

## 1) Interpretation

1.1) In these Conditions:

(a) **"Business Days"** means a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

**"Business Hours"** means 8:30 am – 5:00pm on Business Days.

**"Contract"** means the contract between VMS and the Customer for the purchase and sale of Software, Hardware, Maintenance Services and/or Professional Services incorporating these Conditions.

**"Contract Documents"** means the Order, these Conditions and the Software Maintenance Agreement (where applicable).

**"Customer"** means the person, firm or company identified as the customer in the Order accepted by VMS.

**"Data Protection Legislation"** means the General Data Protection Regulation of the European Union (Regulation (EU) 2016/679) ("**GDPR**"), the Data Protection Act 2018 ("**DA**"), and any other national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and any successor legislation to the GDPR or the DPA.

**"Documentation"** means all documentation relating to the Software and all the revisions, modifications and updates of the same as may be supplied by VMS during the term of the Contract.

**"Hardware"** means the hardware identified in the Order or otherwise supplied by VMS pursuant to these Conditions (which may include cards, key fobs, clocking terminals, access control devices).

**"Maintenance Services"** means the maintenance services provided by VMS from time to time on the terms of the Software Maintenance Agreement.

**"Order"** means the Customer's order for the supply of Software, Hardware, and/or Services, as set out overleaf.

**"Professional Services"** means the professional services identified in the Order or such other services (excluding the Maintenance Services) as VMS agrees to provide from time to time pursuant to these Conditions (which may include on-site scoping, Software installation and Customer training).

**"Services"** means the Maintenance Services and/or the Professional Services.

**"Software"** means the *Capture<sup>ll</sup>* time and attendance software, and all revisions, modifications and updates of the same, licensed to the Customer by VMS pursuant to clause 4 of these Conditions.

**"Software Maintenance Agreement"** means the agreement entered into between the Customer and VMS from time to time for the provision of ongoing support in relation to the Software.

**"VMS"** means Vizual Management Solutions Limited (company number 5343714) whose registered office is at New Media House, 24a Stanley Street, Tunstall, Stoke on Trent, ST6 6BW.

1.2) Headings are for convenience and do not affect interpretation.

1.3) 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.

## 2) Basis of Sale

2.1) The Order constitutes an offer by the Customer to purchase the Software, Hardware and/or Services in accordance with these Conditions and the terms of the Software Maintenance Agreement (where applicable).

2.2) These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. No addition, variation or substitution of these Conditions will bind VMS or form part of the Contract unless agreed in writing and signed by authorised representatives of both parties.

2.3) These Conditions, the Software Maintenance Agreement and the terms of any Order constitute the entire understanding of the parties and supersede and extinguish all prior agreements, promises, assurances, warranties representations, understandings and undertakings between them, whether written or oral, relating to their subject matter.

2.4) No VMS employee or agent is authorised to make any statement, representation, assurance or warranty concerning the subject matter of the Contract unless confirmed by a director of VMS in writing. The Customer acknowledges that in entering the Contract it is not relying on and shall have no remedies in respect of any such statement, representation, assurance or warranty that is not set out in the Contract or otherwise confirmed in writing pursuant to the above.

## 3) Orders

3.1) Any Order placed with VMS will be binding on the Customer and accepted by VMS at its sole discretion. Acceptance of an Order by VMS shall take place when VMS issues its order confirmation to the Customer or takes such other action which is consistent with acceptance of the Order at which point and on which date the Contract shall come into existence.

3.2) Each Order so accepted constitutes a separate legally binding Contract between VMS and the Customer.

3.3) The Customer is responsible for ensuring the accuracy of any Order.

3.4) VMS reserves the right to amend, modify, replace or update any of the Software, Hardware and/or Services or specification of the same to conform to any applicable law or regulatory requirement or otherwise provided that such amendment, modification, replacement or update does not adversely affect the quality or performance, and VMS shall notify the Customer in any such event.

