

**WEIGHTRON BILANCIAL LIMITED**  
**TERMS AND CONDITIONS FOR THE SUPPLY AND DEVELOPMENT OF SOFTWARE**

**1 Scope and Interpretation**

1.1 These terms and conditions (**Software Terms**) together with the Order Form to the extent it applies to the supply, development and installation of Supplied Software constitute the contract between the Buyer and Supplier (**Software Contract**) for the supply, development and installation of Supplied Software by the Supplier. Separate terms and conditions apply to the sale and installation of hardware, the maintenance of hardware and the maintenance of the Licensed Software.

1.2 In these Software Terms each capitalised term will have the meaning set out in Schedule 1 (Definitions) or as defined in bold, bracketed, text.

**2 Orders**

2.1 The Software Contract shall take effect on the earlier of the date on which the Order Form becomes signed by both parties and/or the Buyer receiving the Order Confirmation from the Supplier and the date when the Supplier takes any action towards fulfilling the Software Contract (**Commencement Date**) and shall continue unless terminated earlier in accordance with clause 18. The Supplier has no obligation to accept any Order Forms.

2.2 The Software Contract constitutes the entire agreement between the parties regarding its subject matter. The Buyer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier which is not set out in the Software Contract.

2.3 Any provisions not set out in the Software Contract or the Third Party Terms, including but not limited to, any provision the Buyer applies or purports to apply by way of any purchase order/order confirmation or similar document, shall have no application to the supply and development of software by the Supplier, however those provisions are introduced. The Buyer acknowledges and agrees that the Supplier shall not be bound by any such provisions.

**3 Cancellation of Software Contract**

3.1 Save as expressly provided in the Software Contract, the Buyer shall have no right to terminate the Software Contract. Any Deposit paid by the Buyer shall be non-refundable.

**4 Supply of Software**

4.1 Subject to clause 4.2, the Supplier grants, subject to the terms of the Software Contract, the Buyer, its Affiliates and the Licensed Users a non-exclusive, non-transferable right to use the Licensed Software (in object code form only) and the Documentation at the Location(s) solely for the Buyer's normal business purposes and solely in connection with use of the Hardware.

4.2 Strictly where an End Customer is specified on the Order Form, the Buyer shall be entitled to grant a sub-licence of the licence granted pursuant to clause 4.1 to the End Customer (**Sub-Licence**) strictly subject to the following:

4.2.1 the Sub-Licence shall be granted to the End Customer only;

4.2.2 the terms of the Sub-Licence shall be the same as the terms of the licence granted in the Software Contract (with the term "Buyer" replaced with "End Customer" where the context requires) and shall be subject to all of the restrictions as set out in the Software Contract (including the number of Licensed Users and the Concurrent User Limit). The Sub-Licence shall not permit the End Customer to grant a sub-licence of, nor to assign or novate the benefit or the burden of, the Sub-Licence to a third party without the Supplier's prior written consent;

4.2.3 the Buyer shall remain liable under the Software Contract for the acts and omissions of the End Customer, including for any breaches of the Sub-Licence; and

4.2.4 the Buyer shall ensure that the Sub-Licence shall terminate immediately upon the termination of the licence granted under the Software Contract.

4.3 Where a Sub-Licence has been granted pursuant to clause 4.2, neither the Buyer nor its Affiliates nor its Licensed Users shall have rights to use the Licensed Software.

4.4 The Buyer hereby agrees to indemnify and hold harmless the Supplier against all Losses incurred by the Supplier arising from or in connection with:

4.4.1 the Buyer's breach of any term of this clause 4; and

4.4.2 the End Customer's failure to comply with any term of the Sub Licence.

4.5 The number of Licensed Users of the Licensed Software is unlimited, however, concurrent use of the Licensed Software shall be limited to the Concurrent User Limit.

4.6 The Buyer acknowledges that the Licensed Software is designed such that, should a Licensed User log into the Licensed Software at any time when the Concurrent User Limit is met, one of the Licensed Users already logged into the Licensed Software may be logged out. The Buyer accepts that it has the responsibility for managing use of the Licensed Software within the Concurrent User Limit and the Supplier shall have no liability whatsoever (whether relating to loss of data or otherwise) in connection with a Licensed User being logged out of the Licensed Software in such circumstances.

4.7 The Licensed Software may: (a) be transferred to and used by the Licensed Users at another Location only if the Buyer transfers the whole of its business permanently to that other Location and provided that the Supplier is informed in writing of the change of Location prior to use of the Licensed Software at the new Location; (b) be temporarily used on backup hardware if the Hardware becomes inoperable for any reason; (c) be used with any replacement for all or any part of the Hardware; and (d) be used at an alternative emergency location if any Location becomes temporarily unusable due to flood, fire or similar damage, or an emergency situation, until the Location is again usable, provided that the Buyer gives the Supplier notice of such alternative Location. If the alternative Location is managed by a third party, the third party must have signed a confidentiality undertaking addressed to the Supplier to protect the Supplier's Confidential Information before the Licensed Software is transferred to the alternative Location.

