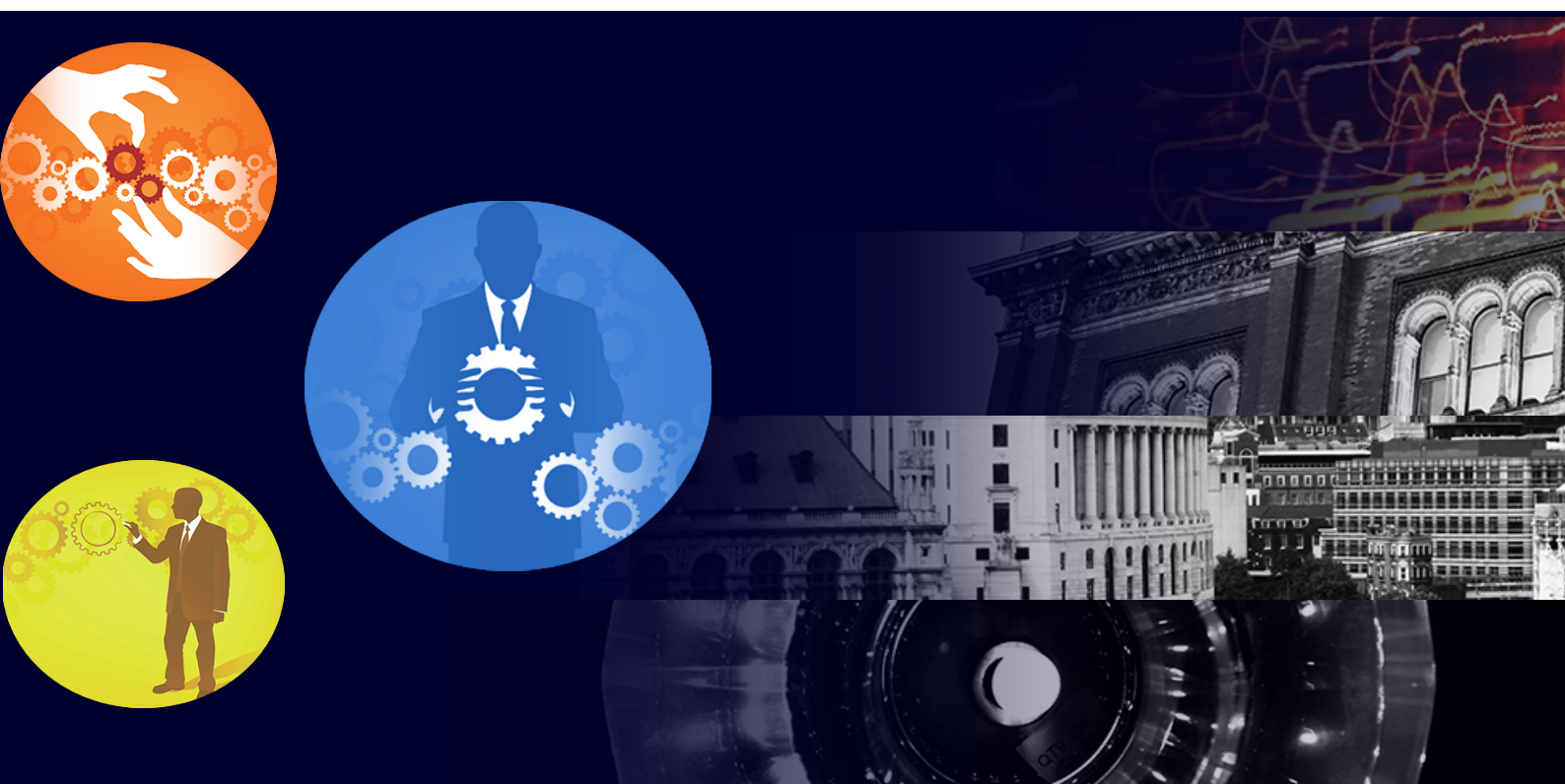




Kimcell Ltd.

