

TERMS AND CONDITIONS FOR SUPPLY OF SERVICES

THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF CLAUSE 11 (LIMITATION OF LIABILITY).

1. INTERPRETATION

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

1.1 Definitions:

Affiliate: includes, in relation to the Supplier, each and any subsidiary or holding company of the Supplier and each and any subsidiary of a holding company of the Supplier.

Applicable Laws: means:

- (a) To the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom.
- (b) To the extent EU GDPR applies, the law of the European Union or any member state of the European Union to which the Supplier is subject.

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

Charges: the charges payable by the Customer for the supply of the Services in accordance with clause 7 (Charges and payment).

ClearVUE.PRO Services: the energy consumption monitoring services provided by the Supplier to the Customer under the Contract via the Website which allows the Customer to view and organise the Customer's energy consumption data including (but not limited to) that collected by the Hardware, as more particularly described in the Scope of Proposal.

ClearVUE.PRO Software: the online software applications provided by the Supplier as part of the ClearVUE.PRO Services.

Commencement Date: is the date on which the Subscription Fee is paid.

Conditions: these terms and conditions as amended from time to time in accordance with clause 15.4.

Confidential Information: means 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 and is clearly labelled as such.

Contract: the contract between the Supplier and the Customer for the supply of Services in accordance with the Order and these Conditions.

Contract Term: the period commencing on the Effective Date and continuing until the end of the Subscription Term, unless terminated as provided for in the Contract.

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

Controller, Processor, Data Subject, Personal Data, Personal Data Breach, processing and appropriate technical and organisational measures: as defined in the Data Protection Legislation.

Customer: the person or firm who purchases Services from the Supplier as set out in the Order.

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

Customer Personal Data: any Personal Data which the Supplier processes in connection with this agreement, in the capacity of a processor on behalf of the Customer.

Customer Default: has the meaning set out in clause 6.3.

Data Protection Legislation:

- (a) To the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of personal data.
- (b) To the extent the EU GDPR applies, the law of the European Union or any member state of the European Union to which the Customer or Supplier is subject, which relates to the protection of personal data.

Effective Date: Has the meaning given in clause 2.2.

Embedded Software: the software embedded in the Hardware.

EU GDPR: the General Data Protection Regulation ((EU) 2016/679).

Hardware: energy consumption monitoring equipment to be installed at the Customer's Premises in accordance with the Proposal.

Heightened Cybersecurity Requirements: any laws, regulations, codes, guidance (from regulatory and advisory bodies, whether mandatory or not), international and national standards, industry schemes and sanctions, which are applicable to the Customer (but not the Supplier) relating to security of network and information systems and security breach and incident reporting requirements, which may include the cybersecurity Directive ((EU) 2016/1148), Commission Implementing Regulation ((EU) 2018/151), the Network and Information systems

Regulations 2018 (SI 506/2018), all as amended or updated from time to time.

Installation Date: has the meaning set out in clause 7.3.

Installation Fee: The amount required to be paid by the Customer on the Effective Date as set out in the Order.

Installation Services: The installation of the Hardware into the Customer's premises, as more particularly described in the Scope of Proposal.

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.

Order: the Customer's order for Services as set out in the Customer's Order Form.

Order Form: The form attached to the Proposal with the proposed Order.

Premises: The site or sites at which the Hardware is to be installed, as set out in the Proposal.

Proposal: A document signed by the Supplier, containing the proposed Scope of Proposal and Quotation.

Quotation: a quote for the cost of the Services to be supplied by the Supplier to the Customer as set out in the Proposal.

Scope of Proposal: the description or specification of the Services to be provided by the Supplier to the Customer as set out in the Proposal.

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

Software: the ClearVUE.PRO Software and the Embedded Software.

Subscription: the subscription purchased by the Customer pursuant to clause 7 which entitles the Customer to access and use the ClearVUE.PRO Services and the ClearVUE.PRO Website in accordance with the Contract.

Subscription Fee: the subscription fee payable by the Customer to the Supplier for the Subscription, as set out in the Order Form.

Subscription Term: the period commencing on the Commencement Date and continuing for the number of years set out in the Order Form, unless terminated as provided for in the Contract.

Supplier: Clearvue Systems Limited registered in England and Wales with company number 11168859.