3.5) Once accepted by VMS, no Order may be cancelled by the Customer without VMS's express prior written agreement. If VMS does agree to the cancellation of an

Order, any deposit paid by the Customer will not be refunded.

## 4) Licence

4.1) In consideration of the price payable for the Software, VMS:

(a) grants to the Customer a non-transferable and non-exclusive licence to use the Software in accordance with these Conditions and to use the Documentation in support of such use of the Software in perpetuity unless the Contract is terminated as provided herein; and  
(b) shall, unless agreed otherwise, deliver and install on the Customer's equipment one licenced copy of the Software.

4.2) The Customer shall:

(a) ensure that the number of persons using the Software does not exceed the number specified in the Order;  
(b) ensure that the Software is only installed on equipment designated and approved by VMS;  
(c) keep a complete and accurate record of the Customer's copying and disclosure of the Software and its users, and produce such record to VMS on request from time to time; and  
(d) notify VMS as soon as it becomes aware of any unauthorised use of the Software by any person.

4.3) The Customer may not use, copy, modify or transfer the Software or Documentation, or any copy, except as expressly provided in these Conditions.

4.4) The Customer may make a reasonable number of backup copies of the Software for its lawful use.

4.5) The Customer has no right (and shall not permit any third party) to copy, adapt, reverse engineer, decompile, disassemble, reproduce, rent, lease, distribute, modify, or make error corrections to the Software in whole or in part in any way or for any purpose whatsoever (including without limitation to create any product to provide functionality similar to that provided by the Software).

4.6) The Customer shall indemnify and hold VMS harmless against any loss or damage which it may suffer or incur as a result of the Customer's breach of this clause 4.

4.7) The Customer shall not:

(a) sub-licence, assign or novate the benefit or burden of the licence granted pursuant to clause 4.1 in whole or in part;  
(b) allow the Software to become the subject of any charge, lien or encumbrance; and  
(c) deal in any other manner with any or all of its rights and obligations in respect of the licence granted pursuant to clause 4.1, without the prior written consent of VMS.

4.8) VMS may at any time sub-licence, assign, novate, charge or deal in any other manner with any or all of its rights and obligations under the Contract.

4.9) The Customer acknowledges that all intellectual property rights in the Software and its related Documentation shall remain the property of VMS or the owner in the case of any sub-licence that VMS has authority to grant and the Customer shall have no rights in or to the Software and its related Documentation other than the right to use it in accordance with these Conditions.

4.10) The Customer shall not remove any of the copyright notices electronically recorded or printed on the Software and/or any Documentation.

4.11) The Customer shall not provide or otherwise make available the Software or any part thereof in any form to any person other than his employees and all duly authorised agents without prior consent from VMS.

4.12) Notwithstanding clause 4.9, in the absence of express agreement to the contrary any Software written, created, adapted or developed by VMS shall remain the exclusive property of VMS or its licensors. The Customer shall not reverse compile, copy, adapt, reverse engineer, assign, transfer, sell, lease, rent, charge or otherwise deal in or encumber VMS's intellectual property and shall keep the same confidential.

4.13) The Customer acknowledges that the Software is capable of providing access control functionality but is not fault-tolerant and is not designed or intended for use or resale to control devices in hazardous environments or other environments requiring fail-safe performance.

4.14) The Customer acknowledges that all Software is supplied "as is". The limited warranty set out at clause 12 is in lieu of all other conditions, warranties, representations, guarantees or terms of any kind express or implied whether by statute, common law or otherwise including but not limited to as to merchantability, satisfactory quality, fitness for purpose or the use of reasonable skill and care. In no event will VMS be liable for any damages including loss of data, lost profits, cost of cover or any special, incidental, consequential or indirect damages arising from the use of the Software or accompanying Documentation however caused.

4.15) VMS reserves the right to make any changes to any and all parts of the Software at any time without obligation to notify any person, firm or company of such changes.

