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BUSINESS TERMS AND CONDITIONS

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1. INTERPRETATION

1.1. The following definitions and rules of interpretation apply in this Agreement:

- 1.1.1 **“Business Day”** means 09:00 to 17:00, Monday-Friday (excluding public holidays in England and Wales).
- 1.1.2 **“Art of Smart’s Equipment”** means any equipment including tools, systems, or facilities provided by Art of Smart or its agents, subcontractors, consultants, or employees and used directly or indirectly in the supply of the Services which are not the subject of a separate agreement between the parties, under which, title passes to the Customer.
- 1.1.3 **“Art of Smart’s Team”** means all directors, managers, employees, consultants, engineers and specialists, agents, and subcontractors engaged in relation to the Services and who are appointed under clause 3.1.8.
- 1.1.4 **“Commencement Date”** means the date that this Services Agreement was made, which can be found at the top of this document.
- 1.1.5 **“Confidential Information”** means any information of a confidential nature as described in clause 9.
- 1.1.6 **“Customer’s Equipment”** means any equipment, systems, or facilities provided by the Customer and used directly or indirectly in the supply of Services. This is extended to apply to any equipment, systems, or facilities which are accessed remotely.

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- 1.1.7 **“Deliverables”** means all documents, products, and materials developed by Art of Smart or its agents, subcontractors, consultants, or employees in relation to the Services provided in any form.
- 1.1.8 **“Document”** includes (in addition to any document in writing) any drawing, plan, diagram, design, image, tape, disk, or any other device or record embodying information in any form.
- 1.1.9 **“Force Majeure Event”** has its definition in clause 14.1.
- 1.1.10 **“In-put Material”** means all Documents, information, and materials provided by the Customer, relating to the Services.
- 1.1.11 **“Intellectual Property Rights”** or **“IPR”** means patents; utility models; rights to inventions; copyright, neighboring, and related rights; trademarks and service marks; business names and domain names; rights in get-up and trade dress, goodwill, and the right to sue for passing off or for unfair competition; rights in designs; database rights; rights to use, and to protective confidentiality of, confidential information (including know-how and trade secrets); and all other intellectual property rights, in each case whether registered or unregistered, and including all applications and rights to apply for and be granted renewals or extensions of, and rights to claim priority from such rights and all similar or equivalent rights or forms of protection, which subsist or will subsist, now or in future, in any part of the world.

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- 1.1.12 **“Practical completion”** is the point at which the project is complete, except for minor defects that can be put right without undue interference or disturbance to an occupier. Delays in building / construction works or uncompleted parts of those which are outside Art of Smart’s control. Examples to include, but not limited to, the audio-visual system being complete but client has not supplied televisions or the system is generally complete however awaiting a gate to be constructed resulting in the intercom being unable to be installed. Any materials / hardware for AOS to complete will be taken away for safe storage if it is unable to be installed.
- 1.1.13 **“Pre-existing Materials”** means all Documents, information, and materials provided by Art of Smart or its agents, subcontractors, consultants, or employees, relating to the Services, which existed prior to the Commencement Date.
- 1.1.14 **“Schedule 1”** means the schedule attached to this Agreement.
- 1.1.15 **“VAT”** means value added tax, chargeable under the Value Added Tax Act 1994.
- 1.1.16 References to **clauses** and **schedules** are to the clauses and schedules of this Agreement, and references to **paragraphs** are to the paragraphs of the relevant schedule or appendix.
- 1.1.17 **Schedule 1** forms part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes Schedule 1.
- 1.1.18 Schedules, clauses, and paragraph headings shall not affect the interpretation of this Agreement.

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- 1.1.19 Unless the context otherwise requires, words in the singular shall include the plural, and words in the plural shall include the singular.
- 1.1.20 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.1.21 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 or following those terms.
- 1.1.22 A reference to “writing” or “written” includes fax and e-mail.
- 1.1.23 A reference to a **person** includes a natural person, corporate or unincorporated body (whether or not having a separate legal personality).
- 1.1.24 A reference to a **party** shall include that party’s personal representatives, successors, and permitted assigns.
- 1.1.25 A reference to a **company** shall include any company, corporation, or other corporate body, wherever and however incorporated or established.
- 1.1.26 A reference to a **holding company** or a **subsidiary** means a holding company or subsidiary as defined in *section 1159* of the *Companies Act 2006*, and a company shall be treated for the purposes only of the membership requirement contained in *section 1159(1)(b)* and *(c)*, as a member of another company even if its shares in that other company are registered in the name of (a) another person, by way of security or in connection with the taking of security, or (b) its nominee.

