

**Part A: General Terms and Conditions**

The General Terms set forth below apply to any Contract between the Customer and JADe, irrespective of whether such Contract is for the sale or licensing of Products or the performance of Services. The subsequent Parts B and C set out the specific terms applicable to the sale and/or licensing of Products and the performance of Services respectively.

**A.1. DEFINITIONS**

A.1.1 In these General Terms:

- (a) **“Acceptance Criteria”** means the document headed %Acceptance Criteria+attached to, or referred to in, the Order.
- (b) **“Business Days”** means any day of the week which is not a Saturday, Sunday or any bank holiday in the United Kingdom.
- (c) **“Charges”** means collectively the Product Charge, Implementation Services Charge, Hosting Services Charge, Maintenance and Support Services Charge, Consultancy Services Charge and Configuration Services Charge; to the extent each is applicable.
- (d) **“Commencement Date”** means the date of the Contract.
- (e) **“Confidential Information”** means any information disclosed by one party to another under or in anticipation of any Contract which is confidential commercial, financial, marketing, technical information, know-how, trade secrets and/or other information in any form or medium whether disclosed orally or in writing before or after the Commencement Date, together with any reproductions of such information in any form or medium or any part(s) of this information (and **“confidential”** means that the information, either in its entirety or in the precise configuration or assembly of its components, is not publicly available).
- (f) **“Configuration Services”** means the configuration and related work to configure any Software.
- (g) **“Configuration Services Charge”** means the price payable by the Customer to JADe, for the performance of the Configuration Services, as specified in the Contract.
- (h) **“Configured Software”** means the software the subject of the Configuration Services as specified in the Contract.
- (i) **“Consultancy Services”** means the consultancy services which are specified in the Contract.
- (j) **“Consultancy Services Charge”** means the price payable by the Customer to JADe, for the performance of the Consultancy Services and/or sale or licensing of the Deliverables, as specified in the Contract.
- (k) **“Contract”** means any agreement between the parties for the supply of Product(s) or the performance of the Services on the basis of an Order (and as may be confirmed in an Order Confirmation), which shall incorporate the Terms.
- (l) **“Customer”** means the person confirmed as being the %Customer+in the Order.
- (m) **“Deliverable(s)”** means any item which is delivered as part of or following the performance of the Consultancy Services as specified in the Contract.
- (n) **“Equipment”** means the hardware (including components), software media and spare parts as specified in the Contract.
- (o) **“JADe”** means Joint Application Development Enterprises Limited of 3 Church Close, Merton, Bicester OX25 2NB.
- (p) **“Fixed Term”** means the fixed term stated in the Order or, in the absence of such term being specified, means twelve (12) months from the commencement of performance of the Maintenance and Support Services.
- (q) **“Group”** means in relation to any company that company and every other company which is for the time being a subsidiary or holding company or a subsidiary of any such holding company (and the terms %subsidiary+and %holding company+shall have the meanings given to them by Sections 736 and 736A of the Companies Act 1985).
- (r) **“Hosting Services”** means the hosting Services to allow the Customer to access and use the Software, including hosting set-up and ongoing services as specified in the Contract.
- (s) **“Hosting Services Charge”** means the price payable by the Customer to JADe, for the performance of the Hosting Services, as specified in the Contract.
- (t) **“Implementation Services”** means the implementation services as specified in the Contract.
- (u) **“Implementation Services Charge”** means the price payable by the Customer to JADe, for the performance of the Implementation Services, as specified in the Contract.
- (v) **“IPR”** means patents, registered designs, trade marks and service marks (whether registered or not), domain names, copyright, database rights, moral rights, design right, and all similar property

rights including those subsisting (in any part of the world) in inventions, designs, drawings, performances, computer programs, semiconductor topographies, confidential information, business names, goodwill and the style of presentation of goods or services and in applications for protection of any of the above rights.

- (w) **“Maintenance and Support Services”** means the maintenance and support services as specified in the Contract.
- (x) **“Maintenance and Support Services Charge”** means the price payable by the Customer to JADe, for the performance of the Maintenance and Support Services, as specified in the Contract.
- (y) **“Order”** means an order for the sale or licensing of Products or the performance of Services submitted by the Customer to JADe in hard copy form (**“Purchase Order”**) or in electronic form (**“Electronic Order”**).
- (z) **“Order Confirmation”** means a written or electronic acknowledgement which may be issued by JADe in response to an Order.
- (aa) **“Product Charge”** means the price payable by the Customer to JADe, for the sale or licensing of the Products, as specified in the Contract.
- (bb) **“Products”** means the Equipment and/or the Software and/or Deliverables.
- (cc) **“Service Level Agreement”** means the service level agreement relating to the Maintenance and Support Services attached to the Contract.
- (dd) **“Services”** means the Configuration Services, Hosting Services, Consultancy Services, Implementation Services, and/or the Maintenance and Support Services, as applicable.
- (ee) **“Sign-Off Form”** means the Sign-Off Form attached to, or referenced in, the Order.
- (ff) **“Software”** means (a) the software specified in the Contract, (b) any Updates, and (c) any related user manuals or other documentation.
- (gg) **“Terms”** means these General Terms and Conditions.
- (hh) **“Trademarks”** means all names, marks, logos, designs, trade dress and other brand designations whether registered or unregistered used in connection with the Products and/or Services.
- (ii) **“Updates”** means subsequent releases and error corrections for the Software which have been purchased from JADe by the Customer and installed on the Software.

