



## 1. DEFINITIONS

1.1. In these Terms, certain words and phrases have defined meanings:

Word or Phrase	Meaning
Agreement	Those documents stated in the Signature Form as making up this agreement;
Client	The party detailed in the Signature Form;
Confidential Information	Trade secrets, know-how, affairs and business and other confidential information of either party. For the avoidance of doubt the Software is Polestar's confidential information;
EULA	A direct licence or licence agreement between the Client and a Software manufacturer / distributor;
Force Majeure	An event or events beyond the reasonable control of the party affected by such event or events;
Hardware	Any hardware to be supplied by Polestar to the Client (including any part or parts of them) as stated in the Schedule or subsequently agreed between the parties;
Initial Period	As set out in the Schedule;
Intellectual Property Rights	Copyright, database right, patents, registered and unregistered design rights, registered and unregistered trade marks, and all other industrial, commercial or intellectual property rights existing in any jurisdiction in the world and all the rights to apply for any of these;
Interest Rate	3% above Lloyds Bank plc's base rate from time to time;
Notice Period	The notice period set out in the Schedule;
Polestar	Polestar Interactive Limited of 13-15 Regent Street, Nottingham NG1 5BS, United Kingdom;
Schedule	The document called "Schedule";
Services	The services provided by Polestar to the Client under this Agreement, as described in the Schedule or subsequently agreed between the parties;
Signature Form	The document called "Signature Form";
Software	Any software that Polestar supplies to the Client under this Agreement, as set out in the Schedule or subsequently agreed between the parties;
Start Date	As set out in the Schedule;
System	The Client's IT systems, or any part of those systems;
Terms	These Standard Terms & Conditions;
Year	A twelve calendar-month period from the Start Date and subsequent anniversaries of the Start Date.

## 2. INTERPRETING THIS AGREEMENT

2.1. In this Agreement:

- 2.1.1. headings are for ease of reference only;
- 2.1.2. the singular includes the plural and vice versa;

2.1.3. the words "including", "include", or "includes" or are shall be deemed to be followed by the words "without limitation" unless the context otherwise requires.

- 2.2. All rights and remedies referred to in this Agreement are cumulative and not to the exclusion of other rights and remedies, unless expressly stated otherwise.
- 2.3. In the event of any conflict or inconsistency between the documents forming this Agreement, the Schedule shall prevail over these Terms.

## 3. WHAT FORMS THE AGREEMENT

- 3.1. This Agreement sets out all the terms agreed between the parties about the subject matter of this Agreement and shall apply to the exclusion of all other terms and conditions (including any terms and conditions which the client purports to apply under any purchase order, confirmation of order, specification or other document). It takes the place of all previous negotiations, understandings and representations and no terms or conditions endorsed upon the Client's purchase order, confirmation of order, specification or other document will form part of the Agreement.

## 4. THE PARTIES DEPEND UPON EACH OTHER

- 4.1. Each party shall comply with its respective obligations under this Agreement.
- 4.2. If either party fails to do something that it ought to do under this Agreement ("Defaulting Party") and directly causes the other party to fail to do something that it ought to do under this Agreement then the Defaulting Party will not treat the other party's failure as a breach of contract in those circumstances nor shall the other party be liable for any delay in performing its obligations in such circumstances.
- 4.3. No variation to the Agreement will be valid unless agreed between the parties in writing.

## 5. POLESTAR'S OBLIGATIONS

- 5.1. Polestar shall use reasonable skill and care in providing the Services and supplying the Hardware.
- 5.2. Where Services are to be provided or Hardware to be delivered in instalments, each instalment shall constitute a separate contract, and failure by Polestar to deliver any one or more instalments in accordance with these Terms, or any claim by the Client in respect of any one or more instalments, shall not entitle the Client to treat the Agreement as a whole as repudiated.