4.8 The Buyer may make one copy of the Licensed Software strictly as is necessary for use in accordance with the Software Contract and for the purposes of backup and security only. The Buyer has no right to make, or authorise the making of, any other copies of the Licensed Software.

4.9 The Supplier shall at all times own all copies of all or any part of the Licensed Software. For copies recorded on a tangible medium, the Buyer shall place on each copy of all or any part of the Licensed Software a clearly visible label indicating that the copy is the property of the Supplier and shall include on such label the Supplier's proprietary rights notice. For electronic copies, the Buyer shall ensure that all proprietary notices contained in the Licensed Software shall be maintained in such copies and shall display when the software is run, in the same way as in the case of the Licensed Software. The Buyer shall keep all copies of the Licensed Software in a secure place when not in use and shall, at all times, keep all such copies in its possession or control.

4.10 The Buyer shall not: (a) sub-licence, rent, lend, assign or transfer in any other way the Licensed Software to any person without the prior written consent of the Supplier; (b) give access to the Licensed Software through any network of hardware to users who are not employees or agents of the Buyer; (iii) make adaptations or variations of the Licensed Software without the prior written consent of the Supplier; or (iv) disassemble, decompile, reverse translate or in any other manner decode the Licensed Software, except as permitted by law.

4.11 The Supplier reserves the right to amend the Specification of the Licensed Software if required by any applicable statutory or regulatory requirements and shall have no liability to the Buyer in respect of any such amendment.

4.12 The Supplier shall provide the Third Party Software to the Buyer and its Affiliates and does so under the standard terms of the relevant third party licensors of such Third Party Software (**Third Party Terms**). The Buyer agrees to be bound to the relevant third party under the Third Party Terms, and shall at all times comply with and procure that its Licensed Users and Affiliates comply with, the Third Party Terms notified to it/them from time to time (including on any notices (or similar) contained within the Third Party Software itself). The Buyer shall ensure that its Affiliates are bound by such Third Party Terms.

4.13 The Third Party Software may be contained on a USB stick (or similar portable device) (**USB**). The Buyer is responsible for ensuring that the USB remains connected as installed or stipulated by the Supplier. If the USB is disconnected, the Supplied Software cannot be used. The Buyer is solely responsible for the costs associated with replacing any USB. Any training whatsoever other than that set out on the Order Form shall be paid for by the Buyer and be subject to the relevant sections of the Supplier's Terms and Conditions for the Maintenance of Software.

4.14 The Supplier may provide to the Buyer, from time to time, copies of the Documentation containing sufficient up-to-date information for the proper use of the Licensed Software. Such Documentation may be supplied in electronic form.

4.15 The Buyer may only make such further copies of the Documentation as is strictly necessary for the use of the Licensed Software and for the training of the Licensed Users. The Buyer shall ensure that all of the Supplier's proprietary notices are reproduced in any such copy.

4.16 The Supplier has no obligation to supply or make available any Maintenance Releases or New Versions to the Buyer.

4.17 The Supplier does not guarantee that support services for the Licensed Software will be available to the Buyer nor that any support services for the Licensed Software which the Supplier may offer under separate terms from time to time will continue to be available to the Buyer. The Supplier may release a New Version at any time and cease to support any old versions of the Licensed Software.

**5 Software Development Services**

5.1 The Supplier shall, develop any elements of Bespoke Software. The Supplier shall do so with reasonable skill and care and materially in accordance with the Specification so far as it relates to Licensed Software.

5.2 The Supplier shall provide such training as set out in the Order Form (if any) and such training will be undertaken at times to be mutually agreed between the Supplier and the Buyer.

**6 Pre-Installation Testing**

6.1 Either before delivering any Licensed Software and Third Party Software (together the **Supplied Software**) to the Location or post-

