

## FRAMEWORK SOFTWARE DEVELOPMENT AGREEMENT TERMS & CONDITIONS

### THIS AGREEMENT IS BETWEEN:

- (1) **GHYSTON LIMITED** incorporated and registered in England and Wales with company number 9304061 whose address is Beacon Tower, Colston Street, Bristol, BS1 4XE ("**Ghyston**"); and
- (2) **XXX** incorporated and registered in England and Wales with company number **XXX** whose registered office is at **XXX** "the **Client**")

### WHEREAS:

- (a) Ghyston is engaged in, amongst other activities, the development, manufacture and sale of Applications and Services (as defined below in Clause 1);
- (b) The Client and Ghyston wish to establish an overall contractual framework for the supply of such Applications and Services; and
- (c) The parties have agreed to enter into this Agreement upon the terms and subject to the conditions hereinafter contained.

### NOW IT IS HEREBY AGREED AS FOLLOWS:

#### 1 Definitions

- 1.1 In this Agreement (except where the context otherwise requires) the following definitions will apply:-

"Application"	means any application and bespoke development provided or supplied to the Client by Ghyston in performance of the Services;
"Associated Companies"	means another company which controls, is controlled by or is in common control, with a company from time to time and for this purpose "control" has the meaning given to it in Section 840 Income and Corporation Taxes Act 1988;
"Business Day"	means any day which is not a Saturday, a Sunday or a public holiday in the City of London;
"Business Hours"	means 9am to 5.30pm UK time on any Business Day;
"Change Control Procedure"	means the procedure set out in Clause 14;
"Charges"	means those charges specified in the Rate Card and / or a Work Order (as applicable);

<b>"Data Protection Legislation"</b>	means the General Data Protection Regulation (GDPR) and all other applicable data protection legislation and regulations;
<b>"Deliverables"</b>	means the Application(s) and any other deliverables to be provided by Ghyston under a Work Order;
<b>"Documentation"</b>	means the operating manuals, user instruction manuals, technical literature and all other related materials in human-readable and/or machine readable forms supplied by Ghyston as specified in the relevant Proposal;
<b>"Event of Force Majeure"</b>	means an instance of force majeure as defined in Clause 19.1;
<b>"Ghyston Technical Framework"</b>	means Ghyston's core techniques, methodology and framework used in the development and forming part of the Deliverables;
<b>"Good Industry Practice"</b>	means the exercise of that degree of skill, care and foresight which would reasonably and ordinarily be expected from a skilled and experienced contractor who is to perform the Services and deliver and install the Deliverables and who is seeking in good faith to comply with its obligations under this Agreement;
<b>"Intellectual Property Rights"</b>	means patents, trademarks, service marks, design rights, domain names, database rights, registrations and applications for registration for any of the foregoing, copyright and all rights in the nature of copyright, trade secrets, know-how and other industrial and intellectual property rights, wherever subsisting;
<b>"Methodology"</b>	means the charging and / or delivery methodologies specified in a Work Order;
<b>"Personal Data"</b>	means data that are subject to protection under Data Protection Legislation;
<b>"Proposal"</b>	means a proposal set out or cross-referenced in a Work Order;
<b>"Premises"</b>	means any of the Client's premises;
<b>"Rate Card"</b>	means the document setting out the pricing structure for the Services, attached as Schedule 1.
<b>"Relief Event"</b>	means any act or omission or delay by the Client the effect of which is materially to

prejudice the ability of Ghyston to perform its obligations in accordance with this Agreement;

**"Services"**

means all consultancy, development, support and other services supplied to the Client by Ghyston pursuant to a Work Order;

**"Specification"**

means the specification relating to the Deliverables as set out in the Proposal;

**"Third Party IPR"**

means any open source, Ghyston-owned or other third party code or software used pursuant to this Agreement and which is subject to the terms of a third party governing licence agreement;

**"TUPE"**

means the Transfer of Undertakings (Protection of Employment) Regulations 2006, as amended;

**"Work Order"**

means a document setting out services to be delivered by Ghyston to the Client.

