

## TERMS AND CONDITIONS OF SALES & SERVICES – revised Jul 2012

### 1. What is this Document?

1.1 This document (the "Conditions") forms part of an agreement between LightPath IT & you, the Customer. 1.2 The Conditions together with the Service Descriptions &/or Product Descriptions & pricing applicable to the Products & Services that you wish to buy together form the whole of LightPath IT's "Agreement" with Customer. The Agreement is a binding document & Customers should ensure that they understand it. 1.3 Our Agreement is intended to comply with all of your statutory rights as a Business User. However, in the event that any uncertainty arises, your statutory rights as a Business User will take priority over the Agreement.

### 2. Definitions

**Business User:** legal entity or person who buys or agrees to buy Products &/or Services from LightPath IT other than for private use  
**Conditions:** this document;  
**Customer:** Business Users;  
**LightPath IT:** the company, LightPath IT Ltd, identified in your Order Confirmation and/or invoice;  
**Description:** a document forming part of the Agreement which describes a Product or Service that the Customer may purchase from LightPath IT;  
**Indemnify:** promise to be responsible for another's loss, damage, liability or penalty including promise to compensate for any loss, damage, liability or penalty which occurs;  
**Order:** request by Customer to purchase Product or Services from LightPath IT;  
**Price:** the total charge for Products &/or Services payable by Customers to LightPath IT;  
**Products:** an individual good (including Software) as described in any current document published by LightPath IT physically &/or on its internet site, or in any Order Confirmation & which Customer buys or agrees to buy from LightPath IT;  
**Services:** service & support carried out by or for LightPath IT in accordance with the Service Offering;  
**Service Offering(s):** the Service options offered by LightPath IT as described in any current document published by LightPath IT physically &/or on its internet site, or in any Order Confirmation;  
**Software:** computer operating systems, middleware, applications or other software that is manufactured or owned by, or licensed by, LightPath IT;  
**Third Party:** Products services or software, not manufactured, assembled or authored by LightPath IT that LightPath IT sells.

### 3. Quotations/Orders and Changes

3.1 LightPath IT quotations are valid only if in writing & for 7 days after the quotation date, unless otherwise stated in the quotation. 3.2 We shall instruct by the Customer, whether received verbally or in writing, to commence the supply or provision of the Product &/or Service as acceptance by the Customer of the Price and the Terms and Conditions. 3.3 A binding contract between the Customer and LightPath IT will come into force upon acceptance by the Customer of the Price and the Terms and Conditions.

### 4. Price and Payment

4.1 For all Services the Customer agrees to pay the current hourly rate as listed on the supplementary price list. 4.2 Services carried out remotely are charged in 15 minute increments, with a minimum charge of 30 minutes. 4.3 Services carried out onsite are charged in 30 minute increments with a minimum charge of 1 hour. 4.4 Any work undertaken can be quoted for and agreed in advance and performed on a fixed rate basis. 4.5 LightPath IT's Business Operating Hours are Monday to Friday 08.30 to 18.00. At LightPath IT's discretion, Out of Hours support will be provided, however additional charges will apply. It is the Customer's responsibility to request support at the appropriate time or state that the work should be carried out within normal business hours if they do not want to pay the additional charge. Pricing is provided on the supplementary price list. 4.6 Unless explicitly stated otherwise, all rates quoted in this agreement are net of VAT, which will be charged at the appropriate rate as in force at the time of any invoice being presented to the Customer. 4.7 A timesheet will be provided detailing the total amount of work carried out for the Customer, each month. 4.8 The Price that Customers have to pay will be shown on LightPath IT's invoice. 4.9 Payment to LightPath IT shall be made by direct bank transfer. 4.10 Bank charges must be paid by the customer. 4.11 If agreed in advance in writing, Business Users may pay within 21 days of the date of invoice. LightPath IT may suspend delivery of Product or Service until full payment is received. If full payment is not received LightPath IT will be entitled to charge interest on the amount outstanding 8% above the Bank of England base rate per annum, charged on a daily basis, until payment has been made in full. If LightPath IT must recover the outstanding payment &/or Product, recovery costs are to be paid by the Customer. In addition a one off charge per debt shall be applied as per the Late Payment of Commercial Debts (Interest) Act 1998, as amended and supplemented by the Late Payment of Commercial Debts Regulations 2002. 4.12 The Customer agrees to repay to LightPath IT all reasonable expenses incurred for the following a) Any software or hardware that the Customer requires for all support or non-support related activities. All costs will be quoted for and agreed in advance. For any costs over £50, the Customer will pay LightPath IT in advance of ordering. b) Postage and courier fees whilst acting on behalf of the Customer. c) Any Travel costs incurred at the Customer's request. d) Research and preparation of additional services, or projects, which the Customer has requested and where LightPath IT has received confirmation from the Customer to instigate the work. e) Subcontracted services when used at the request of the Customer. 4.13 Any Third Party services that LightPath IT purchase on the Customer's behalf will not be paid whilst there are overdue invoices on the account.

