

DIGITRONIX

Est. 1995

Terms and Conditions of Business

V. 08.19

The Client's attention is particularly drawn to the provisions of [Clause 13](#) (Limitation of liability).

1. INTERPRETATION

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

1.1 DEFINITIONS:

Acceptance: the procedure for acceptance by the Client of Goods, Services and/or Deliverables as set out in the Proposal and/or quote.

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

Commencement Date: has the meaning given in: [Clause 2.2](#).

Conditions: these terms and conditions as amended from time to time in accordance with [Clause 17.8](#).

Confidential Information: means any commercial, financial or technical information, information relating to the Deliverables which is obviously confidential or has been identified as such, or which is developed by Digitronix in performing its obligations under, or otherwise pursuant to the Contract. This includes: the operations, processes, plans, Proposals, drafts, product information, know-how, technical information, designs, products, samples, materials, data, prototypes, processes, specifications, studies or software of Digitronix, or of any of Digitronix' affiliates and any information, findings, data, studies, results or analysis derived from Confidential Information and/or copies derived therefrom;

Contract: the contract between Digitronix and the Client for the supply of Goods and/or Services in accordance with these Conditions.

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 measures: as defined in the Data Protection Legislation.

Client: the person or firm who purchases the Goods and/or Services from Digitronix.

Data Protection Legislation: the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications).

Deliverables: the final, Client-approved deliverables produced for the Client by Digitronix, more particularly defined in the Order, including but not limited to Goods, Websites, printed materials, illustrations, logos, campaigns, graphics, images, slogans and taglines.

Delivery Location: has the meaning given in [Clause 4.2](#).

Digitronix: Digitronix Ltd registered in England and Wales with company number 03034758.

Digitronix Materials: has the meaning given in Clause 8.1(h).

Force Majeure Event: has the meaning given to it in [Clause 16](#).

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Goods: the goods (or any part of them) set out in the Order.

Goods Specification: any specification for the Goods that is set out in a Proposal or quotation or otherwise agreed in writing by the Client and Digitronix.

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 Client's order for the supply of Goods and/or Services, as set out in the Client's written acceptance of Digitronix's quotation and/or Proposal and the terms and provisions of which are set out in quotation and/or Proposal.

Proposal: any written/oral suggestions and plans made by Digitronix in relation to a project including all proposed/draft/working Deliverables.

Services: the services, including the Deliverables, supplied by Digitronix to the Client as set out in the Service Specification.

Service Specification: the description or specification for the Services included in the Proposal/quotation or otherwise agreed in writing and amended in writing from time to time.

UK Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive (2002/58/EC) (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

Website: A set of related web pages located under a single domain name, produced as a Deliverable by Digitronix.

1.2 Interpretation:

(a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

(b) A reference to a party includes its personal representatives, successors and permitted assigns.

(c) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.

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

(e) A reference to **writing** or **written** includes fax and email.

2. BASIS OF CONTRACT

2.1 The Order constitutes an offer by the Client to purchase Goods and/or Services covered in the Proposal and/or quotation in accordance with these Conditions.

2.2 The Order shall only be deemed to be accepted when Digitronix issues written acceptance of the Order, at which point, and on which date the Contract shall come into existence (**Commencement Date**).

2.3 Any samples, drawings, descriptive matter or advertising issued by Digitronix and any descriptions of the Goods or illustrations or descriptions of the Services contained in Digitronix's catalogues, brochures or website are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They 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 Client seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.5 Any quotation given by Digitronix shall not constitute an offer and is only valid for a period of 20 Business Days from its date of issue.

2.6 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

2.7 The term of the Contract shall be from the Commencement Date until Acceptance of the Goods or Services by the Client, or termination of the Contract under Clause 14.

3. GOODS

3.1 The Goods are described in the Goods Specification.

3.2 The Client shall indemnify Digitronix against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by Digitronix arising out of or in connection with any claim made against Digitronix for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with Digitronix's use of all materials provided by the Client (whether or not provided in the Goods Specification) This [Clause 3.2](#) shall survive termination of the Contract.