## 6. THE CLIENT'S OBLIGATIONS

- 6.1. Whilst this Agreement is in force, the Client shall:
  - 6.1.1. comply with Polestar's reasonable instructions, guidelines and directions about the use of the Hardware and the Services;
  - 6.1.2. not sell, deal, transfer, or otherwise make available the Services or Hardware or the Software to any third party for any purposes unless Polestar has given consent in writing;
  - 6.1.3. where the Services or supply of Hardware involve Polestar entering the Client's premises, allow Polestar to access the premises and use any space and facilities that Polestar reasonably requests and ensure that the premises are safe and ready for Polestar to use;
  - 6.1.4. ensure that the System is installed and operates in good order and complies with any minimum specification that Polestar notified to the Client before this Agreement was signed by the parties.
- 6.2. The Client agrees that if it fails to comply with clause 6.1.3 and/or 6.1.4, Polestar shall be entitled (in its discretion) to:
  - 6.2.1. charge the Client for the additional time it incurs due to the Client's failure (including travel time);
  - 6.2.2. suspend performance of the Services or delivery of the Hardware until the Client rectifies the failure;
  - 6.2.3. in the case of a failure to comply with clause 6.1.4, charge the Client additional fees (on a time and materials basis) if Polestar chooses to rectify or work-around the failure.



## 7. SOFTWARE

- 7.1. Most Software supplied by Polestar is supplied under a EULA. The licence terms in clauses 7.2 to 7.4 (inclusive) shall only apply if the Services include the supply of Software that is not subject to a EULA.
- 7.2. Polestar grants the Client a limited personal and non-exclusive licence to use the Software. The licence is restricted to use by the Client for internal business use only, subject to any additional restrictions stated in the Schedule.
- 7.3. The licence continues until this Agreement is terminated or expires.
- 7.4. The Client agrees that it shall:
  - 7.4.1. comply with the licence granted under clause 7.2;
  - 7.4.2. not transfer the benefit or burden of any or all licences to anybody else;
  - 7.4.3. not copy, modify or otherwise interfere with the Software (or permit any third party to do so), except as permitted by law.
- 7.5. Polestar does not warrant that the operation of the Software will be uninterrupted or error free.
- 7.6. The Client acknowledges that the Software is off-the-shelf, made available "as is" and has not been designed to meet its specific requirements. Software may include features that restrict its use to the terms of the licence.

## 8. HARDWARE

- 8.1. All drawings, descriptive matters, specifications and advertising issued or made available by Polestar are issued or published for the sole purpose of giving an approximate idea of the Hardware described in them. They will not form part of the Agreement.
- 8.2. Unless otherwise agreed in writing, delivery of the Hardware shall take place at the Client's address as set out in the Signature Form.
- 8.3. Any dates specified by Polestar for delivery of Hardware are intended to be an estimate only and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery will be within a reasonable time.
- 8.4. Polestar shall not be liable for any loss (including loss of profit), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Hardware (even if caused by Polestar's negligence) nor will any delay entitle the Client to terminate or rescind the Agreement (in whole or in part).
- 8.5. If for any reason the Client will not accept delivery of any of the Hardware when it is ready for delivery, or Polestar is unable to deliver the Hardware because the Client has not provided appropriate instructions, documents, assistance, licences or authorisations, or refuses to accept delivery:
  - 8.5.1. the Hardware will be deemed to have been delivered and risk in the Hardware will pass to the Client; and
  - 8.5.2. Polestar may store the Hardware until delivery and the Client will be liable for all related costs and expense (including storage and insurance).
- 8.6. The Client will provide at its expense adequate and appropriate equipment and manual labour for unloading the Hardware.
- 8.7. The quantity of any consignment of Hardware as recorded by Polestar or its delivery agent (which may be the Hardware manufacturer or distributor) shall be conclusive evidence of the quantity received by the Client on delivery unless the Client can provide conclusive evidence to the contrary.
- 8.8. Any liability of Polestar for non-delivery of the Hardware is limited to replacing the Hardware within a reasonable time or issuing a credit note against any invoice received for such Hardware.
- 8.9. Subject to clause 8.5, the Hardware is at the risk of the Client from the time of delivery or deemed delivery.
- 8.10. Polestar shall own the Hardware except for such items as are specified in the Schedule as being sold to the Client. In respect of Hardware that is being sold, ownership shall not pass to the

Client until Polestar has received payment in full (in cleared funds) for all sums due to it in respect of:

