

Background

The Customer has requested, and RFiD Discovery has agreed to supply Equipment and Services to the Customer pursuant to these Conditions. Each time the parties agree a Purchase Order for the supply of Equipment, Software and/or Services, a Contract will be formed between the parties which comprises these Conditions and the terms of the relevant Purchase Order, together with any other documents referenced in either document.

1. INTERPRETATION

1.1 In these Conditions, the following definitions apply:

Affiliates;	in relation to a party, any entity controlling, controlled by or under common control with such party and “control” shall have the meaning given to it in section 1124 of the Corporation Tax Act 2010.
Business Day;	a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.
Change Request;	the document to be completed by RFiD Discovery, in response to a Change requested by the Customer.
Change;	any change the Customer wishes to make to the Equipment Software and/or Services pursuant to clause 3.4 and 3.5.
Commencement Date;	has the meaning set out in clause 2.2.
Conditions;	these terms and conditions as amended from time to time in accordance with clause 19.7.
Contract;	the contract between RFiD Discovery and the Customer for the supply of the Services and the sale of Software and/or Equipment which comprises the Proposal, these Conditions and any applicable Change Request document.
Customer;	the person or firm who purchases the Equipment, Software and/or the Services from RFiD Discovery, as detailed in the Purchase Order.
Data Protection Law;	(i) the UK GDPR and Data Protection Act 2018, as amended or updated from time to time; and (ii) any successor legislation to the UK GDPR and/or the Data Protection Act 2018.
Delivery Location;	has the meaning set out in clause 6.2.
Documentation;	the user instruction manuals, technical literature and all other related materials supplied by RFiD Discovery to the Customer to enable the Customer to use the Equipment and Software.
Equipment Fees;	The fees payable by the Customer to purchase the Equipment, as detailed in the Proposal and/or any Change Request.
Equipment;	The Equipment (or any part of it) set out in the Proposal and/or any Change Request.
Fees;	the Equipment Fees, Licence Fees, Service Fees and/or the Subscription Fees as applicable.
Force Majeure Event;	has the meaning given to it in clause 18.1.
Initial Term;	the initial term of the Services, as set out in the Proposal. For Subscription Services the initial term shall begin on the date of installation of the Equipment, or where installation is carried out by the Customer, on the date of delivery of the Equipment. Where these terms apply due to the Customer renewing their Subscription Services and agreeing to be bound by these Conditions, the date the Customer’s subscription renews, as set out in the applicable Proposal, shall be the date the initial term commences. For any other Services in respect of which an Initial Term applies, the Initial Term shall begin on the date specified in the Proposal.
IP Rights;	patents, copyright, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), registered or unregistered, and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
Licence Fees;	The fees payable where the Customer purchases a perpetual licence to use the Software, as set out in the Proposal and/or any applicable Change Request.
Personal Data; Process; Processing; Data Controller; Data Processor and Data Subject;	shall have the meanings ascribed to those definitions in Data Protection Law.
Proposal;	the quotation detailing the Equipment, Software and/or Services to be supplied to the Customer by RFiD Discovery pursuant to the Contract, and such Proposal may be varied by a Change Request document.
Purchase Order	a purchase order or other written confirmation issued by the Customer to RFiD Discovery, confirming it wishes to purchase Equipment, Software and/or Services pursuant to a Proposal (and any applicable Change Request) provided by RFiD Discovery.
Renewal Period;	has the meaning given to it in clause 17.1.
RFiD Discovery Materials;	has the meaning set out in clause 10.1.7.
RFiD Discovery;	RFiD Discovery Solutions Limited (company number 14088799), whose registered office is at Stockholm Road, Sutton Fields, Hull, East Yorkshire, HU7 0XY
Service Fees;	The fees payable by the Customer to RFiD Discovery for any Services (excluding Subscription Services), as set out in the Proposal and/or any Change Request.
Services;	the services to be supplied by RFiD Discovery to the Customer, as set out in the Proposal and/or Change Request, which may include (without limitation) the Subscription Services or support and maintenance services (where specified in the Proposal/Change Request).
SLA;	the service level agreement relevant to the support and maintenance services supplied either as part of the Subscription Services or as a separate service where specified in the Proposal and/or applicable Change Request, as detailed in the Schedule to these Conditions.