A.1.2 Capitalised words and expressions which are not defined in this Clause have the meanings set out elsewhere in these Terms.

A.1.3 The headings to clauses are inserted for convenience only and shall not affect the interpretation or construction of the Conditions.

A.1.4 Words imparting the singular shall include the plural and vice versa. Words imparting a gender include every gender and references to persons include an individual, company, corporation, firm or partnership.

A.1.5 The words "other" and "including" and the phrase "in particular" shall not limit the generality of any preceding words or be construed as being limited to the same class as any preceding words where a wider construction is possible and the word ~~including~~+shall mean ~~including~~ without limitation+

A.1.6 References to any statute or statutory provision shall include (i) any subordinate legislation made under it, (ii) any provision which it has modified or re-enacted (whether with or without modification), and (iii) any provision which subsequently supersedes it or re-enacts it (whether with or without modification).

**A.2. APPLICABILITY, OFFERS, QUOTATIONS**

A.2.1 Unless expressly stipulated otherwise, these Terms apply to all Contracts between the Customer and JADe relating to the sale or licensing of the Products and/or the performance of the Services and supersede all prior or contemporaneous oral and/or written communications, proposals, warranties and representations with respect to the subject matter of the Contract. The Contract contains the entire agreement between the parties in relation to its subject matter and each party irrevocably and unconditionally waives any right it may have to claim damages for, and/or to rescind the Contract because of breach of any warranty not contained in the Contract, or any misrepresentation whether or not contained in the Contract, unless such misrepresentation was made fraudulently. For the avoidance of doubt, any conditions of purchase or any other standard conditions of the Customer set forth in or referred to on the Order, correspondence, stationery or other trade forms are hereby expressly declared inapplicable to any Contract and notice of rejection to which is hereby given.

A.2.2 No purported alteration or variation of these Terms shall be effective unless it is in writing, refers specifically to the Contract and is signed by duly authorised representatives of both parties.



A.2.3 In the event of any inconsistency between any clause or schedule in a Contract, the following order of precedence will apply (in descending order):

- (a) the appropriate specific Part B or C (as the case may be) of these Terms;
- (b) the general Part A of these Terms;
- (c) the Order Confirmation; and
- (d) the Order.

A.2.4 Quotations by JADe are not binding on JADe and shall constitute an invitation to treat and shall, with respect to the prices specified, remain valid for a period of thirty (30) days from date of issue. All Orders placed with JADe by the Customer for Products or Services shall constitute an offer to JADe and shall not come into being until accepted by JADe. JADe's acceptance of an Order is effective upon the earlier of: (a) JADe's issuance of an Order Confirmation or (b) JADe's delivery of the Products or commencement of the performance of the Services.

### A.3. ORDERING

#### A.3.1 Ordering Procedure.

- (a) The Customer may order Products or Services by:
  - (i) submitting an Electronic Order in the manner directed by JADe; or
  - (ii) submitting a Purchase Order to JADe (and the Customer acknowledges that Electronic Orders for certain Products or Services may, at JADe's discretion, need to be confirmed in a Purchase Order);

in each case specifying the Products or Services required and referencing JADe's quotation number(s).

- (b) JADe may accept the Order by:
  - (i) issuing an Order Confirmation to the Customer; or
  - (ii) delivering the Products or commencing performance of the Services.
- (c) The identification of the Products or Services in the Order and (a) confirmed in any Order Confirmation or (b) delivered to or following commencement of the performance of the Services, will constitute a Contract and create a binding commitment for the purchase of those Products or Services.

A.3.2 The Services will commence on dates set out in the Contract or as may otherwise be agreed in writing between the parties. In the absence of any agreement:

- (a) The Implementation Services will commence as soon as commercially practicable after the date of delivery of the Product and shall conclude on the date of acceptance of the Products (as referred to in Clause B.1.6); and
- (b) The Consultancy Services and the Configuration Services will commence on the date that JADe first start performing the Consultancy Services and/or the Configuration Services (or such other date as may be agreed by the parties) and shall conclude on the date of acceptance of the Deliverable or Configured Software, as the case may be, (or such other date as may be agreed by the parties); and
- (c) The Maintenance and Support Services will commence on the date JADe first start performing the Maintenance and Support Services and will continue thereafter, unless and until terminated in accordance with the terms of the Contract, for the Fixed Term.

A.3.3 For the purposes of placing Electronic Orders, the Customer represents and warrants:

- (a) that it will keep confidential any unique user id and password which JADe assigns to the Customer; and
- (b) that all of the Customer's employees who submit Orders are authorised by the Customer to do so.

### A.4. CHARGES AND PAYMENT

A.4.1 The charges for the Products and Services are the Charges.