- 8.10.1. the relevant Hardware; and
  - 8.10.2. all other sums which are or which become due to Polestar from the Client on any account.
- 8.11. In relation to all Hardware except Hardware for which the Client has become the owner pursuant to clause 8.10, the Client must:
    - 8.11.1. hold it on a fiduciary basis as Polestar's bailee;
    - 8.11.2. store it separately from all other goods in such a way that it remains identifiable as Polestar's property;
    - 8.11.3. maintain the Hardware in satisfactory condition and without damaging or altering the packaging; and
    - 8.11.4. keep it insured against all risks.
  - 8.12. In relation to all Hardware except Hardware for which the Client has become the owner pursuant to clause 8.10:
    - 8.12.1. the Client's right to possession shall terminate immediately if any of the situations described in clauses 17.4.1 to 17.4.3 (inclusive) apply or the Agreement is terminated or expires;
    - 8.12.2. the Client grants Polestar and Polestar's agents an irrevocable licence at any time to enter any premises where the Hardware is or may be stored in order to inspect them, or, where the Client's right to possession has terminated, to recover them.
  - 8.13. Polestar will endeavour to transfer to the Client the benefit of any warranty or guarantee given to Polestar by the manufacturer of the Hardware.
  - 8.14. Unless otherwise agreed, the Client shall direct all communications relating to the quality of or support for the Hardware to the manufacturer of the Hardware concerned and Polestar shall not be responsible for the same.

## 9. THE CLIENT'S SYSTEM

- 9.1. The Client acknowledges that the cost of the Services will be influenced by the complexity and setup of the System, and that (unless stated in the Schedule) the analysis of the System with a view to reducing costs is not within the scope of this Agreement.
- 9.2. If Polestar gives any advice or recommendation about the maintenance, application or use of the System such advice is given as a gesture of goodwill. If the Client relies upon or acts upon the advice/recommendation, this is at the Client's risk and Polestar shall not be liable for such advice / recommendation unless it has confirmed it in writing.

## 10. CONFIDENTIALITY

- 10.1. Each party shall, for the Confidential Information for which it is the recipient:
  - 10.1.1. keep the Confidential Information strictly confidential and not disclose any part of it to any person except as permitted by or as required for the performance of the its obligations under this Agreement;
  - 10.1.2. take all reasonable steps to prevent unauthorised access to the Confidential Information;
  - 10.1.3. not use the Confidential Information other than for the purposes set out in this Agreement.
- 10.2. Each party may disclose the Confidential Information to, and allow its use in accordance with this Agreement by the following (as long as the conditions in 10.3 are met):
  - 10.2.1. employees and officers of the recipient who require it for the recipient to perform its obligations under this Agreement;
  - 10.2.2. the recipient's auditors and professional advisors solely for the purposes of providing professional advice.
- 10.3. As a condition of the rights set out in clause 10.2 the party wishing to exercise the rights must:
  - 10.3.1. ensure that any party to whom it discloses Confidential Information is under an obligation of confidentiality about such Confidential Information; and
  - 10.3.2. procure that such persons observe the restrictions in this clause 10.



