



## TERMS AND CONDITIONS

### TERMS-19-5

These Terms and Conditions (these "**Terms**") govern the terms on which Object Matrix Limited, a company incorporated in England and Wales whose registered company number is 04933751 and whose registered office is at Capital Tower, Greyfriars Road, Cardiff, CF10 3AG (the "**Supplier**") makes sales to customers (each a "**Customer**") to purchase Products (as defined below). These Terms, together with any documents referred to herein, shall together constitute the contract between the Supplier and the Customer setting out the terms upon which the Customer may purchase the Products (the "**Agreement**").

## TERMS

### 1. Definitions and interpretation

#### 1.1 Definitions

**Bribery Laws:** means the Bribery Act 2010 and associated guidance published by the Secretary of State for Justice under the Bribery Act 2010 and all other applicable UK legislation, statutory instruments and regulations in relation to bribery or corruption and any similar or equivalent legislation in any other relevant jurisdiction;

**Business Day:** means a day (other than a Saturday or Sunday or public holiday) on which banks are generally open in London for non-automated normal business;

**Confidential Information:** means any and all confidential information (whether in verbal, written or electronic form), including technical or other information imparted in confidence or disclosed by one party to the other, or otherwise obtained by one party relating to the other's business, finance or technology, know-how, intellectual property, assets, strategy, products and customers, including without limitation information relating to any person, firm, or organisation associated with that party. The Customer's Confidential Information includes the Customer Content;

**Customer Content:** means all content, data, information and other materials inputted by the Customer into the Products or otherwise provided or made available by the Customer to the Supplier pursuant to this Agreement;

**EULA:** means an end user licence agreement between the Supplier and a Customer in the form of the document attached at Schedule 2;

**Force Majeure:** means an event or sequence of events beyond a party's reasonable control (which could not reasonably have been anticipated and avoided by a party) preventing or delaying it from performing its obligations hereunder, including war, revolution, terrorism, riot or civil commotion; strikes, lock outs or other industrial action, whether of the affected party's own employees or others; blockage or embargo; acts of or restrictions imposed by government or public authority; explosion, fire; flood, natural disaster, or adverse weather conditions. Force Majeure does not include, without limitation, inability to pay, mechanical difficulties, shortage or increase of price of raw materials, over-commitment or market or other circumstances which may make the terms of this Agreement unattractive to a party;

**Good Industry Practice:** means the exercise of that degree of care, diligence and skill which would reasonably and ordinarily be expected from a skilled, professional and experienced person engaged in the same type of undertaking under the same or similar circumstances;

**Hardware:** means the Supplier's hardware products, details of which are set out in Schedule 1;

**Intellectual Property Rights:** means copyright, rights in inventions, patents, know-how, trade secrets, trade marks and trade names, service marks, design rights, rights in get-up, database rights and rights in data, rights in software, semiconductor chip topography rights, the right to sue for passing off, mask works, utility models, domain names and all similar rights and, in each case, whether registered or not, including any applications to protect or register such rights, including all renewals and extensions of such rights or applications, whether vested, contingent or future, and wherever existing;

**Order:** has the meaning given in clause 3.1;

**Price:** has the meaning given in clause 5.1.1;

**Products:** means the Supplier's Software and Hardware products set out in the Order;

**SLA:** means a service level agreement between the Supplier and a Customer in the form of the document attached or referred to at Schedule 3;

**Software:** means the Supplier's software products and product services, details of which are set out in Schedule 1;

**Specification:** means the applicable specification(s) for the Software and/or Hardware as set out in Schedule 1 or otherwise supplied in writing by the Supplier;

**VAT:** means:

- (a) value added tax as defined in the [Value Added Tax Act 1994](#); and
- (b) any similar tax in any other jurisdiction.