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- delivery of the Supplied Software to the Location (as agreed between the Supplier and the Buyer), the Supplier shall carry out such tests as it reasonably deems necessary to demonstrate that the Supplied Software is in operable condition and capable of meeting (where conducted pre-delivery) or does meet (where conducted post-delivery) the Specification, or such alternative tests as the parties may mutually agree in writing (**Tests**). The Tests shall be carried out at a mutually agreed time and the Buyer shall observe the Tests. The outcome of the Tests shall be that:
- 6.1.1 both parties agree that the Supplied Software has passed the Tests in which case the Buyer shall immediately sign the relevant Acceptance Certificate; or
- 6.1.2 the Buyer fails to attend the Tests, or informs the Supplier that it does not require the Tests to take place, in which case the Supplied Software shall be deemed to have passed the Tests and the relevant Acceptance Certificate(s) shall be deemed to have been signed by the Buyer; or
- 6.1.3 one, or both, of the parties reasonably considers that the Supplied Software has failed the Tests (**a Fail**).
- 6.2 If a Fail occurs, the Supplier shall use reasonable endeavours to rectify the defects identified with the Supplied Software following which the Tests shall be repeated in respect of the defective element of the Supplied Software only. The Supplier may, at its discretion, change the nature of such Tests to be re-performed. The process set out in clause 6.1 shall be repeated until such time as the Tests are passed (whether pursuant to clause 6.1.1 or 6.1.2) save that:
- 6.2.1 if the Tests have not been passed within 6 months of the Installation Date, then either party may terminate the part of the Software Contract relating to the relevant element of the Supplied Software only by giving the other party notice in writing and, following such termination, the Buyer shall be entitled to a pro-rata refund of any pre-paid Charges paid in respect of such element of the Supplied Software only. Exercise of the termination right under this clause 6.2 shall be the Buyer's exclusive remedy in relation to such failure or delay; and
- 6.2.2 the Buyer may agree to accept the Supplied Software notwithstanding any defects identified in which case the parties shall, in accordance with clause 19.6, agree an appropriate variation to the Specification and if necessary the Charges. Immediately following such variation the Buyer shall sign the relevant Acceptance Certificate.
- 6.3 Acceptance of the Supplied Software shall be deemed to have occurred on the signing by the Buyer of the relevant Acceptance Certificate, or the deemed signing of the relevant Acceptance Certificate.
- 7 Delivery and Installation**
- 7.1 The Supplier shall use reasonable endeavours to deliver and install the Supplied Software at the Location by the Software Delivery Date. The time of delivery and installation shall not be of the essence in the Software Contract.
- 7.2 The Buyer shall be responsible for ensuring that any Third-Party Hardware is installed at the relevant Location and is in Good Working Order and available to the Supplier in advance of the Software Delivery Date.
- 7.3 If any delivery is delayed at the request of the Buyer, or because of the Buyer's acts or omissions, the Software Delivery Date shall be amended to take account of such delay in accordance with clause 12.2. If the Supplier can demonstrate that the delay has resulted in an increase in cost to the Supplier of carrying out its obligations under the Software Contract, the Supplier may notify the Buyer that it wishes to increase the Charges by an amount not exceeding any such demonstrable cost. The Supplier may invoice the Buyer for any additional monies that become payable in this way, within 14 days of demonstrating the increase in costs.
- 8 Charges and payment**
- 8.1 The Charges are set out on the Order Form. If no Charges are set out on the Order Form, charges shall be calculated in accordance with the Supplier's standard rates applicable at the time of delivery. Any charges stated are exclusive of VAT and any other import taxes, duties or other similar charges which the Buyer shall also pay.
- 8.2 Reasonable out of pocket expenses may be charged by the Supplier on the production of reasonable evidence of expenditure to the Buyer.
- 8.3 The Supplier shall charge the Buyer, on a time and materials basis in accordance with Supplier's standard rates, for any time spent on investigating a defect in the Licensed Software which is not covered by any warranty under the Software Contract. The Supplier may raise an invoice for such Charges at any time.
- 8.4 The Buyer shall pay the Deposit on or before the Deposit Payment Date.
- 8.5 The Supplier shall raise invoices for the remaining Charges in accordance with the timings stated on the Order Form, or if no timings are specified on the Order Form, the Supplier may raise its invoices in advance of delivery. The Buyer must pay all invoices in cleared funds by payment into the bank account nominated by the Supplier before the end of the calendar month in which the invoice was raised.
- 8.6 If the Buyer fails to pay any sum due under the Software Contract by the due date for payment then the Supplier shall be entitled to charge interest on the overdue amount at the rate of 5% per annum above Lloyds Bank Plc's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment, whether before or after judgment.
- 9 Changes**
- 9.1 The Buyer may, by giving written notice to the Supplier at any time during the term of the Software Contract, request a change to the Licensed Software.
- 9.2 Within seven working days of receipt of such a notice, the Supplier shall, at its standard rates then in force, prepare for the Buyer a written estimate of any increase or decrease in the Charges in relation to such change, or alternatively, the Supplier may inform the Buyer that it is not willing or able to implement such change in which case no change will be made.
- 9.3 Within 14 working days of receipt of a written estimate referred to in clause 9.2, the Buyer shall inform the Supplier in writing of whether or not the Buyer wishes the requested change to be made. If the change is required, the Supplier shall not make the requested change until the parties have agreed a variation in accordance with clause 19.6 specifying, in particular, any changes to the Specification and Charges.
- 10 Warranties**
- 10.1 The Buyer acknowledges that the only warranties in relation to the Third Party Software or the supply thereof are those provided to the Buyer by the relevant third-party licensor of such Third-Party Software, as set out in the relevant Third Party Terms. The Supplier has no liability to the Buyer in this regard.
- 10.2 The Supplier warrants that:
- 10.2.1 it has the right to license all Intellectual Property Rights in and to the Licensed Software and the Documentation to the Buyer;
- 10.2.2 the use of the Licensed Software by the Buyer in accordance with the Software Contract shall not infringe the Intellectual Property Rights of any third party; and
- 10.2.3 the Licensed Software will, at the date of delivery and for 90 days thereafter, perform materially in accordance with the Specification.
- 10.3 The sole remedies for breach of the warranties in clause 10.2.1 and clause 10.2.2 are set out in clause 14.
- 10.4 The sole remedy for breach of the warranty under clause 10.2.3 shall be correction of Defects by the Supplier within a reasonable time from notification by the Buyer of the Defect that constitutes such breach.
- 10.5 The warranties set out in clause 10.2 are in lieu of all other express or implied warranties or conditions, including implied warranties or conditions of satisfactory quality and fitness for a particular purpose, in relation to the Software Contract. Without limitation, the Supplier specifically excludes any implied or express warranties, representations and conditions that the Licensed Software will: (a) operate in conjunction with any hardware items or software products other than with those that are identified in the Documentation as being compatible with the Licensed Software; (b) operate uninterrupted; or (c) be error-free.
- 10.6 The Supplier does not warrant or guarantee that it will be able to rectify all Defects, nor that any Defect which does not materially affect the Buyer's operations using the Licensed Software will be corrected.
- 10.7 Any unauthorised modifications, use or improper installation of the Licensed Software by, or on behalf of, the Buyer shall render all the Supplier's warranties and obligations under the Software Contract null and void.
- 10.8 The Supplier shall not be obliged to rectify any particular Defect if attempts to rectify such Defect other than normal recovery or diagnostic procedures have been made by the Buyer's personnel or third parties without the permission of the Supplier.
- 10.9 Each party warrants that it has full capacity and authority, and all necessary licences, permits and consents to enter into and perform the Software Contract and that those persons signing the Software Contract are duly authorised to bind the party for whom they sign.
- 11 Buyer's obligations**
- 11.1 The Buyer is responsible for ensuring that the Specification for the Supplied Software meets its requirements.
- 11.2 The Buyer shall:
- 11.2.1 provide all reasonable assistance, access and information as required by the Supplier;
- 11.2.2 if requested by the Supplier, appoint a project manager to have the responsibility and authority in relation to the progress of the Software Contract;
- 11.2.3 co-operate with the Supplier and attend all meetings scheduled by the Supplier on all matters relating to the Software Contract;
- 11.2.4 obtain and maintain (at its own cost) all necessary licences (including without limitation any import/export licences), permissions, approvals and consents required in relation to the Software Contract (including without limitation the installation and use of the Supplied Software);