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- 1.1.27 A reference to a **statute** or **statutory provision** shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.1.28 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

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2. COMMENCEMENT AND DURATION

- 2.1. Art of Smart shall provide the Services to the Customer on the terms and conditions of this Agreement.
- 2.2. Art of Smart shall provide the Services from the Commencement Date and shall continue to provide the Services throughout the term.
- 2.3. This Agreement shall commence on the Commencement Date and continue for the period specified in Schedule 1, and after that shall continue to be supplied unless the Agreement is terminated by one of the parties giving the other 1 month notice in writing (unless this Agreement is terminated in accordance with clause 11).

3. ART OF SMART'S RESPONSIBILITIES

- 3.1. Art of Smart shall:
 - 3.1.1 Provide the Services and deliver any Deliverables to the Customer in accordance with Schedule 1 and shall allocate sufficient resources to the Services to enable it to comply with this obligation.
 - 3.1.2 Meet any deadlines as to performance dates as specified in Schedule 1.
 - 3.1.3 Co-operate with the Customer in all matters relating to the Services.
 - 3.1.4 Provide all equipment, tools, or other items required to provide the Services.
 - 3.1.5 Ensure that all goods, materials, standards, and techniques used in providing the Services are of good quality and are free from defects in workmanship, installation, and design.

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3.1.6 Comply with all applicable laws and regulations relating to the provision of the Services.

3.1.7 Ensure Art of Smart's Team use reasonable skill and care in the performance of the Services.

3.2 Art of Smart acknowledges and agrees that:

3.2.1 The Customer is entering into this Agreement on the basis of the description of Services as detailed in Schedule 1.

3.2.2 If Art of Smart considers that the Customer is not (or may not be) complying with any of the Customer's obligations, it shall only be entitled to rely on this as relieving Art of Smart's performance under this Agreement:

3.2.2.1 To the extent that it restricts or precludes performance of the Services by Art of Smart; and

3.2.2.2 If Art of Smart, promptly after the actual or potential non-compliance has come to its attention, has notified details to the Customer in writing.

4. CUSTOMER'S OBLIGATIONS

4.1 The Customer Shall:

4.1.2 Co-operate with Art of Smart in all matters relating to the Services and appoint as it thinks fit, a Customer's manager in relation to the Services, who shall have the authority contractually to bind the Customer on matters relating to the Services; and

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4.1.3 Provide such information as Art of Smart may reasonably request and the Customer considers reasonably necessary, in order to carry out the Services in a timely manner and to ensure that it is accurate in all material respects.

5. CHANGE CONTROL

- 5.1. If either party wishes to change the scope or execution of the Services, it shall submit details of the requested change to the other, in writing.
- 5.2. If either party has made any request to make a change to the scope or execution of the Services, Art of Smart shall, within a reasonable time, provide a written estimate to the Customer of:
 - 5.2.1 The likely time required to implement the change.
 - 5.2.2 Any necessary variations to Art of Smart's charges arising from the change.
 - 5.2.3 Any other impact of the change on this Agreement.
- 5.3. Unless both parties' consent to a proposed change, there shall be no change to this Agreement.
- 5.4. If both parties consent to a proposed change, the change shall be made only after the agreement of the necessary variations to Art of Smart's charges, the Services, and any other relevant terms of this Agreement has been varied in accordance with clause 15.
- 5.5. If Art of Smart requests a change to the scope or execution of the Services in order to comply with any applicable safety or statutory requirements, and such changes do not materially affect the nature or scope of, or the charges for the Services, the Customer shall not unreasonably withhold or delay consent to it. Unless Art of Smart's request

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was attributable to the Customer's non-compliance with the Customer's obligations, neither the Art of Smart's charges nor any other terms of this Agreement shall vary as a result of such change.

