

1 Applicability

1.1 These terms and conditions (“**Terms and Conditions**”) apply to the sale or lease of any instrument, equipment, consumable or other product (“**Product**”) by Izon to Customer, the provision of any firmware or software (“**Software**”) by Izon to Customer for use in connection with any Product and the provision of any service (“**Service**”) by Izon to Customer. In these Terms and Conditions, “**Izon**” means the person designated as the seller, lessor or service provider in the Quote or Customer Agreement (each as defined below) and, in relation to the license of any Software, Izon Science Limited and “**Customer**” means the person designated in the Customer Agreement. “**Customer Agreement**” means any agreement signed by Izon and Customer that incorporates these Terms and Conditions, any electronic agreement that incorporates these Terms and Conditions, which takes effect when Customer clicks the Accept button or check box presented with these Terms and Conditions, or if neither of the prior circumstances applies any invoice incorporating these Terms and Conditions that relates to the sale or lease of any Product by Izon to Customer, the license of any Software by Izon to Customer or the provision of any Service by Izon to Customer.

2 Contract Formation

- 2.1 **Quotes:** Unless otherwise specified in any quote from Izon for the sale or lease of any Product, license of any Software or provision of any Service (a “**Quote**”), all Quotes are valid for 30 days from the date of the Quote and may be modified or withdrawn by Izon prior to receipt of an order from Customer.
- 2.2 **Orders:** Customer may place orders for Products or Services through Izon’s website www.izon.com (“**Izon Website**”) or by otherwise contacting Izon. Any order submitted is subject to acceptance by Izon. All orders for Products are subject to stock availability. All orders by Customer for Products, Software or Services are subject to and expressly conditioned upon Customer’s assent to these Terms and Conditions.
- 2.3 **Cancellation or Changes:** Customer may not cancel or change any order (in whole or in part) once accepted by Izon, without Izon’s prior written consent and Customer paying any applicable cancellation charges or agreeing to the appropriate adjustments to be made, if any, to the terms of the applicable Customer Agreement due to such change, including as to price and time of delivery.
- 2.4 **Rejection of Customer terms:** Any terms and conditions of Customer, whether specified in an order or otherwise, that are different from or in addition to those contained in the applicable Customer Agreement are objected to and rejected by Izon and are of no effect unless specifically agreed to in writing by Izon. In the case of any conflict between a Customer Agreement and any order submitted by Customer, the applicable Customer Agreement prevails. The shipment of Products by Izon to Customer is not to be construed as acceptance of any terms and conditions of Customer that are different from or in addition to those contained in the applicable Customer Agreement.
- 2.5 **Credit verification:** Izon reserves the right to review Customer’s creditworthiness at any time. If Customer’s creditworthiness, in Izon’s sole and absolute discretion, is unsatisfactory, then Izon may suspend the performance of its obligations to Customer under any Customer Agreement until Customer agrees to such terms of payment and provides such security for payment as is satisfactory to Izon, in its sole and absolute discretion. If Customer fails to agree to any terms of payment or to provide any security for payment that Izon requires then Izon may terminate any contract or arrangement between Izon and Customer for the sale or lease of Products, license of any Software or provision of Services without any liability to Customer. Customer authorises Izon to obtain any information or report about Customer’s creditworthiness from a credit reporting agency or credit provider for the purpose of assessing Customer’s creditworthiness or collecting overdue payments. In granting such authorisation Customer acknowledges that any information provided by it or any information relating to any amount Customer owes Izon or the amount and terms of any credit provided by Izon to Customer and Customer’s compliance with those terms may be disclosed to any credit reporting agency, debt collection agency or credit provider.

- 2.6 Descriptions of Products and Services:** All descriptions, illustrations, data and specifications furnished by Izon or otherwise contained in catalogues, price lists, advertising materials or websites are by way of general description and approximate only and are not incorporated into any Customer Agreement.
- 2.7 Errors or omissions:** Clerical errors or omissions, whether in computation or otherwise in any order, quote, invoice or other documentation or correspondence, are subject to correction by Izon.
- 2.8 No reliance:** Customer's decision to purchase or lease any Product, license any Software or obtain any Service from Izon is made entirely in reliance on Customer's own skill and judgment and not in reliance on any conduct, statement, representation or warranty (written or oral) made by or on behalf of Izon or its employees, officers, agents or representatives unless set out in the applicable Customer Agreement. Customer is solely responsible for determining whether any Product, Software or Service will satisfy its requirements or will be suitable or fit for Customer's specific purpose.