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- 11.2.5 ensure that the relevant Location is suitably prepared for the installation of the Supplied Software in accordance with the Supplier's instructions and is safe for entry by the Supplier and its employees and sub-contractors;
- 11.2.6 provide such access to the Buyer's premises, the Location(s) and other facilities as reasonably required by the Supplier; and
- 11.2.7 comply with any other obligations set out on the Order Form.
- 12 Relief Events**
- 12.1 The Supplier shall not be in breach of the Software Contract nor liable for any delay in performing, or failure to perform, any of its obligations under the Software Contract if such delay or failure results from any events, circumstances or causes beyond its reasonable control including without limitation, acts of God; natural disasters; terrorist attacks; civil war, commotion or riots; imposition of sanctions or embargos; any law or action taken by a governmental or public authority (including without limitation export or import restrictions, quotas or prohibitions); failure to obtain or renew, or the cancellation of, any licence, permit or consent; collapse of buildings; unavailability, interruption or failure of utility supplies; labour or trade disputes, strikes or industrial action; and non-performance by suppliers or subcontractors (**Force Majeure Event**).
- 12.2 If any act or omission of the Buyer (including without limitation the Buyer failing to comply with its obligations under the Software Contract) causes or contributes to the Supplier failing or being delayed in the development or delivery or installation of the Supplied Software or the Supplier's performance of any other obligation under the Software Contract (**Relief Event**), the Supplier shall without limiting its other rights or remedies:
- 12.2.1 have the right to suspend performance under the Software Contract until the Buyer remedies the default;
- 12.2.2 have the right to rely on the Relief Event to relieve it from the performance of any such obligation; and
- 12.2.3 have no liability howsoever arising from the Supplier's failure or delay to perform any such obligation.
- 12.3 The Buyer acknowledges that where the Supplier exercises use of the remedies under clauses 12.2.1 and 12.2.2, it may not be possible for the Supplier to recommence performance of its obligations immediately on the remedying of the Relief Event by the Buyer. As such, any recommencement of performance will be subject to the Supplier's ability to re-allocate its resources accordingly.
- 12.4 The Buyer shall reimburse the Supplier on written demand for any Losses sustained or incurred by the Supplier arising from the Relief Event. Such Losses may include the costs of the Supplier being unable to re-allocate or otherwise utilise its personnel or the costs associated with delivering and installing the Supplied Software at a later date.
- 13 Ownership and Intellectual Property**
- 13.1 The Licensed Software and the Documentation are the property of the Supplier (or the appropriate third-party rights-owner(s)) and the Buyer acquires no rights in or to the Licensed Software or the Documentation other than those expressly granted by the Software Contract. Nothing in the Software Contract shall affect the ownership of the Licensed Software, the Documentation and any other Intellectual Property Rights of the Supplier (or its licensors (as applicable)).
- 13.2 To the extent that any Intellectual property Rights in any Bespoke Software do not automatically vest in the Supplier, or should any Intellectual Property Rights of the Supplier or its licensors be transferred to the Buyer contrary to clause 13.1, the Buyer shall do, and execute or arrange for the doing and executing of, each necessary act, document and thing that the Supplier may consider necessary or desirable to give effect to the provisions of this clause 13 and, if necessary, to perfect the right, title and interest of the Supplier in and to the relevant Intellectual Property Rights.
- 13.3 The Buyer shall use best endeavours to prevent any infringement of the Supplier's Intellectual Property Rights in the Licensed Software and Documentation and shall promptly report to the Supplier any such infringement or suspected infringement that comes to its attention. In particular, the Buyer shall: (a) ensure that each Licensed User, before starting to use the Licensed Software and Documentation, is made aware that the Licensed Software is proprietary to the Supplier and that it may only be used and copied in accordance with the terms and conditions of the Software Contract; (b) implement suitable disciplinary procedures for employees who make unauthorised use or copies of the Licensed Software and Documentation; and (c) not permit third parties to have access to the Licensed Software without the prior written consent of the Supplier which may be given or withheld at the Supplier's absolute discretion and the Supplier may require that such third party executes a written confidentiality agreement before being given access to the Licensed Software and/or Documentation.
- 14 Intellectual Property Rights Indemnity**
- 14.1 The Supplier shall indemnify the Buyer against the losses, damages, costs or expenses (including reasonable legal fees on the standard basis) incurred by the Buyer which arise directly from any claim made against the Buyer for actual or alleged infringement of a third party's Intellectual Property Rights where such claim arises directly from the use of the Licensed Software in compliance with the Software Contract (**Claim**). The indemnity provided in this clause 14.1 is strictly conditional