3.3 Digitronix reserves the right to amend the Goods Specification if required by any applicable statutory or regulatory requirement, and Digitronix shall notify the Client in any such event.

4. DELIVERY OF GOODS

4.1 Digitronix shall ensure that:

(a) each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the contract number, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and

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(b) it states clearly on the delivery note any requirement for the Client to return any packaging material to Digitronix. The Client shall make any such packaging materials available for collection at such times as Digitronix shall reasonably request. Returns of packaging materials shall be at Digitronix's expense.

4.2 Digitronix shall either deliver the Goods to the location set out in the Order or the Client shall collect the Goods, within three Business Days of Digitronix notifying the Client that the Goods are ready, from Digitronix's premises at Unit 6, Union Mills, 9 Dewsbury Road, Leeds, England, LS11 5DD or such other location as the parties may agree (**Delivery Location**).

4.3 Delivery of the Goods shall be completed on the completion of loading of the Goods at the Delivery Location.

4.4 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. Digitronix shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Client's failure to provide Digitronix with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.5 If Digitronix fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Client in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. Digitronix shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Client's failure to provide Digitronix with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.

4.6 If the Client fails to take delivery of the Goods within three Business Days of Digitronix notifying the Client that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by Digitronix's failure to comply with its obligations under the Contract in respect of the Goods:

(a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day following the day on which Digitronix notified the Client that the Goods were ready; and

(b) Digitronix shall store the Goods until delivery takes place and charge the Client for all related costs and expenses (including insurance).

4.7 If ten Business Days after the day on which Digitronix notified the Client that the Goods were ready for delivery the Client has not taken delivery of them, Digitronix may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, charge the Client for any shortfall below the price of the Goods.

4.8 If Digitronix delivers up to and including 10% more or less than the quantity of Goods ordered the Client may not reject them.

4.9 Digitronix may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Client to cancel any other instalment.

4.10 The Client may cancel the Order for Goods at any time before delivery. The Client shall be invoiced for all work carried out and materials purchased by Digitronix up to the date of cancellation.

5. QUALITY OF GOODS

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5.1 Digitronix warrants that on delivery, and for a period of 12 months from the date of delivery (**warranty period**), the Goods shall:

- (a) conform in all material respects with the Goods Specification;
- (b) be free from material defects in design, material and workmanship; and
- (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).

5.2 Subject to [Clause 5.3](#), Digitronix shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full if:

- (a) the Client gives notice in writing during the warranty period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in [Clause 5.1](#);
- (b) Digitronix is given a reasonable opportunity of examining such Goods; and
- (c) the Client (if asked to do so by Digitronix) returns such Goods to Digitronix's place of business at Digitronix's cost.

5.3 Digitronix shall not be liable for the Goods' failure to comply with the warranty in [Clause 5.1](#) if:

- (a) the Client makes any further use of such Goods after giving a notice in accordance with [Clause 5.2](#);
- (b) the defect arises because the Client failed to follow Digitronix's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
- (c) the defect arises as a result of Digitronix following any drawing, design or Goods Specification supplied by the Client;
- (d) the Client alters or repairs such Goods without the written consent of Digitronix;
- (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
- (f) the Goods differ from the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

5.4 Except as provided in this [Clause 5](#), Digitronix shall have no liability to the Client in respect of the Goods' failure to comply with the warranty set out in [Clause 5.1](#).

5.5 The terms of these Conditions shall apply to any repaired or replacement Goods supplied by Digitronix.

6. TITLE AND RISK

6.1 The risk in the Goods shall pass to the Client on completion of delivery.

6.2 Title to the Goods shall not pass to the Client until the earlier of:

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(a) Digitronix receives payment in full (in cash or cleared funds) for the Goods and any other goods that Digitronix has supplied to the Client in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums; and

(b) the Client resells the Goods, in which case title to the Goods shall pass to the Client at the time specified in [Clause 6.4](#).