- 1.2 The clause headings are included for convenience only and shall not affect the construction or interpretation of this Agreement;
- 1.3 Use of the singular includes the plural and vice versa;
- 1.4 Words importing a particular gender do not exclude other genders;
- 1.5 Any reference to "**persons**" includes natural persons, firms, partnerships, bodies corporate, corporations, associations, organisations, governments, states, foundations and trusts (in each case whether or not incorporated and whether or not having separate legal personality);
- 1.6 Any reference to a statute, statutory provision or statutory instrument includes a reference to that statute, statutory provision or statutory instrument together with all rules and regulations made under it as amended or consolidated as at the date of this Agreement;
- 1.7 The Schedule forms part of this Agreement and shall have effect as if set out in full in the body of this Agreement.
- 1.8 In the event of conflict between the terms of this Agreement and the terms of a Work Order, the terms of the Work Order shall prevail.

## **2 Services and Deliverables**

- 2.1 In consideration of the payment of the Charges and any other sums due hereunder and subject to Events of Force Majeure and Relief Events, Ghyston shall perform the Services in all material respects in accordance with the terms of this Agreement and the Work Order.
- 2.2 Ghyston shall provide such training to the Client in relation to the Deliverables as may be specified in a Work Order.

2.3 For the purposes of this Agreement, time shall not be of the essence.

### **3 Charges**

3.1 In consideration of the performance by Ghyston of the Services, the Client shall pay Ghyston the Charges in accordance with the provisions of this Clause 3 subject to any contrary provision in the relevant Work Order.

3.2 Ghyston shall issue invoices for the Charges in accordance with the invoicing procedure set out herein or the Work Order.

3.3 All invoices rendered hereunder shall be paid in full within 14 days from the date of invoice.

3.4 No delay in payment to the Client by any third party will affect the Client's payment obligations hereunder.

3.5 If the Client fails to pay any sum due under this Agreement or any Work Order within 14 days of its due date, Ghyston will be entitled to charge interest on a daily basis on all overdue amounts from the date of such failure until payment (both before and after judgement) at an annual rate 4% above the base rate for the time being in force of Barclays Bank plc.

3.6 Where a bona fide dispute arises as to the amount of all or part of an invoice, such disputed amount shall be payable within 28 days of such dispute being resolved to the reasonable satisfaction of both parties and any undisputed amount shall remain payable in accordance herewith.

3.7 All Charges and other amounts payable under this Agreement are exclusive of VAT and any other taxes. Such taxes, where applicable, will be shown separately on Ghyston's invoice and will be paid by the Client at the rate and in the manner prescribed by law.

3.8 All reasonable travel and living expenses incurred by Ghyston personnel for work carried out away from Ghyston's normal place of business will be recharged to the Client.

### **4 Personnel**

4.1 At all times Ghyston personnel who are engaged in the performance of the Services and the delivery and installation of the Deliverables will remain under the employment and management of Ghyston, whether or not their activities are carried out on the Premises.

4.2 Ghyston shall ensure that its personnel abide by safety and security rules in operation at the Premises and notified to Ghyston and shall take all reasonable precautions to ensure that the provision of the Services and delivery and installation of the Deliverables at the Premises does not endanger the health and safety of the Client's personnel.

4.3 If any Ghyston personnel designated to provide any of the Services should become unavailable or otherwise be unable to complete the relevant work, Ghyston will use its reasonable endeavours to replace such personnel within a reasonable time but shall not be liable for any failure to do so having regard to its other commitments and priorities.

4.4 During the course of this Agreement and until the expiration of twelve months from the later of:

4.4.1 the date of termination or expiry of this Agreement; or

4.4.2 the date that any such individual shall cease to be an employee of or contractor to a party,

the Client shall not directly or indirectly engage any employee or contractor who worked at any stage during the term hereof for the other party. The Client agrees that if it employs or otherwise engages any person contrary to the provisions of this clause it shall be liable to pay to Ghyston liquidated damages (agreed to be a genuine and reasonable pre-estimate of loss and not of the nature of a penalty) equal to such person's annual salary at the time of leaving Ghyston.

## **5 Documentation**

5.1 Ghyston shall provide to the Client from time to time copies of the Documentation specified in the Work Order containing sufficient up-to-date information for the proper use of the Deliverables.

5.2 The Client may make such further copies of the Documentation as are reasonably necessary for the use and maintenance of the Deliverables and for training the Client's personnel in use of the Deliverables.

5.3 The Client may provide copies of the Documentation to any third party who needs to know the information contained in it.

