
- is or becomes publicly known other than through any act or omission of the Receiving Party;
  - was in the Receiving Party's lawful possession before the disclosure;
  - is lawfully disclosed to the Receiving Party by a third party without restriction on disclosure; or
  - is independently developed by the Receiving Party which independent development can be shown by written evidence.
- 8.3 Subject to paragraphs 8.5 to 8.7 (inclusive), the Receiving Party shall:
- not use the Confidential Information for any purpose other than to perform its obligations under the Contract; and
  - hold the Confidential Information it receives under this Contract in confidence and shall not disclose, disseminate or otherwise publish or communicate the Confidential Information to any person, firm, corporation or other third party without the prior written consent of the Disclosing Party.
- 8.4 The Receiving Party shall notify the Disclosing Party in writing immediately upon discovery of any unauthorised use or disclosure of Confidential Information and will cooperate with the Disclosing Party in every reasonable way to regain possession of Confidential Information and prevent any further unauthorised use.
- 8.5 The Receiving Party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the Disclosing Party as much notice of such disclosure as possible.
- 8.6 The Receiving Party may disclose the Disclosing Party's Confidential Information to the Receiving Party's Representatives and any of its Affiliates or their Representatives, subject to the Receiving Party informing those Representatives and Affiliates of the confidential nature of the Confidential Information before it is disclosed and procuring that such Representatives and Affiliates comply with the confidentiality obligations of this paragraph 8.
- 8.7 The Supplier shall be entitled to use the Confidential Information of the Customer to produce promotional case studies, subject to the Supplier

ensuring such information is anonymised so that the Customer cannot be identified from such information.

8.8 The confidentiality obligations of this paragraph 8 shall apply both during the Term of this Contract and for a period of at least 3 years afterwards, provided, however, that any source code relating to the Software shall be held in confidence in perpetuity.

## 9. LIMITATION OF LIABILITY

9.1 Except as expressly and specifically provided in the Contract:

- (a) the Customer assumes sole responsibility for results obtained from the use of the ClearVUE.Zero Services, Software and the Website by the Customer, and for conclusions drawn from such use; and
- (b) the Supplier shall have no liability for:
  - (i) any damage caused by errors or omissions in any information, instructions or scripts provided to the Supplier by the Customer in connection with the Services, or any actions taken by the Supplier at the Customer's direction;
  - (ii) any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Customer's failure or delay to perform any of its obligations under the Contract;
  - (iii) delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the ClearVUE.Zero Services, Software and/or Website may be subject to limitations, delays and other problems inherent in the use of such communications facilities; and
  - (iv) any loss or damage caused to the Customer by the shutting-down of all or part of the Premises or the switching-off of any Customer Infrastructure that is necessary, or agreed between the parties as desirable, for the provision of the Installation Services.

9.2 Nothing in the Contract excludes the liability of either party for:

- (a) death or personal injury caused by that party's negligence;
- (b) fraud or fraudulent misrepresentation; or
- (c) any other liability that cannot be limited or excluded by law.

9.3 Subject to paragraphs 9.1, 9.2 and 9.7:

- (a) the Supplier shall have no liability whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for:
  - (i) loss of profits, sales, business, or revenue;
  - (ii) business interruption;
  - (iii) loss of anticipated savings (unless expressly agreed in the Contract);
  - (iv) loss of business opportunity, goodwill or reputation; or
  - (v) any other special, indirect or consequential loss, damage, charges or expenses arising under or in connection with the Contract; and
- (b) the Supplier's total aggregate liability, whether in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the total of the Licensing Fee and the Installation Fee.

9.4 The Customer is responsible for making its own arrangements for the insurance of any loss in excess of the Supplier's total aggregate liability under paragraph 9.3(b).

9.5 Unless the Customer notifies the Supplier that it intends to make a claim in respect of an event within the notice period, the Supplier shall have no liability for that event. The notice period for an event shall start on the day on which the Customer became, or ought reasonably to have become, aware of the event having occurred and shall expire 2 years from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

9.6 The Supplier is under no obligation to install the Hardware in any premises which in the reasonable opinion of the Supplier are unsuitable (including, but not limited to, the presence of asbestos or

live components, lack of space or other safety issues). The Supplier shall not be liable to the Customer for any costs or losses incurred as a result of the Premises being unsuitable and the provisions of paragraph 6.9 shall apply.

9.7 The Supplier shall follow its archiving procedures for Customer Data as set out in its Disaster Recovery Policy. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for the Supplier to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by the Supplier in accordance with the archiving procedure described in its Disaster Recovery Policy. The Supplier shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by the Supplier to perform services related to Customer Data maintenance and back-up for which it shall remain fully liable).

9.8 This paragraph 9 shall survive termination of the Contract.

## 10. TERMINATION

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

- (a) the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of the Customer being notified in writing to do so;
- (b) the Customer 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), applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, 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;
- (c) the Customer suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business;
- (d) the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy;
- (e) there is a change of Control of the Customer; or
- (f) the EULA is terminated in accordance with its terms.

10.2 Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services under the Contract or any other contract between the Customer and the Supplier if:

- (a) the Customer fails to pay any amount due under the Contract by the relevant date as per paragraph 6.5(a); or
- (b) the Customer becomes subject to any of the events listed in paragraph 10.1(b) to paragraph 10.1(e), or the Supplier reasonably believes that the Customer is about to become subject to any of them.

