

Service Agreement. Terms and Conditions

TERMS & CONDITIONS

1. BASIS OF CONTRACT

- 1.1. Unless the parties enter into a separate written agreement signed by both parties governing an order, these terms and conditions ("Conditions") shall apply to any order placed by you (Client) with Veralink Limited (Veralink).
- 1.2. The dispatch of a purchase order ("PO") by the Client to purchase goods, third-party software products, and/or services specified in the PO or Proposal are in accordance with these Conditions. The PO shall be deemed to be accepted on (a) Veralink issuing written acceptance of the PO; or (b) any act by Veralink consistent with fulfilling the PO, at which point and on which date the contract between the Client and Veralink for the supply of Goods, Products and/or Services in accordance with these Conditions ("Contract") shall come into existence.
- 1.3. These Conditions apply to the Contract including any other terms and conditions in or attached to any quotation, catalogue, invoice or other sales literature or document or tender or dispatch/delivery note issued by Veralink or any other terms that Veralink seeks to impose or incorporate, or which are implied by law, trade custom, practice of course of dealing.

2. PURCHASE ORDER

- 2.1. Veralink will ensure that the Goods, Products and/or Services, including any documents, products and materials developed procured and/or used as part of or in relation to providing the Services ("Deliverables"), as applicable shall:
 - a. correspond with the quantity, type, sort, quality and description set out in the PO;
 - b. meet the operational and functional requirements, performance standards and dates specified on the PO or notice received from the Client and (where applicable) be performed with the best care, skill and diligence in accordance with best practice in the industry, profession or trade; and
 - c. comply with all applicable statutory and regulatory requirements (including with the Data Protection Act 2020, and any other acts and regulations in respect of data protection);
 - d. comply with all applicable consents, permissions, approvals and/or licensing terms, including those relating to and provided by the product vendors.
- 2.2. If the Goods, Products and/or Services do not comply with the undertakings given in clause 2.1, the Client is entitled at its option to exercise one or more of the following rights:
 - a. require Veralink to repair or replace the Goods or Products;
 - b. require Veralink to re-perform the Services.
- 2.3. Veralink will use all reasonable endeavours to meet the agreed time schedule for the provision of the Services and the agreed Date of Delivery for Products and/or Goods. However the Parties agree that, unless otherwise expressly agreed in the SoW, any dates are estimates only. In the event Veralink expects any delay in the provision of the Services or the delivery of the Goods and/or Products, we shall inform Client promptly in writing of the nature of such delay, on the measures actually taken and/or proposed to mitigate against such delay to the maximum extent possible. Notwithstanding the above, Veralink shall never be liable for any delay that is caused by a Product vendor in the delivery of the Products (except where such delay arises due to an act, failure, omission or delay by the Veralink) or the occurrence of a Force Majeure Event.
- 2.4. These Conditions shall extend to any substituted or remedial services and/or repaired or replacement goods supplied by Veralink.

3. DELIVERY OF GOODS AND PRODUCTS

- 3.1. Veralink will deliver the Goods and/or Products to our Client on the date and at the location specified in the PO during normal hours of business (or as otherwise agreed by both parties).
- 3.2. Delivery of the Goods and/or Products shall be completed when the Goods and/or Products are unloaded at the location specified and/or as otherwise agreed for delivery in the PO.
- 3.3. Risk in the Goods and/or Products shall pass to Client on completion of delivery. Title to the Goods and/or Products shall pass to the Client once paid for in full (as applicable). The Client undertakes to take proper care of the Goods and Products and to keep all original packaging and manuals until full payment has been made.

4. PRICE, PAYMENT AND SET OFF

- 4.1. The price for the Goods, Products and/or Services shall be the price set out in the PO and shall be inclusive of, but not limited to, the costs of packaging, insurance and carriage of the Goods and/or provision of the Services. No extra charges shall be effective unless agreed by both parties.
- 4.2. In respect of Goods and/or Products (as applicable), Veralink will invoice Client on or at any time after completion of delivery. In respect of Services, Veralink shall invoice Client in accordance with the quotation, PO, or as otherwise agreed between the parties in writing.
- 4.3. The Client will pay the invoiced amounts within 30 days of the date of receipt of a valid and correct invoice to a bank account nominated in writing by Veralink, unless agreed otherwise in writing.
- 4.4. If Client fails to make a payment due to the Veralink under the Contract by the due date, then Client shall pay interest at a rate of 3% as a late fee and a further 8% per annum from time to time on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment.