## **6 Term and Termination**

6.1 Subject to Clauses 6.2 and 6.4, this Agreement will remain in force until such time as the parties determine that no further Services are to be provided or on the anniversary of the completion of a Work Order if no further Services have since been provided and no agreement has been reached during that twelve month period to provide further Services under any new Work Order and such Services are due to be provided.

6.2 Either party may terminate any Work Order for convenience by giving the other party not less than 3 months' written notice to that effect.

6.3 In the event of termination pursuant to Clause 6.2 above, the Client will pay Ghyston for all completed work, all work in progress and all work reasonably planned according to the Work Order(s) then in force up to the effective date of termination.

6.4 Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate the Agreement without liability to the other if:

6.4.1 the other party commits a material breach of the Agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or

6.4.2 an order is made or a resolution is passed for the winding up of the other party, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order of the other party; or

6.4.3 an order is made for the appointment of an administrator to manage the affairs, business and property of the other party, or documents are filed with a court of

competent jurisdiction for the appointment of an administrator of the other party, or notice of intention to appoint an administrator is given by the other party or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or

- 6.4.4 a receiver is appointed of any of the other party's assets or undertaking, or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the other party, or if any other person takes possession of or sells the other party's assets; or
  - 6.4.5 the other party makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way, or becomes bankrupt; or
  - 6.4.6 the other party ceases, or threatens to cease, to trade; or
  - 6.4.7 the other party takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.
- 6.5 Termination of the Agreement, however arising, shall not affect or prejudice the accrued rights or obligations of the parties as at termination or the continuation of any provision expressly stated to survive in Clause 6.6, or implicitly surviving, termination.
- 6.6 The following provisions shall survive termination:
- Clause 3 – Charges
  - Clause 9 – Intellectual Property Rights;
  - Clause 11 – Warranties;
  - Clause 13 – Liability;
  - Clause 15 – Confidentiality and Publicity;
  - Clause 21 – TUPE;
  - Clause 27 – Data Security.
- 6.7 In the event that this Agreement is terminated as provided for herein:
- 6.7.1 each party shall return to the other party all tangible or other property belonging to the other party then in its possession, custody or power; and
  - 6.7.2 each party shall repay forthwith to the other party all monies paid up to and including such date of termination other than monies properly paid in respect of any obligations previously performed in accordance with this Agreement.

## **7 Delays by the Client**

- 7.1 Where any delay in the performance of the Services or the delivery and installation of the Deliverables by Ghyston is caused directly or indirectly by the Client's actions any indicative time for performance of the Services or the delivery and installation of the Deliverables as agreed by the parties shall be extended by a period of time equivalent to the delay caused directly or indirectly by the Client's actions.

- 7.2 Should Ghyston be prevented from or delayed in proceeding with the performance of any Services by the Client for more than 28 days (per event, or per series of connected events), Ghyston shall be entitled to be reimbursed by the Client for all direct costs reasonably incurred by Ghyston from the end of that 28 day period until the delay ceases, provided that no claim shall be made under this clause unless Ghyston has, within fourteen (14) days after the event giving rise to the claim, given notice to the Client that it is being delayed and that should the delay not cease that it is its intention to make such a claim.

## **8 Personal Data**

- 8.1 To the extent that it processes Personal Data on behalf of the Client, Ghyston undertakes:
- 8.1.1 to use and/or hold such Personal Data only as strictly necessary for the purposes of providing the Services;
  - 8.1.2 not to modify, amend or alter the contents of such Personal Data other than as strictly necessary for the purposes hereof;
  - 8.1.3 not to disclose or permit the disclosure of any such Personal Data to any third party unless specifically authorised in writing by the Client;
  - 8.1.4 to take all reasonable steps to safeguard such Personal Data;
  - 8.1.5 to comply in all respects with Data Protection Legislation;
  - 8.1.6 not to do anything, nor permit anything to be done, which might jeopardise or contravene the terms of any data protection registration of the Client; and
  - 8.1.7 to return all copies of such Personal Data to the Client on demand and in any event on completion of the Services.
- 8.2 To the extent that, on behalf of the Client, Ghyston processes Personal Data that is subject to the GDPR, Ghyston undertakes:
- 8.2.1 to process the Personal Data only on documented instructions from the Client, including with regard to transfers of Personal Data to a third country or an international organisation, unless required to do so by law in which case, Ghyston shall inform the Client of that legal requirement before processing, unless that law prohibits such information on important grounds of public interest;
  - 8.2.2 to ensure that persons authorised to process the Personal Data have committed themselves to confidentiality;
  - 8.2.3 to take, at the Client's expense, all measures required pursuant to Article 32 of the GDPR;
  - 8.2.4 not to engage another processor to process the Personal Data without the consent of the Client and to ensure that any such processor shall be subject to the same obligations under the GDPR as Ghyston in respect of the Personal Data;
  - 8.2.5 taking into account the nature of the processing, to assist the Client by appropriate technical and organisational measures, insofar as is reasonably

