

Palmer Data Technologies Ltd. Standard Terms & Conditions for the Supply of Services

1. Definition and Interpretation

- **1.1** In these Terms and Conditions the following words shall have the following meanings:
- "Agreement" means any agreement between Palmer Data Technologies Ltd, ("PDT") and the Customer incorporating either:-
 - (i) these Terms and Conditions; or
 - (ii) a framework agreement for the supply of services, these Terms and Conditions, and an order acceptance form.
- "Background IPR" means rights in any Intellectual Property, excluding Foreground IPR, owned or controlled by any party arising before commencement of the Services, or in parallel independently of the Services, which is necessary for carrying out the Services.
- "Confidential Information" means any information given to or obtained by PDT from the Customer, or by the Customer from PDT, under the Agreement relating to the Services and designated as confidential in writing by the party owning the information.
- "PDT" shall mean Palmer Data Technologies Ltd, and shall include the trading names of Palmer Data Recovery and Palmer Legal Technologies or any trading name from time to time .
- "Customer" means the person or persons to whom the Agreement is issued. Where the Customer consists of more than one person, the obligation of those persons in respect of the Agreement shall be joint and several.
- "Foreground IPR" means rights in any Intellectual Property obtained, found, produced, devised, developed, or made during or generated in the course of the carrying out of the Services.
- "Intellectual Property" means any copyright, design right, trademark, trade name, know-how, patentable invention for the purposes of the Patents Act 1977, database right for the purposes of the Copyright and Rights in Databases Regulations 1997, and all intellectual property, including Technical Information, the rights to which are protectable by law; and "Intellectual Property Rights" and "IPR" shall mean any rights in Intellectual Property.
- "Price" means the charges, taxes and disbursements specified in either an agreement for the supply of services, an assessment form, an order acceptance form or proposal.
- "The Services" means the services to be supplied by PDT to the Customer as specified in the Agreement.
- "Technical Information" means and includes inventions, discoveries (and applications thereof), designs, drawings, techniques, processes, formulae, reports, specifications, practices, procedures, instructions, software and other technical information and data of any kind in whatever form.
- "Terms and Conditions" means the PDT Standard Terms and Conditions for the Supply of Services.
- "VAT" means UK value added tax.
- **1.2** Clause headings shall not affect the interpretation of these Terms and Conditions.
- **1.3** Unless the context otherwise requires, references in these Terms and Conditions:
 - **1.3.1** to "person" or "third party" include any individual, company, corporation, firm, partnership, joint venture, association, organisation, institution, trust or agency, whether or not having a separate legal personality;
 - **1.3.2** to one gender include all genders, and reference to singular include the plural and vice versa;
 - **1.3.3** to any statute, statutory provision or regulation, are references to that statute, statutory provision or regulation, as from time to time amended, extended or re-enacted.

2. The Services

- **2.1** PDT agrees to provide the Services to the Customer in accordance with these Terms and Conditions and any special conditions agreed between the parties.
- **2.2** In carrying out the Services PDT undertakes to the Customer that it shall use its reasonable endeavours to undertake the Services in accordance with good technical practice and within the time period agreed between the parties although time is not of the essence and that at all times PDT will exercise reasonable skill and care.
- **2.3** PDT cannot undertake to provide the Services or services of this type for the Customer exclusively.
- **2.4** All materials and items of equipment which are to be supplied by the Customer for the purpose of the Services shall be delivered, assembled, maintained, dismantled and collected at the Customer's cost and in accordance with the requirements of the PDT staff responsible for the Services. The Customer agrees that the Service may require that equipment is dismantled such that it cannot be re-assembled again and that all equipment and other accessories (except those owned and provided by the Customer) and all materials obtained by PDT and/or used for the purposes of the Services shall remain the property of PDT.
- **2.5** If the Services involve the Customer's employees attending PDT's premises, the Customer will procure that such employees comply with all security, health and safety, and other relevant procedures whilst on PDT premises. PDT may at any time

at its absolute discretion refuse to accept or continue to accept any particular employee of the Customer on its premises. PDT is under no obligation to allow the Customer's employees to witness the Services being carried out.

- **2.6** No order for the supply of Services is binding on PDT unless and until it has been accepted by PDT in writing.

3. Warranties and Indemnities

- **3.1** The Customer shall provide PDT with all such information and materials as are necessary for PDT to carry out the Services in accordance with clause 2 above and the Customer warrants that all information provided by it or on its behalf to PDT will be accurate. The Customer further warrants that it will give PDT written notice of any hazards, known or suspected, by the Customer that might potentially arise in the use of such materials.
- **3.2** The Customer warrants that it has the necessary rights and is entitled to use or disclose for the purposes of the Services all Intellectual Property supplied by it to PDT for the purposes of carrying out the Services.
- **3.3** The Customer shall indemnify and keep indemnified on a full and unqualified basis PDT against any and all actions, claims, demands, costs, charges and/or expenses arising out of any loss or damage incurred by the reason of any infringement or alleged infringement by the Customer of any Intellectual Property right in relation to the Services.