Supplier Materials: has the meaning set out in clause 6.1(h).

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.

Vulnerability: a weakness in the computational logic (for example, code) found in software and hardware components that when exploited, results in a negative impact to the confidentiality, integrity, or availability, and the term **Vulnerabilities** shall be construed accordingly.

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

Interpretation:

- (a) Unless expressly provided otherwise in this Contract, a reference to legislation or a legislative provision:
 - (i) is a reference to it as amended, extended or re-enacted from time to time; and
 - (ii) shall include all subordinate legislation made from time to time under that legislation or legislative provision.
- (b) Any words following the terms **including, include, in particular, for example** or any similar expression, shall

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be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

- (c) A reference to **writing** or **written** includes faxes and emails.

2. BASIS OF CONTRACT

2.1 The Order constitutes an offer by the Customer to purchase the Services in accordance with these Conditions and the terms of the Order. The Order shall only be deemed to be made when the Customer sends to the Supplier the Order Form signed by the Customer.

2.2 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order by returning to the Customer the Order Form signed by both the Customer and the Supplier at which point and on which date the Contract shall come into existence (**Effective Date**).

2.3 Save for those matters set out in the Proposal, 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.

2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

2.5 Any Quotation given by the Supplier in the Proposal shall not constitute an offer, and is only valid for a period of 14 Business Days from its date of issue.

3. SUPPLY OF SERVICES

3.1 The Supplier shall, during the Subscription Term, provide the ClearVUE.PRO Services and make available the Website to the Customer on and subject to the terms of the Contract and in accordance with the Scope of Proposal in all material respects.

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

3.3 The Installation Services will not commence until the Installation Fee is paid.

3.4 The ClearVUE.PRO Services will not commence until the Subscription Fee is paid.

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

3.6 The ClearVUE.PRO Services are limited by a fair use policy. The Customer acknowledges that the ClearVUE.PRO Services are provided to other users and to preserve the integrity of the Services and to avoid degradation of the ClearVUE.PRO Services, the Supplier may limit the Customer's access to the Services. If, in the Supplier's reasonable opinion, it is considered necessary to limit the Customer's access to the Services, the Supplier may amend the ClearVUE.PRO Services, (including without limitation, transmission speed or access rate) or manage use of, or access to, the ClearVUE.PRO Services in any way the Supplier may see fit. These reasons include but are not limited to, any circumstances where the Customer does not exit from its account at the end of each session or is running an application or program that places excessive resource demands including but not limited to bandwidth and data to and from the ClearVUE.PRO Services.

4. SOFTWARE LICENCE

4.1 Subject to the Customer purchasing the Subscription in accordance with clause 7, the restrictions set out in this clause 4 and the other terms and conditions of the Contract, the Supplier grants to the Customer a non-exclusive, non-transferable right, without the right to grant sublicences, to permit the Customer to use the ClearVUE.PRO Services, the ClearVUE.PRO Software and the Website during the Subscription Term solely for the Customer's internal business operations.

4.2 The Customer shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that:

- (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
- (b) facilitates illegal activity;
- (c) depicts sexually explicit images;
- (d) promotes unlawful violence;
- (e) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
- (f) is otherwise illegal or causes damage or injury to any person or property;

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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 clause.

The Customer shall not:

- (a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under the Contract:
 - (i) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Website (as applicable) in any form or media or by any means; or
 - (ii) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or
- (b) access all or any part of the ClearVUE.PRO Services and Website in order to build a product or service which competes with the ClearVUE.PRO Services and/or the Website; or
- (c) use the ClearVUE.PRO Services and/or Website to provide services to third parties; or
- (d) subject to clause 15.2, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the ClearVUE.PRO Services and/or Website available to any third party; or
- (e) attempt to obtain, or assist third parties in obtaining, access to the ClearVUE.PRO Services and/or Website, other than as provided under this clause 4; or
- (f) introduce or permit the introduction of, any Virus or Vulnerability into the Supplier's network and information systems.

4.4

The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the ClearVUE.PRO Services and/or the Software and/or the Website and, in the event of any such unauthorised access or use, promptly notify the Supplier.

4.5

The rights provided under this clause 4 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer.

5. SUPPLIER OBLIGATIONS

5.1

The Supplier undertakes that the Services will be performed materially within the Scope of Proposal and with reasonable care and skill.

