

NETEXPERTS LIMITED

STANDARD TERMS AND CONDITIONS

1. WORDS AND PHRASES

1.1 In these terms and conditions:

“Agreement”	means the terms upon which we agree to provide the Services to you, consisting of these terms and conditions, the Proposal and the Purchase Order;
“Innovations”	means all inventions, improvements or innovations of any kind (including, without limitation, any computer software) made, conceived, designed, developed or reduced to practice by us in the course of providing the Services;
“Intellectual Property Rights”	means all patents, trade marks and registered designs (and any applications for the protection or registration of these rights and all renewals and extensions thereof) and all copyright, service marks, trade names, design rights and other intellectual property rights throughout the world;
“Proposal”	means the proposal for provision of the Services that: (i) we prepared in response to your request for a proposal from us in relation to the provision of such Services to you; (ii) is specified in the Purchase Order; and (iii) set out in Appendix 1 “Schedule of Services” ; and (iv) forms part of the Agreement;
“Purchase Order”	means the written order for provision of Services by us to you that: (i) you submitted to us in response to the Proposal; and (ii) forms part of the Agreement;
“Services”	means the ordering, delivery, installation, configuration and testing of computer equipment and software at the Site and any other information technology services relating to the Site as set out in the Proposal;
“the Site”	means the geographical site specified in both the Proposal and the Purchase Order at and/or in respect of which the Services will be provided by us to you;
“we”, “us” and “our”	relate to <i>netexperts limited</i> (and includes, where relevant, any agents and/or sub-contractors working for us);
“Working Day”	means 9.00 a.m. to 5.00 p.m. Monday to Friday inclusive, excluding public and bank holidays in the country in which the site is located;
“you” and “your”	relate to the person or company: (i) named as the client in the Proposal; and (ii) who submits the Purchase Order.

2. COMMENCEMENT AND DURATION OF AGREEMENT

2.1 The Agreement for provision of the Services by us to you will come into effect upon acceptance of the Purchase Order by one of our officers or representatives duly authorised to do so, on our behalf. The

Proposal is only valid for a period of 28 days from its stated date of validity or for such other period as is expressly specified in the Proposal and you must therefore submit the Purchase Order to us while the Proposal remains valid. Your submission of the Purchase Order to us after the Proposal's validity has expired will result in the Purchase Order not being accepted. The Agreement will continue until: (i) our completion of the Services; or (ii) its earlier termination under clause 4.

3. YOUR RIGHTS AND RESPONSIBILITIES

3.1 Access and Delivery

To enable us to provide the Services, you will: (i) provide us with full and safe access to the Site upon the provision of reasonable notice; and (ii) make available such working space and facilities at the Site as we may reasonably require to carry out the Services including (without limitation) electricity, access to telephones, computers and the Internet and (ensuring their full co-operation) access to your relevant employees, agents and sub-contractors with which to liaise. We shall not be in any way responsible for any delay in providing or completing any of the Services that results from any failure by you to comply with any of your obligations under this clause 3.1.

Unless and only to the extent it is expressly stated to the contrary in the Proposal, any dates set out in the Proposal for provision or completion of any Services are estimates only and time shall not be of the essence in relation to our provision or completion of any of the Services.

3.2 Price and Payment

The charges for our provision of the Services to you are specified in the Proposal. Unless:

- (a) the Proposal provides for the supply of **equipment** (here defined as hardware and software licenses purchased by us), in which case invoices are due for payment by you within **14 days** of the date they are despatched by us to you;
- (b) the Proposal provides for the supply of an **SLA**, in which case invoices are due for payment by you within **7 days** of the date they are despatched by us to you by registered post; or
- (c) expressly specified to the contrary in the Proposal,

you will by default make payment monthly in arrears in accordance with our invoiced charges for work carried out during each month and any invoices will be due for payment by you within 30 days from the end of the month in which we despatch the invoice to you. In respect of all of our employees, agents or sub-contractors engaged in providing the Services, we will be entitled to charge you on a daily basis for reasonable expenses incurred by them in the course of doing so (subject to anything expressed to the contrary in the Proposal in relation to such expenses). You will make all payments due to us under the Agreement in Pounds Sterling (GBP).