## 5) Prices

5.1) The price for the Software and Hardware shall be the price set out in the Order. The Customer may purchase additional Hardware and licences and/or modules of the Software from VMS in accordance with its standard scale of charges from time to time in force.

5.2) The price for the Services shall be the price set out in the Order or otherwise notified to the Customer from time to time.

5.3) VMS shall be entitled to charge an overtime rate of up to 100% of the service price on a pro-rata basis for any time worked by individuals whom it engages on the Services outside Business Hours.

5.4) VMS shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom VMS 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 VMS for the performance of the Services, and for the cost of any materials.

5.5) Any quotation given by VMS shall not constitute an offer and is only valid for a period of 30 days from its date

of issue. Any quotation that has lapsed must be reconfirmed with VMS prior to an Order being accepted.  
5.6) VMS reserves the right, by giving the Customer written notice at any time before delivery, to increase the cost of Software, Hardware and/or Services to reflect any increase in the cost to VMS which is due to:

(a) any factor beyond VMS's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);

(b) any request by the Customer to change the delivery date(s), quantities or types of Software, Hardware and/or Services ordered; and/or  
(c) any delay caused by any instructions of the Customer or failure of the Customer to give VMS adequate or accurate information or instructions.

Where possible, VMS will provide 30 days' notice of any such changes but the Customer acknowledges this may not always be possible where prices vary for reasons outside of VMS's control. VMS therefore reserves the right to vary prices at short, or even no, notice. Any price changes will be notified to the Customer as soon as reasonably possible. VMS also reserves the right to increase its prices annually on providing written notice to the Customer.

5.7) All amounts payable by the Customer under the Contract are exclusive of VAT and any other sales taxes and all costs and charges of packaging, insurance, transport and delivery (where applicable), which shall be invoiced to the Customer, unless otherwise stated.

5.8) Notwithstanding clause 5.6, VMS shall be able to increase the charges for Maintenance Services by giving the Customer not less than 30 days' notice prior to the commencement of each Renewal Period (as defined in the Software Maintenance Agreement).

5.9) Where the Services involve site visits, the daily rate is payable in full for each day or part day that VMS is on site. Any additional work, development or equipment requested by the Customer or identified by VMS as being required during a site visit must be confirmed in writing prior to being carried out or authorised by the Customer's signatory on the site engineer's sign off sheet and will be invoiced separately. The Customer will provide safe and unrestricted access to the consultant, trainer or engineer making a site visit and any lost time as a result of any failure by the Customer to comply with this obligation is chargeable at normal day rates. Should the Customer cancel any scheduled Services:

(a) after noon on the Business Day preceding the day on which the Services are due to be performed, the Customer may be liable, at VMS's sole discretion, to pay 50% of the charges relating to such Services (including any relevant expenses incurred by VMS); or  
(b) on the day on which the Services are due to be performed, the Customer may be liable, at VMS's sole discretion, to pay the relevant charges in full (including any relevant expenses incurred by VMS).

## 6) Payment

6.1) Subject to clause 6.2, VMS shall invoice the Customer on or at any time after delivery of the relevant Software, Hardware and/or Services.

6.2) The Customer shall pay each invoice submitted by VMS within **30 days** of the date of the invoice in full and cleared funds to a bank account nominated in writing by VMS.

Notwithstanding the invoicing provisions set out at clause 6.1, payment of a deposit at the time of submitting an Order will be required for all new Customers or Customers for whom VMS deems in its sole discretion immediate payment to be necessary. Time for payment of all sums invoiced or due and payable to VMS shall be of the essence of the Contract.

6.3) If the Customer fails to make a payment due to VMS under the Contract by the due date, then, without limiting VMS's remedies, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment, on a daily basis at an annual rate of 3% above Barclays Bank Plc base lending rate from time to time.

6.4) Any amount payable by the Customer 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).