3 Prices and Fees

- 3.1 Prices and fees:** The price for any Product sold by Izon to Customer, rent for any Product leased by Izon to Customer, licence fee for any Software licensed by Izon to Customer or fee for any Service provided by Izon to Customer is:
- (a) the applicable price, rent or fee specified in the Quote, if any, and confirmed in the applicable Customer Agreement; or
 - (b) the applicable price, rent or fee specified in Izon's then-current price list applicable to Customer's jurisdiction.
- 3.2 Discounts:** Any discount offered by Izon is strictly subject to Customer complying with the validity period of the applicable Quote, and with the payment terms specified in the applicable Customer Agreement. Izon reserves the right to charge Customer the full list price for the applicable Product, Software or Service if Customer fails to comply with the specified payment terms.
- 3.3 Price lists:** Izon may amend or change its price list at any time and from time to time without notice.
- 3.4 Price does not include freight, installation or training:** Unless otherwise specified in the applicable Customer Agreement, the purchase price or rent for the Products does not include the cost of delivering, insuring or installing the Products or any training on how to use any Product or Software. If the terms of delivery specified in the Customer Agreement, including any applicable Incoterm[®] 2010, require Izon to arrange and pay for the cost of shipping or insuring the Products then this amount will be added to the invoice for the sale or lease of those Products and is payable by Customer.
- 3.5 Taxes and Duties:** Any taxes and duties (including goods and services tax, sales tax, use tax, value added tax, customs duties and tariffs) assessed or levied in connection with any transaction between Izon and Customer are not included in the applicable price, rent or fee and are payable by Customer or, where, at law, the payment of any such taxes or duties is payable by Izon, the applicable price, rent or fee will be increased by the amount of the applicable taxes or duties.

4 Sale of Products

Reference to Products in this section 4 means the Products specified in the applicable Customer Agreement as being sold by Izon to Customer.

- 4.1 Sale and purchase of Products:** Izon agrees to sell to Customer, and Customer agrees to buy from Izon, the Products for the purchase price and upon the other terms and conditions specified in the Customer Agreement.
- 4.2 Title:** Unless otherwise specified in the Customer Agreement, title to the Products sold to Customer by Izon passes to Customer on delivery to Customer.

5 Lease of Products

Reference to Products in this section 5 means the Products specified in the applicable Customer Agreement as being leased by Izon to Customer.

- 5.1 Lease of Products:** Izon agrees to lease to Customer, and Customer agrees to lease from Izon, the Products for the rent, term and upon the other terms and conditions specified in the Customer Agreement.
- 5.2 Commencement of lease:** Unless otherwise specified in the Customer Agreement, the term of the Lease will commence on the date the Products are shipped to Customer.
- 5.3 Rent:** Customer is unconditionally obligated to pay all rent and other amounts due under the lease for the entire term of the lease no matter what happens, even if a Product is damaged, destroyed or if Customer can no longer use it.
- 5.4 Ownership of Products:** Until Customer purchases the Products upon the exercise of the purchase option in clause 5.11, the Products leased to Customer by Izon are and remain the property of Izon. Customer must not remove any tag or label evidencing Izon's ownership of any Product and if requested by Izon must affix any tag or identifying label evidencing Izon's ownership of any Product that Izon reasonably requires.
- 5.5 Risk of loss:** In respect of any Product leased to Customer by Izon, Customer is responsible for any loss, theft, destruction of, or damage to, that Product from any cause whatsoever and upon the occurrence of any such event Customer must pay Izon the full replacement value of the Product.
- 5.6 Location of Products:** If requested by Izon Customer must advise Izon of the location of any Product. Izon may inspect any Product during normal business hours after giving Customer reasonable notice.
- 5.7 Customer responsibilities:** Customer must:
- keep the Products in good repair, condition and working order in accordance with Izon's instructions, guidelines, warnings and recommendations, normal wear and tear excepted;
 - protect the Products from damage, normal wear and tear excepted;
 - use, service and maintain the Products in accordance with Izon's instructions, guidelines, warnings and recommendations.
- 5.8 Restrictions:** Customer must not:
- alter or modify any Product without the prior written consent of Izon;
 - sell, transfer, assign, sublease or otherwise dispose of any Product;
 - grant, create or permit to exist any lien, encumbrance or security interest in or over any Product other than those that result from any action by Izon.
- 5.9 Extension of lease term:** Unless otherwise specified in the Customer Agreement, upon the expiry of the initial term and until Customer has either fully complied with the requirements of clause 5.10 or purchased the Products in accordance with clause 5.11 the lease will continue as monthly lease, which may be terminated by either party giving the other party one month's prior written notice. The rent will be as specified in the Customer Agreement.
- 5.10 Return of Products:** Subject to Customer purchasing the Products upon the exercise of the purchase option in clause 5.11, at the expiration or termination of the lease, for whatever reason, Customer must, at its cost, arrange for the Products to be returned to Izon at an address designated by Izon in good working order for the original intended purpose of the Products and in a clean condition.
- 5.11 Purchase option:** Customer may at the expiry of the lease purchase all (but not less than all) of the Products subject to the expired lease on a "as is" basis for a purchase price agreed between Izon and Customer plus all applicable sales taxes. To exercise the purchase option in this clause Customer must give Izon not less than three months written notice prior to the expiry of the term of the lease. If Izon and Customer are unable to agree a purchase price for the Products prior to the expiry of the term of the lease then Customer may cancel the exercise of the purchase option in this clause and return the Products to

