

G-Cloud 13

Terms and Conditions:
SAP AMS for Cloud

G-Cloud 13: SAP AMS FOR CLOUD

EPI-USE Labs: General Terms and Conditions

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1. INTRODUCTION

- 1.1 Under the Terms ("Terms") between Supplier and Customer – i.e. Crown Commercial Service (CCS) and/or Buyers, Supplier will provide services ("Services") as specified by the Customer. The Agreement includes the terms and conditions and the acceptable use policy ("Addendum A"). In the event of a conflict between the Base Terms and Addendum A, the Base Terms will govern, except where the Addendum, or a provision contained therein expressly states that it will prevail over the Base Terms.

2. DEFINITIONS AND INTERPRETATION

- 2.1 In the Terms, unless the context clearly indicates a contrary intention, the following expressions have the following meanings and cognate expressions shall have corresponding meanings:
- 2.1.1 "Affiliate" means, with respect to any entity, any other entity directly or indirectly controlling or controlled by, or under common control with, such entity. For purposes of the Terms, "control" (including the terms "controlled by" and "under common control with") means the power, directly or indirectly, to direct or cause the direction of the management and policies of such entity, whether through the ownership of voting securities, by contract or otherwise.
- 2.1.2 "Acceptable Use Policy" means the Acceptable Use Policy for the Services as specified in the G-Cloud 13 Call-Off Contract, the G-Cloud 13 Framework Agreement and/or as included in Addendum A;
- 2.1.3 "Base Components" means the hardware, virtual machines and software that Supplier makes available or licensed under a separate Addendum, if any;
- 2.1.4 "Client" means a client of the Customer;

- 2.1.5 “Content” means information, software, and data that Customer provides, including, without limitation, any information, transactions, records, files, scripts, programmes, recordings, sound, music, graphics, images, code that Customer or its Subcontractors or Services recipients create, install, upload or transfer in or through the Hosting Environment and/or Customer Components;
- 2.1.6 “Customer Components” means the hardware, software and other products, data and Content that Customer provides, including those specified in Addendums;
- 2.1.7 “Customer data” includes Customer’s collective Client personal data;
- 2.1.8 “Distinguishing Marks” means, in respect of each party, the trademarks, trade names, symbols, logos or similar identifying marks belonging to that party and, in the case of Supplier, used by them in connection with the Services and Documentation;
- 2.1.9 “Data Centre Location” means United Kingdom or Europe;
- 2.1.10 “Documentation” means the most current accompanying explanations for the Services that are provided to Customer in machine-readable format; The Documentation shall be sufficient to reasonably enable Customer personnel to use, operate and understand the use and operation of the Services;
- 2.1.11 “Fees” means the fees payable to Supplier for Services;
- 2.1.12 “Hosting Environment” means the Base Components and the Supplier provided Internet access bandwidth, collectively;

- 2.1.13 “Intellectual Property Rights” means all rights arising by virtue of, or in relation to, copyright, trade marks (registered or unregistered), patents, know-how, methodologies, Confidential Information, trade and business secrets, and any other similar rights howsoever arising in the execution of, or pursuant to, the Terms;
- 2.1.14 “Licensed Space” means space in the Data Centre Location, specified in the applicable Addendum;
- 2.1.15 “Licensors” means third parties who licence software or Licensed Space to Supplier;
- 2.1.16 “Materials” means literary or other works of authorship (such as programmes, programme listings, programming tools, documentation, reports, drawings and similar works) created during the Service performance period or otherwise (such as those that pre-exist the Service) that Supplier may deliver to Customer. “Materials” does not include licensed program products available under a subscription Addendum or their own licence agreements, or Base Components;
- 2.1.17 “Required Consents” means any intellectual property consents or approvals required to give Supplier and its Subcontractors the right or license to access, use and/or modify in electronic form and in other forms, including derivative works, the Customer Components, without infringing the ownership or Intellectual Property Rights of the providers, Licensors, or owners of such Customer Components;
- 2.1.18 “Service Centre Location” means United Kingdom
- 2.1.19 “Service Level Agreement” (“SLA”) means the commitment of quality, availability or responsibilities that Supplier provides to Customer, as explicitly stated in an applicable Addendum;

