

## AONIX LIMITED GENERAL TERMS AND CONDITIONS

These are the standard terms and conditions on which Products and Services are supplied by Aonix Limited

### 1. DEFINITIONS

**"Associated Companies"** means any party controlling, controlled by or under common control with the Customer. "Control" (including "controlling", "controlled by" and under "common control with") in relation to any such party means the direct or indirect beneficial ownership of fifty percent (50%) or more of the voting stock or a fifty percent (50%) or greater interest in the income of such party.

**"Aonix Limited Personnel"** means those personnel engaged by Aonix Limited to perform the Services and for the avoidance of doubt shall include employees, agents and consultants appointed by Aonix Limited.

**"Customer"** means the legal entity (person, firm or company) accepting Aonix Limited's written or oral estimate for the supply of Products and/or Services or whose order for Products and/or Services is accepted by Aonix Limited or the party otherwise commissioning the purchasing of Products and/or Services as named on the Aonix Limited's Invoice or the Project Order.

**"Deliverables"** includes, without limitation, all computer programs, documentation, reports and other materials as well as any idea, method, invention, discovery, design, concept or other work arising from Aonix Limited's performance of its Services (whether conceived or developed individually or jointly with the Customer and others).

**"Documents"** means in addition to a document in writing, any drawing, graph, photograph, film or other device embodying visual images and any disk, tape, CD/DVD, electronic memory device or other device embodying any other data.

**"Environmental and Usage Assumptions"** means:

- (a) The hardware and software components of any system or equipment of the Customer are properly installed and are functioning normally in accordance with their respective specifications and are Year 2000 compliant.
- (b) All telecommunications hardware and related software forming part of the system or equipment of the Customer are properly installed and such hardware and software components together with the communication network(s) with which they interconnect are functioning normally in accordance with their respective specifications and are Year 2000 compliant.
- (c) The Customer systems and equipment are operated by persons who have received training on those systems and equipment and who possess appropriate skills and experience in their operation.

**"Fees"** means the charge for the Products or Services as detailed within the Project Order for those Products and/or Services.

**"Invoice"** means the document sent by Aonix Limited to the Customer, demanding payment for the Products or the Services and containing, recording and evidencing contractual terms relating to the Project Order.

**"IPR / Intellectual Property Rights"** means all copyrights (including copyright in computer software), database rights, rights in inventions, patent applications, patents, trade marks, trade names, know how, service marks, design rights (whether registered or unregistered), Source Code, semi-conductor topography rights, trade secrets, rights in confidential information and all other industrial or intellectual property rights of whatever nature;

**“Operating Environment”** means any equipment required to be supplied by the Customer to enable Aonix Limited to implement the Deliverables, which shall comply with the Environmental and Usage Assumptions, and whose details are set out in the respective Project Order;

**"Products"** means goods sold by Aonix Limited pursuant to the Project Order, as specified on the Invoice.

**"Project Order"** means the contract for the supply by Aonix Limited to the Customer of the Products and/or the Services incorporating these terms and conditions.

**"Services"** means the professional services to be performed by Aonix Limited as detailed within the Project Order.

**"Site"** means the address for delivery of the Services as set out in the Project Order.

**"Source Code"** means all source code, program specifications, system specifications and all other information relating to a Deliverable computer system necessary to enable a reasonably skilled programmer to maintain and support the Deliverable, which shall be recorded on magnetic media and readable using Aonix Limited equipment.

**"Third Party Products"** means Products and/or Deliverable not manufactured or assembled or authored by Aonix Limited and supplied to Aonix Limited by third parties for resupply by Aonix Limited.

## 2. GENERAL

- 2.1. These terms and conditions will be incorporated in all Aonix Limited and their Customers Project Orders and will apply to all orders from the Customer for Products and Services and shall prevail and supersede any other terms and conditions referred to, offered or relied upon by the Customer. Any specific terms and conditions relating to the supply of Products and Services will prevail over these standard terms and conditions in the event of any conflict.

## 3. PRODUCTS AND SERVICES

- 3.1. Aonix Limited shall supply, and the Customer shall purchase, Products and/or Services in accordance with the Project Order.
- 3.2. Products and Services are supplied subject to these terms and conditions to the exclusion of any other terms. Amendments to the standard terms and conditions must be confirmed by Aonix Limited in writing within a specific Project Order.