Izon in accordance with clause 5.10.

- 5.12 Repossession of Products:** Customer authorises Izon, its agents and employees and grants each of them an irrevocable licence to enter any premises where any Product may be and take possession of the Product if at the expiration or termination of the lease for whatever reason Customer fails to return the Products to Izon in accordance with clause 5.10.

6 Delivery

- 6.1 Performance:** Izon will ship any Products sold or leased to Customer within Izon's normal lead times. Izon reserves the right to ship Products by instalments. All shipping dates are approximate, not guaranteed and time is not of the essence in relation to the shipment and delivery of Products. Izon may delay the shipment of Products to Customer if Customer is in default in the payment of any amount due prior to shipment or is otherwise in default in the performance of any obligation pursuant to any Customer Agreement.
- 6.2 Terms of delivery:** Unless otherwise specified in the applicable Customer Agreement, Izon will arrange for shipment of the Products to Customer CPT (Carriage Paid To) (Incoterms® 2010), to the shipping address specified in the Customer Agreement, on a Prepay and Add basis.
- 6.3 Delivery and Risk:** Unless otherwise specified in any Customer Agreement, delivery of the Products to Customer takes place, and all risk in the Products passes to Customer, on delivery to the first carrier for shipment to Customer, irrespective of whether title remains vested in Izon.
- 6.4 Delay:** If any shipment of Products is postponed or delayed by any action or inaction of Customer for any reason, including non-payment of any amount due prior to shipment, Izon may store the Products at Customer's risk and cost until Customer has performed all of its obligations required by the applicable Customer Agreement and the Products can be shipped to Customer. All expenses incurred by Izon, such as preparation for and placement into storage, handling, inspection, preservation, insurance, storage and any taxes are payable by Customer upon submission of Izon's invoices.
- 6.5 Damage during shipping:** Izon is not liable for any Products that have been damaged, lost or stolen while being shipped to Customer. Customer is responsible for filing a claim with the applicable freight carrier and is subject to the rules of the freight carrier regarding the timing and processing of such claims.
- 6.6 Acceptance:** Unless Customer gives Izon written notice of any nonconforming Products within 14 days of receiving the Products at the shipping address specified in the Customer Agreement, the Products shall be deemed accepted by Customer and Customer waives all rights to make any claims in respect of any nonconforming Products. Customer must provide Izon with all necessary information required by Izon to assess Customer's claim of receiving nonconforming Products.
- 6.7 Return of nonconforming Products:** Nonconforming Products may not be returned to Izon except with the prior written consent of Izon, which may include additional terms, if granted. If Izon consents to the return of nonconforming Products, Customer must obtain a return advice number and a shipping address from Izon before returning any Products, return the Products in their original or equivalent packaging and pay all costs of shipping the nonconforming Products to Izon.
- 6.8 Remedies for nonconforming Products:** Customer's sole remedy and Izon's sole obligation in respect of a timely and accepted claim for nonconforming Products is limited to, at Izon's sole and absolute discretion, the repair of nonconforming Products, replacement of nonconforming Products with conforming Products or credit of Customer's account for the invoice price of the nonconforming Products.