Software;	the software proprietary to RFiD Discovery, including any applicable Third Party Software, which RFiD Discovery has the right to licence to its Customers, and which may be licensed to the Customer on a perpetual basis or as part of the Subscription Services, as more fully detailed in the Proposal and/or any Change Request.
Subscription Fees;	the subscription fees payable by the Customer to RFiD Discovery for the Subscription Services, as set out in the Proposal and/or any Change Request.
Subscription Services;	the provision of the Software and the maintenance and support services in respect thereof, supplied by RFiD Discovery to the Customer.
Subscription Term;	the Initial Term and any subsequent Renewal Period.
Subscription;	the subscription purchased by the Customer which entitles users to access and use the Subscription Services in accordance with the Contract.
Third-Party Software;	the software programs proprietary to third parties, which are to be provided to the Customer without modification.
UK GDPR;	has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

- 1.2 In these Conditions, a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

2. BASIS OF CONTRACT

- 2.1 By confirming that it wishes to proceed with the Proposal (which may occur by the Customer issuing a PO number to Paragon, confirming verbally or in writing that it wishes to proceed with the Proposal, or by signing the Purchase Order) the Customer is making an offer to purchase the Equipment and subscribe for the Services in accordance with these Conditions.
- 2.2 The date on which RFiD Discovery confirms it has accepted the Customer's offer (which may occur by RFiD Discovery giving the Customer notice in writing, commencing with supply of the Equipment/Services and/or by signing the Purchase Order) shall be the date on which date the Contract shall come into existence (**Commencement Date**). The parties may agree to amend a Proposal and/or make a Change pursuant to clauses 3.4 and 3.5. Following agreement of a Change by the parties, the relevant Change Request shall form part of the Contract.
- 2.3 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of RFiD Discovery which is not set out in the Contract.
- 2.4 Any samples, drawings, descriptive matter or advertising issued by RFiD Discovery and any descriptions of the Equipment or of the Services contained in RFiD Discovery's marketing literature or on its website are issued or published for the sole purpose of giving an approximate idea of the Services and/or Equipment described in them. They shall not form part of the Contract or have any contractual force.
- 2.5 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.6 Any quotation given by RFiD Discovery shall not constitute an offer, and is only valid for a period of 30 days from its date of issue.
- 2.7 All of these Conditions shall apply to the supply of both Equipment and Services except where application to one or the other is specified.

3. SERVICES

Where the Customer purchases Services, this clause 3 shall apply.

- 3.1 RFiD Discovery shall provide the Services in a professional and diligent manner, using reasonable skill and care, in accordance with good industry practice and in accordance with the Proposal, any Change Request and the SLA, where applicable.
- 3.2 RFiD Discovery use reasonable endeavours to meet any timings contained in the Proposal and/or any applicable Change Request for delivery of the Services, but it does not guarantee that the Services shall be supplied in accordance with any such timings.
- 3.3 RFiD Discovery reserves the right to alter the scope of the Services to be supplied if this is necessary to comply with any applicable law or regulatory requirement. However, if such alteration constitutes a material change to the scope of the Services, RFiD Discovery shall notify the Customer of such alteration in advance.
- 3.4 If the Customer requires a Change to the Services and/or the Equipment, the Customer will notify RFiD Discovery of its requirements in writing. Following consideration by both parties of the Customer's requirements, a Change Request document shall be prepared by RFiD Discovery outlining the nature and details of the Change including details of any impact the Change may have on the Fees, the timescales for delivery of the Services and/or the Equipment any other relevant information.
- 3.5 The Customer shall promptly consider the Change Request document and notify RFiD Discovery in writing within 15 Business Days if it wishes to proceed with the Change based on the details in the Change Request. Following any such confirmation RFiD Discovery shall implement the Change on the Customer's behalf. The Customer acknowledges that if a Change is significant, Paragon ID may need to amend the Proposal or any associated project plan.
- 3.6 Where the Customer purchases Subscription Services, the support and maintenance services detailed in the SLA shall be included as part of the Subscription Services. Where the Customer purchases a perpetual licence to use the Software, the support and maintenance services **shall not** be provided to the Customer unless the Proposal and/or any applicable Change Request expressly confirms that the Customer has purchased the support and maintenance services detailed in the SLA, and subject always to the Customer paying the applicable Service Fees.

4. LICENCE TO USE THE SOFTWARE

- 4.1 **Where the Customer purchases a subscription to use the Software and the Subscription Services**, subject always to the Customer paying the Subscription Fees, RFiD Discovery grants to the Customer a non-exclusive, non-transferable right, without the right to grant sub-licences, to use the Subscription Services during the Subscription Term solely for the Customer's internal business operations in accordance with the Proposal and/or any applicable Change Request.
- 4.2 **Where the Customer purchases a perpetual licence to use the Software (as set out in the Proposal and/or any applicable Change Request)**, subject always to the Customer payment the relevant Licence Fees, RFiD Discovery grants to the Customer a perpetual, non-exclusive, non-transferable right, without the right to grant sub-licences, to use the Software as part of the Equipment for the Customer's internal business operations, in accordance with the Proposal and/or any applicable Change Request. To avoid any doubt, where the Customer purchases a perpetual licence to use the Software, such licence does not entitle the Customer to receive support and maintenance services (as set out in the SLA) in respect of the Software, unless the Customer expressly purchases support and maintenance services as part of the Services, as detailed in the Proposal and/or any applicable Change Request. Where the Customer wishes to access the support and maintenance services for the Software, the Customer will be required to pay the Service Fees for such support and maintenance. Support and maintenance services shall be supplied for as long as the Customer pays the Service Fees for such support and maintenance services.