### 3.3. Services

3.3.1. The supply of Services will:

3.3.1.1. start on the agreed date as shown in the Project Order;

3.3.1.2. end upon signoff of the last phase of a project, OR where the Project Order is in respect of the provision of ongoing services, in accordance with terms of that service's defined period of supply and its termination procedures.

3.3.2. The Customer shall, at its own expense, supply Aonix Limited with all necessary documentation and materials and all necessary data and information relating to the Services to be provided within sufficient time to enable Aonix Limited to provide the Services in accordance with the contract to provide the Services.

3.3.3. The Services shall be provided in accordance with any specification or terms supplied by Aonix Limited to the Customer.

- 3.3.4. In respect of the delivery of the Services, when working at a Customer location, the Customer will provide Aonix Limited with and be responsible for expenses associated with:
- 3.3.4.1. Full, unrestricted and safe access to the equipment being used by Aonix Limited, its agents, employees and subcontractors at all times, and notify Aonix Limited in writing, in advance of any hazardous conditions or materials that are likely to be encountered;
  - 3.3.4.2. Adequate working space, operating supplies and facilities, including telephones, power and lighting, within a reasonable distance of the respective Customer Site;
  - 3.3.4.3. Adequate car parking.
- 3.3.5. Where either party supplies the other with equipment to enable Aonix Limited to deliver their Services as per the Project Order, then such equipment must be supplied in accordance with the Environmental and Usage Assumptions. Any such equipment loaned by one party to the other must be returned on the termination of the respective Project Order or upon 30 business days notice from the lender at any time at the cost and expense of the lender.
- 3.3.6. The relationship between Aonix Limited and the Customer is that of independent contractor. Neither party, is an agent for the other, and neither party has any authority to enter into any contract, whether expressly or by implication, in the name of the other party, without that party's prior written consent.

#### 3.4. Products

- 3.4.1. Aonix Limited may help the Customer to specify or choose Product configurations, but the assessment and selection of the Customer's chosen equipment's suitability for the Customer's purpose must be the Customer's ultimate responsibility. Aonix Limited undertakes only that in giving such assistance it has acted in good faith and has not been willingly misleading.
- 3.4.2. Products are subject to availability and may vary from those advertised or included in a sales proposal
- 3.4.3. Aonix Limited reserves the right to cancel or refuse orders for items shown on Aonix Limited's or Associated Companies web sites, Product catalogues and promotional materials with an incorrect price or with any other incorrect information. No contract is made with the Customer until Aonix Limited has dispatched the respective order
- 3.5. Aonix Limited may at any time, without notifying the Customer, make changes to the provision of Services or Products which are necessary to comply with any applicable safety or other statutory requirements or which do not materially affect the nature or quality of the Services or Products to be supplied.
- 3.6. All times and dates supplied for the delivery of Products, Deliverables and provision of Services are given in good faith, but without any responsibility on the part of Aonix Limited. Time of the delivery shall not be of the essence of the Project Order nor shall Aonix Limited be under any liability for any delay beyond Aonix Limited's control.
- 3.7. Aonix Limited and the Customer acknowledge that the performance and the functionality of the computer systems, the Deliverables, the Services, software-controlled equipment and/or hardware used in or affecting the Customer's business may be affected adversely by the processing or other handling of dates after 1 January 2000 (Date Problem). Aonix Limited shall have no obligation under this Project Order to identify, advise upon, assess or correct any Date Problems. The parties may engage in a separate arrangement for the provision of Date Problem advice and assessment services by Aonix Limited on Aonix Limited's standard terms and conditions for such services.
- 3.8. If any Date Problem disrupts, delays or prevents Aonix Limited's ability to perform the Services of the Project Order, Aonix Limited shall not be responsible for the disruptions or delays or for its inability to perform the affected Services.
- 3.9. Aonix Limited sometimes monitors or records telephone calls for training purposes