5.2

The undertaking at clause 5.1 shall not apply to the extent of any non-conformance which is caused by use of the ClearVUE.PRO Services contrary to the Supplier's instructions, or modification or alteration of the Services by any party other than the Supplier or the Supplier's duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, Supplier will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 5.1.

5.3

The Supplier:

- (a) does not warrant that:
 - (i) the Customer's use of the Software, Website and/or ClearVUE.PRO Services will be uninterrupted or error-free; or
 - (ii) that the ClearVUE.PRO Services, Website and/or the information obtained by the Customer through the Services will meet the Customer's requirements; or
 - (iii) the Software and/or Website will be free from Vulnerabilities or Viruses; or
 - (iv) the Software and/or Website will comply with any Heightened Cybersecurity Requirements.
- (b) is not responsible for any 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.PRO Services and Website may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

- 5.4 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 this the Contract.
- 5.5 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.
- 5.6 The Supplier shall follow its archiving procedures for Customer Data as set out in its Back-Up Policy available upon request, as such document may be amended by the Supplier in its sole discretion from time to time. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy against the Supplier 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 Back-Up 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).
- 5.7 As part of the ClearVUE.PRO Services and within 10 Business Days of a request by the Customer, the Supplier shall provide up to 4 hours instruction to the Customer on the ClearVUE.PRO Software by video call or such other method mutually agreed by the parties.
- 6. CUSTOMER'S OBLIGATIONS**
- 6.1 The Customer shall:
- (a) provide the Supplier with:
 - (i) all necessary co-operation in relation to the Contract; and
 - (ii) such information and materials (and access to such information and materials) as may be required by the Supplier;

in order to provide the Services, including but not limited to Customer Data, security access information and configuration services;
 - (b) ensure that the terms of the Order and any such information as may be required by the Supplier (in accordance with clause 6.1 (a) or otherwise) is complete and accurate in all material respects;
 - (c) without affecting its other obligations under the Contract, comply with all applicable laws and regulations with respect to its activities under the Contract;
 - (d) carry out all other Customer responsibilities set out in the Contract in a timely and efficient manner.
 - (e) 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;
 - (f) 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;
 - (g) prepare the Premises for the supply of the Services;
 - (h) 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;
 - (i) ensure that its network and systems comply with the relevant specifications provided by the Supplier from time to time;
 - (j) 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.PRO Services or Website;
 - (k) not use the ClearVUE.PRO Services or Website in any way that would the Supplier's reasonable opinion materially affect the use of or access to the ClearVUE.PRO Services or Website of any other user of the ClearVUE.PRO Services, or would lead to the Supplier incurring additional charges from its own third party suppliers; and
- (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.
- 6.2 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 such Customer Data.
- 6.3 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 Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 6; and
 - (c) 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.
- 7. CHARGES AND PAYMENT**
- 7.1 The Customer shall pay to the Supplier the Installation Fee for the Installation Services and pay to the Supplier the Subscription Fee for the Subscription in accordance with this clause 7 and as set out in the Order.
- 7.2 The Supplier shall invoice to the Customer the Installation Fee on the Effective Date.
- 7.3 The Supplier shall invoice the Customer for the Subscription Fee on completion of the Installation Services (**Installation Date**).
- 7.4 Should the Supplier be unable to provide the Installation Services as a result of the Customer's breach of clause 6 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 live components, lack of space or other safety issues) the Supplier shall provide a credit to the Customer for any invoice it has raised to the Customer for the Installation Fee and shall not be entitled to invoice for the Subscription Fee but shall be entitled to invoice the Customer for the costs the Supplier has reasonably incurred in attending at the Premises, including but not limited to the 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 installation costs under this clause against any amounts already paid by the Customer.
- 7.5 The Customer shall pay any invoice submitted by the Supplier:
- (a) within 30 days of the date of the invoice; and
 - (b) in full and in cleared funds to a bank account nominated in writing by the Supplier, and
- time for payment shall be of the essence of the Contract.
- 7.6 If the Supplier has not received payment within 30 days after the due date, and without prejudice to any other rights and remedies of the Supplier:
- (a) the Supplier may, without liability to the Customer, disable the Customer's password, account and access to all or part of the ClearVUE.PRO Services and the Supplier shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and
 - (b) 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.
- 7.7 All amounts and fees stated or referred to in the Contract:
- (a) shall be payable in pounds sterling;
 - (b) are, subject to clause 11.3(b), non-cancellable and non-refundable;