Notwithstanding clause 4.4, if you are late in making any payment due to us under the Agreement: (i) we may charge you interest at the rate of 4% over the annual base rate quoted by Barclays Bank from time to time from the date upon which you should have made that payment until the day upon which you actually make the payment; and (ii) we may also suspend provision of any or all of the Services until the payment is made.

3.3 Intellectual Property

All Intellectual Property Rights in any Innovations and all other Intellectual Property Rights arising in the course of our provision of the Services shall be and remain owned by us and, subject to any licence granted by us to you under this clause 3.3, we shall be entitled to exploit any such Innovations and/or Intellectual Property Rights in any manner at our sole discretion. In the event you acquire any rights (other than any licence granted to you under this clause 3.3, such as the transfer of third party licenses and warranties) in respect of any such Innovations and/or Intellectual Property Rights by the operation of any law or otherwise, you will: (i) not in any way deal with, dispose of or in any other way exploit any such rights; (ii) assign all such rights to us together with all associated rights relating to them; and (iii) complete (at our request and expense) any documentation required to give effect to such assignment.

Upon your payment in full of all charges for our provision of the Services, you will be entitled to have a non-exclusive, non-transferable, royalty-free licence granted by us to you in respect of any Intellectual Property Rights in any Innovations and/or any other Intellectual Property Rights arising in the course of our provision of the Services to you that we (in our sole but reasonable opinion) consider necessary and appropriate for internal use within your business, provided that in relation to any computer software Innovation the licence granted shall only be in respect of its object code written for you by us or on our behalf and not its source code. Under the terms of any such licence, you will be entitled to: (i) use and reproduce the Licensed Intellectual Property Rights; (ii) decompile and modify the object code of any licensed computer software Innovation solely for the purposes of maintenance, support and as otherwise permitted by law; and (iii) use, modify and copy any associated documents prepared for you by us or on our behalf; but only for the purposes of internal use within your business and only in relation to the Site. You will not, without our prior written consent, be entitled to: (i) use or in any other way deal with any licensed Innovations, Intellectual Property Rights or associated documents for any other purpose; or (ii) dispose of, distribute or disclose (whether for commercial gain or otherwise) any licensed Innovations, Intellectual Property Rights or associated documents outside your company or firm.

3.4 Loss or Damage

You will indemnify us and keep us fully indemnified against any loss, damage or injury caused to any of our employees, agents or sub-contractors or any liability, loss or damage (together with any associated costs and expenses) incurred or suffered by us as a result of any act, omission or default by you or any of your employees, agents and/or sub-contractors.

You will not be liable to us for any actual or anticipated income or profit, contracts, business, goodwill, data, revenue or anticipated savings or any indirect, consequential or special loss or damage howsoever arising and whether or not such loss or damage is foreseeable, foreseen or known.

4. OUR RIGHTS AND RESPONSIBILITIES

4.1 Provision of Services

We will provide the Services to you together with such additional services as you and we may agree in writing from time to time.

Where we are providing the Services on a pay as you go basis, if you do not use the services for one calendar month we reserve the right to charge a Maintenance fee for that and each subsequent month based on the complexity of your system until such time as you use us for Services.

If: (i) you change the Site or the equipment at the Site at any time; or (ii) request us to provide any additional services and we agree to such request; we may need to supply additional work, materials and equipment and/or use additional personnel in order to deal with that change or meet that request.

We will require reasonable prior notice in writing from you of any such change or request and we will be entitled to invoice you for (and, if so invoiced, you shall be required to pay in accordance with the payment terms set out at clause 3.2) additional charges (at our then applicable rates) for any additional work, materials, equipment and/or personnel that are not already included in the Proposal and are necessary to provide the Services in relation to the changed Site or equipment and/or provide the additional services in question to you in accordance with these terms and conditions. Any such costs to be agreed in writing by both parties prior to works being undertaken.