#### **4. DELIVERY, TITLE AND RISK**

- 4.1. From the time of the delivery to the Customer, the Products shall be at the risk of the Customer, who shall be solely responsible for their custody and maintenance, but, unless otherwise expressly agreed in writing, the Products shall remain the property of Aonix Limited until all payments under the Project Order have been made in full and unconditionally. Aonix Limited shall be entitled at any time before title passes (without any liability):
  - 4.1.1. To terminate Customer's right to use, sell or otherwise deal in Products and/or the Deliverables;
  - 4.1.2. To enter the premises of Customer and/or re-possess Products and/or the Deliverables;
  - 4.1.3. To use or sell Products and/or the Deliverables.
- 4.2. Until the Products, Deliverables and the Services and any other products and/or services supplied by Aonix Limited to the Customer have been paid for in full, the Customer shall not be entitled to sell transfer lease charge assign by way of security or otherwise deal in or encumber the Products and/or the Deliverables and the relationship between Aonix Limited and the Customer in respect of the Products and/or the Deliverables including any proceeds of sale or other consideration therefore shall be a fiduciary one.
- 4.3. If in breach of clause 4.2 above the Customer sells the Products and/or the Deliverables prior to the payment thereof then any proceeds of sale in respect thereof and all rights arising under or in respect of said sale shall be held (in the case of the proceeds of sale in a separate account) by the Customer as trustee for Aonix Limited.
- 4.4. With effect from the delivery date up to and including the date of payment the Customer shall insure the Products and/or Deliverables for their full replacement value with such insurance company as Aonix Limited shall approve (such approval not to be unreasonably withheld) and shall provide a copy of the insurance certificate to Aonix Limited which certificate shall have Aonix Limited endorsed thereon as loss payee.
- 4.5. Aonix Limited may at any time, without notifying the Customer, make changes to the provision of Services or Products which are necessary to comply with any applicable safety or other statutory requirements or which do not materially affect the nature or quality of the Services or Products to be supplied.
- 4.6. Services are deemed delivered upon signoff of a phase of a project or delivery of an Invoice, which covers the respective service activity.
- 4.7. To allow Aonix Limited to be able to more effectively manage their participation in the delivery of the Services, Aonix Limited reserve the right to determine the personnel to perform the work, although Aonix Limited shall attempt to honour the Customer's requests for specific individuals.
- 4.8. Aonix Limited Services will be delivered between core business hours of 10:00 and 16:00, United Kingdom time, excluding United Kingdom Bank Holidays, Aonix Limited's planned Christmas Holiday period (usually taken between 24<sup>th</sup> December and 1st January, inclusive) and planned downtime. The planned downtimes during a 12 month period are (a) Company Meetings, no more than four times per calendar year and restricted to commencing on a Friday afternoon and (b) monthly Service briefing/meeting, which are normally restricted to 2 hours.
- 4.9. Aonix Limited assumes that one man day is 7.5 hours.

#### **5. DELIVERABLES/INTELLECTUAL PROPERTY RIGHTS**

- 5.1. The property and copyright and all other intellectual proprietary rights existing now or in the future in the Deliverables shall belong to and be the absolute property of Aonix Limited. At Aonix Limited's request and expense, the Customer shall do all such things and sign all documents reasonably necessary to enable Aonix Limited to obtain all such rights in the Deliverables.

- 5.2. Aonix Limited shall, subject to payment of all fees and expenses due to Aonix Limited in connection with the delivery of the Services, grant the Customer a non-transferable, non-exclusive licence for a period of 25 years from delivery to use and reproduce for the Customer's own internal use only any Deliverables created in the delivery of Services.
- 5.3. The Customer acknowledges that in the delivery of the Services Aonix Limited may use products, materials or methodologies proprietary to it or a third party or Aonix Limited may produce proprietary materials or methodologies that are not part of the Deliverables. The Customer agrees that it will not have or obtain rights in such proprietary products, materials and methodologies except pursuant to a separate written Project Order on terms to be agreed, and the Customer agrees to maintain the confidentiality of such items.
- 5.4. For the avoidance of doubt Aonix Limited the Source Code of any computer program created by Aonix Limited as part of the Deliverables is the property of Aonix Limited and such Source Code shall not be made available to the Customer
- 5.5. The Customer warrants that any Documents or other information or material provided by the Customer to Aonix Limited for the purposes of supplying the Services is accurate and will not infringe the copyright or other rights of a third party and the Customer shall indemnify Aonix Limited against any loss, damages, costs and expenses or other claims arising from such infringement.
- 5.6. Aonix Limited will have no liability under this clause for:
  - 5.6.1. Any infringement arising from the combination of the Products or Deliverables with other systems (hardware or software) not supplied by Aonix Limited; or
  - 5.6.2. The modification of any Deliverables unless the modification was made or approved expressly by Aonix Limited; or
  - 5.6.3. Any information, data, service or applications assistance supplied to the Customer by Aonix Limited. In no circumstances will Aonix Limited be liable for any costs or expenses incurred by the Customer without written authorisation.