- 4.3 The Customer undertakes that where passwords and log in details are provided to enable users to access the Software, to take reasonable steps to ensure such log in details and passwords are kept confidential and secure; where the Software is hosted locally by the Customer, the Customer shall maintain a written, up to date list of users and provide such list to RFiD Discovery within 5 Business Days of the written request at any time or times.
- 4.4 The Customer shall not:
- 4.4.1 attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software in any form or media or by any means; or
 - 4.4.2 attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or
 - 4.4.3 access all or any part of the Software in order to build a product or service which competes with the Software; or
 - 4.4.4 license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Software (or any part thereof), to any third party.
- 4.5 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Software and, in the event of any such unauthorised access or use, promptly notify RFiD Discovery.
- 4.6 The rights provided under this clause 4 are granted to the Customer only, and shall not be considered granted to Affiliates of the Customer unless expressly agreed otherwise in the Purchase Order.
- 4.7 **Where the Customer has purchased Subscription Services in order to use the Software**, the Customer shall permit RFiD Discovery to audit the number of subscriptions used by the Customer to verify that the correct number of subscriptions have been purchased. Such audit may be conducted no more than once per quarter, at RFiD Discovery's expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Customer's normal conduct of business; if any of the audits referred to in this clause 4.7 reveal that the Customer has underpaid Subscription Fees, then without prejudice to RFiD Discovery's other rights, the Customer shall pay to RFiD Discovery an amount equal to such underpayment within 10 Business Days of the date of the relevant audit.
- 5. EQUIPMENT AND SOFTWARE**
- Where the Customer purchases Equipment clauses 5 to 8 shall apply.**
- 5.1 The Equipment to be made available to the Customer shall be as described in the Proposal and/or any applicable Change Request.
- 5.2 RFiD Discovery reserves the right to amend the specification of the Equipment and/or Software if required by any applicable statutory or regulatory requirements or for any technical reasons to ensure functionality of the Equipment and/or Software is not impaired. The Customer will be notified in such instances.
- 6. DELIVERY OF EQUIPMENT**
- 6.1 RFiD Discovery shall deliver the Equipment as specified in the Proposal, any applicable Change Request, or as otherwise agreed in writing.
- 6.2 RFiD Discovery shall facilitate delivery of the Equipment to the location set out in the Proposal, any applicable Change Request, or such other location as the parties may agree in writing (**Delivery Location**).
- 6.3 Delivery of the Equipment shall be completed on arrival of the Equipment at the Delivery Location.
- 6.4 Any dates quoted for delivery of the Equipment are approximate only, and the time of delivery is not of the essence. RFiD Discovery are not liable for any delays with delivery that are caused by a Force Majeure Event or due to the Customer failing to provide RFiD Discovery with adequate delivery instructions or any other instructions that are relevant to the supply of the Equipment.
- 6.5 It is the Customer's responsibility to arrange installation of the Equipment, unless RFiD Discovery agree in writing to install the Equipment on behalf of the Customer as part of the Services. Any such agreement will be recorded in the Proposal and/or any applicable Change Request.
- 6.6 RFiD Discovery may deliver the Equipment by instalments, which shall be invoiced and paid for in accordance with the terms of the Purchase Order. Each instalment shall form part of this Contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel the Contract or any other instalment.
- 7. QUALITY OF EQUIPMENT**
- 7.1 RFiD Discovery confirms that on delivery the Equipment shall:
- 7.1.1 be free from material defects in design, material and workmanship; and
 - 7.1.2 be of satisfactory quality (within the meaning of the Sale of Equipment Act 1979).
- 7.2 To the extent that there is any manufacturer's guarantee or warranty attached to the Equipment, RFiD Discovery shall endeavour pass the benefit of such manufacturer's guarantee or warranty to the Customer, where it is possible to do so.
- 7.3 Subject to clause 7.4, if:
- 7.3.1 the Customer gives notice in writing within a reasonable time after delivery, that some or all of the Equipment does not comply with the warranty set out in clause 7.1;
 - 7.3.2 RFiD Discovery is given a reasonable opportunity of examining such Equipment; and
 - 7.3.3 RFiD Discovery confirms the issue is covered under warranty; and
 - 7.3.4 the Customer (if asked to do so by RFiD Discovery) returns such Equipment to RFiD Discovery's place of business at the Customer's cost,
- RFiD Discovery shall, at its option, repair or replace the defective Equipment.
- 7.4 RFiD Discovery shall not be liable for the Equipment's failure to comply with clause 7.1 if:
- 7.4.1 the Customer continues to use such Equipment after giving a notice in accordance with clause 7.3.1;
 - 7.4.2 the defect occurs because the Customer has not followed RFiD Discovery's instructions relating to storage, installation, use or maintenance of the Equipment or (if there are none) good trade practice;
 - 7.4.3 the defect arises because RFiD Discovery has followed any drawing, design or specification supplied by the Customer;
 - 7.4.4 the Customer alters or repairs such Equipment, without the written consent of RFiD Discovery;

- 7.4.5 the defect arises due to fair wear and tear, wilful damage, negligence, or abnormal working conditions;
- 7.4.6 the Equipment differs from its description as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

7.5 Except as provided in this clause 7, RFiD Discovery shall have no liability to the Customer in respect of the Equipment's failure to comply clause 7.1.