- (c) are exclusive of value added tax, which shall be added to the Supplier's invoice(s) at the appropriate rate.
- 7.8 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).
- 8. PROPRIETARY RIGHTS**
- 8.1 The Customer acknowledges and agrees that the Supplier and/or its licensors own all Intellectual Property Rights in the ClearVUE.PRO Services and the Website. Except as expressly stated herein, the Contract does not grant the Customer any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the ClearVUE.PRO Services or the Website.
- 8.2 The Supplier confirms that it has all the rights in relation to the ClearVUE.PRO Services and the Website that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of the Contract.
- 8.3 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 Effective Date until the end of the Subscription Term for the purpose of providing the Services to the Customer.
- 8.4 Ownership of the Hardware and Supplier Materials shall at all times remain with the Supplier and nothing in the Contract shall constitute transfer of title in the same to any other party.
- 9. DATA PROTECTION**
- 9.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 9 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 9.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Supplier is the Processor.
- 9.3 The Customer acknowledges that the Supplier, once authorised to do so by the Customer (by signing the Order), may, for the purpose of providing the Services as set out in the Order and the Proposal and for the duration of the Subscription Term and for a reasonable period thereafter as necessary to allow the Supplier to comply with the terms of the Contract:
- (a) gather the Customer's data (both commercial and incidental personal data (such as Customer contact details) as the case may be) from the Customer and from the Hardware; and
- (b) share the Customer's data (both commercial and incidental personal data) with Affiliates.
- 9.4 Without prejudice to the generality of clause 9.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Customer Personal Data to the Supplier and/or lawful collection of the Customer Personal Data by the Supplier on behalf of the Customer for the duration and purposes of the Contract.
- 9.5 Without prejudice to the generality of clause 9.1, the Supplier shall, in relation to any Customer Personal Data processed in connection with the performance by the Supplier of its obligations under the Contract:
- (a) process that Customer Personal Data only on the documented written instructions of the Customer which are set out in the Proposal and Order unless the Supplier is required by Applicable Laws to otherwise process that Customer Personal Data. Where the Supplier is relying on Applicable Laws as the basis for processing Customer Personal Data, the Supplier shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless the Domestic Law or EU Law prohibits the Supplier from so notifying the Customer;
- (b) ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Customer Personal Data and against accidental loss or destruction of, or damage to, Customer Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Customer Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services,
- ensuring that availability of and access to Customer Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- (c) ensure that all personnel who have access to and/or process Customer Personal Data are obliged to keep the Customer Personal Data confidential.
- (d) assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (e) notify the Customer without undue delay on becoming aware of a Personal Data Breach;
- (f) at the written direction of the Customer, delete or return Customer Personal Data and copies thereof to the Customer on termination of the Contract unless required by Domestic Law or EU Law to store the Customer Personal Data; and
- (g) maintain complete and accurate records and information to demonstrate its compliance with this clause 9.
- 9.6 The Customer hereby provides its prior, general authorisation for the Supplier to:
- (a) appoint processors to process the Customer Personal Data, provided that the Supplier:
- (i) shall ensure that the terms on which it appoints such processors comply with Data Protection Legislation, and are consistent with the obligations imposed on the Supplier in this clause 9;
- (ii) shall remain responsible for the acts and omission of any such processor as if they were the acts and omissions of the Supplier; and
- (iii) shall inform the Customer of any intended changes concerning the addition or replacement of the processors, thereby giving the Customer the opportunity to object to such changes provided that if the Customer objects to the changes and cannot demonstrate, to the Supplier's reasonable satisfaction, that the objection is due to an actual or likely breach of Data Protection Legislation, the Customer shall indemnify the Supplier for any losses, damages, costs (including legal fees) and expenses suffered by the Supplier in accommodating the objection.
- (b) transfer Customer Personal Data outside of the UK as required for the Purpose, provided that the Supplier shall ensure that all such transfers are effected in accordance with the Data Protection Legislation. For these purposes, the Customer shall promptly comply with any reasonable request of the Supplier, including any request to enter into standard data protection clauses adopted by the EU Commission from time to time (where the EU GDPR applies to the transfer) or adopted by the Commissioner from time to time (where the UK GDPR applies to the transfer).