## **6. CUSTOMER'S OBLIGATIONS**

- 6.1. The Customer shall properly use the Products, Services and/or Deliverables and shall provide Aonix Limited with all reasonable facilities and information to enable Aonix Limited to perform its duties.
- 6.2. The Customer shall be responsible for complying with all Customer applicable regulatory requirements.
- 6.3. In order to carry out the supply of Products and Services:
  - 6.3.1. Aonix Limited shall have full and timely access to the appropriate levels of staff of the Customer, its subsidiaries and to other third party advisers to the Customer, who are directly associated with the delivery of the Products and Services
  - 6.3.2. Aonix Limited shall have full and timely access to data and information as it may reasonably require.
  - 6.3.3. The Customer will keep Aonix Limited informed of any material developments or proposals in relation to the business or operations of the Customer, its Associated Companies, where relevant, where these may have an effect upon the delivery of the Services,
  - 6.3.4. The Customer will be responsible for ensuring that any equipment, software and data systems to be worked on by Aonix Limited in any Project Order have been legally purchased, comply with the respective manufacturers licensing agreements and also complies with any data protection, privacy or other regulatory requirements.
- 6.4. For the duration of the Project Order and for a period of nine months after it ends, the Customer shall not solicit or offer employment to any of Aonix Limited Personnel associated with the delivery of the Services or Products. If the Customer does employ any Aonix Limited Personnel, in any form (permanent or temporary), Aonix Limited estimate the loss at the

equivalent on one year's cost (i.e. basic salary, bonuses and education fees to bring someone up to the level of the person employed by the Customer) for each of the Aonix Limited employees concerned. The Customer will pay damages to Aonix Limited equal to that amount upon commencement of their employment/contract with the Customer.

## **7. SERVICE FEES, PRODUCT PRICES, EXPENSES**

### **7.1. Services**

- 7.1.1. Aonix Limited will invoice the Customer, at the end of the completion of a phase of the Services as detailed within the Project Order or on a monthly basis, whichever is the earlier. Professional fees and expenses will be subject to the addition of local taxes (Value Added Tax in the United Kingdom) where applicable. Aonix Limited retains the right in the event of non-payment of any invoice to suspend work until payment is received.
- 7.1.2. Travelling, subsistence, accommodation and any other expenses necessarily incurred while engaged on the Customer business, whether at the Customer's premises or elsewhere, will be charged as per the Aonix Limited customer expense schedule.
- 7.1.3. If during the course of delivering Aonix Limited Services, a need for ancillary specialist services not specified in the Project Order is identified then these shall be charged in accordance with the Aonix Limited standard rates prevailing at the time of use. Authorisation from the Customer will be obtained to the use of ancillary specialist services before any expenditure is incurred.
- 7.1.4. Aonix Limited will increase Service Fees on an annual basis during December to be effective from the 1<sup>st</sup> of January of the following year. In the event that the Customer does not accept this change in pricing then the maximum increase in the charges shall be no greater than the actual increase in relevant expenses incurred by Aonix Limited in providing the services and in any event no greater than the increase in the United Kingdom Headline Retail Price Index Inflation Rate plus 3% during the corresponding period.
- 7.1.5. In fulfilling its obligations, Aonix Limited Personnel may be required to attend training courses for specific Customer systems (hardware and software) to conform to the latest Environment and Usage Assumptions. Such training costs and any additional hardware and software costs (e.g. upgrade to a piece of software) shall be borne by the Customer

### **7.2. Products**

- 7.2.1. All Fees stated in writing are valid for 5 days. Oral statements on Fees are valid only to the end of the business day upon which they are given.
- 7.2.2. All Fees for the sale of Products and/or Deliverables exclude Aonix Limited's charges for storage, delivery/transport and insurance.
- 7.2.3. The Fees and any additional charges payable under the Project Order are advertised and stated exclusive of all sales taxes including United Kingdom, Value Added Tax.
- 7.2.4. The Fees of the Products and/or Deliverables shall be Aonix Limited's estimated Fee or, where no Fees have been estimated (or an estimated Fee is no longer valid), the Fee listed in Aonix Limited's published price list current at the date of the Customer's order and in any case as shown in the Project Order or on the Invoice.
- 7.2.5. Availability of Products, Fees and therefore delivery to the Customer, can only be confirmed at the point of the Customer order being received and formally processed by Aonix Limited.