4. Liability and Insurance

- **4.1** Except in the case of personal injury (including death) caused by the negligent or wilful act or omission of either party, or of any servant or agent of either party, the aggregate liability of either party to the other arising out of any tort or breach or breaches of the Agreement shall not exceed the total amount payable by the Customer to PDT in accordance with the Agreement. The provisions of this clause 4.1 are without prejudice to the Customer's obligations under clause 3.3 above.
- **4.2** In the event of any breach or breaches of the Agreement by PDT, PDT shall not be liable to the Customer in respect of any resulting:
 - **4.2.1** loss of profit, business, revenue, goodwill or anticipated savings;
 - **4.2.2** indirect or consequential loss or damage.
- **4.3** The Customer shall be liable to PDT for any claim made against PDT as a result of any tort committed by the Customer's employees whilst on PDT premises.
- **4.4** The Customer shall effect a policy or policies of insurance covering all the risks and liabilities which may arise from PDT's inability to perform the Service or perform the service within an estimated time.

5. Confidentiality

- **5.1** PDT shall not without the Customer's written consent disclose to any person other than the Customer or use otherwise than for the purpose of carrying out the Services:-
 - **5.1.1** the nature of the Services or the results obtained; or
 - **5.1.2** any secret or Confidential Information before or after the date of the Agreement concerning the Services or relating to any products or operations of the Customer providing that the information:
 - (i) is acquired from the Customer or is specific to the Customer's business; and
 - (ii) has not been developed or generated independently by PDT; or
 - (iii) has not been in PDT's possession prior to acquisition from the Customer; or
 - (iv) is not in the public domain at the time of disclosure to PDT, or at any time after its disclosure to PDT, through no breach of the Agreement by PDT; or
 - (v) is not required to be disclosed pursuant to any court order or statutory or other legal requirement.

6. Invoicing and Payment Terms

- **6.1** If credit terms are offered by PDT then payments of the Price shall be made within 30 days of receipt of a valid VAT invoice. Payment shall be made in £ sterling and cheques, drafts or other payment instructions should be drawn on a bank trading in the UK. Unless expressly stated otherwise VAT will be added to all Prices at 15%.
- **6.2** If payment is made by credit card or charge card or debit card then the Customer will not instruct the provider of that credit service to dispute a payment item due to PDT without having used reasonable efforts to resolve the dispute with PDT before such instruction is given.
- **6.3** All sums due from the Customer to PDT which are not paid on the due date (without prejudice to the rights of PDT under the Agreement) shall bear compounded interest at the rate of 4% over the daily base rate of the Bank of England.

7. Intellectual Property Rights

- 7.1 Subject to any third party rights other than by virtue of the Agreement, to the extent that the provision of the Services results in the creation of any Foreground IPR such Foreground IPR shall vest in PDT.
- 7.2 Ownership or title to any Background IPR shall not be affected by these Terms and Conditions or by the Agreement.

8. Force Majeure

- 8.1 PDT will not be held responsible for failure or delay in carrying out the Services due in whole or in part to any circumstances whatsoever beyond its reasonable control including the procurement of specialist materials.

9. Termination

- 9.1 Where PDT reasonably assesses that it is unable to fulfil the objective desired by the Customer then the Agreement may be terminated forthwith by PDT with no notice requirement.
- 9.2 Either party may terminate the Agreement forthwith by written notice given to the other where: that other party commits a breach of the Agreement which the party serving the notice reasonably considers is not capable of remedy; or that other party has continued in any breach of the Agreement for more than 30 days after being warned in writing of such breach.
- 9.3 PDT may terminate the Agreement forthwith by written notice given to the Customer if:-
 - 9.3.1 the Customer is a company, and the company passes a resolution or the court makes an order that it should be wound up or that an administrator be appointed, or if the Customer makes a composition or an arrangement with its creditors, or if a receiver or manager or administrator on behalf of a creditor is appointed, or if circumstances arise which entitle the court or a creditor to appoint a receiver, manager or administrator or which entitle the court to make a winding up order; or
 - 9.3.2 the Customer being an individual at any time becomes bankrupt, or has a receiving order made against him or her or makes any composition or arrangement with or for the benefit of his or her creditors, or purports to do so; or
 - 9.3.3 the Customer is a partnership and any partner thereof at any time becomes bankrupt, or has a receiving order made against him or her, or any partner or the partnership makes any composition or arrangement with or for the benefit of their creditors, or purports to do so.
- 9.4 If the Customer does not make payments in accordance with clause 6 above PDT reserves the right to cease the Services and, if it thinks fit, to terminate the Agreement forthwith by written notice given to the Customer.