2.1.20 "Subcontractor" means a contractor, Supplier, agent, or consultant selected and retained by Supplier or Customer, respectively;

2.1.21 "Works" mean all ideas, know-how, processes, information, drawings, documents, designs, models, inventions, copyrightable material, and other tangible and intangible materials authored, prepared, created, made, delivered, conceived or reduced to practice, in whole or in part, by Customer in the course of using the Services, including without limitation computer programs, computer systems, data, and documentation.

2.2 In the Terms:

2.2.1 the singular includes the plural and vice versa and words importing one gender includes every other gender. Any reference to a juristic person includes a natural person and vice versa;

2.2.2 the clause headings are for ease of reference only and shall not affect the interpretation or construction of the Terms; and

2.2.3 if any definition contains a substantive provision conferring rights and/or obligations upon a party, then effect shall be given thereto as if it were contained in the body of the Terms.

3. SUPPLIER OBLIGATIONS

3.1 Supplier will perform Services described in the G-Cloud 13 Call-Off Contract.

3.2 Supplier may subcontract the Services or any portion thereof, or procure a licence required to deliver a Service. However, Supplier will remain responsible for the performance of the Services in accordance with the Terms.

- 3.3 Supplier shall ensure that all registration, permits, licences, approvals and other government approvals have been secured in relation to Customer's utilisation of the Services.

4. INTELLECTUAL PROPERTY RIGHTS

- 4.1 All Intellectual Property Rights in and to the Services, the Documentation and the Supplier Distinguishing Marks shall remain the exclusive property of Supplier or its Licensors. Customer shall have no right, title or interest in the items listed in the foregoing sentence except as expressly set out in the Terms.
- 4.2 Customer shall not alter, remove, cover or otherwise interfere with copyright notices or other proprietary legends that appear on programmes, data media, written documents, promotional packaging, materials in relation to the Services and documentation supplied by Supplier.
- 4.3 All information and data relating to Customer or any entity or individual associated with Customer or their operations and all material developed by Customer or its contractors remain the exclusive property of Customer.
- 4.4 All Intellectual Property Rights in all works, conceived, developed and/or produced by Customer, shall remain vested in Customer but subject to Supplier's inherent rights in and to the Services and Documentation.

5. WARRANTY

- 5.1 Supplier hereby warrants that:
- 5.1.1 It has full authority to enter into the Terms and to consummate the transactions contemplated hereby and that the Terms is not in conflict with any other agreement to which Supplier is a party or by which it may be bound;

5.1.2 All Services performed by Supplier or its agents shall be performed in a professional manner, conforming to generally accepted industry standards, by well-trained and properly equipped personnel and in compliance with all applicable laws.

5.2 **Warranty Limitation.** Notwithstanding the foregoing, the warranties in Section 5.1 will not apply:

5.2.1 to the extent that a Service interruption is due to causes that are external to the Services or otherwise beyond Suppliers's reasonable control, including, without limitation, natural disasters, fire, smoke, water, earthquakes, lightening, electrical power fluctuations or failures, or hardware or software not provided by Supplier;

5.2.2 if the Services have been neglected, misused, or otherwise used in a manner not in compliance with the Documentation or the Terms;

5.2.3 if there has been an unauthorised modification or attempted modification of the Services (other than by Supplier); or

5.2.4 if Customer has refused or otherwise failed to implement corrections, updates, enhancements, new releases, or other modifications that Supplier has provided.

5.3 **Warranty Exclusions.** Except as specifically agreed under the Terms, Supplier disclaims all other warranties, express or implied, including any warranty of satisfactory quality, merchantability or fitness for a particular purpose.

5.3.1 Supplier does not represent that the Services and Documentation are error free or operate without interruption.

5.3.2 Supplier does not make any representation or warranty with respect to Customer's capacity planning responsibilities in section 10.6.