## **8. PAYMENTS**

### **8.1. Services**

8.1.1. Unless otherwise agreed by Aonix Limited in writing, Invoices are payable within 14 days of receipt.

## **8.2. Products**

8.2.1. Aonix Limited accepts payment by bank transfer, cheque, credit or debit card or cash. Credit card and debit card payments are taken at the point of the customer order not on dispatch of Products

8.2.2. For credit customers, unless otherwise agreed by Aonix Limited in writing, Invoices are payable in full on or before supply of Products or, if agreed in writing by Aonix Limited at the time of the Customer order within 5 days of the date of Invoice.

8.3. All Fees and prices are exclusive of United Kingdom Value Added Tax and any similar taxes. All such taxes are payable by the Customer and will be applied in accordance with United Kingdom legislation in force at the tax point date.

8.4. Payments which are not received when payable will be considered overdue and will remain payable by the Customer together with interest for late payment from the date payable at the rate of 3% per annum above base rate for the time being of Barclays Bank plc, United Kingdom, applicable as well after as before any judgement. This interest will accrue on a daily basis and be payable on demand.

8.5. In addition to the above provision for late payment, in this event Aonix Limited may also choose, without prejudice to any other remedy we may have at any time after payment has become due, to terminate or temporarily suspend performance of the Project Order

8.6. If Aonix Limited becomes entitled to terminate the Project Order for any reason, any sums then due to Aonix Limited will immediately become payable in full.

## **9. WARRANTY**

### **9.1. Services Warranty**

9.1.1. Aonix Limited undertakes that it will exercise due care in the performance of its work in accordance with applicable professional standards. Aonix Limited will re-perform any work which is not in compliance with this undertaking without further liability for such non-compliance if it is brought to Aonix Limited's attention within 30 days after the work is delivered. However, Aonix Limited does not warrant, nor will Aonix Limited be responsible for, the performance of any Third Party Products. The Customer's sole and exclusive rights and remedies with respect to claims arising out of or relating to any third party product will be against the third party. In the event Aonix Limited is asked to reperform any work and it is determined that Aonix Limited have already met its obligations under this paragraph, the Customer agrees to pay Aonix Limited on a time and materials basis at our standard rates plus value added tax for time spent on such additional work.

9.1.2. Aonix Limited agrees that for a period of ten (10) business days following the completion of the Deliverables it will resolve all reasonable problems (e.g. bugs to bespoke developed software and changes to presentations/reports) that the Customer identifies in writing via the Aonix Limited Change Request process. If changes are requested, Aonix Limited shall review such request and make appropriate changes where reasonable. Aonix Limited shall then resubmit the Deliverable to the Customer, at which time it shall be deemed accepted. If no changes are specified within the period, then work is deemed accepted. Whether or not there are changes specified, if the Customer implements any of the Deliverables including recommendations of presentations/reports, then the Deliverable is deemed to be accepted. Any requests for assistance after the 10 day period, any additional Services or requests for changes to the Deliverables will incur additional professional fees.

9.1.3. All surveys, forecasts, projections and recommendations made in any report, presentation, or other document are made in good faith and on the basis of the information supplied to Aonix Limited at the time. However, Aonix limited does not guarantee and it takes no responsibility for their achievement or continuing applicability,

because the actual outcome will depend on future events and circumstances and matters over which Aonix Limited has no control, including the actions of management and staff. It shall be the responsibility of the Customer's management to make implementation decisions, if any, and to determine further courses of action with respect to any matters arising from the provision of the Services. Whilst Aonix Limited may assist in the implementation of recommendations; ultimately this is the sole responsibility of the Customer's management.