A.4.2 All Charges for Product and/or Services are based on delivery of the Products to, or performance of the Services at, the Customer's address for delivery or performance of the same as specified in the Contract. All Prices are for delivery or performance in the United Kingdom unless otherwise specified in the Contract

and are excluding V.A.T. and any other taxes and duties imposed. Installation of Products is only included in the price if and insofar as this is expressly stated in the Contract.

A.4.3 The Charge for Software (including all license fees relating to such Software) is not contingent upon nor dependent on any further deliverables and/or services from JADe (including, the installation or support of such Software).

A.4.4 Unless otherwise agreed in writing, the Customer shall pay all invoices within thirty (30) days of the date of JADe's invoice. All such payments shall be without any deduction or set off.

#### **A.5. IPR OWNERSHIP**

A.5.1 Each party shall retain its own pre-existing IPR. Nothing in any Contract or these Terms shall transfer or otherwise vest in the Customer any ownership in any Software or IPR of a third party.

#### **A.6. CUSTOMER OBLIGATIONS**

A.6.1 The Customer shall fulfill all applicable Customer obligations under a Contract, and acknowledges:

- (a) that performance of a Contract by JADe is conditional upon the Customer's fulfilment of such obligations; and
- (b) that JADe shall be entitled to charge the Customer for any additional services which JADe provides as a result of the Customer's failure to do so (the charges for such services being in accordance with JADe's current time and materials rates).

A.6.2 The Customer will co-operate with JADe and will provide safe and timely access to its premises and computer equipment, including remote access, adequate working space, facilities and any other services, personnel, information or materials that JADe personnel may reasonably require to perform JADe's obligations.

A.6.3 Each party will comply with all applicable laws regarding collection and use of data under a Contract. Each party (~~Party A~~) consents to the other party (~~Party B~~) using and processing data of Party A (to the extent such use and processing is necessary for the purposes of the Contract) and will ensure that, where it provides Party B with data relating to another, it has obtained any required consents to enable Party B to use and process such data.

#### **A.7. CHANGE CONTROL**

A.7.1 If either party wishes to change the scope of the Products or Services, it shall submit details of the requested change to the other party in writing.

A.7.2 If either party requests a change to the scope or execution of the Products or Services, JADe shall, within a reasonable time, provide a written estimate to the Customer of:

- (a) the likely time required to implement the change;
- (b) any variations to the Charges arising from the change;
- (c) the likely effect of the change on any agreed timescales for delivery of the Products or performance of the Services; and
- (d) any other impact of the change on the terms of the Contract.

A.7.3 If JADe requests a change to the scope of the Services, the Customer shall not unreasonably withhold or delay consent to it.

A.7.4 If the Customer wishes JADe to proceed with the change, JADe has no obligation to do so unless and until the parties have agreed in writing the necessary variations to its Charges, any agreed timescales and any other relevant terms of the Contract to take account of the change.

#### **A.8. WARRANTY**

A.8.1 The express terms and conditions of the Contract shall apply in place of all warranties, conditions, terms, representations, statements, undertakings and obligations whether expressed or implied by statute, common law, custom, usage or otherwise, all of which are excluded to the fullest extent permitted by law. In particular JADe does not warrant that Products are fit for a particular purpose unless specifically stated to

the contrary in the Contract.

## A.9. LIABILITY

A.9.1 This clause A.9 sets out the entire liability of JADe (including any liability for the acts or omissions of its sub-contractors) in respect of any breach of a Contract and any representation, statement or tortious act or omission including negligence arising under or in connection with a Contract.

A.9.2 Nothing in this Agreement shall exclude or limit JADe's liability for death or personal injury caused by its negligence or for fraudulent misrepresentation or for any liability that cannot legally be excluded or limited.

A.9.3 JADe shall not be liable for any economic loss of whatever nature (whether or not such loss or damage was foreseen, direct, foreseeable, known or otherwise), including loss of anticipated profits, loss of actual profits (direct or indirect), loss of anticipated savings, loss of business, loss of data or for any indirect, special or consequential loss or damage howsoever caused or any losses arising as a result of any third party bringing a claim in respect of any nature whatsoever.

A.9.4 Subject to Clause A.9.2 and A.9.3, JADe's liability in respect of any loss or damage flowing from any one event or series of connected events under any Contract whether for breach of contract or statutory duty, breach of warranty, misrepresentation or in tort (including negligence) will be limited as follows:

- (a) in the case of the Products (except for Deliverables) to the Product Charge;
- (b) in the case of the Implementation Services to the Implementation Services Charge;
- (c) in the case of the Configuration Services to the Configuration Services Charge;
- (d) in the case of the Hosting Services to the Hosting Services Charge;
- (e) in the case of the Maintenance and Support Services, to the Maintenance and Support Services Charge; and
- (f) in the case of the Consultancy Services (including Deliverables), to the Consultancy Services Charge,

but in no event shall JADe's aggregate liability under any Contract whether for breach of contract or statutory duty, breach of warranty, misrepresentation or in tort (including negligence) exceed the Charges relating to that Contract.