- 5.3.3 Supplier provides Materials, non-Supplier products, and non-Supplier services WITHOUT WARRANTIES OF ANY KIND. However, non-Supplier manufacturers, suppliers, or publishers may provide their own warranties to Customer.

5.4 **Security.**

- 5.4.1 Subject to Section 7.4, Supplier shall indemnify Customer, its officers and employees, from and against damage or loss arising from the Suppliers', its agents', subcontractors' or employees' loss or unauthorised disclosure of personal data of Customer's Clients, except to the extent that the Customer or its agents, subcontractors or employees were a factor in such damage by their negligence or wilful misconduct, or errors or wrongful omissions.
- 5.4.2 Customer acknowledges that Supplier offers numerous security options, specified in Addendums. It is the Customer's responsibility to select the set of security options that it determines meet Customer's needs. Supplier will implement such selected security options as specified.
- 5.4.3 Customer acknowledges that Supplier does not control the transfer of data over telecommunications facilities, including the Internet. Supplier does not warrant secure operation of the Services or that it will be able to prevent third party disruptions of the Hosting Environment or Customer Components.
- 5.4.4 Customer agrees that Supplier shall have no liability for any provision of security-related services or advice that Supplier may voluntarily provide outside the scope of selected Services.

6. INDEMNIFICATION AND INFRINGEMENT

6.1 **Indemnification by Supplier.** Supplier shall, in its sole discretion, either defend or settle, at its own cost, any legal claim that is brought or threatened against Customer on the basis of the alleged infringement of any patent, copyright, trademark, trade secret or other Intellectual Property Right of a third party as a consequence of the use of the Base Materials or Components Supplier provides or licence to the Customer. Supplier will also reimburse Customer for all costs and damages that are finally and bindingly awarded against Customer in connection with any such legal dispute provided that:

- 6.1.1 Customer notifies Supplier in writing of any such alleged claim without undue delay; and
- 6.1.2 Customer authorises Supplier to defend, settle or otherwise manage the defence of any such claim; and
- 6.1.3 Customer provides Supplier with all relevant information and reasonable support.

6.2 **Infringement.** If an infringement of proprietary rights of a third party is alleged or, in the reasonable opinion of Supplier, likely to occur, Supplier may, in its own reasonable discretion, either:

- 6.2.1 procure for Customer the continued right to use the Materials or Base Components at no extra cost to Customer; or
- 6.2.2 replace the modified Materials or Base Components in such manner that no proprietary rights of third parties are infringed provided the Materials or Base Components continues to essentially fulfil the functional characteristics; or
- 6.2.3 if none of the foregoing alternatives can be achieved at reasonable costs, Supplier may terminate the Agreement and refund the Fees paid by Customer for the applicable Materials or for use of the applicable Base Components up to a maximum of twelve (12) months of applicable charges.

- 6.2.4 This is Suppliers' entire obligation to Customer with regard to any claim of infringement.
- 6.3 Notwithstanding the foregoing, Supplier is not responsible for third party claims based on:
 - 6.3.1 anything Customer provides which is incorporated into the Materials;
 - 6.3.2 Customer's modification of the Materials;
 - 6.3.3 the combination, operation, or use of the Materials with any product, data, or apparatus that Supplier did not provide; or
 - 6.3.4 non-Supplier hardware, software, or data, including those that may be in the Base Components.
- 6.4 **Indemnification by Customer.** Subject to Section 6.5, Customer shall, in its sole discretion, either defend or settle, at its own cost, any legal claim that is brought or threatened against Supplier on the basis of the alleged infringement of any patent, copyright, trademark, trade secret or other Intellectual Property Right of a third party as a consequence of a claim that:
 - 6.4.1 Content or Customer's use of the Services violates Customer's obligation to abide by the Acceptable Use Policy;
 - 6.4.2 Customer Components infringe that party's patent or copyright;
 - 6.4.3 is brought by a Services recipient and is related, directly or indirectly, to the Services; or
 - 6.4.4 is arising out of or related to a mechanics' lien Customer is required to cancel and discharge pursuant to the Terms.
- 6.5 The indemnity shall apply provided that:
 - 6.5.1 Supplier notifies Customer in writing of any such alleged claim without undue delay;

- 6.5.2 Supplier authorises Customer to defend, settle or otherwise manage the defence of such claim; and
- 6.5.3 Supplier provides Customer with all relevant information and reasonable support.