6.5) The Customer is responsible for any bank or other charges incurred by either party in relation to any payment due, payable or received under the Contract (including, but not exclusively, transfer charges, costs of cheques not being honoured, etc.).

6.6) If and for so long as there are any overdue invoices (whether under this Contract or otherwise), VMS shall be entitled to suspend provision of any Hardware, Software and/or Services to the Customer.

6.7) If:

(a) any sum owed by the Customer to VMS or any other associated company, under this or any other contract is overdue;  
(b) at any time, the credit standing of the Customer has in VMS's reasonable opinion been impaired for any reason;  
(c) the Customer fails to make any payment when it becomes due;  
(d) the Customer makes any voluntary composition or arrangement with its creditors;  
(e) the Customer becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction);  
(f) an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Customer;  
(g) a resolution for the winding up of the Customer is passed or a court makes an order to that effect;  
(h) there is any breach by the Customer of the Contract;  
(i) the Customer ceases, or threatens to cease, to carry on business;  
(j) there is a change of control of the Customer or any purported arrangement of the legal or beneficial interest in the Contract; or  
(k) VMS reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly, then VMS

may, without prejudice to its other rights and remedies and at its option, be entitled to cancel the Contract and/or any relevant Order and/or withhold any further deliveries and/or suspend the provision of any Hardware, Software and/or Services without liability to the Customer until arrangements as to payment or credit have been established to VMS's reasonable satisfaction.

6.8) VMS shall be entitled but not obliged at any time or times without notice to the Customer to set off any liability of the Customer (or any group company of the Customer) to VMS against any liability of VMS to the Customer (or any group company of the Customer) (in either case howsoever arising and whether any such liability is present or future liquidated or unliquidated and irrespective of the currency of its denomination) and may for such purpose convert or exchange any currency. Any exercise by VMS of its rights under this clause shall be without prejudice to any other rights or remedies available to VMS under the Contract or otherwise.

6.9) Unless otherwise agreed by VMS in writing the Customer shall be responsible for all duties, levies, imposts, taxes or other liabilities arising on the exportation of the Hardware, Software and/or Services from the United Kingdom and importation of the Hardware, Software and/or Services overseas.

6.10) If the Customer purchases the Hardware and/or Software through a third-party finance company, the Customer will be required to pay a deposit to VMS, which will be returned to the Customer once VMS receives payment in full from the leasing company. The Customer remains liable for all charges at all times and is entirely responsible for ensuring that it complies with all terms of the leasing arrangements in place with the leasing company.

## 7) Delivery

7.1) VMS will arrange for the Hardware and Software to be delivered to the location set out in the Order or such other location as the parties may agree (**Delivery Location**) solely as the Customer's agent. Delivery shall be completed on the unloading of the Hardware and Software at the Delivery Location.

7.2) VMS accepts no responsibility whatsoever for any loss or damage to Hardware or Software in transit howsoever it occurs. Any such loss or damage must be notified by the Customer to VMS and the relevant courier in writing within 48 hours of the expected delivery date.

7.3) Delivery dates are estimates only and are not guaranteed. Time of delivery is not of the essence. VMS shall not be liable for any loss or damage suffered by the Customer as a result of any delay in delivery.

7.4) The Customer's refusal or failure to accept delivery (either part or whole) shall permit VMS to treat the Contract as repudiated by the Customer and to decline to make any further deliveries, without prejudice to VMS's right to recover damages for breach of contract.

7.5) VMS reserves the right to make deliveries in instalments, which may be invoiced and paid for separately.

7.6) If the Customer refuses or fails to accept any delivery, VMS reserves the right to invoice the Customer in respect of the balance remaining undelivered, with payment becoming due immediately, and VMS shall be entitled to charge reasonable storage costs and expenses (including insurance) to the Customer. In such circumstances, the Software and/or Hardware will be held at the Customer's risk.

## 8) Services

8.1) VMS shall supply the Services to the Customer in accordance with any relevant specification in all material respects.