We will provide all Services with reasonable skill and care. Except as otherwise expressly provided in these terms and conditions, no warranty, condition, undertaking or term (express or implied, statutory or otherwise) as to the condition, quality, performance, suitability or fitness for purpose of any of the Services or any deliverables forming part thereof is given or assumed by us and all such warranties, conditions, undertakings and terms are excluded by us to the greatest extent permitted by law.

4.2 Errors in the Service

If we make an error in the course of providing any of the Services to you, we will (except to the extent that the error is caused by: (i) software not covered by the Proposal; (ii) incorrect or incomplete information provided by you or your employees, agents and/or sub-contractors; and/or (iii) any failure by you or your

employees, agents and/or sub-contractors to comply with any of your obligations under clause 3.1) use all reasonable endeavours to rectify that error as soon as is reasonably practicable. Any such rectification work: (i) will be carried out at our sole cost and expense without any charge to you; and (ii) shall, subject to clause 4.5, constitute our entire liability to you in respect of the error to the exclusion of all other rights and remedies available to you at law or in equity.

We are not responsible for: (i) maintaining the licences of any existing or new software not covered by the Proposal; (ii) any errors in software not covered by the Proposal or their rectification; (iii) any errors (in the provision of the Services or otherwise) caused by incorrect or incomplete information provided by you or your employees, agents and/or sub-contractors; or (iv) any failure by you or your employees, agents and/or sub-contractors to follow any procedures recommended by us for the safe and consistent operation of any equipment and/or software provided by us as part of the Services.

4.3 Goods and Third Party Software

Where we provide any goods or third party software to you in connection with or as part of the Services, we will: (i) endeavour to pass to you the benefit of all warranties or guarantees provided by the manufacturers or distributors from whom we purchase such goods or software; and (ii) at your request and expense, use all reasonable endeavours to assist you to seek to enforce the terms of those warranties and guarantees; subject always to any exclusions and/or limitations of liability imposed by the manufacturer or distributor in respect of any such warranty or guarantee. We do not accept: (i) any liability for any representations made regarding such goods or software (other than fraudulent misrepresentations made by us); or (ii) any liability for breach of any conditions and/or warranties (express or implied, statutory or otherwise) relating to such goods or software; and we hereby exclude all such liability to the greatest extent permitted by law.

4.4 Termination of this Agreement

We may bring this Agreement to an end immediately: (i) if you fail to comply with any of your obligations under this Agreement within 14 days of having been notified by us of the relevant failure or failures; (ii) if you are the subject of a petition for bankruptcy order, or you become insolvent or enter into any composition, scheme or arrangement with your creditors; (iii) if a receiver (including an administrative receiver) is appointed over any of your assets or an application is made to appoint an administrator for you; (iv) if you are a partnership and the partnership is dissolved; or (v) if any other proceedings are commenced in any country relating to your insolvency.

If this Agreement ends for any reason: (i) we will immediately cease providing the Services to you and remove all of our property from the Site and any of your other premises at which any of our property is kept; (ii) each of us shall, subject to clause 3.3, return to the other all materials, documentation and confidential information belonging to the other and all copies of the same or, if requested to do so, destroy the same and certify in writing to the other that it has been so destroyed; and (iii) all outstanding charges for the Services provided by us to you prior to the Agreement ending shall become immediately due and payable.

Both parties may end this agreement at any time by giving 2 months written notice. Upon such termination of the agreement, both parties agree to partake in and to undertake agreed actions resulting from formal planning of an exit strategy.

Any termination of the Agreement (howsoever occasioned) shall not affect any accrued rights or liabilities of either you or us nor shall it affect any provision of the Agreement that, expressly or by implication, survives termination.

4.5 Limitation of Liability please read this carefully

Nothing in the Agreement shall exclude or in any way limit our liability for: (i) any death or personal injury resulting from our negligence or the negligence of our employees, agents or sub-contractors; (ii) fraudulent misrepresentation; or (iii) any other loss or damage for which liability cannot lawfully be excluded.