7 License of Software

- 7.1 Limited Licence:** Subject to Customer paying any applicable licence fee, Izon grants Customer a limited, nonexclusive, non-transferable, revocable licence to download, install, run and use the Software provided by Izon solely for use in connection with the Product to which it relates upon the terms and subject to the conditions of this licence. Software is never sold by Izon.

- 7.2 Licence Fees:** Unless otherwise specified in the applicable Customer Agreement, the purchase price for any Product includes the licence fee to use the Software associated with that Product for the first five years and thereafter the continued use of the applicable Software is conditional on Customer paying the annual licence fee specified by Izon from time to time.
- 7.3 Use of Software:** Customer may only use the Software for its non-commercial personal or internal business and research purposes.
- 7.4 Third Party Products:** The Software may use, incorporate or link to software, data, information, websites or other products or services that are licensed, provided or otherwise made available by a third party (“**Third Party Products**”). Customer acknowledges that its use of any Third Party Product is at its sole risk and may be governed by separate terms and conditions (including privacy policies) specified by the provider of that Third Party Product, as those terms and conditions may be amended from time to time. Izon assumes no liability or responsibility whatsoever for any Third Party Product, including any failure of, or fault with, any Third Party Product.
- 7.5 Restrictions:** Customer must not:
- (a) copy, reproduce, modify, alter, tamper with or otherwise create derivative works of any Software provided by Izon for use in connection with any Product;
 - (b) reverse engineer, disassemble or decompile any Software or apply any other process or procedure to derive the source code of any Software;
 - (c) sell, resell, license or otherwise distribute any Software or any associated documentation to any third party;
 - (d) use any Software for any commercial purpose or any manner not authorised by the applicable Customer Agreement;
 - (e) make any Software available to, or use any Software for the benefit of, any person other than Customer;
 - (f) access or use any Software in a way intended to avoid incurring fees or exceeding usage limits;
 - (g) use any device or equipment in connection with any Software that has not been approved in writing by Izon;
 - (h) access and use any Software if Customer is a direct competitor of Izon or any of its affiliates or for the purpose of monitoring their availability, performance or functionality or for any other benchmarking or competitive intelligence purpose, except with Izon’s prior written consent;
 - (i) remove, modify or obscure any copyright notices, trade marks or other proprietary rights notices on or contained in any Software or on any associated documentation;
 - (j) make the Software available over a network where it could be downloaded by multiple users;
 - (k) cause or allow any person to do any of the acts described in this clause.
- 7.6 Change to Software:** Izon reserves the right to change, modify, discontinue or deprecate any Software, add, change or remove features or functionality of any Software or the look and feel of any Software and the way any data or information is displayed or presented or to otherwise fix bugs, enhance, update, upgrade and create new versions and releases of any Software.
- 7.7 Updates:** Izon, at its discretion, may make available future upgrades or updates to any Software. The terms of this licence apply to any software upgrades or updates provided by Izon that replace or supplement any previous version of any Software used by Customer, unless such update or upgrade is accompanied by a separate licence in which case the terms of that licence will apply.

8 Use of Products and Software

- 8.1 Regulatory Compliance:** No Product or Software has received any approval (“**Approval**”) from the United States Food and Drug Administration (“**FDA**”) or any equivalent regulatory agency or been tested by Izon for

safety or efficacy in food, drug, medical device, cosmetic, commercial or any other use. Accordingly, Customer acknowledges that the Products and Software are labelled and intended for **FOR RESEARCH USE ONLY** and **NOT FOR USE IN DIAGNOSTIC PROCEDURES**. Unless otherwise expressly stated by Izon in writing, no claim or representation is made or intended by Izon:

- (a) as to any diagnostic or other clinical use of any Product or Software;
- (b) that any Product or Software has any Approval for use in any diagnostic or other clinical procedure, or for any other use requiring compliance with any law, regulation or governmental policy (“Regulatory Laws”);
- (c) that any Product or Software will satisfy the requirements of the FDA or any other regulatory agency; or
- (d) that any Product or Software or its performance is suitable or has been validated for any clinical or diagnostic use, for safety and effectiveness, for any specific use or application, or for importation into Customer’s jurisdiction.