6.3 Until title to the Goods has passed to the Client, the Client shall:

(a) store the Goods separately from all other goods held by the Client so that they remain readily identifiable as Digitronix's property;

(b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

(c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on Digitronix's behalf from the date of delivery;

(d) notify Digitronix immediately if it becomes subject to any of the events listed in [Clause 14.2\(b\)](#) to [Clause 14.2\(d\)](#); and

(e) give Digitronix such information relating to the Goods as Digitronix may require from time to time.

6.4 Subject to [Clause 6.5](#), the Client may resell or use the Goods in the ordinary course of its business (but not otherwise) before Digitronix receives payment for the Goods. However, if the Client resells the Goods before that time:

(a) it does so as principal and not as Digitronix's agent; and

(b) title to the Goods shall pass from Digitronix to the Client immediately before the time at which resale by the Client occurs.

6.5 If before title to the Goods passes to the Client the Client becomes subject to any of the events listed in [Clause 14.2\(b\)](#) to [Clause 14.2\(d\)](#), then, without limiting any other right or remedy Digitronix may have:

(a) the Client's right to resell Goods or use them in the ordinary course of its business ceases immediately; and

(b) Digitronix may at any time:

(i) require the Client to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and **(ii)** if the Client fails to do so promptly, enter any premises of the Client or of any third party where the Goods are stored in order to recover them.

6.6 Acceptance of the Goods shall take place in accordance with the procedure set out in the Proposal.

7. SUPPLY OF SERVICES

7.1 Digitronix shall supply the Services to the Client in accordance with the Service Specification in all material respects.

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7.2 Digitronix shall use all reasonable endeavours to meet any performance dates for the Services specified in the Proposal and/or quotation and/or Service Specification , as amended from time to time by written agreement between the parties but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.

7.3 Digitronix reserves the right to amend the Service Specification 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, and Digitronix shall notify the Client in any such event.

7.4 Digitronix warrants to the Client that the Services will be provided using reasonable care and skill.

7.5 Acceptance of the Deliverable and/or Services shall take place after delivery of the Services in accordance with the procedure set out in the Proposal.. If the Client has any amendments to be made to the Deliverables in order for the Deliverables to comply with the Service Specification, Digitronix shall carry out any additional work as agreed in writing, within a timescale agreed by the parties (“**Amendments Procedure**”). Digitronix shall implement the Amendments Procedure on a maximum of 3 occasions for each Order unless otherwise set out in the Proposal and/or Order. Should any amendments be required thereafter by the Client, Digitronix’s daily fee rates will apply.

7.6 Where the Deliverable is a Website, Digitronix shall, within the three month period following Acceptance of the Website, use reasonable endeavours to resolve any defects which occur as a result of errors in the software of the Website. Following the warranty period, Digitronix shall not be responsible for any defects, errors or updates in relation to the Website. Should the Client require the provision of this service, a separate Repair and Maintenance Agreement must be entered into between the parties.

7.7 The Client shall indemnify Digitronix against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by Digitronix arising out of or in connection with any claim made against Digitronix for actual or alleged infringement of a third party’s intellectual property rights arising out of or in connection with Digitronix’s use of all materials provided by the Client (whether or not provided in the Services Specification) for the purpose of inclusion in the Deliverables. This [Clause 7.7](#) shall survive termination of the Contract.

8. CLIENT’S OBLIGATIONS

8.1 The Client shall:

(a) ensure that the terms of the Order and any information it provides in the Service Specification and the Goods Specification are complete and accurate;

(b) co-operate with Digitronix in all matters relating to the Services;

(c) provide Digitronix, its employees, agents, consultants and subcontractors, with access to the Client’s premises, office accommodation and other facilities as reasonably required by Digitronix to provide the Services;

(d) provide Digitronix with such information and materials as Digitronix may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material

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respects;

- (e) prepare the Client's premises for the supply of the Services;
- (f) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
- (g) comply with all applicable laws, including health and safety laws;
- (h) keep all materials, equipment, documents and other property of Digitronix (**Digitronix Materials**) at the Client's premises in safe custody at its own risk, maintain Digitronix Materials in good condition until returned to Digitronix, and not dispose of or use Digitronix Materials other than in accordance with Digitronix's written instructions or authorisation;
- (i) comply with any additional obligations as set out in the Service Specification; and
- (j) provide a designated point of contact for the Contract and, where requested by Digitronix, attend and/or host a meeting between the parties at the commencement of the Contract.