Except as provided in clause 4.2 in relation to the rectification of errors in the Services or in this clause 4.5 above in relation to liability for death, personal injury, fraudulent misrepresentation or

any other loss or damage for which our liability cannot lawfully be excluded: (i) our maximum liability to you for any claim for direct loss or damage under or in connection with this Agreement, whether in contract, tort (including negligence), breach of any statutory duty or implied term or otherwise, will not exceed the total cost for provision of the Services set out in the Proposal and (ii) we will not be liable to you under any circumstances for any actual or anticipated income or profit, contracts, business, goodwill, data, revenue or anticipated savings or any indirect, consequential or special loss or damage howsoever arising and whether or not such loss or damage is foreseeable, foreseen or known. The limitations and exclusions in this clause 4.5 reflect the value of this Agreement to us and you acknowledge and agree that you have entered into the Agreement after due consideration and in the knowledge that our liability is to be limited in accordance with these terms and conditions, the charges for our provision of the Services to you have been determined accordingly and the limitations and exclusions in this clause 4.4 are reasonable. If you require us to accept greater risk and liability than we accept under these terms and conditions, we may be prepared to do so subject to invoicing you for and your payment of an additional charge that reasonably reflects: (i) the increased risk and liability you require us to accept; and (ii) the increased cost to us of insuring against such increased risk and liability.

4.6 Force Majeure and Sickness of Personnel

We will not be liable to you for any failure to perform our obligations under this Agreement where that failure results from any cause outside our reasonable control, including but not limited to natural occurrences, disruption of power supplies, any act, omission or default of you or any of your employees, agents or sub-contractors or any other third parties, or industrial action.

If any of our employees, agents or sub-contractors are unable to provide the Services to you due to their illness: (i) we will use all reasonable endeavours to provide adequate replacement personnel wherever reasonably practicable; but (ii) we will not be deemed to be in breach of this Agreement or liable in any way for any failure to provide adequate replacement personnel having used all reasonable endeavours to do so.

You will be entitled to terminate this Agreement if any cause outside our reasonable control or the illness of any of our employees, agents or sub-contractors results in a delay in our provision or completion of the Services of more than one month. After that one month period has elapsed, you may (without any right to receive compensation or damages for such delay from us following such termination) choose to terminate this Agreement by written notice to us but only whilst such delay continues.

5. NON-SOLICITATION OF STAFF AND CONFIDENTIALITY

5.1 You acknowledge that it is legitimate for us to protect our business against the “poaching” of our employees, agents and sub-contractors by our clients. You therefore agree that you will not, without our prior written consent at any time during our provision of the Services and for 6 months after our completion of the Services or earlier termination of the Agreement under clause 4, solicit, employ or otherwise retain the services of any of our employees, agents and sub-contractors who are or at any time have been engaged in the provision of the Services to you.

5.2 If you fail at any time to comply with clause 5.1, we will be entitled to charge you an amount equal to 6 months’ salary of the relevant employee or 6 times the relevant agent’s or sub-contractor’s average monthly invoice to us, together with any costs that we incur in seeking to hire a replacement (including, without limitation, advertising costs and recruitment agency fees). You acknowledge and agree that: (i) it may not be possible for us to be adequately compensated by damages alone for any such failure to comply with clause 5.1; and (ii) we shall be entitled to see an injunction or other equitable remedy to seek to prevent any breach of clause 5.1.

5.3 Each of us shall: (i) keep and procure to be kept secret all confidential information belonging to the other, or any third party, that is disclosed by the other, or any third party, for the purposes of enabling you and us to perform our respective obligations under the Agreement; and (ii) not use or disclose the same for any other purpose(s) without the prior written consent of the other or any third party.