5. INTELLECTUAL PROPERTY RIGHTS

- 5.1 Unless otherwise agreed between the parties in writing, all intellectual property rights in or arising out of or in connection with the Services (other than in any materials, equipment, specifications or data supplied by Client to Veralink) shall be owned by Veralink. Veralink grants to Client, or shall procure the direct grant to Client of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence to copy and modify the Deliverables for the purpose of receiving and using the Services and the Deliverables.
- 5.2 All Products are sold or licensed exclusively in accordance with the end user terms and conditions or end user license agreement of the relevant Product vendor (the "**End User License Agreement**" or "**EULA**") which shall govern the use of, and warranty applicable to, the Products. Prior to the installation of any software or the purchase of any Products, Client should ensure that it has familiarised itself with the terms of the relevant End User Licence Agreement.
- 5.3 When purchasing and/or licensing Products, Client acknowledges and accepts that its purchase, license and use of the Products will be governed by the applicable End User License Agreement and that this constitutes a direct contractual relationship between Client and the Product vendor.
- 5.4 Notwithstanding the generality of clause 5.3, Veralink acknowledges and agrees that we shall:

- a. adhere to, be bound by and comply with all applicable Product vendor's licensing terms and obligations including the EULA that are or may be applicable to Veralink's use of the Products in order to provide the Services to Client

6. LIMITATION OF LIABILITY

- 6.1. Nothing in this Contract shall limit or exclude either Party's liability for:
 - a. death or personal injury caused by its negligence.
 - b. fraud or fraudulent misrepresentation; or
 - c. any other liability which cannot be limited or excluded by applicable law.
- 6.2. Subject to clauses 5.5 and 6.1, Veralink's total liability to Client with respect to any direct damages arising under the Contract, shall be limited to (i) the prices paid or to be paid by the Client under the SoW under which the event giving rise to the liability occurred (in case of recurring Services, the liability shall be equal to all fees paid or payable by Client in the last twelve (12) months before the event giving rise to the liability occurred). This limitation of liability shall apply regardless of the number of events, the nature of, or the period of time that has elapsed between, the different events giving rise to the liability.

7. CONFIDENTIALITY

- 8.1 Each Party that discloses Confidential Information (the "**Disclosing Party**") shall determine in its sole discretion what Confidential Information it shall disclose to the other Party (the "**Receiving Party**"), in accordance with this Contract. The Receiving Party may provide the Confidential Information only to such of its officers, employees and professional advisers as may in each case require access to the Confidential Information on a strict need-to-know basis solely for the relationship between the Parties ("**Permitted Disclosees**") and shall inform each of them of, and procure their compliance with, the terms of this Contract and in particular this Clause 8. Information shall not be deemed Confidential Information if:
 - a) the Receiving Party can prove that the Information has been independently developed or has become independently available to the Receiving Party other than as the direct or indirect result of a breach by a third party of any obligation of confidentiality or fiduciary duty owed to the Disclosing Party;
 - b) the Information is or becomes publicly known other than as the direct or indirect result of a breach of this Contract by the Receiving Party or any of its Permitted Disclosees;

- c) it can be shown that it was lawfully in the possession of the Receiving Party before the date it was disclosed by the Disclosing Party and that the Receiving Party was not under any obligation of confidence in respect of the information; and/or
- d) the Disclosing Party indicates in writing that it is not Confidential Information.