A.9.5 JADe will not be liable for any delay or failure caused by:

- (a) errors in programs, coding information, data or operating instructions supplied by the Customer;
- (b) the late arrival or non-arrival of material from the Customer; or
- (c) defects in any Customer hardware or Customer software (including any software licenced to the Customer by third parties).

A.9.6 JADe shall, if requested by the Customer (provided such request is made within seven (7) days of the Commencement Date), provide a broker's letter summarising any relevant policies of insurance maintained by JADe.

A.9.7 The Customer acknowledges the extent of JADe's exclusion or limitation of its liability under the Contract and shall insure against or bear itself any loss for which JADe has excluded or limited its liability and agrees that JADe shall have no further liability to the Customer.

## A.10. CONFIDENTIAL INFORMATION

A.10.1 A party receiving Confidential Information (the "Recipient") may use it only for the purposes for which it was provided under a Contract. Confidential Information may be disclosed only to employees (including employees of JADe) or contractors obligated to the Recipient under similar confidentiality restrictions and only for the purposes for which it was provided under the Contract.

A.10.2 The obligations set out in Clause A.10.1 do not apply to information which:

- (a) is rightfully obtained by the Recipient without breach of any obligation to maintain its confidentiality;
- (b) is or becomes known to the public through no act or omission of the Recipient;
- (c) the Recipient develops independently without using Confidential Information of the other party; or
- (d) is disclosed in response to a valid court or governmental order, if the Recipient has given the other party prior written notice and provides reasonable assistance so as to afford it the opportunity to

- object; or
- (e) (subject to Clause A.10.3) is required to be disclosed pursuant to the provisions of the Freedom of Information Act 2000.

A.10.3 If, pursuant to the provisions of the Freedom of Information Act 2000 (or any subordinate legislation or codes of practice), the Customer receives any request to disclose and/or intends to disclose all or any Confidential Information the Customer agrees that it will consult with JADe before disclosing any such Confidential Information. In so consulting the Customer agrees that it will act reasonably and in good faith and will duly consider any representations JADe may make relating to the proposed disclosure or otherwise of such Confidential Information.

#### **A.11. INTELLECTUAL PROPERTY CLAIMS**

A.11.1 JADe will use its reasonable endeavours to assign to, or procure for the benefit of, the Customer any IPR indemnity generally made available to JADe or at JADe's option made publicly available by any third party manufacturer or distributor of the Products. The Customer acknowledges that:

- (a) any such indemnity will be subject to such terms and conditions as may be imposed by such third party manufacturer or distributor; and
- (b) JADe shall not, and shall not be required to, grant any indemnity to the Customer for any intellectual property infringement or otherwise.

A.11.2 This Clause states the entire liability of JADe and exclusive remedies of the Customer for any claim(s) that Products infringe a third party's IPR.

#### **A.12. TRADEMARKS**

A.12.1 The Customer may refer to Products and Services by their associated names, provided that such reference is not misleading and complies with any policies and/or instructions made available by JADe and, in the case of Trademarks of a third party with such third party's applicable policies.

A.12.2 The Customer may not remove or alter any Trademarks, nor may it include any trademarks, service marks, company names, Internet addresses, domain names, or any other similar designations on any Products or Services. The Customer agrees that any use of Trademarks by the Customer will inure to the sole benefit of JADe (or the owner of such Trademarks).

A.12.3 The Customer agrees not to incorporate any Trademarks into the Customer's trademarks, service marks, company names, Internet addresses, domain names, or any other similar designations.

#### **A.13. PUBLICITY**

A.13.1 Subject to the other party's (Party A) prior written consent (such consent not to be unreasonably withheld or delayed), each party (Party B) may use Party A's name in promotional materials, including press releases, presentations and customer references relating to the sale of the Products or provision of the Services. These permissions are free of charge for worldwide use by Party B in any medium.

#### **A.14. CONTRACT TERMINATION**

A.14.1 Either party may terminate a Contract immediately by written notice:

- (a) if the other party commits a non-remediable material breach of that Contract;
- (b) if the other party fails to cure any remediable material breach within sixty (60) days of being notified in writing of such breach; or
- (c) if the other party is deemed to be unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or the other party calls a meeting for the purpose of passing a resolution to wind up its company (other than for the purposes of a solvent reconstruction or amalgamation), or such a resolution is passed or the other party presents or has presented a petition to wind up or present or have presented a petition to appoint an administrator or have an administrative receiver or receiver appointed to the whole or any part of the other party's business, undertaking, property or assets.

A.14.2 Following termination of a Contract (for whatever reason):

- (a) subject to Clause A.14.4, each party will deliver to the other any property (including any Confidential

Information) of the other in its possession or control relating to that Contract, in good condition, reasonable wear and tear excepted; and

(b) JADe may at its option deliver to the Customer any Deliverables (whether finished or unfinished) and the Customer shall pay the Consultancy Services Charge for such Deliverable;

A.14.3 Following termination of the Contract by the Customer pursuant to Clause A14.1, the use of any Software by the Customer which is either licensed by a third party or any Configured Software which is licensed by JADe will continue in accordance with and subject to the terms and conditions of the applicable license with the third party or JADe as the case may be provided always that the Customer has paid JADe the Product Charge for such Software.