possible and at the Client's reasonable, pre-agreed expense, for the fulfilment of the Client's obligation to respond to requests for exercising the data subject's rights laid down in Chapter III of the GDPR;

8.2.6 to assist the Client, at the Client's expense, in ensuring compliance with the obligations pursuant to Articles 32 (Security of Processing), 33 (Notification of a Personal Data Breach to the Supervisory Authority), 34 (Communication of a Personal Data Breach to the Subject), 35 (Data Protection Impact Assessment) and 36 (Prior Consultation) of the GDPR taking into account the nature of processing and the information reasonably available to Ghyston;

8.2.7 to delete or return, at the choice of the Client, all Personal data to the Client after the end of the provision of services relating to processing, and delete existing copies unless applicable law requires storage of the Personal Data. The Client accepts that deletion of Personal Data will be in accordance with, and to the timescales defined in, Ghyston's then current policy on data deletion. Any deletion not in accordance with said policy will be at the Client's expense;

8.2.8 to make available to the Client, at the Client's expense, all information reasonably necessary to demonstrate compliance with the obligations of Article 28 of the GDPR.

## **9 Intellectual Property Rights**

9.1 Should the Client (or any person or entity other than Ghyston) make any modifications to the Application, Ghyston shall not be responsible for any resulting incompatibility with any hardware or software products.

9.2 Subject to any Third Party IPR and Ghyston's Technical Framework, in consideration of payment of the associated Charges, Ghyston hereby assigns to the Client all Intellectual Property Rights in the Deliverables whether created before or after the date of this Agreement, together with all rights of action, remedies, powers and benefits relating to such Intellectual Property Rights and the right to be registered as the proprietor of any applications for registered protection of such Intellectual Property Rights.

9.3 At the request and reasonable cost of the Client, Ghyston will do all further acts and execute all documents that may be necessary under the law of any country to ensure a complete and effective assignment of the Intellectual Property Rights under Clause 9.2.

9.4 Ghyston shall procure that use of Third Party IPR by the Client is permitted under the terms of the governing licence or by way of a royalty-free perpetual irrevocable grant from the owner. Ghyston hereby grants to the Client a worldwide, royalty-free, non-exclusive, irrevocable licence to use the Ghyston Technical Framework within the Deliverables for the purpose of the Client's use of the Deliverables as permitted in this Agreement.

9.5 The Client shall ensure that all copies of the Third Party IPR bear a clear and prominent notice that the relevant third party is the owner of the Intellectual Property Rights therein.

## **10 Methodology**

The Methodology applicable to any particular Services will be specified in the relevant Work Order.



## **11 Warranties**

- 11.1 Ghyston represents and warrants to the Client that:
- 11.1.1 the Deliverables, once delivered and installed will, subject to the effects of any Relief Event, be substantially free from major defects in design and workmanship;
  - 11.1.2 the Services will be provided by Ghyston in accordance with Good Industry Practice;
  - 11.1.3 the Deliverables (except for any Third Party IPR) will not infringe the Intellectual Property Rights of any third party;
  - 11.1.4 Ghyston has obtained all necessary licences to enable it to perform the Services and to enable the Client to use the Deliverables.
- 11.2 Ghyston makes no warranty, representation or undertaking in respect of the Deliverables, save as set forth in this Agreement, and all warranties and representations (including without limitation any as to fitness for any particular purpose, satisfactory quality or merchantability of the Deliverables) are hereby excluded to the fullest extent permitted by law.

## **12 Ghyston Policies**

From time to time and to assist with the provision of the Services, it may be necessary for the Client to work from Ghyston's offices and/or connect to Ghyston's internal network or servers. The Client hereby undertakes that when doing it will comply with Ghyston's then current "**Information Security Policy**".