7. LIMITATION OF LIABILITY

- 7.1 EXCEPT TO THE LIMITED EXTENT SET FORTH IN SECTION 7.3 AND 7.4 BELOW, IN NO OTHER EVENT OR CIRCUMSTANCE SHALL SUPPLIER'S TOTAL LIABILITY TO THE CUSTOMER WHETHER ARISING OUT OF OR RELATING TO THE TERMS FOR ANY CAUSE OR CLAIM WHATSOEVER, AND REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), OR OTHERWISE, EXCEED THE ANNUAL SUBSCRIPTION OR SERVICE FEES SET FORTH IN THE APPLICABLE ADDENDUM.
- 7.2 IN NO EVENT OR CIRCUMSTANCE SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY AMOUNTS REPRESENTING LOSS OF PROFIT, LOSS OF BUSINESS, SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES OF THE OTHER PARTY, INCLUDING COSTS OR DAMAGES RELATED TO SYSTEM OF SOFTWARE DOWNTIME, LOSS OF DEVELOPMENT, PRODUCTION OR WORK STOPPAGES OR DELAYS.
- 7.3 The limitation of liability set forth in Sections 7.1 above shall not limit the indemnification, defence and hold harmless obligations of Supplier and Customer set forth in Section 6, or each party's obligations related to the Terms.
- 7.4 **Data Security Breach.** Notwithstanding Section 7.1, Supplier's total liability to Customer for a breach of Supplier's obligations under the Terms related to Customer data and Clients' personal data security, shall not exceed four (4) times the annual service fees set forth in the applicable Addendum.

- 7.5 Unless the Customer has obtained the prior written approval of Supplier, Supplier will not be responsible for:
- 7.5.1 Any modification or improvement to the Services or software by Customer to fit the particular requirements of Customer;
 - 7.5.2 The correction of any data errors resulting from actions performed by Customer or its agents; or
 - 7.5.3 The correction of any data errors as a result of misuse of the software or Services.
- 7.6 Any action by Customer for an alleged breach of the Terms by Supplier shall be instituted against Supplier within one (1) year after the cause of action had accrued failing which, Customer shall be deemed to have waived its rights to bring any such claim
- 7.7 **Remedy.** Customer's sole and exclusive remedies for any damages or losses of whatever nature and however arising and irrespective of the number of events or causes giving rise to any liability in any way connected with the Services or the use thereof shall, at Supplier's option, be:
- 7.7.1 Functionally equivalent replacement or modification of the Services;
 - 7.7.2 Performance of services to remedy the damage or loss; or
 - 7.7.3 An amount equal to the annual services fees.

8. OTHER CUSTOMER OBLIGATIONS

- 8.1 **Services Support.** Customer will comply with its responsibilities to support the Services as specified in applicable Addendums. Such obligations are to be performed at no charge to Supplier. Supplier's obligations are contingent on Customer meeting such support obligations.
- 8.2 **Representations and Warranties.** Customer represents and warrants that:

- 8.2.1 it has the requisite corporate power and authority to execute, deliver and perform its obligations under the Terms; Customer has no contractual or other obligation that (i) restricts or prohibits Customer's execution or performance of the Terms, or (ii) Customer will breach in connection with the execution or performance of the Terms; and
 - 8.2.2 its use of the Services and all Content will comply with the Acceptable Use Policy.
- 8.3 **Suspected Violations.** Supplier reserves the right to investigate potential violations of the representations and warranties in section 10.2.2. If Supplier reasonably determines that a breach of any such warranty has occurred, then Supplier may, in its sole discretion:
 - 8.3.1 restrict Customer's access to the Services;
 - 8.3.2 remove or require removal of any offending Content;
 - 8.3.3 terminate the Terms for cause; and/or
 - 8.3.4 exercise other rights and remedies, at law or in equity.
- 8.4 Notification.
 - 8.4.1 Except in an emergency or as may otherwise be required by law, before undertaking the activities in sections 10.3.1 or 10.3.2, Supplier will notify Customer providing ten days' prior written notice.
 - 8.4.2 Customer will promptly notify Supplier of any event or circumstance related to the Terms, Customer's use of the Services, or Content of which Customer becomes aware that could lead to a claim or demand against Supplier, and Customer will provide all relevant information relating to such event or circumstance to Supplier at Supplier's request.

- 8.5 **Required Consents.** Customer will promptly obtain and upon request provide to Supplier evidence that it has obtained such Required Consents. Supplier will be relieved of its obligations to the extent that they are affected by Customer's failure to obtain and provide promptly to Supplier any Required Consents.
- 8.6 **Capacity Planning.** Customer acknowledges it is its responsibility to determine whether the Services, Hosting Environment, Customer Components and their combination will meet Customer's capacity, performance, or scalability needs. Customer is responsible for planning for and requesting changes to the Hosting Environment, including any additional capacity required to support anticipated peaks in demand that may significantly increase transaction volumes, or otherwise increase system resource utilisation.
- 8.7 **Content.** Customer is solely responsible for all Content including, without limitation, its selection, licensing, accuracy, performance, maintenance, and support.

9. OTHER LICENCES AND RIGHTS

- 9.1 **Licence for Base Components.** Supplier grants Customer a nonexclusive, revocable licence to use the Base Components solely in connection with the Services as provided under the Terms. Customer agrees not to download or otherwise copy, reverse assemble, reverse compile, or otherwise translate the software portions of the Base Components, other than to make one copy for backup purposes.
- 9.2 **No Sale or Lease of Goods.** As between Customer and Supplier, Supplier retains all right, title and interest in the Base Components. No goods are sold or leased by Supplier under the Terms. If Customer desires to purchase or to lease goods from Supplier, such purchase or lease will be governed by a separate mutually acceptable written agreement between Customer and Supplier or a Supplier Affiliate.
- 9.3 **No Lease of Real Property.** The Terms is a services agreement and not a lease of any real property.

- 9.4 **No Resale.** Customer shall not resell the Services, in whole or in part. This does not prevent Customer from making the Content available to Customer's end users.
- 9.5 **No Sublicense** Customer shall not further sublicense any Licensed Space.

10. TERM AND TERMINATION

- 10.1 The Terms will be effective beginning on 12:01 a.m., GMT, on the G-Cloud 13 Call-Off Contract start date ("Effective Date") and ending at the expiration and/or termination as specified by the Expiry Date in the Order Form, unless the Agreement is terminated earlier in accordance with the terms herein.
- 10.2 Customer or Supplier may terminate the Terms for material breach of the Terms by the other upon written notice containing the specific nature and dates of the material breach. The breaching party will have thirty (30) days from receipt of notice to cure such breach, except for non-payment by Customer, which must be cured within five (5) days from receipt of notice. If such breach has not been timely cured, then the non-breaching party may immediately terminate the Terms upon written notice.
- 10.3 Either party may terminate the Terms in the event of the occurrence of any of the following termination events or if such termination is provided for elsewhere in the Agreement. The right to terminate is not exclusive and will not detract from any other rights that an aggrieved party may have.
- 10.3.1 The other party or any of its employees commits a breach of any obligation under the Terms and fails to remedy such breach to the notifying party's reasonable satisfaction within thirty (30) days of receipt after it demands that such breach be remedied.

