WILKINSON COUTTS ENGINEERING TRAINING LTD (WCET) - STANDARD TERMS AND CONDITIONS

1. Definitions

Acknowledgement means WCET's written acknowledgement of Client's Order, which may be WCET's invoice, confirming supply of services subject to these terms and conditions.

Client means the party to whom the Proposal is addressed. **Contract** means the written agreement between WCET and Client for the supply of Services which incorporates in order of precedence: the Acknowledgement (if applicable), these terms and conditions, the Proposal and the Order (excluding any Client terms and conditions contained therein).

Contact Price means the total price of the Services.

Deliverable(s) means any training course, related documents or other items to be provided to Client resulting from the Services.

IPR means all patents, trademarks, trade/business names, copyright, rights in designs, database rights, software rights, trade secrets, rights in know-how and confidential information and all intellectual property rights (whether or not registered), together with rights to apply for any of these globally.

WCET means the supplier of the Services: Wilkinson Coutts Engineering training Ltd whose registered address is Bluesky Building, Arnhall Business Park, Prospect Road, Westhill, AB32 6FJ.

WCET Employees means employees, consultants and subcontractors of WCET.

Order means Client's purchase order, Proposal acceptance, request to proceed or other communication requesting the supply of Services.

Proposal means WCET written quotation or tender inviting Client to place an Order.

Services means any services to be supplied by WCET under the contract.

2. The Contract

2.1 Any Order, whether or not in response to a proposal, shall be deemed an offer subject to WCET acceptance by means of Acknowledgement. In the event WCET commences Services in advance of sending and Acknowledgement, such Services shall be governed by these terms and conditions.

2.2 Notwithstanding clause 2.1, if Client unconditionally accepts WCET unedited Proposal/unconditional acceptance and these terms and conditions shall form the entire Contract, no Acknowledgement being necessary.

2.3 Any contract between the parties shall be on the basis of these terms and conditions notwithstanding any conflicting terms and conditions sought to be applied by Client, which WCET hereby rejects. These terms and conditions prevail over any terms implied by custom, practice or otherwise supplied.

2.4 WCET shall provide Services and Client shall pay the Contract Price in response of the Services.

2.5 Unless otherwise noted herein, this Contract may only be amended, modified or waived by written agreement of the parties. Any additional work performed shall be governed by these terms and conditions.

3. Price

3.1 The Contract Price and all other amounts payable under this Contract are exclusive of VAT, sales tax and all other duties and taxes, which shall be payable in addition by Client.

3.2 Upon notice to the Client, WCET may vary the Contract Price if following the date of its Proposal there is any change in applicable rates of exchange or taxes.

3.3 If withholding taxes are imposed by any authority in respect of payments due, Client shall deduct and pay such withholding taxes on a timely basis (unless WCET has previously provided Client with evidence satisfactory to the applicable authority that tax is not applicable to such payments). If withholding taxes are deducted, Client shall pay a grossed up amount to WCET such that the net amount, after such deduction is equal to the amount that WCET would have received from Client had withholding not been applicable.

4. Payment

4.1 Unless otherwise agreed, WCET shall invoice Client upon Client booking. Payment of any invoice shall be made by Client in full, without deduction or set off, within 30 days of the date of invoice, in the currency invoiced. WCET shall not be obliged to commence the Services until this is received.

4.2 In the event of late payment(s), WCET shall be entitled to:

(i) charge interest at the rate of 8% per annum calculated on a daily basis until payment is received in clear funds, and recover any administrative costs;

(ii) suspend Services with no liability to Client as a result of such suspension. Client shall be liable to pay WCET's costs of such suspension.

5. Delivery

5.1 WCET shall endeavour to achieve any agreed dates for performance or delivery, but all such dates are estimates only and WCET shall haven liability to client in the event of failure to achieve such dates.

5.2 WCET may vary or cancel the Contract if WCET is unable to proceed as anticipated through unavailability of equipment, personnel or other reason.

5.3 Unless Client provides WCET with notice within 7 days of receipt of a Deliverable, Client shall be deemed to have accepted the Deliverable.