8.2) VMS shall use all reasonable endeavours to meet any performance dates for the Services specified in the Order or otherwise notified to the Customer, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.

8.3) The Customer shall indemnify VMS against any loss, damage or injury caused to VMS's employees, agents or contractors during or as a result of or in connection with the provision of the Services.

8.4) The Customer acknowledges that the Maintenance Services are mandatory for the first 12 months of the Contract but optional thereafter.

## 9) Title and Risk

9.1) Risk in the Hardware and/or Software shall pass to the Customer on completion of delivery.

9.2) Title to the Hardware and/or Software shall only pass to the Customer on receipt by VMS in cash or cleared funds of payment in full of the price of the Hardware and/or Software. The Customer shall not resell the Hardware and/or Software. Where the Customer purchases the Hardware and/or Software through a leasing company, title resides with the leasing company unless and until it is transferred to the Customer pursuant to the terms of the relevant leasing arrangement.

9.3) Until title in the Hardware and/or Software has passed to the Customer, the Customer shall:

(a) ensure that the Hardware remains readily identifiable as VMS's property;  
(b) not remove, deface or obscure any identifying mark or packaging on or relating to the Hardware (including any serial numbers);  
(c) maintain the Hardware in satisfactory condition and keep them insured against all risks for their full price on VMS's behalf from the date of delivery;  
(d) notify VMS immediately if it becomes subject to any of the events listed in clause 6.7(d) to clause 6.7(g);  
(e) give VMS such information relating to the Hardware as VMS may require from time to time; and  
(f) indemnify VMS for any loss or degradation of or damage to any Hardware caused whilst such Hardware is in the possession or under the control of the Customer.

9.4) If before title to the Hardware passes to the Customer, the Customer becomes subject to any of the events listed in clause 6.7(d) to clause 6.7(g), then, without limiting any other right or remedy VMS may have, VMS may at any time:

(a) require the Customer to deliver up all Hardware in its possession which has not been irrevocably incorporated into another product; and  
 (b) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Hardware is stored in order to recover it.  
 9.5) Any Software and/or Hardware supplied to the Customer which is subject to any restrictions or provisions imposed by the manufacturer's and/or licensor's conditions are supplied to the Customer by VMS subject to any such conditions and on the terms of any applicable licence agreement.  
 9.6) The Customer is not entitled to pledge or in any way charge by way of security for any indebtedness any Software and/or Hardware which remain the property of VMS but, if the Customer does so, all monies owing by the Customer to VMS shall (without prejudice to VMS's other rights and remedies) become immediately due and payable.  
 9.7) VMS shall supply the Maintenance Services to the Customer in accordance in all material respects with the Software Maintenance Agreement, or any other specification provided to the Customer from time to time.

**10) Confidentiality**

10.1) Each of the parties to this Contract undertakes that it shall not at any time during the Contract and for a period of two years after termination, disclose to any person any confidential information (written or oral) concerning the business, affairs, customers, clients or suppliers of the other except as permitted by clause 10.2.  
 10.2) 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 other party's confidential information comply with this clause 10; and  
 (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.  
 10.3) Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

**11) Data protection and data processing**

11.1) The Customer shall not, without the prior consent of VMS, submit any personal data to VMS.  
 11.2) In the event that VMS agrees to process personal data on behalf of the Customer:  
 11.2.1) the parties will enter into a data processing agreement in accordance with the requirements of Data Protection Legislation on terms to be agreed between VMS and the Customer prior to VMS providing such services;  
 11.2.2) the Customer will, at its expense, ensure that it complies with and assists VMS to comply with the requirements of all Data Protection Legislation; and  
 11.2.3) the Customer will indemnify VMS against all liabilities, costs, expenses, damages and losses (including but not limited to 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 VMS arising out of or in connection with the breach of the Data Protection Legislation by the Customer, its employees or agents.