## 1.2 Interpretation

In this Agreement, unless the context otherwise requires:

- 1.2.1 the singular includes the plural and vice versa;
- 1.2.2 references to subclauses, clauses or Schedules are to subclauses, clauses or Schedules of this Agreement;
- 1.2.3 references to this Agreement include its Schedules;
- 1.2.4 references to persons include individuals, trusts, partnerships, unincorporated bodies, government entities, companies and/or corporations (in each case whether or not having separate legal personality);
- 1.2.5 **"including"** (or similar words) means including without limitation;

- 1.2.6 clause headings do not affect their interpretation; and
- 1.2.7 references to legislation (including any subsidiary legislation) include any modification or re-enactment thereof.

## **2. Application of these Terms**

- 2.1 These Terms supersede any previously issued terms and conditions of purchase, supply or resale.
- 2.2 Where in conflict, the terms in the EULA will always supersede the terms in this Agreement.
- 2.3 No variation of these Terms or to an Order shall be binding unless expressly agreed in writing and executed by a duly authorised signatory on behalf of the Supplier.

## **3. Ordering**

- 3.1 The Customer shall submit a purchase order to the Supplier requesting the Supplier to supply the Products (an "**Order**"). The Order shall constitute an offer to purchase Products for resale in accordance with these Terms. Such offer shall not be deemed to have been accepted until acceptance has been confirmed by the Supplier in writing, at which point a contract shall exist between the parties in respect of those Products.
- 3.2 The Supplier may, in its ultimate discretion, refuse to accept an Order for any reason.
- 3.3 If an Order is accepted by the Supplier then the Supplier shall confirm such acceptance to the Customer in writing. Such confirmation shall clearly state the Supplier's proposed date and time for delivery of the Products under this Agreement (the "**Proposed Delivery Timings**"), which shall be subject to the Customer's right of cancellation under clause 3.5.
- 3.4 Where the Customer is an appointed Object Matrix reseller subject to:
  - 3.4.1 the Supplier's acceptance of an Order under this clause 3;
  - 3.4.2 the reseller's right of cancellation under clause 3.5; and
  - 3.4.3 the reseller's continued compliance with these Terms,

the Supplier hereby grants to the reseller the non-exclusive, revocable, non-transferable right to market, promote and distribute the Products to jointly agreed customers.

- 3.5 If the Proposed Delivery Timings given by the Supplier in relation to an individual Order are not acceptable to the Customer then the Customer may, by giving notice in writing, terminate such Order (but for the avoidance of doubt such termination shall not affect any other Order made under this Agreement) during the seven (7) day period immediately following receipt of such Proposed Delivery Timings (the "**Termination Period**"). If the Customer chooses to terminate an Order in the applicable Termination Period the Supplier shall be entitled to charge the Customer in respect of any costs, fees or expenses reasonably incurred by the Supplier in relation to such Order during that Termination Period. If Proposed Delivery Timings are accepted in writing by the Customer then the Customer is deemed to have accepted the order and this Termination Period shall not apply.

- 3.6 If an Order is rejected by the Supplier such rejection, including any communication that may accompany such rejection, shall not constitute a counter-offer capable of acceptance by the Customer.
- 3.7 The Company may issue quotations to the Customer from time to time. Quotations are invitations to treat only. They are not an offer and are incapable of being accepted by the Customer.

#### **4. Delivery**

- 4.1 In respect of Orders submitted by the Customer and accepted by the Supplier in accordance with clause 3, and subject to the Customer's right of cancellation under clause 3.5, the Supplier will use its reasonable endeavours to deliver the Products to Customer by the delivery date set out in the Order.
- 4.2 Time is not of the essence in relation to the delivery of Products under clause 4.1. The Supplier shall use its reasonable endeavours to meet estimated dates for delivery as set out in the Order, but any such dates are approximate only.
- 4.3 Until the Customer has paid the Supplier the agreed Price for the Products supplied by the Supplier to the Customer under this Agreement, in full, those Products, together with any ancillary goods, products or documentation supplied with them and (in the case of Software) any media on which they are supplied, shall remain the sole and absolute property of the Supplier both in law and in equity (provided that no title shall pass in respect of the Intellectual Property Rights therein, which is licensed only, and any implied or actual licence under this Agreement is revoked upon non-payment).
- 4.4 The Customer acknowledges and agrees that, until it has paid the Supplier the agreed Price for the Products in full:
- 4.4.1 it possesses all Products supplied under the terms of this Agreement solely as bailee for the Supplier;
- 4.4.2 the Customer will store the Products in a manner which makes them readily identifiable as the Supplier's products.
- 4.5 Notwithstanding that the Supplier retains the property in the Products in accordance with the above provisions, all Products supplied by the Customer to the Customer under this Agreement shall be at the Customer's risk upon delivery to the Customer (or otherwise delivered as agreed in the Order).