Terms and Conditions





Agreement

Customer Name:

Client Reference:

Agreement Number:

Date of Agreement:



T: 01202 755 370

E: paul.bateman@kimcell.co.uk

Gild House
Norwich Avenue West
Bournemouth
Dorset
BH2 6AW

Agreement Amendment Log



Standard Terms

Parties

Kimcell Ltd

Gild House

72 Norwich Avenue West

Bournemouth

Dorset BH2 6AW

and

{CUSTOMER}

Definitions

In this Agreement the following terms shall have the following meanings assigned to them:

"Kimcell" means "the Company";

"XXXXXXX" means "the Customer"



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“Agreement” means this document;

“Confidential information’ means any information which is proprietary to either party, is confidential and is treated as such by the discloser, and is not in the public domain; which may be provided in documentary form on any media or in any tangible form or disclosed orally or by demonstration; which includes any note, record or copy thereof, and any information gained by the receiver from or as a result of such disclosure; but which does not include information which the Discloser has expressly confirmed in writing is not (or is no longer) confidential.

“Customer Contact” means a named representative(s) of the Customer provided to Kimcell; this may be changed from time to time by way of written notification;

“Effective Delivery Date” means the date of completion of installation of the Service;

"Force Majeure" means any cause affecting the performance by a party of its obligations arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control including but not limited to, Acts of God, fire, lightning, explosion, flood, extreme weather conditions, outbreak of hostilities (whether war be declared or not), riot, civil disorder or commotion, acts of terrorism, industrial disputes (whether or not involving Kimcell’s employees), or acts or defaults of any local or central Government or other competent Customer;

“Incident” means an unplanned interruption to or reduction in quality of the Service.

“Order” means the order for the Service as signed on behalf of the Customer;

“Personal Data” has the meaning set out in the EU General Data Protection Regulation 2016/679;

"Service" means the services to be provided by Kimcell as specified in the signed Order;

“Service Duration” means the minimum period of the Agreement as specified in the signed Order;

"Service Fee" means the amount payable by the Customer for provision of the Service as set out in the signed Order and as may be varied by written agreement between the parties hereafter;

“Target Delivery Date” means the anticipated date of completion of installation of the Service; and



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“Unavailability of Service” means an interruption in the Service arising from either: a) a hardware or software application failure of the Service itself or b) a failure of the underlying network facilities under the direct control of Kimcell which are used to provide connectivity to the Service and which is not caused directly or indirectly by a negligent act or omission of the Customer and shall not include any interruption resulting from scheduled or routine maintenance operations carried out by Kimcell.

Provision of Service

Kimcell shall provide the Service during the continuance of this Agreement subject to compliance by the Customer with all the terms and obligations set out in this Agreement.

Kimcell will use reasonable endeavours to provide the completion of installation of the Service at the Target Delivery Date but shall not be liable for loss in respect of any delay unless such delay arises as a result of fraud, willful misconduct, recklessness or negligence on the part of Kimcell and, in the event of the Service not being completed in time due to cause beyond the reasonable control of Kimcell, the target effective completion date shall be extended as may be reasonable to enable completion.

The services and facilities defined in the Service Description may be altered by agreement in writing between Kimcell and the Customer and any application or request made by the Customer to Kimcell for any change in the Service shall be made in writing.

Term

The term of this Agreement shall commence on the Effective Delivery Date or anniversary thereof and will be renewed automatically for periods of a further 12 Months unless and until terminated in accordance with this Agreement.

Contract Start Date: DD Month YYYY

Renewal Date: DD Month YYYY



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Charges for the Service

Service Charge

(fees)

Billing Frequency

(period)

The Customers shall pay Kimcell the Service Fee as detailed above. Following expiry of the Service Duration, the Customer may cancel this Agreement by giving thirty (30) days written notice.

Following the end of the initial Service Duration Kimcell may alter the amount of the Service Fee or any of its charges by giving written notice and such change shall take effect from the date specified in such notification, which shall not be less than thirty (30) days after the giving of such notice.