### 5. Delivery

5.1 The delivery date specified either verbally or in writing is an estimate. 5.2 For practical reasons, Products may be delivered by instalments, which shall be communicated to Customer.

### 6. Passing of Ownership & Risk

6.1 Ownership of Products passes to Customer on the later of receipt by LightPath IT of full payment or delivery to Customer of Product. LightPath IT may recover any Products supplied at any time prior to ownership passing if Customer is in breach of these Conditions. 6.2 Risk meaning: responsibility for damage caused to or by use, handling or storage of the Product, passes to Customer on delivery of Products to Customer or to their representative.

### 7. Acceptance of Products on Delivery, "Cooling Off" & rights of return and cancellation

7.1 Customer should notify LightPath IT promptly: following delivery of any missing, incorrectly delivered, incorrect specification, or otherwise not as ordered Products or Products which are either in damaged packaging or are visibly damaged; following discovery of any non-visible damage or defect in Product supplied.

7.2 Where Product can be returned to LightPath IT by Customer under the terms of this Agreement, it should be made available for collection at a time which is mutually convenient insofar as possible. Customers should act reasonably in complying with a request by LightPath IT to collect Product at a particular time.

7.3 Notwithstanding anything herein to the contrary, Business Users may only reject Product for material non-conformity with the Product Description by providing written notice to LightPath IT within 7 days after delivery or otherwise shall be deemed to have accepted the Products.

### 8. Statutory Rights, Warranties, Repairs, Replacements & Provision of Services

8.1 LightPath IT will provide the Company with an IT support service for approved directors, employees and associates. Unless otherwise stated in writing by The Company all directors, employees and associates will be entitled to request support from LightPath IT. It is the responsibility of The Company to notify LightPath IT of any changes to this list. This contract will only cover the UK head office of the company, for on-site support. All other offices or countries will be supported remotely. If it is desired that the support be extended to cover additional offices and countries, an amendment to this contract will need to be made. The services will comprise of the following a) Provision of general IT maintenance and improvement services with a view to providing better technical ability, stability, security and performance. b) Provision of general advice and coaching on whatever hardware and software is deemed important to the Company. c) Provision of IT Infrastructure. 8.2 If the Company requests an onsite visit and the Service can be completed remotely, the Company will incur charges for the entire duration of travel, in addition to the charge for the requested Service. 8.3 The Company agrees that LightPath IT shall have full control in the performance of its Services for the Company. LightPath IT will duly consider any requests made by the Company regarding the manner of the performance of its service(s). LightPath IT agrees to equip any consultant utilised by the Company with tools immediately necessary to

perform their job function, these are defined as a mobile computer, a mobile phone and any commonly used office software such as Microsoft Office. LightPath IT agrees that the Company may request that the consultant utilises equipment provided by the Company due to specific software, hardware or security requirements. Whilst LightPath IT will take all reasonable care of any equipment on loan from the Company, the Company agrees to indemnify LightPath IT against any loss of the equipment due to events such as but not limited to accidental damage, theft, fire or flood, but excludes malicious damage caused by any employee of LightPath IT to the equipment. 8.4 The Company agrees to promptly provide LightPath IT with access to all office areas and any computers, or IT related equipment that LightPath IT requires access to, so as to carry out their contractual obligations as defined within this agreement, or other agreements that have been approved by the parties herein. 8.5 The Company agrees to notify LightPath IT of any IT related infrastructure changes or business requirements that may impact on the IT infrastructure and such information LightPath IT requires to perform its services under the agreement regarding the company. 8.6 The Company agrees to provide access to senior members of staff as required and such other assistance access and facilities as shall reasonably be required by LightPath IT. 8.6 If as part of the Products and Services LightPath IT use or introduce you to a Third Party, any such introduction will be without any initial or on-going liability to LightPath IT whatsoever. 8.7 Under instruction of the Customer, LightPath IT may purchase Products and Services of a third party as the Customer's agent. Any such purchase is made without any initial or on-going liability to LightPath IT whatsoever. 8.8 Any contract for services provided to the Customer is between the Customer and the Third Party. 8.9 We do not accept any liability in respect to the provision of Products and Services by a Third Party. 8.10 Telephone calls may be recorded for training purposes. Customer must provide LightPath IT with all reasonable courtesy, information & cooperation to enable LightPath IT to deliver the Services & shall be responsible for all telephone & postal charges in contacting. 8.11 Customers must satisfy themselves as to the suitability of the Description for their needs. LightPath IT does not warrant fitness for any particular purpose. Fitness for use in any particular manner or environment must be agreed in writing with LightPath IT prior to purchase. 8.12 Except as expressly provided herein, no warranty, express or implied, as to the condition, quality, performance, merchantability, or durability of Products is given or assumed by LightPath IT & all such warranties are hereby excluded. 8.13 LightPath IT may supply to the Customer such personnel as LightPath IT deems suitable to provide the Services. LightPath IT will duly consider, any opinions expressed by the Customer in regards to the personnel providing the Services and where reasonable and practical accommodate the Customer's request.