- 10.3.2 Either party ceases to conduct business, is declared insolvent, or makes a general assignment for the benefit of its creditors, or a petition for bankruptcy filed by or against it and such petition is not dismissed within ninety (90) days thereafter.
- 10.3.3 Either Party has a material change in its ownership structure such that "voting control" is held by a new person or entity, and the new person or entity is not willing to abide by the terms of the Terms.
- 10.4 Customer may terminate the Terms for convenience by:
 - 10.4.1 providing at least six (6) months' prior written notice to Supplier; and
 - 10.4.2 paying as an early termination charge for each Service Addendum to be terminated, the amount specified in such Service Addendum or, if no amount is specified, an amount equal to three months of the applicable monthly recurring charge of such Service. Such termination charges only apply upon early termination of an initial term of any Service and do not apply to any renewal term.
- 10.5 Upon termination of the Terms for any reason:
 - 10.5.1 All Addenda pursuant to the Terms shall automatically and simultaneously terminate;
 - 10.5.2 Customer, its Customer Affiliates, and its Contractors shall immediately discontinue the use of the software and Services and any other Confidential Information and return all copies of the same to Supplier or otherwise provide Supplier with satisfactory evidence of their destruction in the form of an affidavit; and
 - 10.5.3 Any remaining unpaid Fees, and outstanding costs shall become immediately due and payable to Supplier.

- 10.6 All clauses which by their nature survive termination of the Terms or which must survive to provide the full intended benefit thereof shall survive termination of the Terms.

11. CONFIDENTIALITY

- 11.1 For the purposes of this clause any person giving information shall be referred to as "the discloser" and any person receiving information shall be referred to as "the recipient". For the purposes of this clause the phrase "personnel" or "employees" shall be deemed to include directors, personnel, agents, subcontractors, consultants, or other representatives of the recipient. Any breach of confidentiality by such persons shall be deemed to also be a breach of confidentiality by the recipient.
- 11.2 All information of a confidential nature (including, but not limited to, all information relating to the scope of the Terms, all the details of Customer and any payroll and payments data), disclosed or made available by one party to the other in connection with the Terms, whether furnished verbally or in writing or in computer language, and whether marked with proprietary legend or not, shall constitute confidential, proprietary and trade secret information (collectively referred to as "the Confidential Information") of the discloser, provided that there shall be excluded from such Confidential Information any information which is, at the time of disclosure, already in the public domain otherwise than by breach of the Terms and there shall furthermore be excluded such Confidential Information as the recipient is able to show was within its knowledge prior to the disclosure thereof.

- 11.3 The recipient shall at all times, unless otherwise agreed in writing by the discloser, hold the Confidential Information furnished by the discloser in the strictest confidence and shall use such Confidential Information solely for the purposes of performing under the Terms. The recipient and its employees shall not copy or reproduce the Confidential Information, in whole or in part, by any method whatsoever.
- 11.4 The recipient shall disclose such Confidential Information and the reports only to its own employees and professional advisers who will of necessity require it as a consequence of the implementation of the Terms, provided that prior to any such disclosure, such employees and professional advisers undertake in writing in favour of the discloser to be bound mutatis mutandis by the provisions of this clause or are bound by equivalent obligations of non-disclosure.
- 11.5 Furthermore, it is agreed by the parties that any of the Confidential Information disclosed to the recipient shall be disclosed on no basis other than the basis herein set out, more in particular the basis that the recipient shall at all times comply with the obligations under this clause 13.
- 11.6 The Terms will not preclude disclosure by a party of the Confidential Information of the other party as required by applicable law or pursuant to valid court order or other governmental directive so long as the disclosing party has, unless prohibited by law from doing so, provided to the other party prompt notice of such legal requirement, order, or directive so as to enable the other party to interpose appropriate objections thereto.