6. CHARGES AND PAYMENT

6.1. In consideration of the provision of the Services by Art of Smart, the Customer shall pay the charges as set out in Schedule 1 and in accordance with this clause 6. The charges shall be paid in Great British Pound, unless otherwise agreed in writing by Art of Smart.

6.2. We accept payment by direct bank transfer to the bank account which Art of Smart will provide you details of in writing.

6.3. The charges and payments by the Customer exclude VAT, which Art of Smart shall add to its invoices at the appropriate rate.

6.4. The Customer shall pay each invoice which is properly due and submitted to it, by Art of Smart, in line with the following schedule:

6.4.1. If the value of the total invoice is over £5,000.00 then the following schedule will be implemented:

- 1st Invoice is either the total cost of the design and prewire element or 25% the total invoice value at time of commencement whichever is higher to be paid no later than 14 days of issue. This Invoice payment secures any installation slots in the Art of Smart diary.

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- 2nd Invoice is to cover any hardware and installation of the project of 70% the total invoice value at time of commencement to be paid no later than 14 days before scheduled start day of works.
- 3rd Invoice of 5% the total invoice value at time of commencement plus any variations to be paid upon practical completion. Any minor defects, snagging or omissions that arise post practical completion will be covered through our aftercare service.
- Deposits are non-refundable
- Failure to make payments in line with the payment schedule may cause delays to Art of Smarts' availability of which we take no responsibility.

6.4.2. If the value of the total invoice is under £5,000.00 then the following schedule will be implemented:

- Invoice of 100% the total invoice value at time of commencement to be paid no later than 14 days of issue.

6.5. If a party fails to make any payment due to the other party under this Agreement, by the due date for payment, then, without limiting the other party's remedies under clause 17, the defaulting party shall pay interest on the overdue amount at the rate of 8% per annum above Bank of England's base rate. Such interest shall accrue on a daily basis, from the due date until actual payment of the overdue amount, whether before or after judgment. The defaulting party shall pay the interest together with the overdue amount.

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- 6.6. The parties agree that Art of Smart may review and increase the charges, provided that such charges will not be increased more than once in any 12 month period. Art of Smart will give the Customer not less than 1 month notice of any increase. If such increase is not acceptable to the Customer, it may terminate this Agreement by giving 1 month notice to Art of Smart.

7. QUALITY OF SERVICES

7.1. Art of Smart warrants to the Customer that:

- 7.1.1. Art of Smart will perform the Services with reasonable care and skill, and in accordance with generally recognised commercial practices and standards in the industry for similar services.
- 7.1.2. The Services will materially conform with all descriptions provided to the Customer by Art of Smart, including any relevant description found in Schedule 1.
- 7.1.3. The Services will be provided in accordance with all applicable legislation from time to time in force, and Art of Smart will inform the Customer as soon as it becomes aware of any changes in that legislation.
- 7.1.4. The Customer's rights under this Agreement are in addition to the statutory terms implied in favour of the Customer by the Supply of Goods and Services Act 1982 and any other statute.

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- 7.1.5. The provision of this clause 7 shall survive any performance, acceptance, or payment pursuant to this Agreement and shall extend to any substituted or remedial services provided by Art of Smart.

8. INTELLECTUAL PROPERTY RIGHTS

- 8.1. Art of Smart shall own all Intellectual Property Rights in existence as at the Commencement Date and which are created in the provision of the Services. Nothing in this Agreement is intended to transfer any title, right, or interest in such Intellectual Property Rights to the Customer.
- 8.2. In relation to any claim (including threats) or dispute brought to the Customer's attention, the Customer shall:
- 8.2.1. Upon becoming aware, notify Art of Smart of such a claim (including threats) or dispute.
- 8.2.2. Allow Art of Smart to conduct all negotiations and proceedings to settle the IPR's claim.
- 8.2.3. Provide Art of Smart with reasonable assistance regarding the IPR's claim.
- 8.2.4. Not, without prior consultation with Art of Smart, make any admission in relation to the IPR's claim or attempt to settle it, provided that Art of Smart considers and defends any IPR using competent counsel, and in such a way as not to bring the reputation of the Customer into disrepute.