- 10.4. The restrictions in clause 10.1 do not apply to any information to the extent that it:
- 10.4.1. is or comes within the public domain other than through a breach of clause 10.1; or
  - 10.4.2. is in the recipient's possession (with full right to disclose) other than through a breach of clause 10.1; or
  - 10.4.3. is lawfully received from a third party (with full right to disclose); or
  - 10.4.4. is independently developed by the recipient without access to or use of the Confidential Information.
11. **INTELLECTUAL PROPERTY RIGHTS**
- 11.1. Polestar, or its licensors, own all Intellectual Property Rights in the Hardware, Services and the Software. The Client shall not acquire any Intellectual Property Rights in the Hardware, Services or Software.
12. **LIMITS ON LIABILITY**
- 12.1. Polestar's liability to the Client for any claim for breach of contract, negligence, or for fraud breach of statutory duty or under any indemnity or otherwise shall be limited as follows:
- 12.1.1. for any claim for fraud, fraudulent misrepresentation, or for personal injury or death caused by Polestar's negligence, no limit shall apply;
  - 12.1.2. for other claims for personal injury or death and claims for the damage to or loss of tangible property (excluding claims relating to data contained on any tangible media), liability shall be limited to £10 million per claim or series of claims arising from any one incident.
  - 12.1.3. for any other claim, liability shall be limited to the total fees payable under this Agreement in the 12 months before the claim arose.
- 12.2. Polestar shall not be liable for the following types of loss, whether direct, indirect or consequential, even if Polestar was notified or aware that the Client would incur any such losses:
- 12.2.1. financial loss, including loss of profits, earnings, business or goodwill, business interruption;
  - 12.2.2. expected or incidental losses, loss of sales, loss of or damage to data or software, reduction in the value of an asset;
  - 12.2.3. any claim against the Client by any third party, unless such a claim arises where Polestar did not have the right to provide the Software.
- 12.3. Polestar shall not be liable for indirect or consequential losses of any kind.
- 12.4. Nothing in this Agreement excludes or limits the liability of Polestar for death or personal injury caused by Polestar's negligence or for fraudulent misrepresentation.
13. **PAYMENTS AND INVOICING**
- 13.1. The Client shall pay the fees set out in the Schedule and in accordance with any payment timetable set out in the Schedule. All the prices and charges that Polestar quotes are exclusive of VAT (or any other Sales Taxes) and Polestar shall charge this in addition where it applies. The fees are exclusive of expenses unless the Schedule states otherwise.
- 13.2. The Client will pay all of Polestar's invoices in cleared funds within the payment period set out in the invoice, or if no payment period is set out within 30 days of the date of the invoice. If the Client does not pay any sum by its due date, Polestar shall be entitled to charge interest on the overdue amount at the Interest Rate from the due date up to the date of actual payment (whether before or after any court judgement). In addition, whilst any invoice remains overdue Polestar may suspend the Services (or any part of them) and services provided under any other contract until the Client pays such invoices.
- 13.3. Polestar shall be entitled to increase its fees once in each Year. However, Polestar shall limit any such increase to a percentage not greater than the percentage increase in the Retail Prices Index published by the Central Statistical Office in the preceding year.
- 13.4. Polestar shall be entitled to increase the price payable for Software and Hardware at any time before its delivery to the Client if the price payable by Polestar to its suppliers for that Software or Hardware increases.
- 13.5. The Client shall have no right to set-off.
14. **FORCE MAJEURE**
- 14.1. Neither party shall be liable to the other for any delay or failure in the performance of Polestar's contractual obligations caused by Force Majeure. However, for either party to rely on this clause, it must promptly notify the other of the circumstances of the Force Majeure.
- 14.2. If Force Majeure persists for 28 days or more, the party not claiming Force Majeure may give notice to the other to terminate this Agreement with effect from a date specified in the notice without penalty or other liability (except under Clause 17.5).
15. **NOTICES**
- 15.1. Any notice (except for the service of court proceedings) shall be in writing and shall be delivered personally or sent by special delivery post or fax to the addresses of each party.
- 15.2. Both parties consider that notice has been given:
- 15.2.1. if delivered personally, upon delivery;
  - 15.2.2. if sent by post, two clear days after the date of posting;
  - 15.2.3. if sent by fax, when transmitted provided that the sender sends a copy by special delivery on the same day or the next working day.
- 15.3. Any notification of change of details for the purposes of this clause 15 shall only be effective seven days after notice is given.
16. **DISPUTE RESOLUTION PROCEDURE**
- 16.1. The parties agree that they shall deal with any disputes about this Agreement as follows:
- 16.1.1. the issue in dispute shall be referred to the contact of each party (as indicated on the Signature Form) for discussion;
  - 16.1.2. if the dispute is not resolved, the managing directors (or equivalent) of each party shall discuss the issue;
  - 16.1.3. if the issue is not resolved then it shall be referred to a mediator that the parties jointly appoint. If the parties cannot agree on the mediator, they shall ask the President of the Law Society of England and Wales to appoint a mediator.
  - 16.1.4. if the dispute is still not resolved, then the parties agree that the English Courts have exclusive jurisdiction to settle the dispute.
- 16.2. Each party shall bear its own costs for elements of the dispute resolution procedure up to the involvement of the Courts under clause 16.1.4.
17. **DURATION & TERMINATION**
- 17.1. This Agreement takes effect the Start Date. Subject to clause 17.3 and 17.4, it shall continue for the Initial Period and after that shall be automatically renewed for periods of 1 Year ("Renewal Period") on each anniversary of the Start Date ("Renewal Date") until terminated in accordance with clause 17.2 or 17.3.
- 17.2. Either party shall be entitled to terminate this Agreement by giving written notice to terminate of no less than the Notice Period. Termination shall take effect upon the expiry of the current Agreement period, being either the Initial Period or a Renewal Period.
- 17.3. The Client shall be entitled to terminate this Agreement at any time by (a) giving written notice; (b) paying to Polestar in cleared funds all fees due for the period expiring on of the later of:
- 17.3.1. the end of the current Agreement period; and
  - 17.3.2. the end of Notice Period.