Customer agrees that if it elects to use a Product for a purpose that would subject Customer, its customers or any Product to the application of Regulatory Laws or any other law, regulation or governmental policy, Customer is solely responsible for obtaining any required Approvals and otherwise ensuring that the importation of the Products into Customer’s jurisdiction and Customer’s use of the Products complies with such laws, regulations and policies.

8.2 Use of Products: The Products and Software must only be used by qualified and appropriately trained personnel in strict compliance with all applicable instructions, guidelines, warnings and recommendations of Izon and industry best practice. Customer is responsible for ensuring that its employees, officers, agents, representatives and contractors have received appropriate training and have read and understood all applicable instructions, guidelines, warnings and recommendations of Izon prior to using any Product or Software. Customer is responsible for properly testing the use of any Product for any particular purpose in accordance with practices of a reasonable person who is an expert in the field and in strict compliance with all applicable instructions, guidelines, warnings and recommendations of Izon and industry best practice. Customer is also responsible for identifying all hazards associated with using any Product for any particular purpose and for warning Customer’s employees, officers, agents, representatives and contractors of any and all risks and hazards involved in using and handling any Product or Software. Where any Product is intended to be used with any associated Software Customer must only use that Product with the latest version of the applicable Software.

8.3 Restrictions on use of Products: The Products are only intended for laboratory research and evaluation purposes and Customer must not use and Product or Software for any diagnostic or clinical use or for any other commercial application or purpose, without Izon’s prior written consent. Customer must not use any third-party consumable or product with any Product.

8.4 Single Use and Limited Use Products: Certain Products supplied by Izon may only be used with certain instruments supplied by Izon and for either a single use or limited use application as indicated on the applicable Product packaging, label or insert. Customer must not use any Product otherwise than as intended.

8.5 Disposal of Products: Licencee is fully responsible for ensuring that the obsolete Equipment and/or Consumables are recycled or disposed of in accordance with the Waste Electrical and Electronic Equipment (WEEE) Directive or any other relevant laws and regulations in the countries where the Equipment and/or Consumables are being recycled or disposed of. Alternatively, obsolete Equipment and/or Consumables may be returned to our Christchurch headquarters to be processed appropriately.

9 Supply of Services

9.1 Training and Technical Assistance: At Customer’s request, Izon may, at Izon’s discretion provide Customer

with training on the use of any Product or Software and technical assistance on the use of any Product or Software for such fees and other consideration agreed to in writing by Customer and Izon. Izon makes no warranties of any kind or nature, express or implied, including any implied warranty of merchantability or fitness for any particular purpose, with respect to any training or technical assistance or information provided by Izon or Izon's personnel. Any suggestions by Izon regarding use, selection, application, or suitability of any Product or Software will not be construed as an express warranty unless specifically designated as such in writing by an officer or authorised agent of Izon.

9.2 Supply of Services: All Services will be provided by Izon to Customer in a professional and workmanlike manner.

10 Payment

10.1 Generally: All payments must be made in the currency specified in the Customer Agreement and confirmed in any invoice, in accordance with the payment instructions contained in the invoice, and in immediately available funds without any deduction, set-off or counterclaim.

10.2 Invoicing: Unless otherwise specified in the applicable Customer Agreement Izon will invoice Customer:

- (a) for the sale of Products by Izon to Customer on the date of shipment by Izon;
- (b) for the annual licence fee for any Software on the anniversary date of shipment of the applicable Product to Customer or such other date that Izon and Customer may agree in writing.

10.3 Payment Terms: Unless otherwise specified in the applicable Customer Agreement:

- (a) payment for the sale of Products by Izon to Customer, the license of any Software by Izon to Customer or the provision of any Service by Izon to Customer is due within 15 days of the date of the applicable invoice;
- (b) the rent specified in the Customer Agreement for the lease of Products by Izon to Customer is payable monthly in advance on the 10th day preceding the calendar month to which the monthly rent relates and the first month's rent must be paid to Izon prior to shipment of the applicable Product to Customer.