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9. CONFIDENTIALITY

- 9.1. Both parties undertake that each shall not, at any time during this Agreement, and for a period of 5 years after termination of this Agreement, disclose to any person any In-put Material (in the case of Art of Smart), Pre-existing Material (in the case of the Customer), technical or commercial know-how, specifications, inventions, processes, or initiatives which are of a confidential nature, or any other confidential information concerning the disclosing party's business or its products which the receiving party may obtain in connection with entering into this Agreement, except as permitted by clause 9.2.
- 9.2. Both parties may disclose Confidential Information:
- 9.2.1. To its employees, agents, consultants, or subcontractors (and in the case of Art of Smart, Art of Smart's Team) as is needed for the purpose of discharging its obligations under this Agreement. The party in receipt of such information shall ensure that its employees, agents, consultants, or subcontractors to whom it discloses the Confidential Information, comply with this clause 9.
- 9.2.2. As may be required by law, a court of competent jurisdiction, or any governmental or regulatory authority.
- 9.3. Neither party shall use the other party's Confidential Information for any purpose other than to perform its obligations under this Agreement.
- 9.4. All materials, equipment and tools, drawings, specifications, and data supplied by one party to the other, shall at all times be (and remain) the exclusive property of the party supplying such materials, equipment and tools, drawings, specifications, and data, but

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shall be held by the receiving party in safe custody at its own risk, and maintained and kept in good condition by that party until returned to the supplying party, and shall not be disposed of or used, other than in accordance with any written instruction or authorisation.

10. LIMITATION OF LIABILITY

10.1. Art of Smart's total liability under or in connection with this Agreement shall be limited to the greater of:

10.1.1. 200% the value of the contract; or

10.1.2. £1,000,000.00

10.2. This limit shall apply howsoever that liability arises, including, and without limitation, a liability arising by breach of contract, arising by tort (including, and without limitation, the tort of negligence), or arising by breach of statutory duty.

10.3. Nothing within this clause shall exclude or limit liability for:

10.3.1. Death or personal injury caused by negligence.

10.3.2. Fraud or fraudulent misrepresentation.

10.4. Art of Smart will not be liable to the Customer, whether in contract, tort, or restitution, or breach of statutory duty, or otherwise, for any:

10.4.1. Loss of actual or anticipated profit.

10.4.2. Loss of goodwill.

10.4.3. Loss of business.

10.4.4. Loss of business opportunity.

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- 10.4.5. Loss of anticipated saving.
- 10.4.6. Loss of corruption of data or information.
- 10.4.7. Loss of contracts.
- 10.4.8. Loss of use of money.
- 10.4.9. Loss of revenue.
- 10.4.10. Loss of reputation.
- 10.4.11. Ex gratia payments.
- 10.4.12. Loss of operating time.
- 10.4.13. Loss of opportunity.
- 10.4.14. Special, indirect, or consequential damage or loss suffered by the Customer, arising under or in connection with this Agreement.

11. TERMINATION

11.1. Art of Smart may terminate this Agreement with immediate effect by giving written notice to the Customer if:

- 11.1.1. The Customer fails to pay any amount due under this Agreement on the due date for payment and remains in default for more than 14 days after being notified in writing to make such payment.
- 11.1.2. The Customer commits a material breach of any term of this Agreement where the breach is irremediable, or if such a breach is remediable, fails to remedy that breach within a period of 14 days.

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- 11.1.3. The Customer repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement.
- 11.1.4. A petition is filed, a notice is given, a resolution is passed, or an order is made for or in connection with the winding up of the Customer's business activities.
- 11.1.5. An application is made to court (or an order is made) for the appointment of an administrator, or if notice of intention to appoint an administrator is given over the other party.

12. CONSEQUENCES OF TERMINATION

12.1. On termination of this Agreement for any reason, Art of Smart shall immediately deliver to the Customer:

- 12.1.1. A refund of any sums paid in advance for Services & Products which have not been received by the Customer as a result of the termination of the Agreement.
- 12.1.2. On termination of this Agreement for any reason, the Customer shall immediately pay to Art of Smart, all sums due and owing to it in connection with this Agreement.