## **13 Liability**

- 13.1 The following provisions set out the entire financial liability of Ghyston (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Client in respect of:
- 13.1.1 any breach of the Agreement;
  - 13.1.2 any use made by the Client of the Services, the Deliverables or any part of them; and
  - 13.1.3 any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Agreement.
- 13.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Agreement.
- 13.3 Nothing in this Agreement shall exclude or limit a party's liability for death or personal injury caused by its negligence or for fraudulent misrepresentation.
- 13.4 Subject to Clauses 13.2 and 13.3, Ghyston shall not be liable, whether in tort (including for breach of statutory duty), contract, misrepresentation or otherwise for:
- 13.4.1 loss of profits; or
  - 13.4.2 loss of business; or

- 13.4.3 depletion of goodwill or similar losses; or
  - 13.4.4 loss of anticipated savings; or
  - 13.4.5 loss of goods; or
  - 13.4.6 loss of contract; or
  - 13.4.7 loss of use; or
  - 13.4.8 loss or corruption of data or information; or
  - 13.4.9 any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.
- 13.5 Subject to Clauses 13.2 and 13.3, Ghyston's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Agreement shall be limited to the lower of:
- 13.5.1 three times the total of the Charges covering the affected Work Order(s); and
  - 13.5.2 £3 million.
- 13.6 The parties agree that the limitations on liability contained in this clause have been subject to commercial negotiation and are reasonable in all the circumstances.

## **14 Change Control Procedure**

If applicable, the procedures governing any changes to any agreed scope of work will be as set out in the relevant Work Order.

## **15 Confidentiality and Publicity**

- 15.1 Each party recognises that under this Agreement it may receive trade secrets and/or confidential or proprietary information belonging to the other. Subject to the exclusions detailed in Clause 15.3, all such information which is designated as confidential or which is otherwise clearly confidential in nature constitutes "**Confidential Information**".
- 15.2 Each party agrees not to divulge Confidential Information belonging to the other or to any third party, without the other party's prior written consent.
- 15.3 The following shall not be Confidential Information for the purposes of this clause:
- 15.3.1 information which is in, or which comes into, the public domain otherwise than by reason of a breach of this Agreement or of any other duty of confidentiality relating to that information;
  - 15.3.2 information obtained from a third party without that third party being under an obligation (express or implied) to keep the information confidential;
  - 15.3.3 information which is lawfully in the possession of the other party before the date of this Agreement and in respect of which that party is not under an existing obligation of confidentiality.
- 15.4 Each party shall be permitted to disclose Confidential Information to the extent that it is required to do so:
- 15.4.1 to enable the disclosing party to perform its obligations under this Agreement;
  - 15.4.2 by any applicable law or by a court, arbitral or administrative tribunal in the course of proceedings before it;

- 15.4.3 by any regulatory body (including any investment exchange) acting in the course of proceedings before it or any regulatory body (including any investment exchange) acting in the course of its duties, or
- 15.4.4 in order to give proper instructions to any professional adviser of that party who also has an obligation to keep any such Confidential Information confidential.
- 15.5 The obligation in Clause 15.2 above will survive the expiry or termination of this Agreement for a period of 5 years or, in respect of any particular item of Confidential Information, until such earlier time as that item of Confidential Information reaches the public domain otherwise than by reason of a breach of this Agreement or of any other duty of confidentiality relating to that information.
- 15.6 Each party shall ensure all relevant employees, agents and sub-contractors are aware of the confidentiality of the Confidential Information and take all such steps to ensure compliance by its employees, agents and sub-contractors with these confidentiality provisions.
- 15.7 Either party may publicise the existence of this Agreement, but may not disclose the terms and conditions enclosed herein.
- 15.8 The Client hereby grants Ghyston permission to use its name and logo within Ghyston's marketing material and agrees to provide a suitable digital image of its logo on request.
- 15.9 Where any documentation deliverables are created by Ghyston under this Agreement the Client shall grant, and does hereby grant Ghyston permission to distribute suitably anonymised versions of all such documents for the purpose of marketing Ghyston's services to selected organisations not in competition with the Client, subject to Ghyston allowing the Client the opportunity to review the anonymised documents prior to distribution.
- 15.10 On completion of each Work Order, Ghyston may elect to write a case study describing in overview the problems solved and technologies used in performing the Services, and may request a testimonial from the Client as to Ghyston's performance. Subject to the Client being satisfied with the work performed by Ghyston and the text of the case study, the Client shall provide a testimonial and shall grant Ghyston permission to publish the case study and testimonial on Ghyston's website and in Ghyston's other marketing material for the purpose of marketing Ghyston's services to other organisations.