6. Warranty

6.1 Services shall be provided by such WCET Employees as WCET considers suitable to undertake work. WCET warrants that Services shall be undertaken using reasonable skill and care and any Deliverables shall be free from material errors or omissions, subject to:

(i) Quality and accuracy of any information and/or materials provided by the Client;

(ii) WCET shall take reasonable care to ensure the information contained in the Services and any Deliverables is accurate. However, WCET relies on third party sources and therefore, does not warrant or represent that such information is complete or free from errors or inaccuracies;

(iii) WCET shall not be liable for any failure of the Client to participate in, attend or reach any pass mark relating to any part of the Deliverables, whether internal or externally assessed.

6.2 WCET's liability is limited to the provision of corrected documents or provision of Services of the same nature as those originally provided to correct errors or omissions, subject to notice being given by Client within 3 months from completion of Services.

7. Liability

7.1 Save as stated in clause 6.1, to extent permissible at law, all warranties, conditions, guarantees or representations as to satisfactory quality, performance, merchantability, fitness for a particular purpose or otherwise, whether express or implied by statue or otherwise, oral or in writing are hereby excluded.

7.2 WCET shall in no circumstances be liable for: (i) any indirect, special or consequential loss; (ii) loss of profits; (i) loss of business; (iv) loss of product; (v) loss of use; (vi) loss of contract; (vii) loss of goodwill; (viii) punitive and/or exemplary damages; even if such loss was or should have been in WCET's contemplation upon entering the Contract.

7.3 Notwithstanding anything else contained herein, WCET does not exclude any liability for (a) death or personal injury resulting from its negligence; or (b) fraudulent misrepresentation.

7.4 WCET's liability, whether in breach of contract or in tort (including without limitation negligence) shall not exceed in the aggregate 120% of the Contract Price.

7.5 Client is advised to insure against any losses excluded or limited by clause 7

7.6 WCET shall not be liable for any claim or court proceedings which are brought against it more than 12 months after the event which is the subject of those proceedings.

8. IPR and Licence

8.1 All IPR in any Deliverables an other items produced as a result of Services shall be in the exclusive property of WCET. Client shall not disclose any Deliverable to any third party without WCET prior written consent.

8.2 Client shall flow down the obligations under clause 8 to any of its individual delegates attending and/or participating in training courses.

9. Client Obligations

9.1 Client shall provide WCET with access, free of charge, to its personnel, premises, transport, accommodation, office facilities, suitable storage space for WCET's equipment, documentation, data, information and any other material as set out in the Proposal or otherwise upon the reasonable request of WCET.

9.2 Client undertakes to provide a suitable and safe working environment for WCET Employees. WCET Employees shall observe Client's reasonable site regulations, as notified to WCET.

9.3 Client shall obtain all export/import licences, visas or other consents required, or where required to be applied for in WCET's name, Client shall provide assistance where required. Any delay or denial of such consents shall be subject to clause 11.

9.4 Client shall indemnify WCET from any and all claim and losses, including but to limited to claims made by a third party, which arise as a result of the willful, reckless or negligent act or omission of Client or its individual delegates, employees, agents or subcontractors or as a result of any breach by Client or its individual delegates, employees, agents or subcontractors of any of its obligations under the Contract.

9.5 Client warrants that no bribes (as defined under the Bribery Act 2010 and similar legislation including but not limited to the US Foreign Corrupt Practices Act, the UK Anti-Terrorism, Crime and Security Act 2001 and legislation implementing the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the United Nations Convention Against Corruption) have been or shall be offered to, paid to or received from any party or third party in connection with this Contract. Client warrants that not other offences have been or shall be committed in connection with this Contract. Client warrants that it has proper procedures and policies in place in compliance with the Bribery Act 2010 and similar legislation.