#### **5. Prices and payment**

- 5.1 The Order shall specify:
- 5.1.1 the price payable for the Products, together with any applicable taxes or duties (including VAT) which may be charged in addition (together the "**Price**"); and
- 5.1.2 any applicable plan setting out timings and conditions for payment of the Price (the "**Payment Plan**").
- 5.2 The Supplier shall invoice the Customer at the times and in the amounts specified in the Payment Plan. If no times are specified in the Payment Plan then the Supplier shall raise its invoice at the time of delivery of the Products to the Customer in accordance with clause 4.

- 5.3 The Supplier shall invoice the Customer electronically to the email address notified by the Customer in writing to the Supplier for all sums due under this Agreement.
- 5.4 The Customer shall pay all sums due under this Agreement in full without set-off or counterclaim within thirty (30) days of the date of the Supplier's valid invoice, or on the due date for payment specified in the Order, if earlier.
- 5.5 Amounts payable to the Supplier under this Agreement shall be paid by BACS electronic funds transfer into the bank account detailed on the relevant invoice.

## **6. Interest on late payment**

- 6.1 Where sums due are not paid in full by the due date, the Supplier may, without limiting its other rights, charge interest on such sums at the rate of 3% a year above the base rate of the Bank of England from time to time in force.
- 6.2 Interest will apply from the due date for payment until actual payment in full, whether before or after judgment.

## **7. Customer's obligations**

- 7.1 The Customer shall:
- 7.1.1 comply with the Supplier's reasonable instructions in relation to the use of the Products;
  - 7.1.2 provide such information and assistance as the Supplier may reasonably require to perform its obligations under this Agreement;
  - 7.1.3 comply with the terms of the Supplier's EULA and the Supplier's SLA relating to the Products;
  - 7.1.4 maintain appropriate records of any matters relevant to the performance of its obligations under this Agreement in such format and for such period as the parties agree in writing;
  - 7.1.5 perform its obligations under this Agreement with all reasonable skill and care and in accordance with Good Industry Practice.
- 7.2 Where the Customer is an appointed Supplier reseller it shall not:
- 7.2.1 make or give any promises, warranties, guarantees or representations concerning the Products other than those contained in the EULA;
  - 7.2.2 supply the Products to any third party until they have duly executed a EULA and any relevant related Products licences, and shall provide evidence of the same at the Supplier's request; and
  - 7.2.3 amend any terms of the EULA with the Customer without the Supplier's prior written consent.

## **8. Supplier's obligations**

- 8.1 Supplier shall, subject to payment by Customer of the Price, provide Customer with:
- 8.1.1 comply with the SLA

- 8.1.2 comply with the EULA
- 8.1.3 comply with its obligations in Schedule 4
- 8.1.4 perform its obligations under this Agreement: (a) in accordance with all applicable laws and regulations; (b) with all reasonable skill and care; (c) in accordance with Good Industry Practice; and (d) using a sufficient number of experienced and qualified personnel;
- 8.1.5 have in place safeguards in accordance with Good Industry Practice to ensure the logical and physical security of the Customer Content, including ensuring adequate protection against malicious or accidental access, amendment, use or damage during storage and transmission;
- 8.1.6 promptly notify the Customer of the loss, compromise or any unauthorised access to, or breach of the security of, any Customer Content;
- 8.1.7 promptly provide such information and assistance as the Customer may reasonably require in respect of this Agreement.