## **16 Intellectual Property Rights Indemnity**

- 16.1 Subject to the provisions of Clauses 13.5, 16.2 and 16.5, Ghyston will indemnify the Client and keep it indemnified from and against any and all claims made against the Client alleging that the use of the Application(s) permitted under this Agreement infringes the Intellectual Property Rights of a third party. Such indemnity will include all losses, costs and expenses incurred by the Client as a consequence of such claim.
- 16.2 Immediately upon becoming aware of a claim which might give rise to any liability on Ghyston to indemnify the Client under Clause 16.1 the Client shall:
- 16.2.1 give written notice of the claim to Ghyston;
- 16.2.2 allow Ghyston to assume the control and conduct of the defence and settlement of the claim and make no admissions in respect thereof; and

- 16.2.3 at Ghyston's expense give such reasonable assistance as may reasonably be required by Ghyston in the defence, settlement or compromise of the claim.
- 16.3 In connection with the control or conduct of the defence and settlement of the claim Ghyston shall keep the Client informed of relevant matters.
- 16.4 In the event that a final judgment is obtained in respect of the claim against the Client, Ghyston must either:
- 16.4.1 procure for the Client the right to continue using the Application in the manner contemplated by this Agreement; or
- 16.4.2 replace or modify the Application so that it no longer infringes the rights of any third party (provided that any such replacement or modification of the Application shall not materially affect the functionality of the Application);
- 16.5 The indemnity contained in Clause 16.1 shall not extend to Third Party IPR or any claim which arises as a result of any modifications to the Application made by any person other than Ghyston, or its employees or agents.

## **17 Set-off**

All amounts due under this Agreement shall be paid in full without any deduction or withholding other than as required by law and the Client shall not be entitled to assert any credit, set-off or counterclaim against Ghyston in order to justify withholding payment of any such amount in whole or in part.

## **18 Waiver and Remedies**

- 18.1 Any failure to exercise or any delay in exercising a right or remedy provided by this Agreement or at law or in equity shall not constitute a waiver of the right or remedy or a waiver of any other rights or remedies. A waiver of a breach of any of the terms of this Agreement or of a default under this Agreement shall not constitute a waiver of any other breach or default and shall not affect the other terms of this Agreement.
- 18.2 The rights and remedies provided by this Agreement are cumulative and (subject as otherwise provided in this Agreement) are not exclusive of any rights or remedies provided at law or in equity.

## **19 Force Majeure**

- 19.1 *"Event of Force Majeure"* means an event which falls within one or more of the following categories:
- 19.1.1 riot, civil unrest, military action or terrorism;
- 19.1.2 damage to or destruction of premises or equipment;
- 19.1.3 earthquake, storm, flood or other natural disaster;
- 19.1.4 deliberate sabotage of, or malicious damage to equipment or data (not attributable to Ghyston or any of its employees);

- 19.1.5 industrial action, strikes or lock-outs by employees of third parties (excluding suppliers or sub-contractors of Ghyston except where no substitute is reasonably available);
- 19.1.6 inability to obtain supplies of power, fuel, or transport;
- 19.1.7 exercise of emergency powers by any United Kingdom governmental authority whether national, regional or local.
- 19.2 Either party shall be released from its obligations (other than an obligation to pay money) to the extent that performance thereof is delayed hindered or prevented by any circumstances beyond its reasonable control.
- 19.3 The party claiming to be affected by an Event of Force Majeure shall not be entitled to invoke the provisions of Clause 19.2 unless it fully performs the following obligations, namely:
  - 19.3.1 on becoming aware of any Event of Force Majeure which gives rise, or which is likely to give rise, to any failure or delay in the performance of its obligations under this Agreement, it notifies the other party by the most expeditious method then available, giving details of the Event of Force Majeure, the obligations on its part which are affected and its reasonable estimate of the period for which such failure or delay shall continue;
  - 19.3.2 it provides written confirmation and reasonable evidence of such Event of Force Majeure within 10 Business Days of notification under sub-clause 19.3.1; and
  - 19.3.3 it takes all reasonable steps to prevent, avoid, overcome and mitigate the effects of such Event of Force Majeure.
- 19.4 If a party is prevented from performing its obligations under this Agreement by an Event of Force Majeure which continues for more than 3 months then either party shall be entitled to terminate this Agreement without liability to the other party forthwith on giving written notice of termination to the other party.