**12) Warranties**

12.1) All Software and/or Hardware is supplied on and subject to the terms and conditions of warranties and licences of the original manufacturers and/or licensors. To the extent practicable, VMS will pass on to the Customer the benefit of any guarantees or indemnities given to it by its suppliers.  
 12.2) VMS makes no warranty as to the description, quality, fitness for purpose, suitability or otherwise of any Software and/or Hardware supplied. VMS accepts no responsibility for any loss or damage, arising directly or indirectly, from the use of any Software and/or Hardware supplied by it, including any loss arising by reason of any failure of the Software and/or Hardware to comply with any specifications provided by the Customer.  
 12.3) VMS warrants that all Services provided under this Contract will be provided with reasonable skill and care.  
 12.4) Subject to clause 12.1, VMS hereby passes to the Customer the benefit of the manufacturer's warranty. To the extent practicable, all Hardware is supplied subject to the manufacturer's warranty and, unless expressly stated otherwise, VMS does not warrant the performance of the Hardware (**Hardware Warranty**).  
 12.5) If the Customer reports a fault with the Hardware during the manufacturer's warranty period and the fault is due to faulty design, manufacture, material or the negligence of VMS or its suppliers, VMS will give all reasonable assistance to the Customer in connection with procuring that the manufacturer will deal with the matter under the terms of its warranty and may at its option repair the Hardware or replace it with hardware in equivalent condition provided that:  
 (a) the Hardware has been properly kept and maintained, used in accordance with the instructions of the manufacturer, VMS or its supplier and has not been modified except with VMS's prior written agreement; and  
 (b) the fault has not arisen as a result of any abuse or damage (whether accidental or as a result of any Act of God) or the actions of anyone other than VMS.  
 12.6) The Hardware Warranty:  
 (a) applies to any Hardware repaired or replaced under this clause 12, provided that the applicable warranty period shall be the remainder of the original manufacturer's warranty period; and  
 (b) does not cover fair wear and tear.  
 12.7) VMS will endeavour to rectify faults with the Hardware during the applicable manufacturer's warranty remotely. If VMS deems it necessary to examine the Hardware, the Customer will, at its cost, return such

Hardware to VMS at its request. If VMS, at its sole discretion, deems that a site visit is necessary, additional costs may apply as set out in clause 5.4.  
 12.8) VMS warrants to the Customer that the Software will be free from material defects in design, material and workmanship for a period of ninety (90) days from the date of installation (**Software Warranty Period**).  
 12.9) VMS does not warrant that the use of the Software will be uninterrupted or error-free or free from any bugs.  
 12.10) The Customer accepts responsibility for the selection of the Software to achieve its intended results and acknowledges that the Software has not been developed to meet the individual requirements of the Customer.  
 12.11) Except as otherwise expressly provided, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

**13) Returns**

13.1) Unless the Hardware is found to be defective under clause 14, no Hardware may be returned to VMS without its prior agreement.  
 13.2) VMS will not normally grant such agreement unless special circumstances apply and only then subject to certain conditions as VMS deems appropriate (including relating to the condition of the Hardware and at the Customer's cost).