7.6 These Conditions shall apply to any repaired or replacement Equipment supplied by RFiD Discovery under clause 7.3.

8. TITLE AND RISK

8.1 The risk in the Equipment shall pass to the Customer on completion of delivery.

8.2 Title to the Equipment shall not pass to the Customer when payment of the Equipment Fees has been made in full in cleared funds to the bank account directed by RFiD Discovery pursuant to clause 11.6.

8.3 Until payment for the Equipment has been received, and title to the Equipment has passed to the Customer, the Customer shall:

- 8.3.1 Only use the Equipment for its own internal purposes and any other purposes agreed in writing by the parties;
- 8.3.2 Keep the Equipment in a good and safe condition, in accordance with the requirements notified by RFiD Discovery to the Customer in the Documentation;
- 8.3.3 not sell, sub-licence, rent, hire, tamper, interfere or intentionally or recklessly damage the Equipment;
- 8.3.4 not remove, deface or obscure any identifying mark or packaging on or relating to the Equipment;
- 8.3.5 keep the Equipment fully insured against all risks for their full replacement price on RFiD Discovery's behalf from the date of delivery;
- 8.3.6 notify RFiD Discovery immediately if it becomes subject to any of the events listed in clause 17.2.2 to clause 17.2.4; and
- 8.3.7 give RFiD Discovery such information relating to the Equipment as RFiD Discovery may require from time to time and on request, during normal working hours, give RFiD Discovery access to the Equipment so that RFiD Discovery can verify that the Equipment is being used in accordance with this clause 8.3.

8.4 Until payment for the Equipment has been received, and title to the Equipment has passed to the Customer, if the Customer becomes subject to any of the events listed in clause 17.2.2 to clause 17.2.4, then, without limiting any other right or remedy RFiD Discovery may have:

- 8.4.1 the Customer's right to use the Equipment in the ordinary course of its business ceases immediately; and
- 8.4.2 RFiD Discovery may at any time:
 - 8.4.2.1 require the Customer to deliver up all Equipment in its possession; and
 - 8.4.2.2 if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Equipment are stored in order to recover them.

9. THIRD PARTY SOFTWARE

9.1 To the extent that the Software includes any Third Party Software, the Third Party Software shall be licenced to the Customer under the standard licence terms applicable to such Third Party Software, and the Customer agrees to be bound to the relevant third parties by such licence terms.

9.2 RFiD Discovery shall provide to the Customer, from time to time, copies of the Documentation containing sufficient up-to-date information for the proper use of the Software. Such Documentation may be supplied in electronic form and/or through a portal made available by RFiD Discovery.

10. CUSTOMER'S RESPONSIBILITIES

10.1 The Customer shall:

- 10.1.1 co-operate with RFiD Discovery in all matters relating to supply of the Services;
- 10.1.2 check the terms of the Proposal, any applicable Change Request and Purchase Order to ensure they are complete and accurate;
- 10.1.3 provide RFiD Discovery, its employees, agents, consultants and subcontractors, with access to the Customer's premises and facilities as reasonably required by RFiD Discovery to provide the Services;
- 10.1.4 provide RFiD Discovery with such information and materials as RFiD Discovery may reasonably require to supply the Services, and ensure that such information is accurate in all material respects;
- 10.1.5 prepare the Customer's premises for the supply of the Services and Equipment;
- 10.1.6 obtain all necessary licences, permissions and consents which may be required in relation to the Services;
- 10.1.7 keep and maintain all materials, equipment, documents and other property of RFiD Discovery (**RFiD Discovery Materials**) at the Customer's premises (including any items contained in the Customer's vehicles) in safe custody at its own risk, maintain RFiD Discovery Materials in good condition until returned to RFiD Discovery, and not dispose of or use RFiD Discovery Materials other than in accordance with RFiD Discovery's written instructions or authorisation.