10.4 Method of payment: Customer may pay any amount owed to Izon by electronic funds transfer to a bank account designated by Izon, credit card or using one of the payment methods supported on the Izon Website.

10.5 Grant of security interest: Customer grants Izon a security interest in all Products sold or leased by Izon to Customer, together with all proceeds (including insurance proceeds), as security for the payment and performance of all obligations of Customer under the applicable Customer Agreement. Customer will sign any documents and provide any further information required for Izon to perfect and register its security interest in the Products in any applicable jurisdiction. Izon may file any financing statement and any other document that may be necessary to evidence and perfect its security interest in the Products in any applicable jurisdiction.

10.6 Allocation of payments: Izon may allocate amounts received from Customer in any manner Izon determines, including in any manner required to preserve any purchase money security interest it has in any Products.

10.7 Verification Statement: Customer waives the right to receive a copy of the verification statement confirming registration of a financing statement or financing change statement relating to any security interest.

10.8 Default Interest: Without prejudice to Izon's other rights and remedies, Izon may charge interest on any amount not paid by Customer when due from the due date to the date of actual payment at the rate of 1.5% per month, calculated daily and compounded monthly.

10.9 Recovery of Expenses: Customer must also pay Izon's costs and expenses (including, without limitation,

court costs, legal fees and disbursements on a solicitor and own client basis) which are incurred or payable by Izon enforcing or exercising any of its rights pursuant to any Customer Agreement including without limitation, the recovery of any amounts owed by Customer to Izon under such Customer Agreement or repossessing any Products.

11 Data Processing and Disclosure

- 11.1 **Data protection and privacy:** Customer is responsible for complying with all privacy and data protection laws in connection with the collection, storage, use and disclosure of any personal information that forms part of any data generated in connection with using any Product or Software, including implementing all necessary and prudent administrative, physical and technical safeguards to protect such personal information.
- 11.2 **Izon's Privacy Policy:** Izon's Privacy Policy, which is available on request or can be found on the Izon Website, explains Izon's practices in connection with the collection, storage, use and disclosure of personal information in relation to providing any Product, Software or Service to Customer.

12 Limited Product Warranty

- 12.1 **Limited Product warranty:** Izon warrants to Customer that originally purchases or leases any Product from Izon that the Product will be free of defects in materials and workmanship and conforms to Izon's published specification for the Product for the period specified below in relation to the applicable Product from the date of original shipment to Customer unless Customer purchases an extended warranty from Izon, in which case the warranty specified in this clause will apply until the expiry of the term specified in the extended warranty, (the "**Warranty Period**") when used normally in accordance with the instructions, guidelines, warnings and recommendations of Izon:
- (a) qNano: 24 months;
 - (b) Automatic Fraction Collector: 24 months;
 - (c) Variable Pressure Module: 24 months;
 - (d) qEV columns: until the expiration date set forth on the qEV column packaging, label or insert or 90 days if no expiry date is specified; and
 - (e) for any other Product the period specified by Izon on the applicable Product Packaging, label or insert.
- 12.2 The warranty in this clause does not apply in relation to any Product that has been repaired or altered by someone other than Izon or authorised by Izon and does not cover normal wear and tear or defects or damaged caused by improper storage, installation, application or operation, accident, abuse, misuse, neglect, operation outside the instructions, guidelines, warnings and recommendations of Izon, exposure to moisture, dampness, extreme thermal or environmental conditions or to rapid changes in such conditions, corrosion, oxidation or chemicals. If any Product fails to meet the warranty in this clause, Customer must promptly notify Izon in writing prior to the expiration of the Warranty Period. Izon will, at its option, either repair or replace the defective Product. Izon reserves the right to examine any Product to determine if it is covered by the warranty in this clause. The warranty in this clause does not cover the cost of returning the defective Product to any address designated by Izon for the purpose of assessing any warranty claim and shipping the repaired or replacement Product to Customer, all of which are payable by the Customer. Any repaired or replacement Product does not extend or renew the applicable Warranty Period.