## 9.2. Products Warranty

- 9.2.1. In respect of Third Party Products, the Customer shall only be entitled to the benefit of any warranty or guarantee given by the Third Party manufacturer. Aonix Limited does not give any warranty, guarantee or other term as to their quality, fitness for purpose or otherwise.
- 9.2.2. Unless the Customer shall, within one business day after delivery, inspect the Products and notify Aonix Limited, in writing, of any defects found, the Products shall be deemed to have been accepted on delivery. Any software developed by Aonix Limited and forming part of the Products shall not be sold but Aonix Limited will grant a non-exclusive non transferable licence to the Customer.
- 9.2.3. Aonix Limited warrants that all Products except for Third Party Products (which have the benefit of the manufacturers guarantee) shall be free from defect for a period of 30 days from delivery or purported delivery. If, before the expiry of the warranty period Aonix Limited receives written notice from the Customer of any breach of the warranty then Aonix Limited shall, within a reasonable time, repair or, at its option, replace Products or spare parts that are defective or otherwise remedy such defects.
- 9.2.4. This warranty does not apply to defects resulting from improper or inadequate installation, use or maintenance; actions or modifications by unauthorised third parties or the Customer or accidental or wilful damage.
- 9.2.5. Aonix Limited does not give any warranty that the Products are fit for any particular purpose and this warranty is given in place of all warranties, conditions, terms, undertakings and obligations implicit by statute, common law, custom, trade, usage, course of dealing or otherwise, all of which are excluded to the fullest extent permitted by law.

## 10. LIABILITY

- 10.1. Aonix Limited shall not, save to the extent that the law requires otherwise, be held responsible for any losses, damage, cost, legal costs, court costs, expenses (together "the losses") whatsoever and howsoever, caused, incurred, sustained or arising if any information reasonable requested by Aonix Limited from the Customer is withheld or not produced within a reasonable, or stated time and such information is material to the Products and/or Services provided by Aonix Limited.
- 10.2. The Customer shall indemnify, defend and hold harmless Aonix Limited and its Associated Companies and its and their directors, officers, employees, sub-contractors and agents, from and against losses resulting or arising from any third-party claims, actions, proceedings, investigations or litigation relating to or arising from or in connection with these terms and conditions or any Project Order and/or the supply of Products or Services except to the extent that such losses arise wholly or in part from the intentional misconduct of Aonix Limited or its Associated Company.
- 10.3. Any liability of Aonix Limited arising out of or in connection with any particular Project Order (including liability for interest and costs), contract, tort (including negligence) or otherwise in connection with these terms and conditions for any one event or a series of events is limited to the price of the Products, Deliverables and/or Services giving rise to the liability, or 125% of the payment Aonix Limited has received from the Customer in the 12 months before the event(s) complained of, whichever is the smaller. In no event (including our own negligence), and even if Aonix Limited have been advised of the possibility of such losses, will Aonix Limited be liable for any:
  - 10.3.1. economic loss (including, without limitation, loss of revenue, profit, contract, business

or anticipated savings);

10.3.2. loss of goodwill or reputation;

10.3.3. special, indirect or consequential loss; or

10.3.4. damage to or loss of data/information

10.3.5. Aonix Limited has no liability for Products and Services provided by third parties.

10.4. Nothing in this clause 10, excludes in any way or restricts Aonix Limited's liability for:

10.4.1. death or personal injury caused by the negligence of Aonix Limited;

10.4.2. direct damage to tangible property caused by the negligence of Aonix Limited which will not exceed £1,000,000GBP for any one event or series of connected events;

10.4.3. Fraudulent misrepresentation or for anything which may not legally be restricted. Nor does it affect consumers' statutory rights.;

10.4.4. Any infringement of any Intellectual Property of any third party.

10.5. Aonix Limited and the Customer shall at their own expense obtain and maintain insurance of a type and amount adequate to cover all loss, damage, liability or costs in respect of which it is liable to indemnify the other under the provisions of this clause 10 and shall not do or omit any act, matter or thing which may prejudice or render voidable any such insurance. Each party will, forthwith on request by the other, provide the party requesting the same with evidence of the insurance as that party may reasonably require.