A.14.4 Following termination of the Contract by JADe pursuant to Clause A.14.1, the Customer will forthwith cease to use, and will either return to JADe or (at JADe's option) destroy, all Configured Software (including all copies thereof).

A.14.5 Rights and obligations under a Contract (including these Terms) which by their nature should survive, will remain in effect after performance, termination or expiration of the Contract.

#### **A.15. SUBCONTRACTING, ASSIGNMENT AND THIRD PARTY RIGHTS**

A.15.1 JADe shall be entitled to subcontract all or any part of its obligations under the Contract without the prior consent of the Customer.

A.15.2 Save as provided in Clause A.15.1, neither party shall be entitled to assign, charge or transfer the Contract (or any part or parts thereof) without the prior written consent of the other party, such consent not to be unreasonably withheld or delayed.

A.15.3 Save that Group companies of JADe may enforce any provision of these Terms and/or any Contract, the Contracts (Rights of Third Parties) Act 1999 shall not apply to these Terms and a person who is not a party to the Contract (including any employee, officer, agent, representative or sub contractor of either party) shall not have the right (whether under the Contracts (Rights of Third Parties) Act or otherwise) to enforce any term which expressly or by implication confers a benefit on that person without the express prior agreement in writing of the parties which agreement must refer to this Clause A.15.3. Even if a person who is not a party to these Terms and/or any Contract has a right to enforce any term by virtue of the aforementioned Act, the parties may vary or cancel these Terms or any Contract without requiring the consent of such third party.

#### **A.16. MISCELLANEOUS**

A.16.1 A party is not liable under any Contract for non-performance caused by events or conditions beyond that party's reasonable control, if the party makes reasonable efforts to perform. This provision does not relieve either party of its obligation to make payments then owing. In the event any such event continues beyond a period of ninety (90) days either party may terminate the Contract.

A.16.2 All written notices required under any Contract or these Terms must be delivered in person or by means evidenced by a delivery receipt or acknowledgement and will be effective upon receipt. Notices communicated by electronic mail or facsimile will be deemed to be written.

A.16.3 Any express waiver or failure to exercise promptly any right under these Terms or any Contract will not create a continuing waiver or any expectation of non-enforcement.

A.16.4 If any provision of these Terms is held invalid by any law or regulation or by any court or arbitrator, such invalidity will not affect the enforceability of other provisions.

A.16.5 To the extent applicable, each party shall comply with the provisions of the Data Protection Act 1988.

A.16.6 The parties each warrant that they have full capacity and authority and all necessary consents to enter into and to perform their respective obligations set out in a Contract.

A.16.7 Products, Services and technical data delivered by JADe may be subject to UK export controls and/or the trade laws of other countries. The Customer will comply with all such laws and obtain all licenses to export, re-export or import as may be required after delivery to the Customer.

#### A.16.8 Governing Law and Dispute Resolution.

- (a) The parties will use reasonable efforts to resolve any dispute arising out of the Terms through a meeting of appropriate managers from each party. If the parties are unable to resolve the dispute, either party may escalate the dispute to its executives. If an executive level meeting fails to resolve the dispute within thirty (30) days after escalation, either party may seek any available legal relief. This provision will not affect either party's right to seek injunctive or other provisional relief at any time.
- (b) Subject to Clause A.16.8(a), the parties agree that the Courts of England and Wales shall have exclusive jurisdiction to resolve any dispute. All disputes will be governed by English law.

#### A.17. FAIR USAGE POLICY

To ensure the continued availability of unlimited calls or support tickets being raised on fixed cost services, JADe has a 'Fair Use Policy' to make sure our services are not subject to excessive, unwarranted %out of scope+and/or improper use.

We have designed our services to be generous, but we do not want those generous terms abused.

If we believe your requests are out of scope %such as support for products out of warranty, support for systems not in the SLA agreement or home support on non business infrastructure, we may refuse you access to this feature and begin applying quota restrictions on your account.

To ensure we do not unreasonably restrict our customers, the following steps will occur if we consider that a service is showing excessive or improper use:

##### *Month 1:*

JADe may contact individual customers identified as exceeding 1.5 times the average usage of all JADe Business customers whom are on the same service level agreement, to discuss their usage requirements.

Where a peak in usage occurs but is not expected to continue, no alternative arrangements are necessary.

##### *Month 2:*

If excessive or improper usage continues in a second month, a second communication may be made to discuss an alternative agreement, solution or a proposal made for training services to better serve the customer's needs and ensure maximum productivity to the business.

##### *Month 3:*

If the excessive usage continues into the third billing period, the customer may be informed that quota counting will be activated on their service and that they may be charged accordingly.

Excessive use is a continuing and unreasonably disproportionate use of the service when compared to other customers. In the case of monitoring, management and reporting; excessive report requests and excessive support calls or tickets raised that are in excess of 1.5 times the average usage of all JADe customers on the same service level agreement is considered excessive use.

#### **Part B: Specific Terms of Sale and Delivery.**

The specific terms set forth in this Part B apply to any Contracts made between the Customer and JADe for the procurement of Products. The General Terms set forth in Part A apply to, and form an integral part of, these specific terms.