The Service Fee is not refundable except where otherwise stated herein and is exclusive of Value Added Tax, which shall be paid by the Customer at the appropriate rate applicable at the time of the invoice.

The Service Fee does not include charges for any communications service used to connect the Customer to the Service unless otherwise stated.

Additional fees may be charged at Kimcell's non-discounted rates for advanced support, custom programming, configuration, and test and validation following delivery of information, data, images, copy and other such material to Kimcell from the Customer.



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Additional fees may be charged for investigations into Incidents reported by the Customer Contact that are not due to failure of the Service.

Kimcell may, at its discretion, charge interest on any Service Fees or additional fees payable by the Customer under this Agreement which are not paid within thirty (30) days of the date of the invoice at the rate of five percentage points above the Bank of England Base Rate for the time being, calculated from the date of the invoice to the date actual payment is received.

Cheques and direct debits payable by the Customer returned unpaid by the Customer's bank shall incur an administration charge of £25 plus VAT.

Unavailability of Service

The Customer Contact shall notify Kimcell of any Incident of which it becomes aware.

The duration of any Unavailability of Service will be determined at the sole discretion of Kimcell based on Kimcell's internal records and shall be deemed to commence only from the time that Kimcell is notified of the Incident.

The Customer Contact shall notify Kimcell of any Incident in the Service.

The duration of any Unavailability of Service will be determined at the sole discretion of Kimcell based on Kimcell's internal records and shall be deemed to commence only from the time that Kimcell is notified of the Incident.

Support Hours

The standard period for which support shall be provided is 09:00 to 17:30, Monday to Friday, excluding statutory holidays.

Under the provisions of a Support Agreement, the customer will receive unlimited telephone and email support to assist with using and maintaining the content of the system.

Kimcell's Rights and Obligations

Kimcell shall provide such instructions as Kimcell considers in its sole discretion to be necessary regarding use of the Service and in the interests of safety and quality of service.

Kimcell shall provide the Service 24 hours per day 7 days a week.



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Kimcell maintains the right of restricted access to the Service to allow repairs, maintenance and archiving.

Kimcell shall not be liable for any Unavailability of Service other than as provided by this Agreement.

Kimcell shall have the right to restrict access to the Service following the failure of the Customer to comply with its obligations.

Kimcell shall not give, bargain, sell, assign, sub-contract or otherwise dispose of its rights under this Agreement or any part thereof without the prior written consent of the Customer, whose agreement shall not be unreasonably withheld.

Kimcell shall comply in all material respects with all applicable environmental laws and regulations in force from time to time in relation to the Services. Without prejudice to the generality of the foregoing, the Kimcell shall promptly provide all such information regarding the environmental impact of the Services as may reasonably be requested by the Customer.

Kimcell shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 and any other anti-discrimination legislation in relation to the provision of the Services or otherwise and shall take all reasonable steps to ensure that its staff, sub-contractors and agents do not do so.

Customer's Rights and Obligations

The Customer shall not use the Service to send, receive or store any material which may be considered to be abusive, indecent, obscene, defamatory, racist, offensive, menacing, in breach of confidence or copyright or any other rights, or to cause annoyance, inconvenience or needless anxiety other than in accordance with the acceptable use policies of any connected networks.

The Customer shall not use the Service to send unsolicited messages containing advertising in contravention of the EC Directive on Privacy and Electronic Communications.

The Customer shall maintain appropriate security standards and keep secure access passwords, PIN numbers or similar such security devices that are provided as part of the Service and shall make Kimcell aware of any security breaches or unauthorised access by way of the designated contact person.

Unless, as is otherwise provided to the Customer by Kimcell under the terms of the Service, the Customer shall be responsible for the backup of its own data.



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The Customer may not give, bargain, sell, assign, sub-contract or otherwise dispose of its rights under this Agreement without the prior written consent of Kimcell.

The Customer shall provide all agreed material, copy, images, and approve where necessary such designs within the designated period.