12.2 Both parties shall return, destroy, or otherwise deal with, any Confidential Information as the disclosing party shall wish for it to be dealt with.

12.3 On termination or expiry of this Agreement, the following clauses shall continue in force: clause 8, clause 9, clause 11, and clause 22.

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12.4 Termination or expiry of this Agreement shall not affect any rights, remedies, obligations, or liabilities of the parties that have accrued up to date of termination or expiry, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry.

13. REMEDIES

13.1. If any Services are not supplied in accordance with Schedule 1 or Art of Smart fails to comply with any terms of this Agreement, the Customer shall be entitled (without prejudice to any other right or remedy) to require Art of Smart to carry out such additional work as is necessary to correct its failure.

14. FORCE MAJEURE

14.1. A Force Majeure Event is any circumstance not within a party's reasonable control. This includes, without limitation:

- 14.2.1 Acts of God such as flood, drought, earthquake, tsunami, or other natural disaster, epidemic, or pandemic.
- 14.2.2 War, or threat of or preparation for war (including terrorist attack, armed conflict, civil war, civil commotion, or riots).
- 14.2.3 Imposition of sanctions.
- 14.2.4 Nuclear, chemical, or biological contamination.
- 14.2.5 Sonic boom.
- 14.2.6 Fire, explosion, or accident (including collapse of building).
- 14.2.7 Interruption or failure of utility services.

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14.2. Provided it has complied with this clause 14, if a party is prevented, hindered, or delayed in or from performing any of its obligations under this Agreement by a Force Majeure Event, the affected party shall not be in breach of this Agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

14.3. The corresponding obligations of the other party will be suspended and its time for performance of such obligations extended to the same extent as those of the affected party.

14.4. The affected party shall:

14.4.1. As soon as practicable after the start of the Force Majeure Event, but no later than 7 Business Days from its start, notify the other party in writing of the event, the date on which it started, its likely or potential duration, and the effect of the event on its ability to perform any obligations under this Agreement.

14.4.2. Use reasonable endeavors to mitigate the effect of the event on the performance of its obligations.

15. VARIATION

15.1. No variation of this Agreement shall be effective unless it is in writing and signed by the parties or their authorised representatives.

16. WAIVER

16.1. A waiver of any right or remedy under this Agreement or by law, is only effective if given in writing and shall not be deemed a waiver of any subsequent breach.

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16.2. A failure or delay by a party to exercise any right or remedy provided under this Agreement or by law, shall not constitute a waiver of that, or any other, right or remedy.

17. RIGHTS AND REMEDIES

17.1. The rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

18. SEVERANCE

18.1. If any provision or part provision of this Agreement becomes invalid, illegal, or unenforceable, this shall not affect the validity and enforceability of the rest of this Agreement.

18.2. If it comes to the attention of either party that any provision or part provision of this Agreement is invalid, illegal, or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid, and enforceable.

19. AGREEMENT IN FULL

19.1. This Agreement, including any schedules and appendixes, constitutes the entire agreement between the parties, and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations, and assurances between them, whether written or oral.

19.2. Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties or constitute any party the agent of another party.

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Cheshire

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20. THIRD PARTY RIGHTS

20.1. No one, other than a party to this Agreement, shall have any right to enforce any of its terms.

21. NOTICES

21.1. Any notice or other communication given to a party in connection with this Agreement shall be in writing, and shall be:

- 21.1.1. Delivered either by hand, by pre-paid first-class post, or by other next working day delivery service, at the receiving party's postal address provided in this Agreement unless otherwise stated; or
- 21.1.2. Sent by email to the party's nominated email address.

22. GOVERNING LAW AND JURISDICTION

22.1.1. This Agreement, and any dispute or claim arising out of, or in connection with, it or its subject matter or formation (including non-contractual disputes), shall be governed and construed in accordance with the law of England and Wales. We both agree that the courts of England and Wales will have exclusive jurisdiction.

Milton Keynes

York

Cheshire