## **9. Warranties**

### **9.1 The Customer warrants and represents to the Supplier that:**

- 9.1.1 the Customer has the right, power and authority to enter into this Agreement and to perform its obligations under this Agreement.
- 9.1.2 To the extent permitted by applicable law, the Customer disclaims all other warranties and conditions as to its performance including but not limited to implied warranties relating to quality, fitness for a particular purpose, or ability to achieve a particular result. This does not exclude any liability for fraudulent misrepresentation.

### **9.2 The Supplier warrants and represents to the Customer that:**

- 9.2.1 the Customer has the right, power and authority to enter into this Agreement and to grant to the Customer the rights contemplated in this Agreement;
- 9.2.2 the Products do not and shall not infringe the Intellectual Property Rights of any third party; and
- 9.2.3 for the period of ninety (90) days following delivery the Products shall conform and perform substantially in accordance with the Specification for the same, when used in the manner directed or recommended by the Supplier in writing.

### **9.3 If the Products fail to conform to the warranty in subclause 9.2.3, the Customer agrees that its sole remedy is that the Supplier will use all reasonable endeavours to remedy such non-conformance and if, in the Supplier's reasonable opinion, it is unable to remedy such non-conformance the Supplier will accept return of the Products and refund the Price for the Products, if paid, upon which that particular Customer's sublicence shall immediately terminate unless otherwise agreed in writing by the Supplier and the Customer, provided the non-conforming item is returned to the Supplier within the ninety (90)-day warranty period, and this shall be the Customer's sole and exclusive remedy for such failure.**

- 9.4 To the extent permitted by applicable law, the Supplier disclaims all other warranties and conditions as to the Products including but not limited to implied warranties relating to quality, fitness for a particular purpose, or ability to achieve a particular result. This does not exclude any liability for fraudulent misrepresentation.

## **10. Limits on liability**

- 10.1 Subject to the following subclauses, in no event shall the aggregate liability of either party (whether in contract, tort (including negligence) or otherwise) and in respect of all claims, losses and damages arising under or in connection with this Agreement exceed:
- 10.1.1 in respect of any individual Order made under this Agreement, the total Price paid or payable to the Supplier under this Agreement in respect of that Order; and
  - 10.1.2 in respect of all claims under this Agreement, the total Prices paid or payable to the Supplier under this Agreement in the twelve (12) month period immediately preceding such claim, loss or damage.
- 10.2 The above limits on liability shall not apply in respect of any indemnities provided by either party under this Agreement, including without limitation the indemnity under clauses 13 (Intellectual Property Rights and indemnity).
- 10.3 Each party's liability to the other in contract, tort (including negligence), misrepresentation (whether innocent or negligent), breach of statutory duty or otherwise arising out of or in connection with this Agreement shall not extend to any loss of profits, loss of business opportunity, loss of goodwill, loss of data, loss of anticipated savings, or any special, indirect or consequential loss or damage whatsoever.
- 10.4 The parties agree that the limitations on liability in this Agreement are reasonable given their respective commercial positions and ability to purchase relevant insurance in respect of risks under this Agreement.
- 10.5 Notwithstanding the above or other limitations and exclusions of liability set out in this Agreement, neither party excludes or limits any liability for:
- 10.5.1 personal injury (including sickness and death) to the extent that such injury results from the negligence or wilful default of a party or its employees; or
  - 10.5.2 fraud or fraudulent misrepresentation; or
  - 10.5.3 any breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
  - 10.5.4 any other liability to the extent the same cannot be excluded or limited by law.

## **11. Insurance**

Each party must for the duration of this Agreement maintain appropriate insurance cover with a reputable insurance company against all of that party's relevant liabilities and indemnities that may arise under this Agreement, and will provide to the other party upon request sufficient evidence of such insurance cover.

## **12. Force Majeure**

- 12.1 A party will not be liable if delayed in or prevented from performing its obligations hereunder due to Force Majeure, provided that it:
- 12.1.1 promptly notifies the other of the Force Majeure event and its expected duration; and
  - 12.1.2 uses reasonable endeavours to minimise the effects of that event.
- 12.2 If, due to Force Majeure, a party:
- 12.2.1 is unable to perform a material obligation; or
  - 12.2.2 is delayed in or prevented from performing its obligations for a continuous period of more than fourteen (14) days,

the other party may, within a further ten (10) days, terminate this Agreement on written notice, otherwise this Agreement shall continue in full force and effect.