- on the Buyer: (a) notifying the Supplier (such notice to specify the nature of the Claim in reasonable detail) as soon as reasonably practicable upon the Buyer being notified of any Claim or being notified of a third party's intention of making a Claim or becoming aware of a potential Claim; (b) not making any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of the Supplier; and (c) giving the Supplier and its professional advisers access to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of the Buyer, so as to enable the Supplier and its professional advisers to examine them and to take copies for use in connection with the Claim.
- 14.2 Without prejudice to clause 10.7, the Supplier shall not in any circumstances have any liability in relation to a Claim: (a) caused or contributed to by the Buyer's use of the Licensed Software in combination with software or hardware not supplied or approved in writing by the Supplier; (b) based on use of any version of the Licensed Software other than the latest version supplied by the Supplier, if such Claim could have been avoided by the use of such supplied version; or (c) where the Claim arises in respect of a feature, part or element of the Licensed Software or Documentation which was specified by the Buyer, whether set out in the Specification or otherwise.
- 14.3 If use of the Licensed Software or Documentation becomes, or is likely to become, the subject of a Claim, the Supplier may at its absolute discretion: (a) replace all or part of the Licensed Software or Documentation with software or documentation which is, in the Supplier's reasonable opinion, similar to the Software or Documentation in material respects; (b) modify the Licensed Software or Documentation as necessary to avoid such claim, provided that any modified software functions in substantially the same way as the Licensed Software before modification; or (c) procure for the Buyer a licence from the relevant claimant to enable the continued use of the Licensed Software or Documentation. If any Claim arises from the circumstances set out in clause 14.2, the Buyer shall be liable to the Supplier for any costs and charges arising from and connected with any of the steps set out in this clause 14.3.
- 14.4 Subject to clause 14.5, if: (a) use of the Licensed Software or Documentation by the Buyer becomes or, or is likely to become subject to a Claim; (b) use of the Licensed Software or Documentation is determined in a court of law as infringing the Intellectual Property Rights of a third party; (c) the Supplier is of the opinion that use or possession by the Buyer or Licensed Users of the Licensed Software and/or the Documentation in accordance with the Software Contract is likely to constitute infringement of a third party's rights; or (d) an injunction or similar order is granted in connection with a claim of the type(s) referred to in clause 14.1 which prevents or restricts the use or possession by the Buyer or any Licensed User of the Licensed Software and/or the Documentation in accordance with the Software Contract; and if the Supplier is unable to procure for the Buyer the right to continue using the Licensed Software and/or Documentation or to provide the Buyer with functionally equivalent non-infringing software on commercially reasonable terms, the Software Contract and the licences granted hereunder may be terminated by the Supplier (in whole or in part) and a relevant pro-rata refund of any pre-paid Charges made to the Buyer.
- 14.5 If, however, any of the circumstances referred to in clause 14.4 arise from any of the circumstances set out in clause 14.2 then:
- 14.5.1 the Supplier may terminate the Software Contract forthwith;
- 14.5.2 the Buyer shall not be entitled to any refund; and
- 14.5.3 the Buyer shall indemnify (and keep indemnified) and hold harmless the Supplier against all associated Losses.
- 15 Data Protection**
- 15.1 Each party undertakes to comply with the Data Protection Legislation and all applicable laws and regulations relating to the processing of personal data or privacy or any amendments and re-enactments thereof, and shall procure that its employees, agents and subcontractors shall observe the provisions of the same.
- 16 Buyer Indemnities**
- 16.1 To the extent that Bespoke Software is designed and configured by Supplier in accordance with a Specification supplied or contributed to by the Buyer, the Buyer shall indemnify (and keep indemnified) and hold harmless the Supplier against all Losses suffered or incurred by the Supplier in connection with any claim for actual or alleged infringement of a third party's rights (including its Intellectual Property Rights) arising out of or in connection with the Supplier's use of the Specification.
- 16.2 The Buyer shall indemnify (and keep indemnified) and hold harmless the Supplier against any Losses arising from or in connection with a breach by the Buyer of its obligations under clause 11.
- 16.3 The Buyer shall comply with the Third-Party Terms and shall indemnify (and keep indemnified) the Supplier and hold the Supplier harmless against any and all Losses resulting from a breach of such terms (howsoever arising) by the Buyer, its Affiliates and/or any Licensed Users.
- 17 Liability**
- 17.1 Nothing in the Software Contract shall limit or exclude the Supplier's liability for:
- 17.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;