10. Term and Termination

10.1 The Contract is valid until completion of the Services.

10.2 Without prejudice to any other right or remedy, either party may terminate the Contract and any associated licenses immediately upon giving notice, if the other party:

(i) commits a breach of the Contract, that is capable of remedy, and fails to remedy the breach within 30 days of receipt of notice requesting remedy;

(ii) commits a material breach of the Contract, which cannot be remedied;

(iii) is repeatedly in breach with the Contract provided notice has been given out of the breaches;

(iv) commits any act of omission which contravenes any relevant laws;

(v) is the subject of a bankruptcy order, becomes insolvent, makes any arrangement or composition with or assignment for the benefit of creditors, goes into either voluntary (otherwise than for reconstruction or amalgamation) or compulsory liquidation, has a receiver or administrator appointed over its assets or any similar event.

In any event of termination, all sums due to WCET shall be payable immediately (including but not limited to Services performed up to date of termination and any costs incurred or committed to). Any termination or expire of this Contract shall not affect the accrued rights or liabilities of either party nor shall it affect any provision hereof which is intended to continue in force on or after such termination.

11. Force Majeure

WCET shall not be liable to Client for failure to perform any of its obligations under the Contract to the extent that such failure is a result of circumstances beyond its reasonable control. Should such circumstances continue for more than 21 days, WCET may terminate the Contract.

12. Confidentiality

12.1 Client shall keep strictly confidential all information disclosed or otherwise discovered regarding WCET and its products, software, know-how, the Deliverables and the Services expect any part of such disclosed information or data which (i) is in or comes into the public domain without breach of this Contract; (ii) Client can show (a) was in its possession or known to it prior to receipt from WCET; (b) was independently developed by or for it without use of such information; (c) was obtained by it or made available from a source other than WCET without the breach of any confidentiality obligations; or (d) is disclosed by it with the prior written approval of WCET.

12.2 Client shall flow down the obligations under clause 12 to any of its individual delegates attending training courses and shall ensure they sign WCET's confidentiality agreement if required.

13. Assignment and Subcontracting

Client shall not assign, subcontract or otherwise transfer any right or obligation of the Contract whether in whole or in part, without the consent in writing of WCET.

14. Non-Solicitation

While this Contract is in force and for a period of 12 months after completion or termination , Client shall not, directly or indirectly, seek to employ or otherwise engage the services of any WCET Employees, who have been involved in the Contract or performance of the Services.

15. Entire Agreement

Except for any applicable valid license agreements between the parties, the Contract contains the whole agreement between the parties and supersedes any pervious agreements, communications and representations. No oral representations made by WCET or WCET Employees are binding. Neither party has relied upon any representation or collateral warranty which is not set out in the Contract. All other terms and conditions are expressly excluded except those prohibited by statue.

16. Waiver

No waiver of any breach of provision of the Contract shall be held to be a waiver of any other or subsequent breach and the failure of a party to enforce any provision shall not be a waiver of any right subsequently to enforce any other provision.

17. Severability

If any of the words or provisions of this Contract is deemed invalid, illegal or unenforceable for any reason, then the Contract shall be read as if the relevant words or provisions are, to the extent required, deleted and the validity of the remaining provisions shall not be affected.

18. Notices

Any notice required to be given by either party under this Contract shall be deemed to have been given if in writing and sent by the post to the other party's registered address or any other formally notified address of the other party. Notices shall be deemed served 48 hours after posting.

Any other communication required in writing may be by post, email or fax.

19. Rights of Third Parties

No person who is not a party to the Contract shall have any rights under the Contracts (Rights of Third Parties) Act 1999 or otherwise to enforce any term of the Contract.

20. Governing Law and Jurisdiction

The Contract shall be governed, construed and shall take effect in accordance with the laws of Scotland, and all disputes arising shall be subject to the exclusive jurisdiction of the Courts of Scotland to which Client and WCET irrevocably submit.

21. Cancellation

21.1 Cancellation charges are in accordance with the following schedule:

(i) Cancellation more than 2 calendar months before course start date: no fees payable;

(ii) Cancellation 1- 2 calendar months before course start date: 50% fees payable;

(iii) Cancellation less than 1 calendar month before course start date : 100% fees payable.

21.2 For API exam preparation courses please see specific API course information document.