12. CHANGES

- 12.1 **Services.** Supplier may, in its reasonable discretion, change the prices, terms and conditions of applicable Addendums by giving prior notice to the Customer, as the result of:
- 12.1.1 law, regulation, or similar governmental action;

12.1.2 a ruling by a court of competent jurisdiction; or

12.2 **Acceptable Use Policy.** Supplier, in its reasonable discretion, may modify the Acceptable Use Policy upon thirty (30) days' notice to Customer. Except when such modification is required by law, regulation, or similar governmental action, or a ruling by a court of competent jurisdiction, Customer may terminate the Terms (and the affected Service Option Addendums or Exhibits) without the payment of termination charges if such modification has a material adverse effect on the Customer's use of the Services and Customer gives Supplier notice within ninety (90) days of the effective date of the modification.

12.3 **Amendments.** Except for changes pursuant to Sections 12.1 and 12.2, the Terms may be amended only by a writing signed by authorised representatives of both parties.

13. GENERAL PROVISIONS

13.1 **Entire Agreement.** The Terms constitutes the complete and exclusive statement and record of the agreement between Customer and Supplier. No prior statement, representation, warranty, inducement or the like, shall be binding on either party, unless contained herein or reduced to writing in a separate formal document and signed by the parties. Furthermore, no variation of, or addition to the Terms shall be of any force or effect unless reduced to writing and signed by the duly authorised representative of both parties.

13.2 **No Waiver.** If either party should condone any breach of any provision of the Terms or the time for performance of any obligation, it shall not thereby be deemed to have waived any preceding or succeeding breach of the same or any other provision hereof.

- 13.3 **Publicity.** Neither party shall use the name, marks and/or logos of the other in publicity, advertising, or similar activity, without the prior written consent of the other, except that Customer hereby consents to Supplier's inclusion of Customer's name in Customer listings or in promotional or marketing material or editorials as indicated in Addendum D. Such promotional, marketing and editorial material shall be published as part of Supplier's marketing or information efforts from time to time.
- 13.4 **Governing Law.** The Terms and the rights and obligations of the parties hereto shall be governed by and construed under the laws of the state or country where Supplier has its principal place of business.
- 13.5 **Construction of Contract** Since the provisions of the Terms have been settled by negotiation, the rule of construction that clauses must be interpreted against the party principally responsible for drafting will not apply.
- 13.6 Notices
- 13.6.1 Any notices to be given to the parties in terms of the Terms other than those contemplated in the day-to-day execution of the maintenance services, shall be in writing and delivered by hand during ordinary business hours or posted by prepaid registered post or transmitted by fax or email during normal business hours to the respective addresses mentioned on the front page of this document, which respective addresses the parties choose for the delivery or service of all notices, communications or legal processes arising out of the Terms. A party shall be entitled to change such address to another physical address, which change will take effect after the expiry of thirty (30) days written notice to the other party.

13.6.2 A written notice as communication actually received by either party from the other shall be an adequate written notice as communication to such receiving party notwithstanding that it was not sent to or delivered at that party's chosen domicilium citandi et executandi.

13.6.3 A notice in terms of clause 15.6.1 which was sent by fax or email will be deemed to be received on the first business day after the day of dispatch and a notice which was sent by registered post will be deemed to be received 10 days after date of posting.

13.7 Assignment and Third-Party Beneficiaries

13.7.1 Neither Party shall have any right or ability to assign, transfer, or sublicense any obligations or benefit hereunder without the written consent of the other provided.

13.7.2 Any purported assignment in violation of this section shall be null and void. The Terms shall be binding upon and inure to the benefit of the Parties hereto and their heirs, executors, administrators, successors, legal representatives, and permitted assigns.

13.7.3 Except if explicitly provided for, the Terms does not create any intended third-party beneficiary rights other than a Customer Affiliate.

13.8 **Risk of Loss.** Risk of loss for all Base Components shall at all times remain with Supplier. Risk of loss for all Customer Components shall at all times remain with Customer.

13.9 **Waiver.** The failure of one party to insist upon strict adherence to any term of the Terms on any occasion shall not be considered a waiver, nor shall it deprive that party of the right to insist later on adherence thereto. Any waiver must be in writing and signed by an authorised representative of the waiving party.