8.2 If Digitronix's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Client or failure by the Client to perform any relevant obligation (**Client Default**):

- (a) without limiting or affecting any other right or remedy available to it, Digitronix shall have the right to suspend performance of the Services until the Client remedies the Client Default, and to rely on the Client Default to relieve it from the performance of any of its obligations in each case to the extent the Client Default prevents or delays Digitronix's performance of any of its obligations;
- (b) Digitronix shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from Digitronix's failure or delay to perform any of its obligations as set out in this [Clause 8.2](#); and
- (c) the Client shall reimburse Digitronix on written demand for any costs or losses sustained or incurred by Digitronix arising directly or indirectly from the Client Default.

9. CHARGES AND PAYMENT

9.1 The price for Goods:

- (a) shall be the price set out in the Order or, if no price is quoted, the price set out in Digitronix's published price list as at the date of order; and
- (b) shall be exclusive of all costs and charges of packaging, insurance, transport of the Goods, which shall be invoiced to the Client.

9.2 The charges for Services shall be calculated on a time and materials basis:

- (a) the charges shall be calculated in accordance with Digitronix's daily fee rates, as set out in its current price list at the date of the Contract. This will be displayed on its website or provided directly to the Client, or included in the Proposal;

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(b) Digitronix's daily fee rates for each individual person are calculated on the basis of an eight-hour day from 9.00 am to 5.00 pm worked on Business Days;

(c) Digitronix shall be entitled to charge an overtime rate on a pro-rata basis for each part day or for any time worked by individuals whom it engages on the Services outside the hours referred to in [Clause 9.2\(b\)](#); and

(d) Digitronix shall be entitled to charge the Client for any expenses reasonably incurred by the individuals whom Digitronix engages in connection with the Services including travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by Digitronix for the performance of the Services, and for the cost of any materials.

9.3 Digitronix reserves the right to:

(a) increase the price of the Goods, by giving notice to the Client at any time before delivery, to reflect any increase in the cost of the Goods to Digitronix that is due to: **(i)** any factor beyond the control of Digitronix (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs); **(ii)** any request by the Client to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification; or **(iii)** any delay caused by any instructions of the Client in respect of the Goods or failure of the Client to give Digitronix adequate or accurate information or instructions in respect of the Goods.

9.4 In respect of Good and Services, unless otherwise set out in the Order,

Digitronix shall invoice the Client in the following stages:

- 30% of total amount payable upon acceptance by Digitronix of Order
- 30% of total amount payable upon completion of design stage (as defined in the Proposal)
- 40% of total amount payable upon completion of the Services and/or Delivery of the Goods

9.5 The Client shall pay each invoice submitted by Digitronix:

(a) within 30 days of the date of the invoice or in accordance with any credit terms agreed by Digitronix and confirmed in writing to the Client; and

(b) in full and in cleared funds to a bank account nominated in writing by Digitronix, and

time for payment shall be of the essence of the Contract.

9.6 All amounts payable by the Client under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by Digitronix to the Client, the Client shall, on receipt of a valid VAT invoice from Digitronix, pay to Digitronix such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.

9.7 If the Client fails to make a payment due to Digitronix under the Contract by the due date, then, without limiting Digitronix's remedies under [Clause 14](#) (Termination), the Client shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this [Clause 9.7](#) will accrue daily at 4% a year above 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%.

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9.8 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).

10. INTELLECTUAL PROPERTY RIGHTS

10.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Client) shall be owned by Digitronix.

10.2 Digitronix grants to the Client, or shall procure the direct grant to the Client of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence to use the Deliverables (excluding materials provided by the Client) for the purpose of receiving and using the Services and the Deliverables in its business, insofar as the purpose shall be restricted to the uses set out in the Proposal. Should the Client require use of the Deliverables for a purpose not set out in the Order, a separate agreement shall be entered into between the parties.