### 9. Frustration/Circumstances beyond the Parties' control ("Force Majeure")

9.1 Neither party is responsible for non-performance in case of circumstances beyond its reasonable control ("Force Majeure") including without limitation, strikes by non LightPath IT employees, terrorist acts, war, exchange fluctuations, governmental or regulatory actions, natural disasters, severe weather, unforeseeable transport or production problems affecting companies that supply LightPath IT. 10.2 If the Force Majeure event lasts longer than 60 days then LightPath IT shall have the right to terminate the Agreement by providing notice in writing to Consumer & returning all sums paid by Consumer under the Agreement. No compensation to Consumer will then be due in these circumstances.

### 10. Liability

10.1 LightPath IT warrants that any Services shall be provided with reasonable skill and care. LightPath IT's liability under this warranty shall be limited to making available free of charge the labour and materials required to make good any failure to perform the Services with reasonable skill or care. LightPath IT's liability is also conditional upon: a) written notice of the defect being given to LightPath IT within 30 days after discovery of the same and in any event within 6 months after the date of performance of the Services in question; and b) any software or goods upon which the Services were performed having been properly stored and not having been submitted to improper use or modification (other than modification by LightPath IT). 10.2 The warranty contained in 10.1 above is given in lieu of and shall be deemed to exclude all other warranties and conditions whether express or implied whether arising by common law, statute or otherwise.

10.3 LightPath IT shall not be liable for data loss whether caused by LightPath IT's negligence or that of its agents or otherwise. The Customer shall ensure that all data is adequately backed up to prevent data loss of any kind occurring.

10.4 It is hereby agreed that LightPath IT shall not be liable to the Customer, whether caused by LightPath IT's negligence or that of its agents or otherwise, for any loss of profit or any indirect, special or consequential loss, or by reason of any representation not contained in this agreement (unless fraudulent), or any implied warranty, condition or other term or any duty at common law, or by reason of any delay in delivery or performance.

10.5 The Customer agrees that LightPath IT's total liability shall not exceed £1 million for any one claim or series of related claims in any period of one year.

10.6 Nothing in clauses 10.1 to 10.5 shall operate to exclude LightPath IT's liability in respect of death or personal injury caused by LightPath IT's negligence or that of its employees, or for fraud.

### 11. Export Control

11.1 Customer is advised that Product, which may include technology & software, is subject to EU export control

laws & laws of the country where it is delivered or used. Under these laws, Product may not be sold, leased or transferred to restricted end-users or countries or for restricted end-uses. Customer agrees to abide by these laws.

### 12. Data Protection

12.1 Personal data obtained by LightPath IT from Customer shall be held & processed in accordance with all applicable laws and consistently with LightPath IT's Privacy Policy. LightPath IT may share such personal data with other LightPath IT entities, agents, or subcontractors performing services for LightPath IT. LightPath IT may also transfer personal data to affiliated companies or agents or subcontractors which may be outside the European Economic Area (EEA), in which case LightPath IT will ensure adequate protection to safeguard personal data. For a copy of LightPath IT's Privacy Policy, please visit LightPath IT's website or contact LightPath IT Ltd, 38 Brackens Drive, Warley, Brentwood, Essex, CM14 5UF.

### 13. Confidentiality

13.1 Each party must treat all information received from the other which appears to be confidential as it would treat its own confidential information generally, but at least, with no less than a reasonable degree of care.

### 14. Termination

14.1 Either party may terminate this Agreement if the other: 14.1.1 commits a material or persistent breach of these Conditions; & 14.1.2 fails to remedy such breach within 30 days of written notice being given to it by the other party requiring a remedy. 14.2 LightPath IT may terminate this Agreement with immediate written notice if Customer: 14.2.1 fails, without good reason, to pay on time; or 14.2.2 breaches or LightPath IT reasonably suspects Customer has breached export control laws.

14.3 Either party may terminate if the other becomes insolvent or bankrupt or is unable to pay debts as they fall due. This provision shall not relieve LightPath IT of an obligation to complete the delivery of any Product that has been ordered and fully paid for by a Customer prior to that Customer becoming insolvent or bankrupt.

### 15. Law & Jurisdiction

15.1 This Agreement is to be interpreted in accordance with English Law. 15.2 If any part of these Conditions is found to be unenforceable by a court, the rest are unaffected. All notices must be in writing & sent to a legal officer of each party, at the address provided on the invoice.

### 16. Assignment & Subcontracting

16.1 LightPath IT may assign, subcontract or transfer its obligations or rights to a competent third party in whole or in part. Customers may do so only with LightPath IT's written consent.

### 17. Miscellaneous

17.1 Customer can find information about LightPath IT policies, Product and Service Offering details and notices at [www.lightpathit.com](http://www.lightpathit.com).

### 18. TUPE

18.1 Customer shall keep LightPath IT fully indemnified against any claims, costs, demands, awards, compensation or other liability of any nature arising out of the termination of the employment rights (by way of redundancy or otherwise) or deemed transfer of any employment rights of any employees of the Customer or otherwise resulting from the entering into or termination of any Order, Services or this Agreement (in whole or in part) for whatsoever reason.