## **20 No Partnership/Agency**

Nothing in this Agreement is intended to create a partnership or joint venture of any kind between the parties, or to authorise either party to act as agent for the other. Save where expressly so stated in this Agreement, neither party shall have authority to act in the name or on behalf of or otherwise to bind the other.

## **21 TUPE**

- 21.1 The parties do not envisage that TUPE shall apply in respect of the commencement of the provision of the Services by Ghyston pursuant to this Agreement.
- 21.2 Notwithstanding 21.1, in the event that TUPE is found or alleged to apply so as to transfer from the Client to Ghyston the contract of employment of any employee, the following provisions shall apply:
  - 21.2.1 Ghyston shall promptly notify the Client in writing, upon becoming aware of any such event

21.2.2 the Client shall indemnify and hold Ghyston harmless in respect to any and all liabilities, losses and costs falling on Ghyston in respect of such employees by virtue of the application of TUPE.

## **22 Assignment and Sub-contracting**

- 22.1 Neither party may assign any benefit or obligation arising under this Agreement, without the prior written consent of the other party (which consent shall not be unreasonably withheld or delayed).
- 22.2 Any purported assignment which does not comply with the terms of this clause shall, as between the parties to this Agreement, be null and void.

## **23 Entire Agreement**

- 23.1 This Agreement, together with any Work Orders entered into by the parties, constitute the entire agreement and understanding between the parties in respect of the matters dealt with in them and supersedes cancels and nullifies any previous agreement between the parties relating to such matters notwithstanding the terms of any previous agreement or arrangement expressed to survive termination.
- 23.2 Without prejudice to any liability for fraudulent misrepresentation or fraudulent misstatement, each of the parties acknowledges and agrees that in entering into this Agreement, and in respect of the documents referred to in it, it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to this Agreement or not) other than as expressly set out in this Agreement. The only remedy available to it for breach of the warranties shall be for breach of contract under the terms of this Agreement.

## **24 Variation**

No variation of this Agreement or of any of the documents referred to in it shall be valid unless it is in writing and signed by or on behalf of each of the parties.

## **25 Severance**

- 25.1 If any provision of this Agreement shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions of this Agreement which shall remain in full force and effect.
- 25.2 If any provision of this Agreement is so found to be invalid or unenforceable but would be valid or enforceable if some part of the provision were deleted, the provision in question shall apply with such modification(s) as may be necessary to make it valid.
- 25.3 The parties agree, in the circumstances referred to in Clause 25.1 and if Clause 25.2 does not apply, to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible the same effect as would have been achieved by the invalid or unenforceable provision. The obligations of the parties under any invalid or unenforceable provision of this Agreement shall be suspended while an attempt at such substitution is made.

## **26 Notices**

26.1 Any notice given under or in relation to this Agreement shall be in writing and signed by or on behalf of the party giving it and may be served by:

26.1.1 delivering it personally or by sending it by pre-paid first class post, or recorded delivery or registered post;

without prejudice to any such other modes of service as may from time to time be permitted by the Civil Procedure Rules 1999 and any Practice Directions applying thereto or any amendment or re-issue thereof to the address and for the attention of the relevant party set out in Clause 26.3 or in the event that another address has been notified by a party hereunder in accordance with and making specific reference to this Clause 26 then to that other address.

26.2 Any such notice shall be deemed to have been received:

26.2.1 if delivered personally, at the time of delivery;

26.2.2 in the case of pre-paid first class post or recorded delivery or registered post, 48 hours from the date of posting if from and to an address in the United Kingdom or Northern Ireland and 5 days from the date of posting if from and to an address elsewhere;

Provided that if deemed receipt occurs before 9am on a Business Day the notice shall be deemed to have been received at 9am on that day, and if deemed receipt occurs after 5pm on a Business Day, or on a day which is not a Business Day, the notice shall be deemed to have been received at 9am on the next Business Day.

26.3 The addresses of the parties for the purposes of sub-clause 26.1 are the addresses listed in (1) and (2) at the top of this document.