10.3 The Client shall not sub-license, assign or otherwise transfer the rights granted by [Clause 10.2](#).

10.4 The Client grants Digitronix a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the Client to Digitronix for the term of the Contract for the purpose of providing the Services to the Client and for the purposes of the demonstration and marketing of Digitronix's Goods and Services.

10.5 The Client warrants that all information and materials provided to Digitronix for inclusion in the Deliverables does not infringe any third party's Intellectual Property Rights.

11. DATA PROTECTION

11.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This [Clause 11](#) is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation. In this [Clause 11](#), **Applicable Laws** means (for so long as and to the extent that they apply to Digitronix) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law; and **Domestic UK Law** means the UK Data Protection Legislation and any other law that applies in the UK.

11.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Client is the controller and Digitronix is the processor.

11.3 Without prejudice to the generality of [Clause 11.1](#), the Client will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to Digitronix for the duration and purposes of the Contract.

11.4 Without prejudice to the generality of [Clause 11.1](#), Digitronix shall, in relation to any personal data processed in connection with the performance by Digitronix of its obligations under the Contract:

(a) process that personal data only on the documented written instructions of the Client unless Digitronix is required by Applicable Laws to otherwise process that personal data. Where Digitronix is relying on Applicable Laws as the basis for processing personal data, Digitronix shall promptly notify the Client of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit Digitronix from so notifying the Client;

(b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Client, to protect against unauthorised or unlawful processing of personal data and

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against accidental loss or destruction of, or damage to, 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 personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to 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 personal data are obliged to keep the personal data confidential; and

(d) not transfer any personal data outside of the European Economic Area unless the prior written consent of the Client has been obtained and the following conditions are fulfilled: (i) the Client or Digitronix has provided appropriate safeguards in relation to the transfer; (ii) the data subject (as defined in the Data Protection Legislation) has enforceable rights and effective legal remedies; (iii) Digitronix complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and (iv) Digitronix complies with reasonable instructions notified to it in advance by the Client with respect to the processing of the personal data;

(e) assist the Client, at the Client'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;

(f) notify the Client without undue delay on becoming aware of a personal data breach;

(g) at the written direction of the Client, delete or return personal data and copies thereof to the Client on termination of the Contract unless required by Applicable Law to store the personal data; and

(h) maintain complete and accurate records and information to demonstrate its compliance with this [Clause 11](#) and immediately inform the Client if, in the opinion of Digitronix, an instruction infringes the Data Protection Legislation.

11.5 The Client does not consent to Digitronix appointing any third party processor of personal data under the Contract.

11.6 Either party may, at any time on not less than 30 days' notice, revise this [Clause 11](#) by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to the Contract).

12. CONFIDENTIALITY

12.1 Each party undertakes that it shall not at any time during the Contract, and for a period of five years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, Clients, clients or suppliers of the other party, except as permitted by [Clause 12.2](#).

12.2 Each party may disclose the other party's confidential information:

(a) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the

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other party's confidential information comply with this *Clause 12*; and

(b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

12.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

13. LIMITATION OF LIABILITY: THE CLIENT'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.

13.1 Digitronix has obtained insurance cover in respect of its own legal liability for the provision of Services. Digitronix has been unable to obtain insurance in respect of certain types of loss at a commercially viable price. The limits and exclusions in this clause reflect the insurance cover Digitronix has been able to arrange and the Client is responsible for making its own arrangements for the insurance of any excess loss.

13.2 The restrictions on liability in this *Clause 13* apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

13.3 Neither party may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.

13.4 Nothing in the Contract limits any liability which cannot legally be limited, including liability for: **(a)** death or personal injury caused by negligence; **(b)** fraud or fraudulent misrepresentation; and **(c)** breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

13.6 Subject to *Clause 13.4*, Digitronix's total liability to the Client in respect of all breaches of duty occurring within any contract year shall not exceed the cap.