5.4 The obligations of confidentiality in clause 5.3 shall not extend to any information which: (i) is, at the date of disclosure, part of the public domain other than by reason of a breach of confidentiality by the recipient; (ii) becomes part of the public domain other than by reason of a breach of confidentiality by the recipient (provided that, in respect of any information that is not in the public domain at the date of disclosure but

becomes so, the recipient shall comply with clause 5.3 up until such information becomes part of the public domain; (iii) which the recipient can show to have been in its written records prior to the date of disclosure; or (iv) the recipient independently receives from a third party entitled to disclose it. The obligations of confidentiality in clause 5.3 may also be overridden by requirements for disclosure by law and/or the disclosure requirements of a competent court, tribunal or authority.

6. DISPUTES

6.1 Any dispute relating to the nature or quality of the Services that we cannot settle amicably between us will be referred to an expert to be: (i) agreed between us; or (ii) if agreement on the choice of expert cannot be reached within 14 days of the parties have agreed to refer the dispute to an expert, appointed at the request of either you or us by the President at that time of Institute of Electrical Engineers. The written report of the expert will as between you and us be conclusive evidence of all matters of fact and opinion set out in the report (except in the case of manifest error) and the charges of the expert shall be borne and paid as the expert may direct.

Any other dispute relating to the Agreement that we cannot settle amicably between us will be determined by the Courts of England or, at our sole discretion, the Courts of the country in which you are domiciled or the Plant is located if it is other than England or Wales, and you irrevocably submit to the jurisdiction of such courts.

7. GENERAL

7.1 VAT

Unless indicated otherwise, all sums payable under this Agreement are stated exclusive of: (i) Value Added Tax, which will be charged at the rate prevailing at the relevant tax point; and (ii) any other tax or duty chargeable under any relevant legislation.

7.2 No Partnership or Agency

The Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the parties other than the contractual relationship expressly provided for in the Agreement.

7.3 Assignment

You will not assign, transfer, sub-licence or sub-contract any of your rights, licences or obligations under the Agreement without our prior written consent. We may sub-contract the provision of any of the Services or the performance of any of our other obligations under the Agreement at our sole discretion.

7.4 Notices

Any notice to be given by you or us must be in writing and may be delivered by facsimile. Any notice that is served by facsimile must be confirmed by post to be effective. Notices to us should be sent to us at the address stated on the Proposal. Any notice given to you must be sent to you at the address stated on the Purchase Order. You and we are free to provide each other with an alternative address for notices at any time. Facsimile notices will be deemed received on the next Working Day after transmission.

7.5 Waiver

Any express or implied waiver by us of any failure by you to perform any of your obligations under this Agreement: (i) will not prevent the subsequent enforcement of that obligation by us; and (ii) will not be taken to be a waiver of any subsequent failure by you to perform that or any other obligation under this Agreement.

7.6 Nature of Agreement

The Agreement constitutes the entire agreement between us relating to provision of the Services by us to you and overrides any prior agreements, arrangements, undertakings, correspondence or statements between us relating to provision of the Services (including, without limitation, any statements or representations in any advertisements or literature produced by us relating to the Services and any matter contained or referred to in the Proposal and/or the Purchase Order). In the event of any conflict between: (i) the Purchase Order and these terms and conditions, these terms and conditions shall prevail; (ii) the Proposal and these terms and conditions, these terms and conditions shall prevail; and (iii) the Proposal and the Purchase Order, the Proposal shall prevail. For the avoidance of doubt, nothing in the Agreement or any other document pertaining to the subject matter of the Agreement (including, without limitation, the Purchase Order) shall have the effect of incorporating your standard terms and conditions of business (if any) into the Agreement.

7.7 Severance

If any provision of this Agreement is ruled to be invalid for any reason, that invalidity will not affect the rest of this Agreement, which will remain valid and enforceable in all respects.

7.8 Variation

The Agreement shall not be amended, modified, varied or supplemented in any manner except by an instrument in writing signed by a duly authorised officer or representative of each of us.

7.9 Third Party Rights

The Agreement does not create any right enforceable under the Contract (Rights of Third Parties) Act 1999 by any person other than you and us.

7.10 Law

The law of England and Wales governs the Agreement.