## **13. Confidential Information**

- 13.1 Each party shall maintain the confidentiality of the other party's Confidential Information and shall not without the prior written consent of the other use, disclose, copy or modify the other party's Confidential Information (or permit others to do so) other than as necessary for the performance of its rights and obligations under this Agreement.
- 13.2 Each party undertakes to:
- 13.2.1 disclose the other party's Confidential Information only to those of its officers, employees, agents and contractors to whom and to the extent to which such disclosure is necessary for the purposes contemplated under this Agreement; and
  - 13.2.2 to procure that such persons are made aware of and agree in writing to observe the obligations in this clause.
- 13.3 Each party shall give notice to the other of any unauthorised misuse, disclosure, theft or loss of the other party's Confidential Information immediately upon becoming aware of the same.
- 13.4 The provisions of this clause shall not apply to information which:
- 13.4.1 is or comes into the public domain through no fault of the recipient, its officers, employees, agents or contractors;
  - 13.4.2 is lawfully received by the recipient from a third party free of any obligation of confidence at the time of its disclosure;
  - 13.4.3 is independently developed by the recipient, without access to or use of such information; or
  - 13.4.4 is required by law, by court or governmental or regulatory order to be disclosed provided that the relevant party, where lawfully possible, notifies the other party at the earliest opportunity before making any disclosure.



- 13.5 The obligations under this clause shall survive the variation, expiry or termination of this Agreement for a period of five (5) years thereafter.

#### **14. Anti-bribery**

- 14.1 Each party shall comply with applicable Bribery Laws relating to prevention of bribery and corruption and each shall use all reasonable endeavours to ensure that:
- 14.1.1 all of that party's personnel;
  - 14.1.2 all of that party's subcontractors; and
  - 14.1.3 all others associated with that party, involved in performing services for or on behalf of that party or otherwise involved with this Agreement so comply.
- 14.2 Without limitation to the above subclause:
- 14.2.1 neither party shall (directly or indirectly) offer or give or request, agree to receive or accept any bribe, other improper payment or advantage or bribe any UK or foreign public official in breach of applicable Bribery Laws; and
  - 14.2.2 each party shall implement, maintain and enforce adequate procedures designed to prevent persons associated with that party engaging in conduct which contravenes the Bribery Act 2010.
- 14.3 Each party shall immediately notify the other as soon as it becomes aware of a breach or possible breach of any of the requirements in the foregoing subclauses.
- 14.4 The expressions "**adequate procedures**", "**associated with**" and "**foreign public official**" shall be construed in accordance with the Bribery Act 2010 and associated guidance published under that Act.

#### **15. Termination**

- 15.1 Either party may without prejudice to its other rights and remedies by notice in writing to the other party immediately terminate this Agreement:
- 15.1.1 in accordance with clause 12 (Force Majeure);
  - 15.1.2 if the other is in material or persistent breach of any of its obligations under this Agreement and, if that breach is capable of remedy, has failed to remedy that breach within thirty (30) days after receiving written notice requiring it to remedy that breach; or
  - 15.1.3 if the other is unable to pay its debts (within the meaning of the Insolvency Act 1986, section 123) or becomes insolvent or an order is made or a resolution passed for the administration, winding-up or dissolution of the other (otherwise than for the purposes of a solvent amalgamation or reconstruction) or an administrative or other receiver, manager, liquidator, administrator, trustee or similar officer is appointed over all or any substantial part of the assets of the other or the other enters into or proposes any composition or arrangement with its creditors generally or any analogous event occurs in any applicable jurisdiction.

15.2 In the event of termination or expiry of this Agreement for any reason, each party shall:

15.2.1 within seven (7) days of such termination return (or, at the other party's option, destroy) all Confidential Information in its possession or under its control and all copies of such information.