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- 17.1.2 fraud or fraudulent misrepresentation; or
- 17.1.3 any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.
- 17.2 Subject to clause 17.1:
- 17.2.1 the Supplier shall not be liable to the Buyer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profits (direct or indirect), loss of production, loss of use, loss of business or business opportunities, loss of revenue or any loss or corruption of data or information; loss of anticipated savings, loss of (or loss or liability under) any other contract or any indirect or consequential loss arising under or in connection with the Software Contract;
- 17.2.2 the Supplier shall have no liability to the Buyer in relation to the Third Party Software (however arising); and
- 17.2.3 the Supplier's total liability to the Buyer for all other losses arising under or in connection with the Software Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall be limited to the amount of the Charges actually paid by the Buyer under the Software Contract.

**18 Termination**

- 18.1 Without limiting their other rights or remedies, either party may terminate the Software Contract with immediate effect by giving written notice to the other party if the other party commits a material breach of any term of the Software Contract and (if such a breach is remediable) fails to remedy that breach within twenty-one (21) days of that party being notified in writing to do so.
- 18.2 Without limiting its other rights or remedies, the Supplier may terminate the Software Contract with immediate effect by giving written notice to the Buyer if the Buyer:
- 18.2.1 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); it being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring); it having a receiver appointed to any of its assets or ceasing to carry on business; or, if any such step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- 18.2.2 the Buyer suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- 18.2.3 the Buyer's financial position deteriorates to such an extent that in the Supplier's opinion the Buyer's capability to adequately fulfil its obligations under the Software Contract has been placed in jeopardy; or
- 18.2.4 the Buyer fails to pay any amount due under the Software Contract on the due date for payment and remains in default not less than seven (7) days after being notified in writing to make such payment.
- 18.3 Where the Supplier is entitled to terminate the Software Contract under this clause 18, it shall also be entitled to terminate any other contracts with the Buyer.
- 18.4 Termination of the Software Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of the Software Contract which existed at or before the date of termination.
- 18.5 Any provision of the Software Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.
- 18.6 On termination of the Software Contract for any reason:
- 18.6.1 the Buyer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of the Supplied Software or services supplied and any costs or expenses already incurred by the Supplier but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Buyer immediately on receipt;
- 18.6.2 the Buyer shall either return to the Supplier or, at the Supplier's option, permanently delete and destroy, all material copies of the Licensed Software and Documentation and shall ensure that any copies of the Licensed Software on hard discs or other storage means associated with any Licensed Software or any computer equipment owned or controlled by the Buyer are permanently deleted;
- 18.6.3 all Third Party Terms shall be terminated and the Buyer shall comply with all relevant provisions of the Third Party Terms that apply following termination;
- 18.6.4 the Buyer shall on request return, or destroy, or permanently erase any Confidential Information belonging to the Supplier; and
- 18.6.5 the Buyer shall return all of the Supplier's materials and equipment and if the Buyer fails to do so, then the