Confidentiality

(1) The parties agree not to disclose any Confidential Information relating to the other party to any third party without the prior written consent of the other party. Should it be necessary for Kimcell to disclose Confidential Information to its staff, agents and sub-contractors, Kimcell shall ensure that such staff, agents and sub-contractors are subject to the same obligations as Kimcell in respect of all Confidential Information.

These restrictions shall not apply to information which:

- (a) was already in the public domain at the time of the disclosure (other than by breach of this Agreement)
- (b) was already in the possession of the party making the disclosure, without obligation of confidentiality prior to its disclosure by the information owner;
- (c) was obtained from a third party without obligation of confidentiality;
- (d) is a requirement of law placed upon the party making the disclosure, including any requirements for disclosure under the Freedom Of Information Act, Code of Practice on Access to Government Information or the Environmental Information Regulations
- (e) is independently developed by or for Kimcell without access to the Customer's Confidential Information.

(2) Either party shall immediately inform the other if it becomes aware of the possession, use or knowledge of any of the Confidential Information by any unauthorised person, whether during or after the term of the Agreement and shall provide such reasonable assistance as is required to deal with such event.

(3) The obligations contained in this Condition shall continue to apply after the expiry or termination of the Agreement.

(4) Kimcell shall not communicate with representatives of the general or technical press, radio, television or other communications media, with regard to the Agreement, unless previously agreed in writing with the Customer.



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(5) Except with the prior consent in writing of the Customer, Kimcell shall not make use of the Agreement or any Confidential Information otherwise than for the purposes of providing the Service. However, nothing in this clause shall prevent either party from using any techniques, ideas or know-how gained during the performance of the Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of IPR.

Data Protection

With respect to the parties' rights and obligations under this Agreement, the parties agree that the Customer is the Data Controller and that Kimcell is the Data Processor.

Kimcell shall:

- (1) process the Personal Data only in accordance with instructions from the Customer (which may be specific instructions or instructions of a general nature as set out in this Agreement or as otherwise notified by the Customer to Kimcell during the Term);
- (2) process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the Services or as is required by Law or any Regulatory Body;
- (3) implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;
- (4) take reasonable steps to ensure the reliability of any Kimcell personnel who have access to the Personal Data;
- (5) obtain prior written consent from the Customer in order to transfer the Personal Data to any approved Sub-contractors or Affiliates for the provision of the Services;
- (6) ensure that all Kimcell personnel required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the



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obligations set out in this clause;

(7) ensure that none of Kimcell's personnel publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Customer;

(8) notify the Customer (within [five] Working Days) if it receives:

a request from a Data Subject to have access to that person's Personal Data; or
a complaint or request relating to the Customer's obligations under the Data Protection Legislation;

(9) Provide the Customer with full cooperation and assistance in relation to any complaint or request made, including by:

- 9.1 providing the Customer with full details of the complaint or request;
- 9.2 complying with a data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with the Customer's instructions;
- 9.3 providing the Customer with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Customer); and
- 9.4 providing the Customer with any information requested by the Customer;

(10) permit the Customer or the Customer Representative (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit Kimcell's data processing activities (and/or those of its agents, subsidiaries and Sub-contractors) and comply with all reasonable requests or directions by the Customer to enable the Customer to verify and/or procure that Kimcell is in full compliance with its obligations under this Agreement; and

(11) not process Personal Data outside the European Economic Area without the prior written consent of the Customer and, where the Customer consents to a transfer, to comply with:

- 11.1 the obligations of a Data Controller under the Eighth Data Protection Principle set out in Schedule 1 of the Data Protection Act 1998 by providing an adequate level of protection to any Personal Data that is transferred; and
- 11.2 any reasonable instructions notified to it by the Customer



Ownership of designs patent, trademarks and copyright

The ownership of and sole right to the copyright in any design prepared by Kimcell under this Agreement shall be vested in Kimcell unless otherwise agreed in writing.

Kimcell agrees to indemnify the Customer and hold the Customer harmless and the Customer's directors, officers and employees from and against any claims made by third parties for infringement of any late letters patent, trademark, copyright or intellectual property right of that third party arising as a result of the Customer's use of the Service, provided that such alleged infringement is caused other than by the fraud, willful default, recklessness or negligence of the Customer.