**14) Defects**

14.1) VMS shall not be liable for the Hardware's failure to comply with the Hardware Warranty set out in clause 12.4 if:  
 (a) the defect or non-conformance should have been apparent on a reasonable visual examination of the Hardware;  
 (b) the Customer makes any further use of such Hardware after giving notice of the defect or non-conformance to VMS;  
 (c) the defect arises because the Customer failed to follow VMS's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Hardware or (if there are none) good trade practice;  
 (d) the defect arises as a result of VMS following any drawing, design or specification supplied by the Customer;  
 (e) the Customer alters or repairs such Hardware without the written consent of VMS;  
 (f) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or  
 (g) the Hardware differs from its specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.  
 14.2) If within the Software Warranty Period, the Customer notifies VMS in writing of any defect or fault in the Software in consequence of which it fails to comply with the warranty at clause 12.8, and such defect or fault does not result from the Customer, or anyone acting with the authority of the Customer, having amended the Software or used it outside the terms of the Contract for a purpose or in a context other than the purpose or context for which it was designed or in combination with any other software not provided by VMS, VMS shall at VMS's sole option, do one of the following:  
 (a) repair the Software;  
 (b) replace the Software; or  
 (c) terminate the Contract immediately by notice in writing to the Customer and refund any of the price paid by the Customer as at the date of termination (less a reasonable sum in respect of the Customer's use of the Software to the date of termination) on return of the Software and all copies thereof, provided that the Customer provides all the information that may be necessary to assist VMS in resolving the defect or fault, including a documented example of any defect or fault, or sufficient information to enable VMS to recreate the defect or fault.  
 14.3) The terms of these Conditions will apply to any repaired or replacement Hardware and/or Software supplied by VMS.  
 14.4) Except as provided in this clause 14, VMS shall have no liability to the Customer in respect of the Hardware's failure to comply with the warranty set out in clause 12.4 and/or the Software's failure to comply with the warranty set out in clause 12.8.

**15) Customer's Obligations**

15.1) The Customer shall:  
 (a) ensure that the terms of the Order are, and any information it provides to VMS is, complete and accurate;  
 (b) co-operate with VMS in all matters relating to the Contract;  
 (c) provide VMS, its employees, agents, consultants and subcontractors, with:  
 (i) access to the Customer's premises, office accommodation and other facilities; and  
 (ii) such information and materials, as reasonably required by VMS to comply with its obligations under the Contract;  
 (d) comply with all applicable laws, including health and safety laws; and  
 (e) keep all materials, equipment, documents and other property of VMS (**VMS Materials**) at the Customer's premises in safe custody at its own risk, maintain the VMS Materials in good condition until returned to VMS, and not dispose of or use the VMS Materials other than in accordance with VMS's written instructions or authorisation.  
 15.2) If VMS's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):  
 (a) without limiting or affecting any other right or remedy available to it, VMS shall have the right to suspend performance of the Contract until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays VMS's performance of any of its obligations;  
 (b) VMS shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly

from VMS's failure or delay to perform any of its obligations as set out in this clause 15.2; and  
 (c) the Customer shall reimburse VMS on written demand for any costs or losses sustained or incurred by VMS arising directly or indirectly from the Customer Default.

**16) Limitation of Liability**

16.1) Subject to clause 16.2:  
 (a) VMS shall not in any circumstances have any liability for any losses or damages which may be suffered by the Customer (or any person claiming under or through the Customer), whether the same are suffered directly or indirectly or are immediate, incidental or consequential, and whether the same arise in contract, tort (including negligence) or otherwise howsoever, which fall within any of the following categories:  
 (i) special damage even if VMS was aware of the circumstances in which such special damage could arise;  
 (ii) loss of profits;  
 (iii) loss of anticipated savings;  
 (iv) loss of business opportunity;  
 (v) loss of goodwill;  
 (vi) loss or corruption of data, provided that this clause 16.1(a) shall not prevent claims for loss of or damage to the Customer's tangible property that fall within the terms of clause 16.2 or any other claims for direct financial loss that are not excluded by any of this clause 16.1(a); and  
 (b) VMS's total liability to the Customer arising under or in connection with the Contract, whether arising in contract, tort (including negligence), breach of statutory duty, or otherwise shall not under any circumstances exceed the total charges paid or payable by the Customer under the Contract, whether or not invoiced to the Customer, in the contract year in which the breaches occurred. If the Customer does not consider that this limit is sufficient to protect its interests, the Customer should contact VMS and VMS will be pleased to discuss with the Customer whether it is able to amend this limit. The Customer accepts that VMS shall be entitled to charge the Customer, and the Customer shall pay, an additional fee for accepting any different limit if VMS agrees to do so.  
 16.2) Nothing in the Contract will limit either party's liability for:  
 - (a) death or personal injury resulting from the negligence of that party or its officers, agents or employees;  
 (b) fraud or fraudulent misrepresentation; or  
 (c) any other matter in respect of which liability cannot by applicable law be limited.  
 16.3) This clause 16 shall survive termination of the Contract.