10. Effect of termination

- 10.1 Termination of the Agreement shall not affect any obligation or liability of any Party which has accrued at the date of termination.
- 10.2 Except for clauses 3, 4, 5, 6, 7, 8, 9 and except in respect of any other accrued rights, neither party shall be under any further obligation to the other.
- 10.3 Upon termination of the Agreement PDT may set off against any debt owed by the Customer to PDT, or the amount of loss and/or damage PDT have reasonably assessed as resulting from the termination of the Agreement, any sums otherwise due to the Customer.

11. Assignment and sub-contracting

- 11.1 The Customer shall not assign or sub-contract the Agreement or any part of it without the prior consent of PDT in writing, such consent not to be unreasonably withheld.
- 11.2 PDT may at any time, on reasonable notice in writing to the Customer, transfer or assign all or any rights and/or obligations under the Agreement.
- 11.3 PDT shall be free to subcontract or otherwise deal with the whole or any part of the Services unless the Customer's data is to be exported outside the European Union in which case it shall not do so without the prior consent of the Customer in writing.

12. Waiver, variation and representations

- 12.1 No delay by PDT in enforcing or expressing any right, either arising out of the Agreement or any right in respect of any breach of the Agreement by the Customer, shall constitute a waiver of such right.
- 12.2 No waiver by PDT of any breach of the Customer's obligations shall constitute a waiver of any other prior or subsequent breach.

- 12.3 Any variation of any provision of the Agreement must be effected in writing and issued by PDT. No purported variation by any other means shall bind PDT.
- 12.4 No statement in any publication issued by PDT constitutes a term of the Agreement, nor a representation in reliance upon which the Agreement has been entered into.

13. Legal Relationship

- 13.1 Nothing in the Agreement shall be construed so as to create a partnership or joint venture between the parties or have the effect of making any employee of the Customer an employee of PDT or of making any employee of PDT an employee of the Customer.
- 13.2 Neither of the parties shall act or describe itself as the agent of the other, nor shall it make or represent that it has authority to make any commitments on the other's behalf.
- 13.3 Any reference made to a PDT marketing programme from time to time that includes words such as but not limited to "Partner" or "Affiliate" are subject to the overriding principles of clauses 13.1 and 13.2.

14. Severability

- If any part of the Agreement is unenforceable, such unenforceability shall not affect the enforceability of the remainder of the Agreement.

15. Notices

- Any notices to be given under the Agreement shall be in writing and sent to the relevant address or addresses set out in the Agreement by hand, electronic mail transmission, facsimile or prepaid post. Such notices shall be deemed to be received at once if sent by facsimile or electronic mail transmission and if sent by prepaid first class post within the United Kingdom shall be deemed to be served on the second business day after posting. If a notice is sent to or from abroad by prepaid mail it shall be deemed to be served on the fifth business day after posting.

16. Dispute resolution

- 16.1 PDT and the Customer shall in good faith attempt to negotiate a settlement to any dispute between them arising out of or in connection with the Agreement.
- 16.2 If any such dispute cannot be resolved in accordance with condition 16.1, the dispute may, by agreement between PDT and the Customer, be referred to mediation in accordance with condition 16.3
- 16.3 The procedure for any such mediation shall be as follows:
 - 16.3.1 A neutral person ("the Mediator") shall be chosen by agreement between PDT and the Customer, alternatively, either party may within 14 days from the date of the proposal to appoint a mediator, or within 14 days of notice to either party that the chosen mediator is unable or unwilling to act, apply to the Centre for Dispute Resolution ("CEDR") to appoint a mediator.
 - 16.3.2 PDT and the Customer shall within 14 days of the appointment of the Mediator meet with him or her to agree a timetable for the exchange of all relevant and necessary information and the procedure to be adopted for the mediation. If appropriate, PDT and the Customer may at any stage seek from CEDR guidance on a suitable procedure.
 - 16.3.3 Unless otherwise agreed, all negotiations and proceedings in the mediation connected with the dispute shall be conducted in strict confidence and shall be without prejudice to the rights of the parties in any future proceedings.
 - 16.3.4 If PDT and the Customer reach agreement on the resolution of the dispute, that agreement shall be reduced to writing and shall be binding upon PDT and the Customer.
 - 16.3.5 Failing agreement, either PDT or the Customer may invite the Mediator to provide a non-binding but informative opinion in writing. Such opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the dispute without the prior written consent of PDT and the Customer.
- 16.4 For a period of sixty days from the date of the appointment of the Mediator, or such other period as PDT and the Customer may agree, neither of the parties to the dispute may commence any proceedings in relation to the matters referred to the Mediator.

17. Jurisdiction and governing law

- The Agreement is subject to English law and to the exclusive jurisdiction of the courts of England and Wales.