Any articles produced by Kimcell by virtue of the Service shall remain the property of Kimcell until all sums payable by the Customer to Kimcell have been fully discharged.

Termination and Suspension of Service

The parties shall have the following rights to terminate this Agreement:

If the Customer

- a) fails to pay the Service Fees due under this Agreement; or
- b) shall cease to carry on business or have an administrator, receiver or liquidator appointed or enter into any composition or agreement for the benefit of its creditors or has any distress or execution levied on its goods, then Kimcell may, without prejudice to any right or remedy, suspend the Service (giving written notice to the Customer of such suspension) and the Customer shall continue to be liable for any of the charges and Service Fees which may accrue during such suspension. Furthermore, Kimcell may give thirty (30) days written notice to terminate the Agreement.

If Kimcell

- a) shall cease to carry on business, or have an administrator or receiver appointed or enter into liquidation or enter into any agreement with its creditors; or
- b) fails to fulfill any of its obligations of a serious or fundamental nature under any part of this Agreement then the Customer may, after giving written notice, terminate the agreement between the Customer and Kimcell.

Kimcell or the Customer may terminate this Agreement following completion of the Service Duration by giving not less than thirty (30) days written notice.



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Upon termination of this Agreement, however brought about, the Customer shall remain liable for all outstanding obligations and Service Fees and this Agreement shall continue to cover any material sent or received by the Customer for as long as it remains on the Service.

Limitation of Liability

Kimcell has no obligation, duty or liability for breach of statutory duty or otherwise beyond that of a duty to exercise reasonable skill and care in the provision of the Service.

The Customer hereby explicitly acknowledges that Kimcell has no control over the information transmitted to or from the Service and that Kimcell does not examine the use to which customers put the Service or the nature of the information they are sending or receiving. Kimcell hereby excludes all liability of any kind for the transmission or reception of information of whatever nature.

Neither party shall in any circumstances be liable to the other party under this Agreement or otherwise for any direct or indirect loss of business, revenue, profits or savings, wasted expenditure, corruption or destruction of data or for any direct or indirect or consequential loss whatever unless such loss arises as a result of fraud, willful misconduct, recklessness or negligence on the part of the unaffected party.

In the event of any part of this Agreement being illegal, void, invalid or unenforceable under the laws of any jurisdiction, the legality, validity and enforceability of the remainder of the Agreement in that jurisdiction shall not be affected, and the legality, validity and enforceability of the whole of the this Agreement shall not be affected in any other jurisdiction.

Kimcell may at any time, modify these terms and conditions by written agreement with the Customer and any such change shall take effect from the date specified in the notification to the Customer which shall not be less than thirty (30) days after the giving of such notification.

Waiver

The failure by either party to exercise any right or remedy shall not constitute a waiver of that right or remedy.

No waiver shall be effective unless it is communicated to the other party in writing.



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A waiver of any right or remedy arising from a breach of the Agreement shall not constitute a waiver of any right or remedy arising from any other breach of the Agreement.

Severability

If any term, clause or provision of this Agreement is held by a tribunal or court in any proceedings relating to the Agreement to be unlawful, invalid or otherwise unenforceable, the validity or enforceability of the remainder of the Agreement shall not be affected. If the tribunal or court finds invalid a provision so fundamental as to prevent the accomplishment of the purpose of the Agreement, the parties shall immediately commence negotiations in good faith to remedy the invalidity.

Warranties

The Customer acknowledges that any hardware and/or designated software supplied under this Agreement is supplied to Kimcell by a third party. Accordingly, Kimcell is able to give no warranty in respect of such hardware and/or software but will to the extent possible pass on to the Customer the benefit of any warranties or guarantees given by such third party in relation to such hardware and/or software.

Kimcell otherwise warrants that for the term of this Agreement the Service will be performed using reasonable skill and care in a timely and professional manner using appropriately skilled, qualified and experienced personnel.