13 Intellectual Property

- 13.1 **Proprietary Rights:** Izon and its licensors own all intellectual property rights in the Products, Software and any associated documentation. Subject to Customer's rights to use any Product or Software in accordance with these Terms and Conditions and any applicable Customer Agreement, Customer obtains no

proprietary or ownership rights in any intellectual property rights of Izon and its licensors, under the applicable Customer Agreement, to the Products, Software and any associated documentation.

- 13.2 **Suggestions:** If Customer or any of its employees, officers, contractors or agents provides any feedback or suggestion about any Product or Software, any feature or functionality of any Product or Software, Izon may use that information without restriction, even if such feedback or suggestion has been marked confidential. Customer hereby irrevocably assigns to Izon all intellectual property rights in and to such feedback and suggestions and agrees to provide Izon with any assistance it may require to document, perfect and maintain its rights in such feedback and suggestions.

14 Disclaimers

- 14.1 **Software:** Software is provided on an “as is” and “with all faults” basis. Izon does not guarantee or warrant that any Software is free of errors or defects. Izon does not have any obligation to correct any defects or problems in any Software.
- 14.2 **Availability and compatibility:** Izon does not guarantee or warrant that any Product or Software will always be accessible or available, operate in an uninterrupted manner or in combination with any other software or hardware products.
- 14.3 **Viruses and security intrusions:** Izon does not guarantee or warrant that any Software will be free from infection, viruses, destructive code, corruption, attack, interference, hacking or other security intrusion.
- 14.4 **Exclusion of warranties:** Subject to 12.1 and except as otherwise specified in any Customer Agreement and subject to any statutory warranties which cannot be excluded, to the maximum extent permitted by law Izon expressly disclaims all guarantees and warranties of any kind, whether express, implied or statutory including any guarantee or warranty as to quality, performance, merchantability or fitness for a particular purpose, title, non-infringement of any third party’s intellectual property rights or regarding results obtained through the use of any Product of Software (including, without limitation, any claim of inaccurate, invalid, or incomplete results) or any other guarantee or warranty arising from any course of dealing, performance or usage.

15 Limitation of Liability

- 15.1 **Exclusion of Liability:** Izon, its affiliates (including related companies) and their directors, officers, employees, representatives, agents, distributors, licensors and suppliers (the “Izon Group”) are not under any circumstances liable to Customer or any other person, whether in contract, tort (including negligence) or otherwise, for any cost, damage or loss, including any direct, indirect or consequential loss, loss of profits, opportunity or savings, business interruption loss, procurement of substitute Products, Software or Services, special, exemplary or punitive damages, even if Izon has been advised of the possibility of such damages, incurred by Customer or any other person or for which Customer or any other person is liable, in connection with the use of or inability to use any Product or Software, the provision or use of or inability to use any Service, errors, mistakes or inaccuracies in any data or information provided or obtained in connection with the use of any Product, Software or Service or otherwise in connection with or arising out of any Customer Agreement. The exclusion of liability in this clause is an agreed allocation of risk constituting in part the consideration for Izon’s supply of Products or Services to Customer.
- 15.2 **Limitation of Liability:** If any exclusion of liability of any person in the Izon Group set out in these Terms and Conditions is inapplicable, or is held unenforceable, then the liability of such person, whether that liability arises in contract, tort (including negligence) or otherwise, will be limited, in the case of any liability relating to any Product, to the price of that Product and, in the case of any other liability, to the GST exclusive fees paid by Customer in the 12 calendar months preceding the event or series of events giving rise to the claim of liability.

16 Suspension and Termination

16.1 Default: If:

- (a) Customer fails to pay any amount due under any Customer Agreement by the due date;
- (b) Customer breaches any of its obligations, other than an obligation referred to in clause 16.1(a), under any Customer Agreement and fails to remedy the breach (if capable of remedy) within 20 days after receiving notice from Izon requiring the breach to be remedied;
- (c) Customer is, becomes, is deemed to be or is likely to become insolvent, bankrupt or a poor credit risk or becomes subject to any bankruptcy, insolvency or reorganisation proceeding under applicable law;

then, without prejudice to Izon's other rights and remedies, Izon may, in its sole and absolute discretion, suspend the performance of its obligations under the applicable Customer Agreement or terminate the applicable Customer Agreement by written notice to Customer without any liability to Customer and payment for any Products or Services delivered or provided up to the date of the suspension or termination and any other amount payable pursuant to the applicable Customer Agreement shall immediately become due and payable. Upon the occurrence of any event specified in this clause and until all amounts that Customer owes Izon have been paid in full, Izon may, in its sole and absolute discretion and without prejudice to its other rights and remedies, stop and retrieve any Products in transit, enter any premises where any Product maybe and remove the Product without legal process or being responsible for any damage caused, and resell any or all of the Products and apply the proceeds in or towards payment of the purchase price or rent for the Products and all other amounts owing to Izon by Customer.