#### **B.1. PRODUCT DELIVERY**

B.1.1 JADe will use its reasonable endeavours to meet any delivery date(s) identified or stated in the Contract.

B.1.2 The Products shall be delivered by JADe to the delivery address indicated by the Customer in the Order (provided such address is in the United Kingdom) (the "**Delivery Address**"). Without prejudice to Clause B.1.3, the risk of loss and/or damage to the Products passes to the Customer at the time of delivery by or on behalf of JADe to the Delivery Address.



- B.1.3 Title to the Equipment shall be retained by JADe until payment in full is made by the Customer for the relevant Equipment, including any relevant amounts as referred to in Clause A.4. Equipment delivered to the Customer with retention of title may not be resold, pledged or proposed as security for a claim of a third party.
- B.1.4 Changing delivery arrangements.
- (a) JADe may make Product substitutions and modifications that do not cause a material adverse effect in overall Product performance.
  - (b) Unless otherwise stated in the Order, JADe may make and invoice for partial deliveries.
- B.1.5 The Customer shall immediately check the Products delivered for deficiencies in quantity and for external damage to the packaging and indicate any deficiencies and/or damage on the accompanying transport documents, failure by the Customer to make such indication shall render any claims relating to quantity or obvious damage null and void.
- B.1.6 The Customer will have three (3) Business Days after delivery of Products at the Delivery Address to inspect and test Products. In the absence of any written notice to JADe reporting any defects, Products will be deemed accepted by the Customer three (3) Business Days after receipt at the Delivery Address. In the event that JADe installs Products for the Customer, acceptance will be deemed to occur upon successful completion of the manufacturer's standard diagnostic testing by JADe of the installed Products. If a defect is reported to JADe within the period specified above, the provisions of Clause B.3.2 will apply.
- B.1.7 The Products will comply with any specification set out in the Contract.

**B.2. LICENSE TERMS FOR SOFTWARE PRODUCTS**

- B.2.1 JADe shall procure the grant to the Customer of or, at its option, sub-license to the Customer a non-exclusive and non-transferable license to use Software provided to the Customer hereunder for its internal use only, subject to:
- (a) any restrictions set out in a Contract as to the permitted number of users and CPUs; and
  - (b) any supplemental license terms accompanying the Software (JADe shall provide the Customer with a copy of such supplemental licence terms upon the Customer's request).
- B.2.2 All IPR in and all other rights not expressly granted to the Customer are reserved to the owner of such Software and the owner thereof retains title to and all IPR in all copies.
- B.2.3 JADe and/or the licensor(s) of the Software (and/or any of their independent audit firms) may, upon reasonable notice, examine and audit the records and systems of the Customer to ensure compliance with any license granted or procured by JADe.
- B.2.4 The Customer may not alter or obscure any proprietary rights notice appearing on any JADe or third party supplied Software or materials, and must include such notices on any copies.
- B.2.5 Except as prohibited by applicable law, the Customer may not make copies of Software, other than for archival purposes, or modify, decompile, or reverse-engineer Software.
- B.2.6 The Customer may not transfer any operating system Software license with its related Equipment without the prior written consent of JADe.

**B.3. PRODUCT WARRANTY**

- B.3.1 JADe will use its reasonable endeavours to assign to, or procure for the benefit of, the Customer any warranties generally made available by any third party manufacturer or distributor of the Products. Save as expressly provided in the Contract:
- (a) JADe does not provide any warranty relating to the Products; and
  - (b) all Products are provided without any obligation for JADe to maintain or support such Products.
- B.3.2 The Customer's sole and exclusive remedy and JADe's entire liability for breach of any warranties, conditions, terms, representations, statements, undertakings and/or obligations in relation to the Products will be (at JADe option): (a) the repair of defective Product; (b) the replacement of defective Product or (c)

the issuance of a credit note to the Customer in respect of such Product. Title in all defective Equipment (or parts thereof) which are removed shall transfer back to JADe.

B.3.3 No warranty will apply to any Product which has been:

- (a) modified, altered or adapted without JADe's written consent;
- (b) abused or used in a manner other than in accordance with the relevant manual;
- (c) repaired by any third party (other than by JADe or any third party contracted by JADe to perform any of JADe obligations under any Contract);
- (d) improperly installed by any party other than JADe (or any third party contracted by JADe to perform any of JADe obligations under any Contract); or
- (e) used with equipment or software not covered by the warranty, to the extent that the problems are attributable to such use.

### **Part C: Specific Terms of Services.**

The specific terms set forth in this Part C apply to any Contracts made between the Customer and JADe for the performance of Services. The General Terms set forth in Part A apply to, and form an integral part of, these specific terms.

#### **C.1. IMPLEMENTATION SERVICES AND CONFIGURATION SERVICES**

C.1.1 Implementation Services and Configuration Services, as applicable, are as confirmed in the Contract.

C.1.2 Ownership and title to the IPR in the Configured Software shall vest in JADe. JADe grants to the Customer a non-exclusive and non-transferable licence to use the Configured Software for its internal use only and subject to any restrictions which may be set out in the Contract.