10.2 If RFiD Discovery cannot perform any of its responsibilities under the Contract or is delayed from doing so as a result of any act or omission of the Customer or the Customer failing to perform any relevant obligation (**Customer Default**):

- 10.2.1 RFiD Discovery may, without limiting its other rights or remedies, have the right to suspend supply of the Equipment, Software and/or performance of the Services until the Customer rectifies the Customer Default. RFiD Discovery can rely on the Customer Default to relieve it from performing any of its obligations under the Contract to the extent the Customer Default affects the performance of such obligations;
- 10.2.2 RFiD Discovery shall not be liable for any costs or losses experienced by the Customer which arise directly or indirectly from RFiD Discovery's failure or delay to perform any of its obligations as set out in this clause 10.2; and
- 10.2.3 the Customer shall reimburse RFiD Discovery on written demand for any costs or losses experienced by RFiD Discovery which arise directly or indirectly from the Customer Default.

11. CHARGES AND PAYMENT

11.1 The Customer shall pay the Fees to RFiD Discovery in accordance with this clause 11 and the Proposal And/or any applicable Change Request.

11.2 RFiD Discovery shall invoice the Customer for the Equipment Fees, Licence Fees and Service Fees in accordance with the payment schedule detailed in the Proposal as updated by any applicable Change Request.

- 11.3 RFiD Discovery shall invoice the Customer for the Subscription Fees during the Initial Term in accordance with the payment schedule detailed in the Proposal and/or any applicable Change Request. Following expiry of the Initial Term, unless otherwise agreed in writing the Subscription Fees shall be paid annually in advance by the Customer. RFiD Discovery shall invoice the Customer for the Subscription Fees payable for each Renewal Period at least 30 days prior to each Renewal Period commencing or as otherwise agreed in writing.
- 11.4 RFiD Discovery reserves the right to:
- 11.4.1 increase the Fees, by giving notice to the Customer at any time to reflect any increase in the cost of Services to RFiD Discovery that is due to:
 - 11.4.1.1 any factor beyond the control of RFiD Discovery (including third party software costs, foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - 11.4.1.2 any Changes requested by the Customer; or
 - 11.4.1.3 any delay caused by the Customer failing to give adequate instructions or accurate information in respect of the Equipment and/or Services.
- 11.5 RFiD Discovery shall invoice the Customer for any expenses and or additional sums in respect of the Services and/or the Equipment, as detailed in the Proposal, any applicable Change Request and/or as otherwise agreed in writing with the Customer.
- 11.6 The Customer shall pay each invoice submitted by RFiD Discovery within 30 days of the date of receipt of the invoice. Payment shall be made in full and in cleared funds to a bank account nominated in writing by RFiD Discovery. Time for payment shall be of the essence of the Contract.
- 11.7 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by RFiD Discovery to the Customer, the Customer shall, on receipt of a valid VAT invoice from RFiD Discovery, pay to RFiD Discovery such additional amounts in respect of VAT.
- 11.8 If the Customer fails to make any payment due to RFiD Discovery under the Contract by the due date for payment, then, notwithstanding any other rights or remedies available to RFiD Discovery, the Customer shall pay interest on the overdue amount at the rate of 2% per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 11.9 RFiD Discovery shall have the right to increase the Subscription Fees and the daily rates on which it bases its calculations for the Service Fees no more than once in every twelve months, provided that in respect of the Subscription Fees any such increase shall not take place during the Initial Term (unless the Subscription Fees are changed in accordance with clause 11.4).
- 11.10 RFiD Discovery may increase the Equipment Fees by giving the Customer 30 days' notice in writing, if the costs of purchasing such Equipment are increased by RFiD Discovery's supplier(s). If the Customer pays the Equipment Fees prior to the expiry of such 30 day period, the increased Equipment Fees shall not be applied.
- 11.11 The Customer shall pay all amounts due under the Contract in full without any set-off.
- 12. IP RIGHTS AND OWNERSHIP**
- 12.1 All IP Rights in the Equipment, Software, Services and the Documentation shall be owned by RFiD Discovery or the relevant Third Party Provider and shall remain the property of RFiD Discovery or the relevant Third Party Software Provider.
- 12.2 All RFiD Discovery Materials are the exclusive property of RFiD Discovery.
- 12.3 The Customer shall use all reasonable endeavours to prevent any infringement of RFiD Discovery's IP Rights and the IP Rights of any Third Party Software provider and shall promptly report to RFiD Discovery any such infringement that comes to its attention. In particular, the Customer shall:
- 12.3.1 ensure that any users, before starting to use the Subscription Services and/or RFiD Discovery Materials, are made aware that the Software and RFiD Discovery Materials are proprietary to RFiD Discovery and that they may only be used in accordance with these Conditions;
 - 12.3.2 implement suitable disciplinary procedures for employees who use the Subscription Services in an unauthorised manner or make copies of the Software and/or RFiD Discovery Materials; and
 - 12.3.3 not permit third parties to have access to the Subscription Services and/or RFiD Discovery Materials without the prior written consent of RFiD Discovery and subject to any Conditions which RFiD Discovery may seek to impose.
- 12.4 RFiD Discovery shall defend, at its expense, any claim brought against the Customer alleging that the normal use or possession of the Software (excluding any Third-Party Software) infringes any Intellectual Property Rights of a third party ("Intellectual Property Claim"). Subject to the provisions of the Contract, RFiD Discovery shall indemnify the Customer in respect of any damages awarded to such third party in settlement of an Intellectual Property Claim provided that the Customer:
- 12.4.1 promptly gives RFiD Discovery written notice of the Intellectual Property Claim upon becoming aware of the same;
 - 12.4.2 makes no admission or settlement without RFiD Discovery's written consent;
 - 12.4.3 acts in accordance with RFiD Discovery's reasonable instructions and provides reasonable assistance to RFiD Discovery in order to resolve the Intellectual Property Claim; and
 - 12.4.4 give RFiD Discovery sole authority to defend or settle the Intellectual Property Claim.
- 13. DATA**
- 13.1 To the extent that it is applicable, both parties will comply with all applicable requirements of Data Protection Law. This clause 13 is in addition to, and does not relieve, remove or replace, a party's obligations under Data Protection Law.
- 13.2 For the avoidance of doubt, the purpose of the Services is not to process the Customer's Personal Data. Accordingly, there should be no, or minimal processing of Personal Data through the Services. However, to the extent that any Personal Data is processed by RFiD Discovery through the Services the provisions in this clause 13 shall apply.
- 13.3 The Customer shall own all right, title and interest in and to its Personal Data processed through the Services and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Personal Data.
- 13.4 The parties acknowledge that:
- 13.4.1 if RFiD Discovery process any personal data on behalf of the Customer when performing its obligations under the Contract, the Customer is the controller and RFiD Discovery are the processor for the purposes of Data Protection Laws;