- 17.4. Either party can terminate this Agreement immediately by serving written notice on the other party if the other party:
- 17.4.1. commits a material breach of an obligation under this Agreement which is not capable of remedy;
  - 17.4.2. commits a material breach of an obligation under this Agreement which is not remedied within 28 days after receipt of a notice from the party not in breach specifying the breach, requiring its remedy and making clear that failure to remedy may result in termination;
  - 17.4.3. enters into liquidation, is dissolved or declared bankrupt or has a receiver, administrator or administrative receiver appointed over all or part of its assets, or enters into an arrangement with its creditors, or any similar situation.
- 17.5. Termination of this Agreement (or of any element of it) shall not affect any rights, obligations or liabilities of either party that have accrued before termination or that are intended to continue to have effect beyond termination.
- 17.6. Clauses 10, 11, 12 and 16 shall survive termination of this Agreement.
- 18. GENERAL**
- 18.1. There may be occasions on which the Client requests new services, software or hardware. Any price quotation given by Polestar for these shall be valid for 30 days only. Polestar can withdraw the quotation at any time. A contract for any such services, software or hardware shall not come into place until (a) the Client has accepted the quotation or placed an order, and (b) Polestar has acknowledged the order or despatched the services, software or hardware to the Client. Any such contract shall be on these Terms and Conditions and may not be cancelled by the Client.
- 18.2. Polestar shall be entitled to retain any Client property in Polestar's possession or control until Polestar has received payment in cleared funds of all sums due under this Agreement.
- 18.3. The provision of Services that include the supply of third party hardware, software or services shall be subject to such additional terms imposed by such third party on end users from time to time, as may be issued to the Client by Polestar or the third party.
- 18.4. Risk in the Software together with any documentation or any other of Polestar's property passes to the Client when Polestar dispatches it to the Client's premises or such other address as may have been requested by the Client.
- 18.5. If Client IT systems, hardware, software or data is being hosted in a data centre as part of the Agreement, the Client may wish to have access to the data centre from time to time. Access on each occasion shall be subject to (a) the Client giving Polestar no less than 30 days notice of; and (b) of the Client's acceptance of such terms of access as may be or may have been issued to the Client by Polestar or the data centre.
- 18.6. Each party warrants that it has the full power and authority to enter into this Agreement.
- 18.7. All warranties, representations, conditions and all other terms that are not expressly stated in this Agreement are, to the fullest extent permitted by applicable law, excluded from this Agreement.
- 18.8. Any dates that Polestar quotes for supply and completion of the Services are estimates only. Time shall not be of the essence for performance of the Services.
- 18.9. Persons who are not a party to this Agreement shall not have any rights under this Agreement.
- 18.10. This Agreement shall not constitute or imply any partnership, joint venture, agency or other relationship between the parties other than independent contractors.
- 18.11. The Client shall not, for the duration of this Agreement, and for 6 months afterwards, directly or indirectly induce or attempt to induce any of Polestar's employees that have been involved in this Agreement to leave its employment.
- 18.12. The Client may not assign nor transfer any part of this Agreement without first obtaining Polestar's consent (such consent not to be unreasonably withheld or delayed).
- 18.13. If either party fails to exercise a right or remedy that it has or which arises under this Agreement, such failure shall not prevent Polestar from exercising that right or remedy subsequently for that or any other incident.
- 18.14. A waiver of any breach or provision of this Agreement shall only be effective if made in writing.
- 18.15. If any part of this Agreement is found to be invalid or unenforceable by any court, such invalidity or unenforceability shall not affect the other provisions of this Agreement and such other provisions shall remain in full force and effect.
- 18.16. English law governs this Agreement.