C.1.3 In the event that JADe supplies any Configured Software to the Customer, the Configured Software shall be subject to the terms for acceptance as set out in the Acceptance Criteria. Acceptance shall be deemed to occur upon the earlier of the following:

- (a) successful completion of the acceptance tests relating to such Configured Software;
- (b) use by the Customer or any third party on behalf of the Customer (other than, for this purpose, JADe) of the Configured Software other than for acceptance testing purposes;
- (c) failure by customer to carry out (either at all or within seven (7) days of any request to do so by JADe) any acceptance tests required to be undertaken by the Customer; or
- (d) signature by the Customer of the Sign-Off Form.

#### **C.2. REMOTE SERVICES**

C.2.1 In respect of all Services delivered remotely, the Customer:

- (a) agrees that JADe may access Products remotely at the Customer's site, and may process and store Product data in order to remotely monitor, manage and service Products (all such data will be treated by JADe as the Customer's Confidential Information, except that the Customer permits disclosure for the purposes of fulfilling the Contract);
- (b) commits to procure and maintain a JADe-specified bridge or gateway appropriate to the systems or networks involved, at the Customer's expense; and
- (c) assumes responsibility for all telecommunications and internet access charges related to the remote Services.

C.2.2 If the Customer fails to permit or facilitate remote Services, JADe may decline to deliver such Services and charge such additional charges or impose such other conditions for the delivery of Services which would otherwise be provided remotely, or revoke any applicable warranties.

#### **C.3. MAINTENANCE AND SUPPORT SERVICES**

C.3.1 Maintenance and Support Services are as set out in the Contract. JADe shall perform the Services in accordance with the Service Level Agreement.

- C.3.2 Maintenance and Support Services will be delivered to the Customer's sites as set out in the Contract and for the systems indicated on the relevant Contract (respectively, "**the Customer Sites**" and "**Covered Systems**"). The Customer will give JADe at least thirty (30) days written notice prior to relocating Covered Systems, which notice must specify the new site. Support of relocated systems is subject to inspection and re-certification of the relocated systems at JADe's applicable time and materials rates.
- C.3.3 The Customer will perform routine system preventative maintenance and cleaning. Prior to requesting support from JADe, the Customer will comply with all applicable suppliers' operating and troubleshooting procedures or such other procedures as may otherwise be provided by JADe. If such efforts are unsuccessful in eliminating the malfunction, the Customer will promptly notify JADe. The Customer will establish and maintain a procedure external to Covered Systems so that the Customer can reconstruct lost or altered files, data or programs.
- C.3.4 Requests for Maintenance and Support Services may be made only by the Customer personnel who possess the necessary expertise and training (as from time to time defined by JADe) to diagnose and resolve system and software malfunctions with direction by JADe.
- C.3.5 Maintenance and Support Services do not include services required due to:
- (a) improper use, abuse, accident, or neglect;
  - (b) alterations, modifications, or attempts to repair Covered Systems that JADe has not authorised;
  - (c) causes external to a Covered System, such as failure to maintain environmental conditions within the operating range specified by the manufacturer;
  - (d) attachment of a Covered System to equipment, software, or other items not provided by JADe;
  - (e) re-locations or attempts to relocate Covered Systems; or
  - (f) failure to maintain software and Covered Systems at JADe-specified minimum release levels or configurations necessary to keep a Covered System within the terms of JADe's applicable end of life support policy, or to properly install remedial replacement parts, patches, software updates or subsequent releases as directed by JADe,

and any Maintenance and Support Services JADe delivers as a result of any such event will be invoiced separately at JADe's applicable time and materials rates and are subject to the applicable Contract.

- C.3.6 Any parts of the Covered System replaced as part of the Maintenance and Support Services are supplied on an exchange basis. The parts may be new or like new. The parts replaced shall, upon their removal from the Covered System, become the property of JADe.

#### **C.4. CONSULTANCY SERVICES**

- C.4.1 Consultancy Services (if any) shall be set out in the Contract.
- C.4.2 Deliverables (if any) to be delivered by JADe to the Customer shall be set out in the Contract.
- C.4.3 JADe grants the Customer a non-exclusive, non-transferable licence to use the Deliverables solely for its own business purposes and such other purposes (if any) as may be specified in the Contract.
- C.4.4 Deliverables shall be subject to the terms for acceptance as set out in the Acceptance Criteria. Acceptance shall be deemed to occur upon the earlier of the following:
- (a) successful completion of the acceptance tests relating to such Deliverable(s);
  - (b) use by the Customer or any third party on behalf of the Customer (other than, for this purpose, JADe) of the Deliverable(s) other than for acceptance testing purposes;
  - (c) failure by the Customer to carry out (either at all or within seven (7) days of any request to do so by JADe) any acceptance tests required to be undertaken by the Customer; or
  - (d) signature by the Customer of the Sign-Off Form.

#### **C.5. HOSTING SERVICES**

- C.5.1 Hosting Services shall be set out in the Contract. JADe shall perform the Hosting Services in accordance with the Service Level Agreement which shall apply with effect from the start of the month after the Implementation Services have been completed.