10.3 The Customer may terminate the Contract upon 30 days' written notice if the Supplier:

- (a) commits a material breach of the Contract and fails to remedy that breach within 30 days of the Supplier being notified in writing to do so; or
- (b) enters administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtains a moratorium under Part A1 of the Insolvency Act 1986, is wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring),

has a receiver appointed to any of its assets or ceases to carry on business.

## 11. CONSEQUENCES OF TERMINATION

11.1 On termination of the Contract for any reason:

- (a) all licences granted under the Contract and the EULA shall immediately terminate and the Customer shall immediately cease all use of the ClearVUE.Zero Services, Software and the Website;
- (b) the Customer shall return and make no further use of the Hardware and any Supplier Materials (and all copies of them) belonging to the Supplier;
- (c) the Customer may request in writing for the delivery to the Customer of the then most recent copy of the Customer Data (such request to be made no later than ten days after the effective date of termination of the Contract). The Supplier shall use reasonable commercial endeavours to deliver the copy of Customer Data to the Customer within 30 days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and Charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by the Supplier in returning or disposing of Customer Data;
- (d) any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination shall not be affected or prejudiced; and
- (e) in the event that the Customer does not comply with its obligations pursuant to paragraph 11.1(b) within 30 days, the Supplier may at the Customer's cost enter the Customer's Premises and take possession of the Hardware and any Supplier Materials. Until such Hardware and Supplier Materials have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose.

11.2 The Supplier shall retain a copy of the Customer Data for a period of 6 years following the termination of this Contract (or longer where necessary, for example in connection with an ongoing dispute with the Customer), after which the Customer Data shall be anonymised so that the Customer is no longer identifiable from such data.

11.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

## 12. DATA PROTECTION

12.1 Unless the context otherwise requires, for the purposes of this paragraph 12:

- (a) **Data Protection Legislation:** means all applicable data protection and privacy legislation in force from time to time including: the GDPR; the Data Protection Act 2018 (and regulations made thereunder); and the Privacy and Electronic Communications Regulations 2003 (SI 2003 No. 2426) as amended;
- (b) **EU GDPR:** means the General Data Protection Regulation ((EU) 2016/679);
- (c) **GDPR:** means the EU GDPR or the UK GDPR (as applicable);
- (d) **UK GDPR:** has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018; and
- (e) the terms **controller**, **processing** (and **process** and **processed** shall be construed accordingly), **personal data** and **personal data breach** shall be interpreted and construed by reference to Data Protection Legislation.

12.2 The parties acknowledge that for the purposes of the Data Protection Legislation, to the extent that personal data is shared in connection with this Contract, each party shall process such personal data as an independent controller.

12.3 Each party shall:

- (a) comply with its obligations under Data Protection Legislation with respect to the personal data it processes;
- (b) not intentionally do or omit to do anything that would cause the other party to breach its obligations under Data Protection Legislation; and
- (c) promptly (and without undue delay) notify the other party in writing of any personal data breach of which it becomes aware relating to personal data of the other to the extent such personal data breach is likely to affect the other party.

## 13. FORCE MAJEURE

13.1 Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.

## 14. ENTIRE AGREEMENT

14.1 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter, save for any confidentiality or non-disclosure agreement relating to the Purpose.

14.2 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

14.3 Save for those matters set out in the Scope of Services, any samples, drawings, descriptive matter or advertising issued by the Supplier, and any descriptions or illustrations contained in the Supplier's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them and shall not form part of the Contract or have any contractual force. Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract.

14.4 Nothing in this paragraph 14 shall limit or exclude any liability for fraud.

## 15. GENERAL

15.1 The Supplier 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.

15.2 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 the Supplier.

15.3 Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives)

15.4 A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or default. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

15.5 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 this Contract is deleted under this

- paragraph 15.5, the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 15.6 Nothing in the Contract is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).
- 15.7 Except as expressly provided in the Contract, the rights and remedies provided under this Contract are in addition to, and not exclusive of, any rights or remedies provided by law.
- 15.8 Use of the ClearVUE.Zero Services, Software or Website contrary to the Contract, or any transfer, sublicensing, copying or disclosure of technical information or materials related to the Services, may cause irreparable injury to the Supplier and/or its Affiliates, suppliers, employees, agents, consultants and sub-contractors such that damages alone would not be an adequate remedy for any breach of the Contract, and under such circumstances the Supplier, its Affiliates, suppliers, employees, agents, consultants and sub-contractors will be entitled to equitable relief, including, but not limited to, preliminary and permanent injunctive relief.
- 15.9 Unless it expressly states otherwise, 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. The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.
16. **NOTICES**
- 16.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be:

- (a) delivered by hand or by pre-paid first-class post or other next working day delivery service to the party's registered address; or
- (b) sent by email to the following addresses (or an address substituted in writing by the party to be served):
- (i) **Supplier:** [customer.support@clearvue.business](mailto:customer.support@clearvue.business) and [legal.team@clearvue.business](mailto:legal.team@clearvue.business)
- (ii) **Customer:** The address for communications with the Customer as set out in the Customer details section of the Order Form
- 16.2 Any notice shall be deemed to have been received:
- (a) if delivered by hand, at the time the notice is left at the proper address;
- (b) if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
- (c) if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume.
- 16.3 This paragraph 16 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.
17. **GOVERNING LAW AND JURISDICTION**
- 17.1 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.
- 17.2 Each party 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.