- 13.4.2 the Customer's Personal Data shall not be transferred or stored outside the UK and EEA without the Customer's prior written consent, and any such transfers shall be conditional upon the following:
- 13.4.2.1 RFiD Discovery providing appropriate safeguards in relation to the transfer;
 - 13.4.2.2 the data subject having enforceable rights and effective legal remedies; and
 - 13.4.2.3 RFiD Discovery complying with its obligations under Data Protection Laws by providing an adequate level of protection to any Personal Data that is transferred; and
 - 13.4.2.4 RFiD Discovery complying with the Customer's reasonable instructions when processing its Personal Data.
- 13.5 RFiD Discovery shall, in relation to any Personal Data processed by it when performing its obligations under the Contract:
- 13.5.1 process that Personal Data only on the Customer's written instructions unless required otherwise by laws of any member of the European Union and/or Domestic UK Law to process such Personal Data;
 - 13.5.2 assist the Customer, at the Customer's cost, in responding to any request from a data subject to enable the Customer to comply with its Data Protection Law obligations with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
 - 13.5.3 promptly notify the Customer on becoming aware of a Personal Data breach affecting the Customer's Personal Data;
 - 13.5.4 at the Customer's written request, delete or return the Customer's Personal Data on termination of the Contract unless required by applicable law to store the Personal Data; and
 - 13.5.5 maintain records and information to demonstrate RFiD Discovery's compliance with this clause 13.
- 13.6 Each party shall ensure that it has in place appropriate technical and organisational measures, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage, having regard to the state of technological development and the cost of implementing any such measures.
- 14. CONFIDENTIALITY**
- A party (**receiving party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (**disclosing party**), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, the Equipment, the Services and/or Documentation which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause 14 shall continue in place for five years after expiry or termination of the Contract.
- 15. WARRANTY**
- Each party warrants that it has full capacity and authority, and all necessary licences, permits and consents to enter into and perform this Contract and that those signing this Contract are duly authorised to bind the party for whom they sign.
- 16. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE**
- 16.1 Nothing in the Contract shall limit or exclude either party's liability for:
- 16.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - 16.1.2 fraud or fraudulent misrepresentation;
 - 16.1.3 any matter in respect of which it would be unlawful for either party to exclude or attempt to exclude its liability.
- 16.2 Subject to clause 16.1:
- 16.2.1 Neither party shall, under any circumstances whatsoever be liable to the other, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any indirect, special or consequential losses arising under or in connection with the Contract, including (without limitation): (1) loss of profit; (2) loss of business; (3) loss of goodwill; and/or (4) loss of or corruption to data; and
 - 16.2.2 Both parties total aggregate liability to the other in respect of all direct losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the Fees paid by the Customer in the twelve months preceding the event giving rise to the claim.
- 16.3 The terms implied by sections 13 to 15 of the Sale of Equipment Act 1979 and the terms implied by sections 3 to 5 of the Supply of Equipment and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 16.4 This clause 16 shall survive termination of the Contract.
- 17. DURATION AND TERMINATION**
- 17.1 The Contract shall start on the Commencement Date and shall continue for the Initial Term. On expiry of the Initial Term, and thereafter on each anniversary of the Initial Term expiry date, the Contract shall automatically renew for further periods of twelve (12) months (or such other period as is specified in the Proposal / applicable Change Request) (each a "**Renewal Period**"). Either party may terminate the Contract by giving the other party not less than 90 days' written notice prior to expiry of the Initial Term or the Renewal Period, as applicable.
- 17.2 Without limiting its other rights or remedies, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- 17.2.1 the other party commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 30 days after receipt of notice in writing to do so;
 - 17.2.2 the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
 - 17.2.3 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or