15.3 Termination of this Agreement for whatever reason shall not operate to affect any provisions that expressly or by implication survive termination.

## **16. Compliance with law**

Each party shall comply and shall (at its own expense unless expressly agreed otherwise) ensure that in the performance of its duties hereunder, its employees, agents and representatives will comply with all applicable laws and regulations, provided that neither party shall be liable for any breach to the extent that such breach is directly caused or contributed to by any act or default of the other party or its employees, agents and representatives.

## **17. Dispute resolution**

If there is a dispute between the parties in relation to any matter under this Agreement, the parties' respective managers shall meet to try to resolve any such dispute and if they fail to do so with a reasonable time the matter in dispute shall be referred to a senior manager of the Customer and the Supplier respectively, for them to try to resolve the matter in dispute, failing which the provisions of clause 21 (Governing Law and jurisdiction) shall apply.

## **18. Notices**

18.1 Notices under this Agreement must be in writing and sent to the other party at the address specified at the top of this Agreement (or to such other applicable address for service agreed by the parties from time to time in writing). Notices may be given, and will be deemed received if correctly addressed:

18.1.1 by first-class post: two (2) Business Days after posting;

18.1.2 by airmail: seven (7) Business Days after posting;

18.1.3 by hand: on delivery; or

18.1.4 by email: on receipt of a read return mail from the correct address within 24 hours from delivery if no notice of delivery failure is received.

## **19. Entire Agreement**

This Agreement (and any documents referred to herein) contain the whole agreement between the parties relating to their subject matter and supersede any prior agreements, representations or understandings between them unless expressly incorporated by reference in this Agreement. Each party acknowledges that it has not relied on, and shall have no remedy in respect of, any representation (whether innocent or negligent) made but not expressly embodied in this Agreement. Nothing in this clause limits or excludes any liability for fraud or fraudulent misrepresentation.

## **20. General**

- 20.1 Each party will, at its own cost, do all further acts and execute all further documents necessary to give effect to this Agreement.
- 20.2 The parties are independent businesses and not partners, principal and agent, or employer and employee, or in any other relationship of trust to each other.
- 20.3 For the purposes of the Contracts (Rights of Third Parties) Act 1999, this Agreement is not intended to and does not give any person who is not a party to it any right to enforce any of its provisions. However, this does not affect any right or remedy of such a person that exists or is available apart from that Act.
- 20.4 No party may assign, subcontract or encumber any right or obligation under this Agreement, in whole or in part, without the other's prior written consent.
- 20.5 No amendment or variation of this Agreement will be valid unless agreed in writing by an authorised signatory of each party.
- 20.6 If any clause in this Agreement (or part thereof) is or becomes illegal, invalid or unenforceable under applicable law, but would be legal, valid and enforceable if the clause or some part of it was deleted or modified (or the duration of the relevant clause reduced), the relevant clause (or part thereof) will apply with such deletion or modification as may be required to make it legal, valid and enforceable, and the parties will promptly and in good faith seek to negotiate a replacement provision consistent with the original intent of this Agreement as soon as possible.
- 20.7 Unless otherwise expressly agreed, no delay, act or omission by either party in exercising any right or remedy will be deemed a waiver of that, or any other, right or remedy.
- 20.8 All payments under this Agreement will be made without set-off or counterclaim, free and clear of and without deduction of any taxes, levies, duties, charges and withholdings of any kind now or in future imposed in any jurisdiction.

## **21. Governing law and jurisdiction**

- 21.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter is governed by and shall be construed in accordance with the laws of England and Wales.
- 21.2 Subject to any disputes which the parties agree to resolve using an alternative dispute resolution process permitted in accordance with clause 17 (Dispute resolution), the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales to settle any disputes and claims which may arise out of, or in connection with, this Agreement.

**Schedule 1 – Product(s) and details**

**As defined in EULA schedule 1.**

## **Schedule 2 – EULA**

Contained in document:

“End user licence terms 5-2019”

**Schedule 3** SLA

Contained in document:

"Service Level Agreement 5-2019"