- 8.2 The burden of proof in respect of any exception in this Clause 0 shall be upon the Party seeking to rely on such exception.
- 8.3 The Receiving Party agrees that it shall keep all Confidential Information confidential and, unless as expressly permitted or required under Clause 0, not disclose any Confidential Information to any third party, not copy or use any Confidential Information in any manner for any purpose other than as set out in this Contract and at its own expense take all reasonable security precautions or other steps (at least as great as the precautions and steps taken in respect of its own Confidential Information) to protect the Confidential Information and ensure that the obligations of this Contract are met.
- 8.4 The Disclosing Party represents that it has the right to make the disclosures made under this Contract. The Confidential Information disclosed under this Contract is delivered "as is" and the Disclosing Party makes no representation of any kind with respect to the accuracy of such Confidential Information or its suitability for any particular use.
- 8.5 If the Disclosing Party so requests in writing, immediately return to the Disclosing Party or (at the option of the Disclosing Party) certify destruction of all or any Confidential Information together with any copies of any document containing Confidential Information and erase any Confidential Information from any computer, word processor or other device or storage media in its possession or control provided that the Receiving Party shall be entitled to retain one copy of the Confidential Information for internal audit purposes.
- 8.6 If any Confidential Information is required to be disclosed by law or by regulation, by the Receiving Party then the Receiving Party shall notify the Disclosing Party of the information to be disclosed and the circumstances in which the disclosure is alleged to be required as soon as reasonably practicable and shall take all reasonable action to avoid and limit such disclosure.

8. TERMINATION

- 8.1. In addition to the rights under clauses 2.2, 2.3 and 9.1 and without prejudice to any other right or remedy available to it, either Party shall be entitled to immediately terminate the Contract if the other Party:
- a. commits a material or persistent breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 7 days after receiving notice of the breach or commits a material breach which cannot be rectified;
 - b. takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction; or
 - c. suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.
- 8.2. Termination of the Contract shall not affect the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination. 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.

- 8.3. Veralink may terminate this Contract with immediate effect if Client fails to pay any undisputed invoice falling properly due under the Contract within seven (7) days from the date of written notification from Veralink to Client's head of procurement and the CEO that the amount due has not been paid on the due date for payment (as indicated on the face of the invoice) and must be paid by the date stipulated in such written notification.

9. GENERAL

- 9.1. Force majeure: Neither party shall be liable to the other as a result of any delay or failure to perform its obligations under the Contract if and to the extent such delay or failure is caused by an event or circumstance which is beyond the reasonable control of that party. If such event or circumstances occurs, either Party shall have the right, without limiting its other rights or remedies, to terminate this Contract with immediate effect by giving written notice.
- 9.2. Notices: Any notice or other communication required to be given under or in connection with this Contract shall be in writing and shall be delivered to the other party by hand or by next working day delivery service or sent by email to the address specified in the PO or such other address as notified in writing. Neither party shall use email for the purpose of serving upon the other party any notices alleging or specifying a breach of this Contract or to serve any proceedings or documents involved with any legal action. A notice or other communication shall be deemed to have been received:
- if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
 - if sent by next working day delivery service, at 9.00 am on the second working day after posting; or
 - if sent by email, at 9.00am on the next working day after transmission (provided an error-free email transmission report has been received by the sender). This clause does not apply to the service of any proceedings or other documents in any legal action.
- 9.3. Waiver: No delay, neglect or forbearance on the part of either party in enforcing against the other party any term or condition of the Contract shall either be or be deemed to be a waiver or in any way prejudice any right of that party under this Contract.
- 9.4. No partnership: Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership of any kind between any of the parties.
- 9.5. Contracts (Rights of Third Parties). A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 9.6. Variation: Any variation to the Contract shall only be binding when agreed in writing and signed by both Parties.
- 9.7. Severance: If any provision in this Contract shall in whole or in part be held to any extent to be unlawful or unenforceable under any enactment or rule of law, the remainder of the provisions shall stand in full force and effect.
- 9.8. Statutory Requirements: Client shall comply with all statutes, orders, regulations or bye laws applicable to the performance of this Contract and shall indemnify Veralink against all losses, claims or liabilities, expenses, proceedings or otherwise as a result of the Client's non-compliance with the same.
- 9.9. Governing law and jurisdiction: The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter shall be governed by, and construed in accordance with, Jamaican Laws, and the parties irrevocably submit to the exclusive jurisdiction of the courts of Jamaica to settle any such dispute or claim.