- 17.2.4 the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 17.3 Without limiting its other rights or remedies, RFiD Discovery may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 17.4 Without limiting its other rights or remedies, RFiD Discovery may, by giving the Customer five (5) Business Days' notice in writing, suspend delivery of the Equipment / supply of the Services (including the Customer's right to access the Software) if:
- 17.4.1 the Customer fails to pay any amount due under this Contract on the due date for payment; and/or
- 17.4.2 the Customer becomes subject to any of the events listed in clause 17.2.2 to clause 17.2.4 or RFiD Discovery reasonably believes that the Customer is about to become subject to any of them.
- 17.5 On termination or expiry of the Contract for any reason:
- 17.5.1 the Customer shall immediately pay to RFiD Discovery all of RFiD Discovery's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has yet been submitted, RFiD Discovery shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- 17.5.2 where the Customer has purchased a subscription to use the Software, the Customer's licence to use the Software and receive the Subscription Services shall end and the Customer shall return all RFiD Discovery Materials within 30 days of the termination or expiry date unless RFiD Discovery confirms to the Customer in writing that this is not necessary;
- 17.5.3 where the Customer has purchased a perpetual licence to use the Software, the Customer may continue to use the Software in accordance with this Agreement, but to the extent that the Customer has received and support and maintenance services in respect of the Software, such support and maintenance services shall end on termination;
- 17.5.4 the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- 17.5.5 clauses which expressly or by implication have effect after termination shall continue in full force and effect.
- 18. FORCE MAJEURE**
- 18.1 For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of a party including but not limited to strikes, failure of a utility service or transport network, act of God, war, riot, malicious damage, epidemic or pandemic, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood or storm.
- 18.2 Neither party shall be liable to other as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
- 18.3 If the Force Majeure Event prevents either party from performing its obligations under the Contract for more than four (4) weeks, then either party shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the other.
- 19. GENERAL**
- 19.1 **Assignment and other dealings.** RFiD Discovery may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract. The Customer shall not, without the prior written consent of RFiD Discovery (such consent not to be unreasonably withheld or delayed), assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.
- 19.2 **Notices.** Notices under the Contract shall be given in writing and may be given by delivery or first class post, addressed to the receiving party at the address specified in the Purchase Order or such other address as that party may have specified to the other party in writing in accordance with this clause. Notices sent by first-class post shall be deemed to have been received within 48 hours of posting. Notices delivered by hand shall be deemed to have been received at the time of delivery.
- 19.3 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 19.4 **Waiver.** A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 19.5 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, nor constitute either party the agent of another party for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.
- 19.6 **Third parties.** A person who is not a party to the Contract shall not have any rights to enforce its terms.
- 19.7 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and Conditions shall be effective unless it is agreed in writing and signed by RFiD Discovery.
- 19.8 **Governing law.** The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law in England and Wales. The parties irrevocably agree submit to the exclusive jurisdiction of the Courts in England and Wales.

Schedule - Service Level Agreement (SLA)

This Schedule shall apply where the Customer has purchased either (1) the Subscription Services or (2) the support and maintenance services as part of the Services, subject always to the Customer paying the relevant Fees.

The following terms shall apply to the support and maintenance services supplied by RFiD Discovery in respect of the Subscription Services.

1. INTERPRETATION

In addition to the definitions in the Conditions, the following definitions apply in this SLA.

1.1 Definitions:

Customer Cause;	any of the following causes: (a) any improper use, misuse or unauthorised alteration of the Software by the Customer, including (but not limited to) attempted corrections by unauthorised personnel; (b) any use of the Software by the Customer in a manner inconsistent with Documentation or any other instructions supplied by RFiD Discovery to the Customer; (c) the use of a version or release of the Software which is out of date (being a version of the Software which is one version older than the current version of the Software); (d) Unauthorised additions to the Software which have not been supplied by RFiD Discovery (including viruses); (e) Fluctuation or failure of the electrical supply, or the environmental conditioning equipment; (f) Any accident, neglect, intentional damage, fire, sabotage, act of God, or any cause including deterioration and wear and tear; (g) Any fault or damage beyond the Customer's control.
Error;	any failure of the Software to perform the facilities or functions detailed in the Proposal and/or any applicable Change Request and includes any deviation from the norm or reduction in service through an application.
Scope of Support;	the scope of the maintenance and support services as set out in paragraph 2.1 of this SLA;
Service Levels;	the service level responses and response times referred to in paragraph 7 of this SLA.
Support Request;	a request made by the Customer for support in accordance with paragraph 4.1 of this SLA.
Support Hours	The hours during which the support and maintenance services shall be supplied being 8.30am-5.00pm on Business Days.