13.7 In *Clause 13.6*:

cap. The cap is one hundred per cent (100%) of the total charges in the relevant Order in relation to which the breaches occurred.

total charges. The total charges means all sums paid by the Client and all sums payable under the Contract in respect of goods and services actually supplied by Digitronix, whether or not invoiced to the Client.

13.9 This *Clause 13.9* sets out specific heads of excluded loss:

(a) Subject to *Clause 13.4*, the types of loss listed in *Clause 13.9(b)* are wholly excluded by the parties.

(b) The following types of loss are wholly excluded: **(i)** loss of profits; **(ii)** loss of sales or business; **(iii)** loss of agreements or contracts; **(iv)** loss of anticipated savings; **(v)** loss of use or corruption of software, data or information; **(vi)** loss of or damage to goodwill; and **(vii)** indirect or consequential loss.

13.10 Digitronix has given commitments as to compliance of the Goods and Services with relevant specifications in *Clause 5* and *Clause 7*. In view of these commitments, the terms implied by sections

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13 to 15 of the Sale of Goods Act 1979 and sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

13.11 Unless the Client notifies Digitronix that it intends to make a claim in respect of an event within the notice period, Digitronix shall have no liability for that event. The notice period for an event shall start on the day on which the Client became, or ought reasonably to have become, aware of its having grounds to make a claim in respect of the event and shall expire 6 months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

13.12 This [Clause 13](#) shall survive termination of the Contract.

14. TERMINATION

14.1 Without affecting any other right or remedy available to it, either party may terminate the Contract by giving the other party not less than one month's written notice.

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

(a) the other party commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 21 days after receipt of notice in writing to do so;

(b) the other party 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), 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 other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or

(d) the other party'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.

14.3 Without affecting any other right or remedy available to it, Digitronix may terminate the Contract with immediate effect by giving written notice to the Client if: **(a)** the Client fails to pay any amount due under the Contract on the due date for payment; or **(b)** there is a change of control of the Client.

14.4 Without affecting any other right or remedy available to it, Digitronix may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Client and Digitronix if the Client fails to pay any amount due under the Contract on the due date for payment, the Client becomes subject to any of the events listed in [Clause 14.2\(b\)](#) to [Clause 14.2\(d\)](#), or Digitronix reasonably believes that the Client is about to become subject to any of them.

15. CONSEQUENCES OF TERMINATION

15.1 On termination of the Contract:

(a) the Client shall immediately pay to Digitronix all Digitronix's outstanding unpaid invoices and

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interest. In respect of Services and Goods supplied but for which no invoice has been submitted, Digitronix shall submit an invoice, which shall be payable by the Client immediately on receipt;

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

15.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations and 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.

15.3 Any provision of the Contract that expressly or by implication is intended to have effect after termination or expiry shall continue in full force and effect.

16. FORCE MAJEURE

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

17. GENERAL

17.1 Assignment and other dealings

(a) Digitronix 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 Client 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 Digitronix.

17.2 Notices.

(a) Any notice given to a party under or in connection with the Contract shall be in writing and shall be:
(i) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or **(ii)** sent by fax to its main fax number or sent by email to the address specified in the Order.

(b) Any notice shall be deemed to have been received: **(i)** if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; and **(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 at the time recorded by the delivery service; and **(iii)** if sent by fax or 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 17.2\(b\)\(iii\)](#), 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 17.2](#) does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

17.3 Severance. If any provision or part-provision of the Contract is or becomes invalid, illegal or

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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. Any modification to or deletion of a provision or part-provision under this [Clause 17.3](#) shall not affect the validity and enforceability of the rest of the Contract.

17.4 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 remedy. 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.

17.5 No partnership or agency. Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.

17.6 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) not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misrepresentation based on any statement in the Contract.

(c) Nothing in this clause shall limit or exclude any liability for fraud.

17.7 Third party rights. 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.

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

17.9 Governing Law and Jurisdiction. This Contract (and any non-contractual matters arising in relation to its subject matter) will be governed by English law and be subject to the exclusive jurisdiction of the English courts,