Dispute Resolution

(1) The parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Agreement. If the parties cannot settle the dispute in this manner, the dispute may, by agreement between the parties, be referred to mediation as described in paragraph (2) of this Condition. The performance of the Service shall not cease or be delayed by the reference of a dispute to mediation as a result of adopting paragraph (2) of this Condition.

(2) If the parties agree to refer the dispute to mediation:

(a) in order to determine the person who shall mediate the dispute (the "Mediator") the parties shall by agreement choose a neutral adviser or mediator from a list provided by the Centre for Dispute Resolution (CEDR) within 30 days after agreeing to refer the dispute to mediation;



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(b) the parties shall within 14 days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held.

(c) unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the parties in any future proceedings;

(d) if the parties reach agreement on the resolution of the dispute within 60 days of the Mediator being appointed, or such longer period as may be agreed between the parties, the agreement shall be confirmed in writing and be binding on the parties once it is signed by both;

(e) failing agreement within 60 days of the Mediator being appointed, or such longer period as may be agreed between the parties, either of the parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Agreement without the prior written consent of both parties.

(3) If the parties do not agree to refer the dispute to mediation, or fail to reach agreement as to who shall mediate the dispute or if they fail to reach agreement in the negotiations within 60 days of the Mediator being appointed (or such longer period as may be agreed by the parties), then any dispute or difference between them may be referred to arbitration as below.

(4) Arbitration. If the parties are unable to resolve the Dispute by mediation, the parties agree that the dispute shall be referred to and finally resolved by arbitration under the LCIA Rules. There shall be 3 arbitrators: each party shall nominate one arbitrator, and those two arbitrators shall within 30 days of the appointment of the second arbitrator agree upon a third arbitrator to act as Chairman of the Tribunal. If no agreement is reached within 30 days, the LCIA Court shall nominate and appoint a third arbitrator to act as Chairman of the Tribunal.

Force Majeure

If either of the parties becomes aware of circumstances of Force Majeure which give rise to or which are likely to give rise to any failure or delay on its part, it shall forthwith notify the other and shall inform the other of the period which it is estimated that such failure or delay shall continue.

If the default or breach caused by the Force Majeure event is capable of remedy, such default or breach will be remedied as soon as the Force Majeure event has ceased to exist.



Without prejudice to the foregoing, neither party shall be liable for failure to perform its obligations under this Agreement which is due to a Force Majeure event.

Kimcell warrants that it will establish appropriate back-up processes to maintain a minimal level of service should there be a significant disruption to Kimcell's infrastructure and equipment (including telephones, power supply and computers).

Service of Notice

Any notices shall be deemed to be received by the other party three (3) days following posting by first-class post or facsimile transmission or email to the Customer's Internet electronic mail account or an electronic mail server shown as being a recipient site for correctly-addressed email or delivered to or left at the address provided by the Customer as detailed in the Schedule.

Law

This Agreement is governed by and shall be construed in accordance with English law and the parties hereby irrevocably and unconditionally submit to the non-exclusive jurisdiction of the English Courts for determining any dispute which may arise out of or in connection with this Agreement, having due regard to the provisions for Dispute Resolution defined earlier in this Agreement.

The Order and this Agreement constitute the entire agreement and understanding between the parties and supersede all prior written and oral representations, agreements or understandings between them relating to the subject matter of this Agreement provided that neither party excludes liability for fraudulent misrepresentations upon which the other party has relied.

Headings

Headings contained in this Agreement are for reference purposes only and should not be incorporated into this Agreement and shall not be deemed to be any indication of the meaning of the clauses to which they relate.

Signatures

Please print sign and return two copies of this document with any associated purchase order to:

Kimcell Ltd, 72 Norwich Avenue West, Bournemouth, Dorset BH2 6AW



T: 01202 755 370

E: paul.bateman@kimcell.co.uk

Gild House
Norwich Avenue West
Bournemouth
Dorset
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Kimcell will in turn sign both copied of this contact and return one copy to:

Customer

Signed	Signed
Print Name	Print Name
Date	Date
On behalf of the Customer Customer	On behalf of the Company Kimcell Ltd.



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