2. SOFTWARE SUPPORT SERVICES

2.1 As part of the maintenance and support services, RFiD Discovery shall:

- 2.1.1 use commercially reasonable efforts to correct all Errors notified to RFiD Discovery; and
- 2.1.2 provide technical support for the Software in accordance with the Service Levels.

2.2 Support and maintenance services shall be provided during the Support Hours.

2.3 If the Customer requires that support is provided by an individual whose qualification or experience is greater than that reasonably necessary to resolve the relevant Support Request, this shall be outside of the Scope of Support and RFiD Discovery reserve the right to charge the Customer additional fees in respect of such support. RFiD Discovery shall advise the Customer of this in advance.

2.4 If the Customer requires that support is provided on-site at its premises where an Error can be corrected remotely without a site visit, this shall be outside of the Scope of Support and RFiD Discovery reserve the right to charge the Customer additional fees in respect of such support. RFiD Discovery shall advise the Customer of this in advance.

2.5 RFiD Discovery may determine whether the support services requested are outside the Scope of Support. If RFiD Discovery make any such determination, it shall promptly notify the Customer.

3. FEES

3.1 The provision of support services which are deemed to be outside the Scope of Support shall be charged for at RFiD Discovery's applicable daily rates then in place.

3.2 If the Customer requests that support is supplied at the Customer's premises, RFiD Discovery shall use reasonable endeavours to accommodate such request, subject always to the Customer paying RFiD Discovery's fees in respect thereof which shall be calculated by reference to RFiD Discovery's daily rates then in force.

4. SUBMITTING SUPPORT REQUESTS AND ACCESS

4.1 The Customer may request support by raising a support ticket via the customer hub web portal or emailing rfidsupport@paragon-id.com. Each Support Request shall include a description of the problem and the start time of the Error.

4.2 The Customer will assist RFiD Discovery by providing all available documentation and such other information as may be reasonably necessary to assist in resolution of the Support Request. Where necessary, the Customer shall provide remote access to the servers dedicated to the Software for RFiD Discovery to enable RFiD Discovery to troubleshoot and solve reported faults.

5. SERVICE LEVELS

5.1 RFiD Discovery shall:

- 5.1.1 prioritise all Support Requests based on its reasonable assessment of the severity level of the problem reported; and
- 5.1.2 respond to all Support Requests in accordance with the responses and response times specified in paragraph 7 of this SLA.

5.2 The parties may, on a case-by-case basis, agree in writing to a reasonable extension of the Service Level resolution times.

5.3 RFiD Discovery shall, on request, give the Customer regular updates of the nature and status of its efforts to correct any Error.

5.4 RFiD Discovery shall have no liability and no responsibility for providing support for any Error which arises due to Customer Cause. In such instances, RFiD Discovery may, in its absolute discretion, agree to provide support in respect thereof, but RFiD Discovery shall be permitted to charge the Customer separately for the time spent by RFiD Discovery dealing with the issue based on RFiD Discovery's daily rates then in place.

6. REMEDIES

If an issue is not resolved within the relevant Service Level response time, the Customer may escalate the Support Request to RFiD Discovery’s senior management team.

7. SERVICE LEVELS

RFiD Discovery shall use reasonable endeavours to achieve the following response and resolution times. Resolution includes a complete fix or a workaround.

Categorisation	Response Time (During Support Hours)	Resolution Time (During Support Hours)
Critical: The business process can no longer continue due to reported error or deficiency of the Software, regardless of what the Customer attempts to do to remedy the problem, and that data is lost and or corrupted.	4 Support Hours	2 Business Days
Serious: The Customer’s business process can function temporarily or work around the reported error or deficiency in the Software. However, there is a serious impact on the Customer’s productivity and or the service levels that the Customer typically achieves with the Software.	6 Support Hours	5 Business Days
Minor: There has been no loss of data associated with the reported error or deficiency of the Software and the Customer’s business process can continue or work around the reported error through proper business procedures	8 Support Hours	20 Business Days

8. UPDATES

8.1 Application Software

RFiD Discovery shall provide periodic updates of the Software for the duration of the Subscription Term (where support and maintenance services are supplied as part of the Subscription Services) or where the Customer opts to purchase a perpetual licence to use the Software and pays separately for support and maintenance services for as long as the Customer pays the Services Fees for the support and maintenance services.

8.2 Timing of Updates

Updates will be released at the discretion of RFiD Discovery. The Customer shall co-operate with RFiD Discovery for the implementation of any updates.