- 9.7 The Supplier may, at any time on not less than 30 days' notice, revise this clause 9 by replacing it (in whole or part) with any applicable standard clauses approved by the EU Commission or the UK Information Commissioner's Office or forming part of an applicable certification scheme or code of conduct (Amended Terms). Such Amended Terms shall apply when replaced by attachment to this agreement, but only in respect of such matters which are within the scope of the Amended Terms.
- 10. INDEMNITY**
- 10.1 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 use of the ClearVUE.PRO Services 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 the claim.
- 10.2 The Supplier shall defend the Customer, its officers, directors and employees against any claim that the Customer's use of the ClearVUE.PRO Services or Website in accordance with the Contract infringes any United Kingdom patent effective as of the Commencement Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:
- (a) the Supplier is given prompt notice of any such claim;
- (b) the Customer does not make any admission, or otherwise attempt to compromise or settle the claim and provides reasonable co-operation to the Supplier in the defence and settlement of such claim, at the Supplier's expense; and
- (c) the Supplier is given sole authority to defend or settle the claim.
- 10.3 In the defence or settlement of any 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, terminate the Contract on 2 Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.
- 10.4 In no event shall the Supplier, its employees, agents and sub-contractors be liable to the Customer to the extent that:
- (a) the value of the claim exceeds the total aggregate liability of the Supplier as set out in clause 11.3(b); or
- (b) the alleged infringement is based on a modification of the ClearVUE.PRO Services or Website by anyone other than the Supplier; or
- (c) the alleged infringement is based on the Customer's use of the ClearVUE.PRO Services or Website in a manner contrary to the instructions given to the Customer by the Supplier; or
- (d) the alleged infringement is based on the Customer's use of the ClearVUE.PRO Services or Website after notice of the alleged or actual infringement from the Supplier or any appropriate authority.
- 10.5 The foregoing and clause 11.3(b) 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 patent, copyright, trade mark, database right or right of confidentiality.
- 11. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE**
- 11.1 Except as expressly and specifically provided in the Contract:
- (a) the Customer assumes sole responsibility for results obtained from the use of the ClearVUE.PRO Services and the Website by the Customer, and for conclusions drawn from such use. The Supplier shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Supplier by the Customer in connection with the ClearVUE.PRO Services, or any actions taken by the Supplier at the Customer's direction;
- (b) all 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; and
- (c) the ClearVUE.PRO Services and the Website are provided to the Customer on an "as is" basis.
- 11.2 Nothing in the Contract excludes the liability of the Supplier:
- (a) for death or personal injury caused by the Supplier's negligence; or
- (b) for fraud or fraudulent misrepresentation.
- 11.3 Subject to clause 11.1 and clause 11.2:
- (a) the Supplier shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses
- however arising under the Contract even if the Supplier, its Affiliates, suppliers, employees, consultants, agents or sub-contractors knew or should have known of the possibility of such loss costs, damages, charges or expenses; and
- (b) the Supplier's total aggregate liability in contract (including in respect of the indemnity at clause 10.2), 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 Subscription Fee and the Installation Fee.
- 11.4 The Customer is responsible for making its own arrangements for the insurance of any loss excess in excess of the Supplier's total aggregate liability under clause 11.3(b).
- 11.5 Nothing in this clause 11 excludes the liability of the Customer for any breach, infringement or misappropriation of the Supplier's Intellectual Property Rights.
- 11.6 Nothing in this clause 11 shall limit the Customer's payment obligations under the Contract.
- 11.7 The Supplier has given commitments as to compliance of the Services with relevant specifications in clause 5. In view of these commitments, the terms implied by sections 3 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 11.8 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 12 months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.
- 11.9 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.
- 11.10 This clause 11 shall survive termination of the Contract.
- 12. TERM AND TERMINATION**
- 12.1 The Contract shall commence on the Effective Date and shall, unless otherwise terminated as provided in this clause 12, continue until the end of the Subscription Term.
- 12.2 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 that party 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 terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
- (e) there is a change of Control of the Customer.
- 12.3 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 on the due date for payment;
- (b) the Customer becomes subject to any of the events listed in clause 12.2(c) to clause 12.2(e), or the Supplier