16.2 Effect of termination: Upon termination of any Customer Agreement that includes the license of any Software for whatever reason Customer must immediately cease using that Software and delete all copies of the Software installed on any of its computers and destroy all copies of the Software in its possession and certify in writing to Izon that it has complied with this clause.

16.3 Survival: Clauses 2.8, 4.2, 5.4, 5.5, 5.10, 5.12, 7.5, 13.2, 10.9, 16.2 and 17.2 and sections 13.1, 14 and 15 survive termination of the applicable Customer Agreement.

16.4 Recovery of Expenses: Customer must also pay Izon's reasonable costs and expenses (including, without limitation, legal fees and expenses) which are incurred Izon in evidencing, perfecting, registering, maintaining or releasing its security interest in any Products and enforcing or exercising any of its rights pursuant to this Contract, including without limitation, the recovery of any amounts owed by Buyer to Energy Mad under this Contract or repossessing the Goods.

17 General

17.1 Amendment: Izon may change these Terms and Conditions from time to time by posting a revised version of these Terms and Conditions on the Izon Website.

17.2 Confidentiality: Each party must at all times keep confidential and not directly or indirectly make or allow any disclosure to be made of any information ("**Confidential Information**") disclosed to it by a party, whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure, except to the extent (a) required by law; (b) to comply with any request of a governmental or regulatory body (including warrants or court orders); (c) that the parties otherwise agree in writing; (d) necessary to obtain the benefit of, or to carry out the obligations under or in connection with any Customer Agreement; (e) a party needs to disclose the information to its affiliates, employees, officers, agents, licensors, suppliers or professional advisors who need to know it and who have agreed in writing (or in the case of professional advisors who are otherwise bound) to keep it confidential; or (f) that information is or becomes available in the public domain without breach by a party of its confidentiality obligations under this clause or at law.

17.3 Entire Agreement: Each Customer Agreement constitutes the entire agreement, understanding and

arrangement (express and implied) between Customer and Izon relating to the subject matter of the applicable Customer Agreement and supersedes and cancels any previous agreement, understanding and arrangement, whether written or oral, relating to the subject matter of the applicable Customer Agreement.

- 17.4 Excused performance:** Izon is not liable to Customer or any other person for any failure or delay in performing any obligation under any Customer Agreement due to a cause beyond its reasonable control, including, without limitation, acts of God, force majeure, earthquakes, fires, floods or other severe weather conditions, acts or failures to act of government authorities, strikes or other labour disturbances, failures or delays caused by Izon's suppliers or vendors, war (declared or undeclared), terrorism, civil unrest, riots, epidemics or systemic electrical, Internet, telecommunications or other utility failures.
- 17.5 Governing Law:** Each Customer Agreement is governed by and is to be construed in accordance with New Zealand law and the parties submit to the non-exclusive jurisdiction of New Zealand. The United Nations Convention on the International Sale of Goods does not apply.
- 17.6 Headings:** Headings are inserted for convenience only and shall be ignored in construing these Terms and Conditions.
- 17.7 No assignment:** Customer may not assign or otherwise transfer any right or interest in any Customer Agreement to any person without the prior written consent of Izon. Any assignment in violation of this clause is void.
- 17.8 Modification:** Subject to clause 17.1, no modification to these Terms and Conditions is binding on Izon unless in writing and signed by an authorised representative of Izon.
- 17.9 Severability:** If any provision of any Customer Agreement is held to be invalid or unenforceable for any reason, the remaining provisions remain in full force and effect.
- 17.10 Waiver:** No delay or failure to act is a waiver. No waiver is effective unless it is in writing. No waiver shall be construed as a waiver of any other term or condition, nor as a waiver of any subsequent breach of the same term or condition.

These Terms and Conditions were last amended by the Izon on 29th August 2019.