10.6. The representations, warranties, terms and conditions set out in this terms and conditions are the parties' only representations, warranties, terms and conditions relating to the Project Orders and Aonix Limited's provision of the Services in connection with the Project Orders and are made expressly in place of and to the exclusion (to the fullest extent permitted by law) of all other representations, warranties, terms and conditions, express or implied, by statute or otherwise, including without limitation any implied warranties, terms or conditions as to performance, fitness for a particular purpose, merchantability, satisfactory quality or otherwise and are subject to the limitations on liability set out herein

## **11. FORCE MAJEURE**

11.1. Neither party will be liable to the other for any delay in or failure to perform their obligations (other than a payment of money) as a result of any cause beyond their reasonable control including but not limited to floods, strikes, or other labour disturbances, civil disorder, riots, fires, accidents, wars, embargoes, act of terrorism, delay of carriers, delay in suppliers, inability to obtain materials, failure of power or natural sources of supply, acts, injunctions, acts of local or central government, or restraints of government or any other Act of God or other force majeure.

11.2. The affected party shall exert its reasonable efforts to eliminate or cure or overcome any such causes and to resume performance of its obligations with all possible speed. If such a delay or failure continues for at least 90 days, either party will be entitled to terminate the Project Order by notice in writing.

11.3. In the event of the imposition of restrictions of a legal or regulatory nature which prevent Aonix Limited from supplying the Service then Aonix Limited will have no liability to the Customer for failure to supply the Service.

## **12. CONFIDENTIALITY**

12.1. In connection with the delivery of the Services and/or Products, each party shall hold all confidential information of the other in strict confidence. Save as may be required by law or applicable regulation, neither party shall disclose such information without the prior written consent of the other party.

12.2. All proposals for work, specifications, estimates and pricing, presentations, reports, documents, Deliverables and other advice given, including Project Orders, are for the Customer's exclusive use and must not be handed over or otherwise disclosed to any third party without Aonix Limited's prior written consent. The Customer agrees to take all steps necessary to ensure that they are not handed over or otherwise disclosed or used by any third party without Aonix Limited's prior written consent.

## **13. TERMINATION**

- 13.1. Aonix Limited's services in relation to the Project Order may be terminated by Aonix Limited at any time by written notice in the event that the Customer does not perform the Customer Obligations defined within the Project Order, or if the assumptions upon which the Project Order is based are in Aonix Limited's opinion inaccurate or misleading.
- 13.2. The Project Order may be terminated immediately by notice in writing:
- 13.2.1. By Aonix Limited if the Customer fails to pay any sums due under the Project Order by the date payable without prejudice to any other provisions relating to late payment in the Project Order.
- 13.2.2. By either party if the other party is in material or continuing breach of any of its obligations under the Project Order and fails to remedy the breach (If capable of remedy) for a period of 90 days after written notice by the other party.
- 13.2.3. By either party, if the other party becomes involved in any legal proceedings whatsoever concerning its solvency, or ceases trading, or commits an act of bankruptcy or is adjudicated bankrupt or enters into liquidation, whether compulsory or voluntary, other than for the purposes of an amalgamation or reconstruction, or makes an arrangement with its creditors or petitions for an administration order or has a receiver or manager appointed over all or any part of its assets or generally becomes unable to pay its debts within the meaning of Section 123 or Section 268 of the Insolvency Act 1986, (or equivalent circumstances occur in any other jurisdiction).
- 13.3. Any termination of the Project Order under this clause will be without prejudice to any other rights or remedies of either party under the Project Order or at law and will not affect any accrued rights or liabilities of either party at the date of termination.
- 13.4. On termination of the Project Order, the Customer will be obliged to satisfy Aonix Limited that they have erased/removed all copies of the Products and/or Deliverables from their magnetic media and that they have no ability to reproduce the Products and/or Deliverables in any way, and that they must return to Aonix Limited immediately all related documentation or other tangible property in their possession belonging to Aonix Limited.
- 13.5. Where the Project Order relates to Services for the provision of training:
- 13.5.1. The Customer agrees to pay the full invoice in respect of any course, which is postponed or cancelled by them with less than seven days notice prior to the course date
- 13.5.2. If a delegate withdraws from a course once that course has commenced then the Customer shall pay the full value of the course invoice to Aonix Limited.
- 13.5.3. The Customer may substitute delegates at any time upon notification to Aonix Limited, subject to the new delegate complying with the requirements for the course as notified by Aonix Limited to the Customer.
- 13.6. Any provisions of the Project Order, which by their nature extend beyond the expiry or termination of the Project Order shall survive such expiration or termination. Such provisions shall include, without limitation, fees and expenses, professional fees and expenses, payment and interest, confidential information, Deliverables, limitation on liability and indemnities of these terms and conditions.
- 13.7. Where a Project Order relates to Products supply to the Customer, the Customer cannot cancel/terminate an order once it has been accepted by Aonix Limited, unless this is agreed in writing by an Aonix Limited authorised representative.