- reasonably believes that the Customer is about to become subject to any of them; and
- (c) the Supplier reasonably believes that the Customer is about to become subject to any of the events listed in clause 12.2(b).
- 12.4 The Customer may terminate the Contract if the Services do not comply materially within the Scope of Proposal by giving written notice to the Supplier within 30 days of the Installation Date and (if such a breach is remediable) the Supplier fails to remedy that breach within 14 days of being notified in writing to do so.
- 13. CONSEQUENCES OF TERMINATION**
- 13.1 On termination of the Contract for any reason:
- (a) all licences granted under the Contract shall immediately terminate and the Customer shall immediately cease all use of the Clear.VUE.PRO Services and/or 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 Supplier may destroy or otherwise dispose of any of the Customer Data in its possession unless the Supplier receives, no later than ten days after the effective date of the termination of the Contract, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. The Supplier shall use reasonable commercial endeavours to deliver the back-up 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) the Supplier may enter the Customer's premises and take possession of the Hardware and any Supplier Materials. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.
- 13.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry. For the avoidance of doubt, if the customer should terminate the Contract under clause 12.4 above, the Customer will remain liable for the Installation Fee.
- 13.3 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.
- 14. CONFIDENTIALITY**
- 14.1 The Customer may be given access to Confidential Information from the Supplier in order to perform its obligations under the Contract. The Confidential Information shall not be deemed to include information that:
- (a) is or becomes publicly known other than through any act or omission of the Customer;
- (b) was in the Customer's lawful possession before the disclosure;
- (c) is lawfully disclosed to the Customer by a third party without restriction on disclosure; or
- (d) is independently developed by the Customer, which independent development can be shown by written evidence.
- 14.2 The Customer shall hold the Confidential Information in confidence and use its best endeavours to preserve and protect the confidentiality of the Confidential Information at all times (including taking all reasonable steps to ensure that the Confidential Information is not disclosed or distributed by its employees or agents in violation of the terms of the Contract), both during the Subscription Term 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.
- 14.3 The Customer 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 Supplier.
- 14.4 The Customer shall not use the Confidential Information for any purpose other than to perform its obligations under the Contract.
- 14.5 The Customer shall notify the Supplier in writing immediately upon discovery of any unauthorised use or disclosure of Confidential Information and will cooperate with the Supplier in every reasonable way to regain possession of Confidential Information and prevent any further unauthorised use.
- 14.6 The Customer may disclose Confidential Information only 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 Supplier as much notice of such disclosure as possible including but not limited to:
- (a) notifying the Supplier prior to such disclosure to allow the Supplier an opportunity to contest the disclosure,
- (b) asserting the privileged and confidential nature of the Confidential Information, and
- (c) cooperating fully with the Supplier in protecting against any such disclosure and/or obtaining a protective order narrowing the scope of such disclosure and/or use of the Confidential Information.
- 15. GENERAL**
- 15.1 **Force majeure.** The Supplier shall have no liability to the Customer under the Contract if it is prevented from or delayed in performing its obligations under the Contract, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.
- 15.2 **Assignment and other dealings.**
- (a) 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.
- (b) The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Supplier.
- 15.3 **Entire agreement.**
- (a) 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.
- (b) 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. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.
- (c) Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.
- (d) Nothing in this clause shall limit or exclude any liability for fraud.
- 15.4 **Variation.** 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).
- 15.5 **Waiver.** 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.
- 15.6 **Severance** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the

Contract. If any provision or part-provision of this Contract deleted under this clause 15.6 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.

15.7

Notices.

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service to the address specified in the Order Form; or sent by email to the address specified in Order Form
- (b) Any notice shall be deemed to have been received:
 - (i) if delivered by hand, at the time the notice is left at the proper address;
 - (ii) if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
 - (iii) 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. In this clause 15.7(b), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- (c) This clause 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.

15.8

No partnership or agency. 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).

15.9

Rights and remedies.

- (a) 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.
- (b) Use of the ClearVUE.PRO Services or Website contrary to the Contract, or any transfer, sublicensing, copying or disclosure of technical information or materials related to the ClearVUE.PRO Services, may cause irreparable injury to the Customer 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.

15.10

Third party rights.

- (a) 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.
- (b) The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

15.11

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

15.12

Jurisdiction. 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 or formation.