**17) Force Majeure**

17.1) VMS shall not be liable for any loss or damage caused by delay in performance or non-performance of any of its obligations under any Contract where the same is caused by any event beyond VMS's control including but not limited to an act of God, war, riots, insurrection, governmental or parliamentary prohibitions or enactments, import or export regulations, fires, flood, casualty, epidemic, strikes, lock-outs, cessation of labour, trade disputes, destruction or shutdown of production facilities, shortage or curtailment, or manufacturing limitation imposed by third-party manufacturers, suppliers or vendors.

**18) Dispute Resolution**

18.1) It is the intention of the parties to settle amicably by negotiation all disagreements and differences of opinion on matters of procedure and management arising out of the Contract.  
 18.2) If any disagreement or difference of opinion arises out of or in connection with the Contract, employees of VMS and the Customer shall meet to attempt resolution. Should they not meet within 14 days of the date on which either party convenes a meeting to resolve the matter, or should they not be able to resolve the matter within 14 days of first meeting, the matter shall promptly be referred by either party to a member of the senior management team of VMS and the Customer for immediate resolution.  
 18.3) If, within 14 days of the matter first having been referred to the senior management team, no agreement has been reached as to the matter in dispute, the dispute shall finally be resolved by the courts of England and Wales in accordance with clause 20.6.  
 18.4) For the avoidance of doubt, this clause 18 shall not prevent either party from commencing or continuing court proceedings in relation to any dispute or VMS from seeking injunctive relief in the case of any breach or threatened breach by the Customer of any obligation of confidentiality or any infringement by the Customer of VMS's intellectual property rights.

**19) Termination**

19.1) Without affecting any other right or remedy available to it, VMS may terminate the Contract:  
 (a) with immediate effect by giving notice to the Customer if the Customer is in breach of these Conditions or any other Contract Document; or  
 (b) on giving not less than 30 days' notice to the Customer.  
 19.2) Immediately upon termination of the Contract for whatever reason:  
 (a) the Customer shall pay to VMS all of VMS's unpaid invoices and interest and, where no invoice has been submitted, VMS may submit an invoice which will be payable in accordance with clause 6;  
 (b) each party shall return to the other all equipment, materials and property belonging to the other party that the other party had supplied to it in connection with the Contract;  
 (c) each party shall return to the other all documents and materials (and any copies) containing the other party's confidential information and, to the extent possible, erase any such confidential information from its computer systems; and

(d) any software or intellectual property licences granted by one party to the other pursuant to the Contract shall terminate.  
 19.3) Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.  
 19.4) Termination of the Contract shall not affect any rights, remedies, obligations or 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.

**20) General**

20.1) Any notice required or permitted to be given by either party to the other under the Contract shall be in writing (which includes email) addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice. Where such notice is sent by email, it should be sent to:  
 (a) [kparker@vizualms.co.uk](mailto:kparker@vizualms.co.uk), if to VMS; and,  
 (b) any email address provided by the Customer, if to the Customer.  
 20.2) A waiver by VMS 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 VMS 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.  
 20.3) If any provision of the Contract is or becomes invalid, illegal or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected.  
 20.4) Nothing in the Contract shall limit or exclude either party's liability for fraud.  
 20.5) No one other than a party to the Contract shall have any right to enforce any of its terms.  
 20.6) This Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales. The parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.  
 20.7) Any conflict or inconsistency between the terms of these Conditions, the Order, and the Software Maintenance Agreement shall be resolved by giving precedence in the following order: (a) the Order; (b) the Software Maintenance Agreement; and (c) these Conditions.