#### **14. ASSIGNMENT**

- 14.1. Aonix Limited may sub-contract all or any of its obligations under the Project Order to a competent third party. Except for this, neither party shall assign or otherwise transfer any of its rights or obligations.

#### **15. NOTICES**

- 15.1. Any notice required or permitted to be given by either party to the other under these terms and conditions shall be in writing addressed to the other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving notice.
- 15.2. Any notice or other communication to be given under the Project Order shall be delivered personally or sent by first-class pre-paid post or facsimile transmission.

- 15.3. For avoidance of doubt notices sent to Aonix Limited should be sent to (subject to written confirmation within a specific Project Order): Aonix Limited, Clare House, 166 Lord Street, Southport, Merseyside. PR9 0QA. United Kingdom. For the attention of: Haren Thakkar.
- 15.4. All such notices or other communications shall be deemed to have been served as follows:
- 15.4.1. If delivered personally, at the time of such delivery;
  - 15.4.2. If sent by first-class pre-paid post, three English business days (Saturdays, Sundays and United Kingdom Bank Holidays excluded) after being placed in the post; or
  - 15.4.3. If sent by facsimile three business days after the postal confirmation has been placed in the post;
  - 15.4.4. Aonix Limited will NOT accept any notices via electronic email or facsimile

## **16. SEVERANCE**

- 16.1. If any of the provisions of the Project Order is judged to be invalid, illegal or unenforceable, the continuation in full force and effect of the remainder of them will not be prejudiced unless the substantive purpose of the Project Order is thereby frustrated, in which case either party may terminate the Project Order forthwith on written notice.

## **17. HEADINGS**

- 17.1. Headings to clauses in these terms and conditions are for the purpose of information and identification only and shall not be construed as forming part of these terms and conditions.

## **18. WAIVER**

- 18.1. The waiver by either party of a breach or default of any of the provisions of these terms and conditions by the other party shall not be construed as a waiver of any succeeding breach of the same or other provisions nor shall any delay or omission on the part of either party to exercise or avail itself of any right power or privilege that it has or may have hereunder operate as a waiver of any breach or default by the other party.

## **19. PROMOTIONAL ACTIVITIES**

- 19.1. Subject to clause 12 above Aonix Limited shall have the right to refer to and use any information or material which is not of a confidential nature derived by it in the delivery of the Services, Products or the Deliverables to the Customer for its internal and external promotional and marketing purposes. The Customer grants Aonix Limited the right to use the Customer's trademarks or design rights for such purposes.

## **20. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

- 20.1. Aonix Limited and the Customer agree that any person who is not a party to these terms and conditions shall have no right to enforce any term of these terms and conditions or Project Order against either of the parties.

## **21. ENTIRE PROJECT ORDER**

- 21.1. These terms and conditions and any authorised Project Order supersedes any proper contracts, arrangements and undertakings between the parties in relation to it subject matter and constitutes the entire Project Order between the parties relating to the subject matter.

## **22. DISPUTES**

- 22.1. If any dispute arising out of or in relation to these terms and conditions is not resolved following an escalation process through 3 appropriate tiers of management within a reasonable timeframe, the parties will attempt to resolve the dispute in good faith through an Alternative Dispute Resolution (ADR) procedure as recommended to the parties by the Centre for Dispute Resolution.

If the matter has not been resolved by an ADR procedure within 30 days of the initiation of that procedure, or if either party will not participate in an ADR procedure, the dispute shall then be decided by the High Court of England and Wales.

## **23. LAW AND JURISDICTION**

- 23.1. These terms and conditions shall be governed by and construed in all respects in accordance with the laws of England and the parties hereby submit to the non-exclusive jurisdiction of the English courts.

23.2. No failure or delay on the part of Aonix Limited or the Customer to exercise or enforce any rights conferred on it by the terms and conditions shall be construed or operate as a waiver thereof nor shall any single or partial exercise of any right, power or privilege or further exercise thereof operate so as to bar the exercise or enforcement thereof at any time or times.