**C.6. SERVICES**

- C.6.1 JADe shall use its reasonable endeavours to ensure that all reasonable precautions as are necessary to protect the health and safety of its personnel employed to perform the Services and shall comply with the requirements of the Health and Safety at Work (etc) Act 1974 and any other applicable legislation relating to the health and safety of its personnel.
- C.6.2 JADe shall use its reasonable endeavours to ensure that it does not knowingly discriminate within the meaning of the provisions of the Sex Discrimination Act 1975, Race Relations Act 1976, the Disability Discrimination Act 1995, the Employment Equality (Sexual Orientation) regulations 2003 and the Employment Equality (Religion or Belief) Regulations 2003.

**C.7 ON-SITE MATERIALS**

- C.7.1 The Customer will segregate, safeguard and designate as the property of JADe all tools, parts, spares, equipment and materials placed on a Customer site and for which title is not transferred to the Customer ("**On-Site Materials**").
- C.7.2 On-Site Materials may only be used by authorised persons of the Customer. The Customer will have no right or interest in the On-Site Materials, and will not grant any liens or security interests therein. The Customer assumes all risk of loss or damage to On-Site Materials that may occur prior to their return and receipt by JADe.
- C.7.3 Within ten (10) days after termination or expiration of any Contract, the Customer will deliver to JADe any On-Site Materials related to such Contract, with a bill of lading, freight charges prepaid and fully insured.

**C.8. NON-SOLICITATION**

- C.8.1 The Customer will not, without the prior written consent of JADe, Recruit any personnel (including any personnel of JADe) assigned by JADe to perform any Services until one (1) year after completion of the applicable Services.
- C.8.2 "**Recruit**" means to initiate personal contact for the purposes of hiring, but does not include responding to an unsolicited application, receiving unprompted responses to advertisements, or receiving candidates who are, without the Customer involvement, presented to the Customer by a recruiting firm.
- C.8.3 If the Customer hires personnel in violation of this Clause C.8, the Customer immediately will pay JADe liquidated damages in an amount equal to the hired employee's total compensation for the six (6) months preceding the date of hiring.

**C.9. SERVICE WARRANTIES**

- C.9.1 JADe warrants that it will perform the Services in a good and workmanlike manner and that it shall use its reasonable endeavours to ensure the Services are performed with due skill, care and diligence.
- C.9.2 The Customer's sole and exclusive remedy and JADe's entire liability for breach of the above warranty will be re-performance of Services within a reasonable time following notification in writing by the Customer to JADe of such breach.
- C.9.3 Any claim for breach of the above warranty must be made in writing and notified to JADe within sixty (60) days of performance of the Services at issue.

**C.10. IPR OWNERSHIP AND LICENSE TERMS FOR SERVICE DELIVERABLES**

- C.10.1 JADe shall own all IPR in the Deliverables. Rights not expressly granted under any Contract are reserved to JADe. The Customer's rights to use Deliverables are set out in Clause C.10.2 below.
- C.10.2 License terms.
- (a) JADe grants to the Customer a non-exclusive and non-transferable license to use Deliverables for its internal use only, subject to:
- (i) any restrictions set out in the Contract as to the permitted number of users and CPUs; and
  - (ii) any supplemental license terms accompanying the Deliverable or as specified in the appropriate Contract (if any).

- (b) Any tools provided by JADe to the Customer may be accessed only by authorised Customer contacts for the sole purpose of diagnosing and resolving problems on Covered Systems. The provision of an Update will not alter any warranty on the Software previously licensed, and such Updates may be used or accessed only in connection with the use of Covered Systems.
- (c) Except as prohibited by applicable law, the Customer may not:
  - (i) make copies of Deliverables, other than for archival purposes; or
  - (ii) modify, de-compile, or reverse-engineer Deliverables.

**C.11. CHARGES AND PAYMENT**

- C.11.1 The charges for Services are included in the Charges. Subject to Clause C.11.2, charges for Services shall be payable in advance and payable either monthly, quarterly or annually as stated in the Contract (or as otherwise agreed in writing between the parties).
- C.11.2 Invoices for Consultancy Services, Implementation Services and Configuration Services shall be rendered upon completion of such Services or monthly in the event the duration of such Services exceeds one (1) month or as otherwise agreed in writing between the parties.
- C.11.3 The stated charges are exclusive of VAT and other taxes and duties and unless otherwise expressly stated in the Contract are exclusive of the following items (for which the Customer is responsible):
  - (a) reasonable travel expenses associated with any Services in the amount actually incurred by JADe;
  - (b) reasonable and necessary out-of-pocket expenses associated with the Services;
  - (c) transportation and insurance charges related to On-Site Materials; and
  - (d) the costs of operating supplies and accessories.

**C.12. MISCELLANEOUS**

- C.12.1 JADe may make Service substitutions and modifications that do not cause a materially adverse effect in overall Service performance.
- C.12.2 The Customer acknowledges that Services are solely for the Customer's internal use, and the Customer may not provide, lease, or resell Services, directly or indirectly, to any third party, unless, and only to the extent that, the Customer is authorised by JADe in writing to do so.