26.4 In proving such service it shall be sufficient to prove that the envelope containing such notice was addressed to the address of the relevant party set out in Clause 26.3 (or as otherwise notified by that party hereunder) and delivered either to that address or into the custody of the postal authorities as a pre-paid recorded delivery, registered post or airmail letter.

26.5 For the purpose of this clause "First class post" includes recorded delivery and registered post.

## **27 Data Security**

27.1 The Client shall be solely responsible for the security and provision of backup copies of its own data.

27.2 Discussions on how data will be safely transferred between Ghyston and the Client will take place as part of each project set up phase.

## **28 Contracts (Rights of Third Parties) Act 1999**

No term of this Agreement is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this Agreement.

## **29 Counterparts**

This Agreement may be entered into in the form of two or more counterparts each executed by one or more of the parties but taken together executed by all and provided that all the parties shall so enter into the Agreement each of the executed counterparts (when duly exchanged or delivered) shall be deemed to be an original but taken together they shall constitute one instrument.

### **30 Governing Law and Disputes**

30.1 This Agreement, its subject matter or its formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law.

30.2 If any dispute which arises between the parties concerning this Agreement cannot be resolved between the individuals concerned within seven Business Days then either party may refer the matter to be considered by both parties' managing directors (or such person that holds equivalent office who has been nominated in writing by that party for this purpose) who shall meet and use their best endeavours to resolve the issue within seven Business Days of such reference failing which the dispute shall be determined as follows (whether or not the relevant provision of this Agreement contains an express reference to this clause):

30.2.1 if the dispute shall be of a technical nature relating to the Services or any similar or related matter, either party may refer it for final settlement to an expert nominated jointly by the parties or, failing such nomination within 20 Business Days after either party's request to the other thereof, nominated at the request of either party by the President at that time of the British Computer Society. Such expert shall be deemed to act as an expert and not as an arbitrator. His decision shall (in the absence of manifest error) be final and binding on the parties and his fees for so acting shall be borne by the parties in equal shares unless he determines that the conduct of either party is such that such party should bear all (or such proportion as he may decide) of such fees;

30.2.2 in any other case the dispute shall be determined by the High Court of Justice in England and the parties hereby submit to the exclusive jurisdiction of that court for such purpose.

Signed on behalf of **GHYSTON LIMITED**

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Position: \_\_\_\_\_

Date: \_\_\_\_\_

Signed on behalf of [*Client Name*]

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Position: \_\_\_\_\_

Date: \_\_\_\_\_



## SCHEDULE 1 – RATE CARD

- 1 The Rate Card defines the pricing structure for the Services.
- 2 The Charge for provision of resource for a Person Day by Ghyston (“Day Rate”) is defined in the table below. For the avoidance of doubt, 1 Person Day equates to 7.5 hours of work performed by Ghyston personnel on tasks directly related to the Services (“Work Done”), and excludes any time worked on tasks outside the scope of the Services.

Resource	Day Rate
Graduate	£730
Standard e.g. Developer / Tester / Designer / UX	£990
Senior e.g. Project Manager / Product Owner / Tech, Design, UX or QA Lead / Consultant	£1230
Director e.g. Strategy Lead / Governance	£1615
Retained Support	£1045

- 3 A supplement of £50 per day will be applied to work performed on the Client’s premises.
- 4 The Rate Card shall apply to all Work Done unless a) stated otherwise in the appropriate Work Order, or b) Ghyston are not working on a day rate basis (i.e. are working for a fixed price).
- 5 Notwithstanding Clause 4, the Rate Card shall not apply to work agreed by the parties to take place outside Business Hours; for example, but not limited to, out of hours support. The Charges for such work shall be defined in the relevant Work Order.
- 6 The Day Rates exclude VAT.
- 7 The Day Rates defined in this Rate Card shall be reviewed annually and Ghyston reserves the right to increase them by up to a maximum of 5% per annum or the current annual rate of UK CPI inflation (whichever is the higher), with the first such review being on the 1<sup>st</sup> January following the execution date of the Agreement. Subject to Clauses 4 and 5, all Work Done will be charged at the Day Rate in force on the date that the work was performed.
- 8 Once a period of three years has passed from the execution date of the Agreement, the parties may renegotiate Day Rates at any time based reasonably on movement of prevailing market rates in the UK.