Supplier may enter the Buyer's premises and the Location(s) (if different) and take possession of them.

**19 General**

- 19.1 **Confidentiality.** Each party undertakes that it shall not at any time disclose to any person any Confidential Information of the other party, except as permitted by clause 19.2.
- 19.2 Each party may disclose the other party's Confidential Information:
- 19.2.1 to its employees, officers, representatives or advisers (and in the case of Supplier being the recipient of the Buyer's Confidential Information, to its agents, Affiliates and subcontractors) who need to know such information for the purposes of exercising the party's rights or performing its obligations under or in connection with the Software Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses such confidential information comply with clause 19.1; and
- 19.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 19.3 No party shall use any other party's Confidential Information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Software Contract.
- 19.4 The Supplier may refer to the Buyer as being a client of the Supplier in customer reference lists, sales presentations, advertising or press releases.
- 19.5 **Assignment and other dealings.** The Buyer shall not assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Software Contract without the prior written consent of the Supplier.
- 19.6 **Variation.** No variation of the Software Contract shall be effective unless it is in writing and signed by an authorised representative of both parties.
- 19.7 **Waiver.** A waiver of any right or remedy by the Supplier shall only be effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A delay or failure to exercise, or the single or partial exercise of, any right or remedy by the Supplier shall not waive that or any other right or remedy; nor prevent or restrict the further exercise of that or any other right or remedy by the Supplier.
- 19.8 **Dispute Resolution.** If a dispute arises out of or in connection with the Software Contract or the performance, validity or enforceability of it (**Dispute**) then, except as expressly provided in the Software Contract, the parties shall follow the procedure set out in this clause:
- 19.8.1 either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents;
- 19.8.2 following service of the Dispute Notice, the parties shall use reasonable endeavours to promptly resolve the Dispute by way of without prejudice discussions between the relevant representatives in accordance with the following escalation levels and timescales;

Escalation Level	Supplier representative	Buyer representative	Time for resolution
1	Service Manager	Manager	10 Business Days
2	Service Director	Director	5 Business Days
3	Managing Director	Managing Director	5 Business Days

- and
- 19.8.3 if, for any reason, the parties are unable to resolve the Dispute within the timescales and escalation levels referred to in clause 19.8.2, or should either party fail to engage or cease its engagement in that process, then the Dispute shall be finally resolved by the courts of England and Wales in accordance with clause 19.14.
- 19.9 Nothing in clause 19.8 shall prevent the Supplier from commencing Court proceedings at any time.
- 19.10 **Severance.** If any provision or part-provision of the Software Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted.
- 19.11 **Notices.** Any notice or other communication given to a party under or in connection with the Software Contract shall be in writing, addressed to that party at its registered office or such other address as that party may have notified to the other party, and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service. Any other form of delivery, including without limitation, delivery via fax or email, shall not be valid. A notice or other communication

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shall be deemed to have been received: if delivered personally, when left at the relevant address; 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; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

- 19.12 The provisions of clause 19.11 shall not apply to the service of any proceedings or other documents in any legal action.
- 19.13 **Third party rights.** No one other than a party to the Software Contract and their permitted assignees shall have any right to enforce any of its terms.
- 19.14 **Governing law and jurisdiction.** The Software 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 laws of England and Wales and each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any such dispute or claim.