- 13.10 **Freedom of Action.** Each party is free to enter into similar agreements with others.
- 13.11 **Severability.** If any provision in the Terms is found or held to be invalid or unenforceable, then the meaning of such provision shall be construed, to the extent feasible, so as to render the provision enforceable. However, if no feasible interpretation would save such provision, it shall be deleted from the Terms and the remainder of the Terms shall remain in full force and effect. However, if the severed provision is essential and material to the rights or benefits received by either party, the parties shall use their best efforts to negotiate, in good faith, a substitute, valid and enforceable provision or agreement which most nearly affects their intent in entering into the Terms.
- 13.12 **Force Majeure.** Any delay or non-performance of any obligation arising from the Terms (other than for payment of amounts due hereunder) that is caused by conditions beyond the control of the party required to perform, shall not constitute a breach of the Terms and the time for performance of such obligation, if any, shall be deemed to be extended for a period equal to the duration of such conditions preventing performance.
- 13.13 **Personnel.** Each party is responsible for the supervision, direction, and control of its respective personnel. Supplier reserves the right to determine the assignment of its personnel. Supplier may subcontract portions of the Services to Subcontractors selected by Supplier.
- 13.14 **Dispute Resolution and Arbitration**

- 13.14.1 Should any dispute of any nature whatsoever, arise out of, or in connection with, or relating to, the Terms, then the parties agree that members of their respective senior management shall first meet and use their best endeavours to negotiate in good faith a settlement of such dispute. Should the parties fail to meet or should such negotiations fail to resolve the dispute or to agree on a process to resolve the dispute, such as mediation or arbitration, after 30 days have elapsed after such referral of the dispute, either Party may take such action as it believes appropriate.
- 13.14.2 The provisions of clause 13.14.1 will not preclude a Party from seeking urgent relief from a Court in appropriate circumstances.

Addendum “A” – Acceptable Use Policy

This Acceptable Use Policy ("Policy") outlines unacceptable use of Supplier.

This Policy is in addition to any other terms and conditions under which Supplier provides the Services to the Customer.

Supplier may make reasonable modifications to this Policy from time to time by executant providing prior written notice to Customer of such changes.

The examples listed in this Policy are not exhaustive. Prohibited uses and activities include, without limitation, any use of the Services in a manner that, in Supplier's reasonable judgement, involves, facilitates, or attempts any of the following:

1. violating any law of, or committing conduct that is tortious or unlawful in, any applicable jurisdiction;
2. gambling activities;
3. displaying, performing, sending, receiving or storing any content that is obscene, pornographic, lewd, lascivious, or excessively violent, regardless of whether the material or its dissemination is unlawful;
4. advocating or encouraging violence against any government, organisation, group, individual or property, or providing instruction, information, or assistance in causing or carrying out such violence, regardless of whether such activity is unlawful;
5. accessing, sending, receiving, displaying, performing, disclosing, storing, or executing any content a) in violation of any copyright, right of publicity, patent, trademark, service mark, trade name, trade secret or other intellectual property right, b) in violation of any applicable agreement, or c) without authorisation;
6. deleting or altering author attributions, copyright notices, or trademark notices, unless expressly permitted in writing by the owner;
7. obtaining unauthorised access to any system, network, service, or account;
8. interfering with service to any user, site, account, system, or network by use of any programme, script, command, or otherwise;

9. introducing or activating any viruses, worms, harmful code and/or Trojan horses;
10. sending or posting unsolicited messages or email, whether commercial or not, a) to any recipients who have requested that messages not be sent to them, or b) to a large number of recipients, including users, newsgroups, or bulletin boards, at one time;
11. evading spam filters, or sending or posting a message or email with deceptive, absent, or forged header or sender identification information;
12. propagating chain letters or pyramid schemes, whether or not the recipient wishes to receive such mailings;
13. holding Supplier, its affiliates, officers, employees and/or shareholders up to public scorn or ridicule; and/or
14. reselling Supplier's services, in whole or in part, to any entity or individual, without Supplier's prior written consent, or misrepresenting your relationship with Supplier.