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**SCHEDULE 1**

**Definitions**

1.1 The terms listed here shall have the following meanings:

<b>Acceptance Certificate:</b>	the certificate in the form and format to be determined by the Supplier and which is to be signed by the Buyer or which shall be deemed signed in accordance with clause 6;	<b>Licensed Software:</b>	the Supplier Standard Software and the Bespoke Software;
<b>Affiliate:</b>	any entity that directly or indirectly controls, is controlled by, or is under common control with another entity;	<b>Licensed Users</b>	those employees and agents of the Buyer who are authorised by the Buyer to use the Licensed Software;
<b>Bespoke Software:</b>	the Supplier's Standard Software modified by the Supplier specifically for the Buyer pursuant to the Software Contract and any other software developed for the Buyer by the Supplier, whether listed as such in the Order Form and described in more detail in the Specification, or otherwise;	<b>Location:</b>	the location for the delivery and installation of the Licensed Software and at which the Licensed Software and Documentation is to be used as specified in the Order Form, and includes in relation to use of the Licensed Software and Documentation: (i) any additional locations set out in the Specification; and (ii) any other location(s) as may be agreed by the parties in writing from time to time;
<b>Business Day</b>	means any a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business;	<b>Losses</b>	means all liabilities, costs, expenses, damages, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses and any indirect or consequential losses;
<b>the Buyer</b>	means the entity identified as such on the Order Form;	<b>Maintenance Release:</b>	a release of the Supplier Standard Software which corrects faults in, adds functionality to, or otherwise amends or upgrades the Supplier Standard Software, but which does not constitute a New Version;
<b>Charges:</b>	the charges (including any Deposit) payable by the Buyer to the Supplier for the Supplied Software including its delivery and installation);	<b>New Version:</b>	any new version of the Supplier Standard Software which from time to time is publicly marketed and offered for purchase by the Supplier in the course of its normal business, being a version which contains such significant differences from the previous versions as to be generally accepted in the marketplace as constituting a new product;
<b>Concurrent User Limit</b>	the number of Licensed Users able to access the Licensed Software at any one time. Unless otherwise specified in the Order Form the Concurrent User Limit under the Software Contract shall be 1;	<b>Order Form</b>	means the order form attached to or accompanying these Software Terms;
<b>Confidential Information:</b>	information of commercial value and any other confidential or proprietary information, in whatever form or medium, disclosed by a party (or any of its Affiliates) to the other party (or any of its Affiliates), including commercial or technical know-how, technology, information pertaining to business operations and strategies, and information pertaining to business affairs, customers, suppliers, pricing and marketing and, for clarity, including (in the case of the Supplier's information) information relating to the Licensed Software or any of its constituent parts, the source code relating to the Licensed Software or any parts thereof;	<b>Software Delivery Date</b>	means the target date for delivery and installation of the Supplied Software, as set out on the Order Form;
<b>Data Protection Legislation</b>	all applicable data protection law and regulations in any jurisdiction;	<b>Specification</b>	the functional design specification of the Supplied Software in final agreed form as agreed between the Supplier and the Buyer;
<b>Defect</b>	an error in the Licensed Software that causes it to fail to operate materially in accordance with the Specification;	<b>the Supplier</b>	means Weightron Bilancai Limited;
<b>Deposit</b>	means the deposit (if any) payable by the Buyer in respect of the Supplied Software and/or its development, delivery or installation, as set out in the Order Form;	<b>Supplied Software</b>	has the meaning given to it in clause 6;
<b>Deposit Payment Date</b>	means the final date for payment of the Deposit, as set out on the Order Form;	<b>Supplier Standard Software</b>	the unmodified standard software programs proprietary to the Supplier (including all subsequent amendments and updates to, or new versions of, such software programs) to be provided by the Supplier pursuant to the Software Contract as set out in the Order Form and described in more detail in the Specification;
<b>Documentation</b>	the operating manuals, user instruction manuals, technical literature and all other related materials in human-readable or machine-readable forms in respect of the Licenced Software supplied by the Supplier to the Buyer;	<b>Tests</b>	has the meaning given in clause 6.1;
<b>End Customer</b>	the ultimate intended recipient of the Supplied Software (if applicable) as set out in the Order Form where the Supplied Software is being procured by the Buyer for the benefit of that recipient pursuant to a contract between that recipient and the Buyer;	<b>Third Party Hardware</b>	hardware supplied other than by the Supplier; and
<b>Hardware</b>	means the relevant hardware identified in the Order Form with which the Supplied Software is to inter-operate, whether that hardware was supplied by the Supplier to the Buyer (under separate agreement) or is Third Party Hardware;	<b>Third-Party Software:</b>	the software programs proprietary to third parties (including open-source software), which are to be provided to the Buyer without modification pursuant to the Software Contract, as set out in the Order Form and described in more detail in the Specification.
<b>Good Working Order</b>	the Third-Party Hardware operates in accordance with its specification and any requirements notified by the Supplier to the Buyer;		
<b>Intellectual Property Rights:</b>	patents, utility models, rights to inventions, copyright and related rights, trade marks and service marks, trade names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair		