

Terms and Conditions

1 DEFINITIONS AND INTERPRETATION

1.1 In these Terms

"Acceptance" means the first to occur of (i) the signing by the Customer of an acceptance certificate as provided in clause 5; or (ii) deemed acceptance of the Services as provided in clause 5.

"Acceptance Testing" and **"Acceptance Tests"** means those tests reasonably necessary to measure the compliance of the Services with the Services defined in the Schedule.

"Affiliate" means each and any subsidiary and holding company of the Customer and each and any subsidiary of such holding company from time to time. A person shall become or cease to become an Affiliate as and when it satisfies or ceases to satisfy this definition from time to time.

"Agreement" means any Agreement including the recitals, schedules, these Terms and any appendices or attachments to it.

"Applicable Laws" means all applicable laws, regulations, regulatory requirements and codes of practice of any relevant jurisdiction, as amended and in force from time to time.

"Charges" means the charges for the Services

"Commencement Date" shall be an agreed date of commencement between the parties.

"Competent Authority" means any supranational, national, federal, state, county, local or municipal government body, bureau, commission, board of arbitration, tribunal, authority, agency, court, department, minister, ministry, official or public or statutory person (whether autonomous or not) having jurisdiction over these Terms or any of the parties.

"Confidential Information" means the existence and terms of these Terms, all sums payable under it and all information that a reasonable person would consider to be of a confidential nature (whether or not marked as confidential) disclosed by or on behalf of one party to the other and, in the Customer's case, by or on behalf of any of its Affiliates, including but not limited to (i) names and expertise of employees, (ii) formulas, source code to software, processes, ideas, inventions, schematics and (iii) technical, business, financial and product development plans, forecasts, customer lists, strategies or other information, but shall exclude the Excluded Information from the date that it becomes Excluded Information.

"Control" means in respect of a company, the power of a person to directly or indirectly secure:

- (a) by means of the holding of shares or the possession of voting power in or in relation to that company or any other body corporate; or
- (b) by virtue of any powers conferred by the articles of association or other document regulating that company or any other body corporate,

that the affairs of the company are conducted in accordance with the wishes or directions of that other person.

"Data Protection Laws" means the DPA, or any amendment, replacement or re-enactment for the time being in force, and any other data protection and privacy laws and regulations and any codes of practice, guidelines and recommendations applicable in any jurisdiction including (without limitation) the Privacy and Electronic Communications (EC Directive) Regulations 2003 and the Privacy and Electronic Communications (EC Directive) (Amendment) Regulations 2011.

"Developed IPR" means all Intellectual Property Rights arising from the performance by either party of its obligations under an Agreement or as a result of any work carried out in connection with them or preparatory to them.

"Disclosing Party" has the meaning given to it in clause 11.1.

"Divested Entity" means:

- (a) any person which at any time becomes an Affiliate;
- (b) any business or undertaking which at any time is or becomes owned by the Customer or an Affiliate; and/or
- (c) which, in the case of a company then ceases to be an Affiliate or in the case of a business or undertaking, ceases to be owned by the Customer or any Affiliate.

"Documentation" means the documentation relating to the Service set out in **Error! Reference source not found. (Error! Reference source not found.)**.

"DPA" means the Data Protection Act 1998.

"Excluded Information" means information which:

- (a) was or becomes publicly known through no default or breach of these Terms by the Receiving Party;
- (b) was or becomes lawfully known to the Receiving Party without restriction from a source other than the Disclosing Party who itself obtained it without any confidentiality obligation or which has been demonstrated by the Receiving Party to the Disclosing Party to have been independently developed by the Receiving Party;
- (c) is approved for disclosure by the Disclosing Party without restriction in a document which is signed by a duly authorised officer of such party; or
- (d) is required to be disclosed by the Receiving Party, to the extent that the Receiving Party is compelled to disclose it by a Competent Authority (including without limitation OFGEM and the Health & Safety Executive) (in which case the Receiving Party shall give the Disclosing Party prompt notice of the relevant order).

"Group" means the group of entities comprising:

- (a) an entity;
- (b) any subsidiary of that entity; and

(c) any holding company of that entity,

and member of the Group shall be construed accordingly.

"Hosting Service" where relevant, means the Service comprising the hosting of the technology.

"Hosting Service Provider" Where hosting services are not provided by the Customer, means AWS or such other sub-contractor of the Supplier as is approved by the Customer in writing to provide the Hosting Service on behalf of the Supplier.

"Intellectual Property Rights" means all copyright and rights in the nature of copyright and all design rights, patents, trade marks, database rights, applications for any of the above, moral rights, know-how or any other intellectual or industrial property rights whether or not registered or capable of registration and subsisting in any part of the world.

"Losses" means all claims, demands, actions, losses, expenses, judgements, settlements, damages and costs (including all interest, penalties and legal and other professional costs and expenses).

"Receiving Party" has the meaning given to it in clause 11.1.

"Service" means the provision of consultancy services which may comprise System Design, Architecture, Engineering, Development, Training or Support as set out in **Error! Reference source not found. (Error! Reference source not found.)**.

"Supplier's Background IPR" means all Intellectual Property Rights, excluding the Customer's Background IPR and Data, which relate to the performance by either party of its obligations under these Terms (and including all rights which relate to the Third Party Software and the Replacement Software (if any) but which do *not* arise from the performance of such obligations or as a result of any work carried out in connection with them or preparatory to them.

"System(s)" means any technologies, platforms or code which has been designed and developed exclusively by the Supplier as a complete system

"Term" means the period from and including the Commencement Date until the expiry date

"Terms" means these Terms and Conditions of service, accompanied by an Agreement

"Third Party Licences" means the licenses of third party software or technologies including, but not limited to, WSO2

"VAT" means value added tax.

"Working Day" means any day from Monday to Friday inclusive, excluding public holidays in England.

1.2 In these Terms, unless otherwise specified, any reference to:

(a) a statute or statutory provision includes a reference to the statute or statutory provision as modified or re-enacted or both from time to time, and to any subordinate legislation made under it;

- (b) clauses, schedules and/or parties are to clauses of and schedules and/or parties to these Terms, respectively;
- (c) a document is a reference to the document as from time to time supplemented or varied;
- (d) the singular includes the plural and vice versa and the masculine includes the feminine and the neuter genders and vice versa;
- (e) a **"person"** includes natural persons, firms, partnerships, companies, corporations, associations, organisations, governments, states, governmental or state agencies, foundations and trusts (in each case whether or not having separate legal personality);
- (f) a **"subsidiary"** or **"holding company"** is to be construed in accordance with Section 1159 of the Companies Act 2006 and **"parent undertaking"** or **"subsidiary undertaking"** is to be construed in accordance with Section 1162 of that Act;
- (g) times of the day are to London time; and
- (h) **"writing"** includes fax transmission, but excludes email, SMS and similar means of communication.

1.3 The headings used in these Terms are inserted for convenience only and shall not affect the interpretation of these Terms.

1.4 In these Terms any phrase introduced by the words **"include"**, **"including"**, **"includes"** and **"such as"** are to be construed as illustrative and shall not limit the sense of the words preceding those words.

2 **PROVISION OF SERVICE**

2.1 The Supplier will provide the Service or the System to the Customer from the Commencement Date for the Term.

2.2 The Supplier will apply such time, attention, resources and skill as may be necessary for the due and proper performance of the Service and as would be expected of an expert supplier of services similar to the Service.

3 **SERVICE LEVELS**

3.1 The Supplier shall ensure that the Service or the System complies with any agreed and defined service levels.

4 **INTELLECTUAL PROPERTY RIGHTS AND DATA**

4.1 The Supplier hereby assigns to the Customer with full title guarantee free from all liens, charges and encumbrances all of its future right, title and interest in the Developed IPR, such assignment to take effect from the date that such rights arise. The Supplier hereby unconditionally and irrevocably waives all moral and author's rights in respect of the Developed IPR and shall use best endeavours to procure that its employees and contractors and all other persons involved in provision of the Service also do so.

4.2 The Supplier shall use all reasonable endeavours to produce the Developed IPR in such a manner that allows a suitably qualified and resourced third party to

update the Developed IPR in the ordinary course without incurring excessive future investment relative to the nature of the change.

- 4.3 The Intellectual Property Rights in the Supplier's Background IPR are and shall remain the property of the Supplier or its third party licensors. Subject to clause 4.4, the Supplier hereby grants to the Customer and its Affiliates and/or shall procure the grant to the Customer and its Affiliates of the following licences (the "**Supplier Background Licence**"):
- (a) a perpetual, transferable, non-exclusive, world-wide, royalty free and irrevocable licence (with the right to grant sub-licences) to use the Supplier's Background IPR as required in order to operate, use, modify, enhance, reproduce, support and/or maintain the Services for the Customer's business purposes, whether during the Term of any Agreement or after its expiry or termination, and
 - (b) a transferable, non-exclusive, world-wide and royalty free licence (with the right to grant sub-licences) to use the Supplier's Background IPR.
- 4.4 To the extent that any Third Party Software or Replacement Software is required in order to operate, use, modify, enhance, reproduce, support and/or maintain the Systems for the Customer's business purposes, the Supplier Background Licence shall be subject to the terms of the relevant Third Party Licences or Replacement Licences, and the Customer shall comply with the terms of such licences, provided always that the terms of the relevant Third Party Licences do not as of the Commencement Date, and the terms of the relevant Replacement Licences do not insofar as is reasonably practicable as of the date they are entered, conflict with the Supplier Background Licence.
- 4.5 The Customer shall retain ownership of all Intellectual Property Rights relating to the Systems, all trade marks, logos and trade names owned by the Customer and all of the Customer's data, content and/or other materials that are used in the provision of the Services, provided to the Supplier and/or stored or processed by the Supplier by means of or in connection with the Service (the "**Customer's Background IPR and Data**"). Should ownership of any such rights vest in the Supplier notwithstanding the foregoing, the Supplier hereby assigns all of its future right, title and interest in the Customer's Background IPR and Data, such assignment to take effect from the date that such rights arise.
- 4.6 The Customer hereby grants the Supplier a non-exclusive, royalty free licence to use the Customer's Background IPR and Data and the Developed IPR assigned to the Customer for the purpose of complying with its obligations under these Terms but not further or otherwise.
- 4.7 The Intellectual Property Rights relating to trade marks, logos, trade names, data, content and/or any other materials posted or used on the Systems by third party users of the Systems shall, for the avoidance of doubt, remain the property of the relevant third parties.
- 4.8 The Supplier undertakes that it will promptly execute in favour of the Customer or its nominee all such further assignments, transfers, deeds, documents or other assurances and do all further acts and things as the Customer or its nominee may require to become the legal and beneficial owner of the Developed IPR and otherwise to give effect to the terms of any assignment or vesting provided for under this clause 4 and to secure to the Customer or its nominee the benefit of the rights assigned or vesting under such clause.

5 DELIVERY AND ACCEPTANCE OF A SYSTEM

- 5.1 Where applicable, the Supplier shall deliver the System to the Customer by the delivery date specified in the Project Plan, unless delayed by an act or omission of the Customer or by one of the Customer's sub-contractors or agents for whom the Supplier has no responsibility (a "**Non-Supplier Delay**"), in which case the Supplier shall be granted an extension of time equivalent in length to the Non-Supplier Delay.
- 5.2 The Customer shall conduct any acceptance tests within a reasonable time following the delivery or making available of the System pursuant to clause 5.1. The form and detail of such tests shall be determined as described in the definition of "Acceptance Tests" .
- 5.3 If the System passes the Acceptance Tests, the Customer shall acknowledge this in writing as soon as reasonably practicable following completion of such tests.
- 5.4 If the System fails the Acceptance Tests, then subject always to clause 5.5 the Customer shall advise the Supplier in writing of the defects that caused the System to fail the relevant tests ("**Defects**"), providing reasonable details of such defects, and the Supplier shall promptly remedy the Defects and re-deliver the System to the Customer so that the Customer can repeat the Acceptance Testing.
- 5.5 If the System fails the Acceptance Tests at any stage as a result of a Defect caused by an act or omission of the Customer, or by one of the Customer's sub-contractors or agents for whom the Supplier has no responsibility (a "**Non-Supplier Defect**"), the System shall be deemed to have passed the Acceptance Tests notwithstanding such Non-Supplier Defect. The Supplier shall provide all assistance reasonably requested by the Customer in remedying any Non-Supplier Defect by supplying additional services or products. If such assistance is requested, the Customer shall pay the Supplier for all such additional services and products at the Supplier's then current rates.
- 5.6 The procedure set out in this clause 5 shall be repeated in respect of any further deliverables to be provided following agreement by the parties pursuant to clause 13.

6 PROVISION OF STAFF

- 6.1 The training of the staff designated by the Supplier for the performance of the Services is carried out by the Supplier at its own expense.
- 6.2 The Supplier undertakes to assign to the performance of the Services staff that are duly qualified to perform all of the Services, which the Supplier must prove on simple request by the Customer. The Supplier shall ensure the permanence of the skills within its teams responsible for performing the Services, for the sole purpose of guaranteeing the proper performance of its contractual obligations, it being specified that the competence and the availability of the Supplier's staff constitute an essential and determining condition of these Terms.
- 6.3 In the event that a member of the staff assigned to the performance of the Services terminates his employment or services with the Supplier, whatever the reason therefor, the Supplier undertakes to replace him/her and take any action to maintain the same quality of services and to comply with its obligations under any Special Conditions (and, in particular, any service level indicators (SLI)). Any

costs inherent to maintaining the level of the Services but not envisaged at the time of the conclusion of any Agreement shall be fully assumed by the Supplier.

- 6.4 The Customer reserves the right to request the Supplier to replace one or several staff assigned to the performance of Services on legitimate grounds.
- 6.5 The Supplier shall recruit, remunerate, train and manage under its sole responsibility the staff that it assigns for the performance of the Services, as well as any Sub-Contractors that it may use and which shall be approved by the Customer
- 6.6 In the absence of any specific agreement of the Customer, the Services are performed during business days of the Customer. In the event of programmed necessity to extend the performance of the Services to non-business days of the Customer, the Customer undertakes, in order to allow the Supplier to comply with its legal obligations concerning the working hours of its staff, to inform the Supplier in writing at least forty-eight (48) hours in advance. In the event of an emergency requiring the performance of Services on a non-business day of the Customer within a period of forty-eight (48) hours or less, the Customer shall try to inform the Supplier as quickly as possible by any necessary means. As far as is necessary, it is the responsibility of the Supplier to inform the Customer of any difficulty encountered in this regard.
- 6.7 The Supplier undertakes to make any Sub-Contractors comply with the commitments stipulated in this Clause.
- 6.8 Whatever the case, the Customer shall in no event be responsible for any disputes with the Supplier's staff including, but not limited to, their performance and their termination or their expiry. The Supplier undertakes to indemnify and hold harmless the Customer against any recourse or legal actions of the staff of the Supplier or of its Sub-Contractors against the Customer, including indemnities, damages, compensation, expenses, legal fees or any other amounts payable resulting from the said recourse or legal actions or from any transfer of the staff of the Supplier, of a company of the Supplier's Group or of its Sub-Contractors.
- 6.9 Each of the Parties shall not, unless otherwise agreed in writing and in advance, directly solicit any employee or Sub-Contractor of the other Party who has directly participated in the performance of the Services, throughout the term of the Special Conditions concerned and for twelve (12) months after its expiry
- 6.10 In the event where the Services are performed on the premises of the Customer

The customer undertakes to allow access to the staff designated by the Supplier for the performance of the Services to its premises, installations and supplies as far as is necessary for the performance of the Services

The staff designated by the Supplier for the performance of the Services are obliged to strictly comply with the internal regulations in effect in these premises, a copy of which shall be provided to the Supplier at its request

The staff designated by the Supplier for the performance of the Services shall strictly restrict to the needs relating to the performance of the Services the use of Internet possibly provided by the Customer

Furthermore the Supplier undertakes to make the staff that it designates for the performance of the Services comply with the formalities to carry out before their

arrival on the said premises, as well as those to carry out at the end of the Services (badges and documents to fill out).

The Supplier is responsible for any damage caused by the fault of its staff or that of its possible Sub-Contractors on the premises of the Customer.

7 **CHARGES**

- 7.1 In consideration of the supply of the Services, the Customer shall pay the Charges for the Services. The Supplier shall invoice the Customer the Charges in accordance with any agreed schedule of payments. The Supplier acknowledges and agrees that payment of the Charges may be made by any member of the Customer Group from time to time and Supplier accepts such payment from any other member of the Customer Group in full satisfaction of all amounts due against a relevant invoice(s) by the Customer.
- 7.2 Where applicable, the Charges are subject to VAT which shall be payable by the Customer to the Supplier at the then prevailing rate and in the manner prescribed by law.
- 7.3 The Charges are fixed and are not subject to any increase unless agreed between the two parties
- 7.4 All sums due shall, unless the subject of a bona fide dispute, be paid by the Customer within 30 days of receipt of an invoice. If a bona fide dispute exists in relation to part only of an invoice, the Customer will pay the undisputed amount.
- 7.5 If the Supplier owes the Customer money, the Customer may deduct this from money which the Customer owes to the Supplier.
- 7.6 If either party fails to make any payment on the due date and that payment is not the subject of a bona fide dispute between the parties then, without prejudice to any rights or remedies available to the other party, the other party may charge that party interest on the amount unpaid, at the rate of two per cent per annum above Barclays Bank base rate from time to time until payment in full is made.

8 **WARRANTIES**

- 8.1 The Supplier warrants and represents to the Customer that:
- (a) it has full capacity to agree to these Terms and perform its obligations under these Terms;
 - (b) These Terms are agreed to by a duly authorised representative of the Supplier;
 - (c) it has and shall maintain all necessary permits, licences and consents to enter into and to perform its obligations under these Terms (including all rights required to grant to the Customer and its Affiliates the Supplier Background Licence)
 - (d) it shall provide the Services in accordance with all Applicable Laws;
 - (e) the System and the Service will be suitable for the purposes that have been made known to the Supplier;

- (f) it shall perform and discharge its obligations under these Terms using the utmost skill and care of a competent and diligent provider of the Services and in any event, in accordance with first class computing industry practices and standards; and
- (g) no Intellectual Property Rights of any third party will be infringed (i) by the use of the Service or System by the Customer or its Affiliates, (ii) by the Developed IPR, or (iii) by use of the Supplier's Background IPR by the Customer or its Affiliates, in compliance with the terms (other than terms relating to payment of fees) of any Third Party Licences or Replacement Licences then in force, as required in order to operate, use, modify, enhance, reproduce, support and/or maintain the System for the Customer's business purposes.

8.2 If the Customer notifies the Supplier of a breach of the warranty in clause 8.1, then the Supplier shall within the timescale specified in Schedule 1 or otherwise within a reasonable time correct the reported defect. Correction of any defect shall be without prejudice to the Customer's other rights and remedies.

9 **LIABILITY**

9.1 Nothing in these Terms shall limit or exclude the liability of either party to the other in respect of:

- (a) fraud;
- (b) death or injury to persons caused by negligence;
- (c) any other liability which cannot by law be limited or excluded;
- (d) the Supplier's breach of the obligations set out in clause 11;
- (e) the Supplier's liability under the indemnities given in clause 10 and clause 12.

9.2 The parties shall not be liable to the other for any of the following types of loss or damage even in each case if the party has been advised of the possibility of such loss or damage:

- (a) indirect or consequential loss; or
- (b) loss of profits, revenue, contracts or anticipated savings.

10 **INSURANCE**

10.1 The Supplier shall effect and maintain throughout the continuance of any Agreement the following insurance policies:

- (a) insurance in accordance with workman's compensation and occupational disease laws and employer's liability insurance for an amount of not less than five million pounds (£5,000,000) per occurrence or series of occurrences arising from one event, which shall comply with all applicable laws. Such insurance shall cover all employees, agents, sub-contractors and persons engaged by the Supplier;
- (b) general third party insurance with a combined bodily injury and property damage limit of not less than five million pounds (£5,000,000) or such

other sum as may be specified by the Customer per occurrence or series of occurrences arising from the one event; and

- (c) professional indemnity insurance for an amount of not less than five million pounds (£5,000,000) per occurrence or series of occurrences arising from one event

10.2 The Supplier may be requested in writing to provide the Customer with certificates of insurance for the Policies. The Supplier shall provide such certificates within 15 Working Days of such request. Failure to provide such certificates shall be deemed to indicate that the Supplier has failed to meet its obligations to provide the insurance cover required under these Terms and the Customer shall then itself be entitled to take out such insurance cover and deduct the costs thereof from the charges due to the Supplier (or if no further charges are due, the Supplier shall reimburse the Customer the amount of such costs). The Supplier shall also provide the Customer with updated certificates on the renewal anniversary of any policies required hereunder.

10.3 The Supplier shall give immediate written notice to the Customer in the event of any cancellation of any of the Policies.

10.4 The Supplier shall not during the continuance of these Terms and for a period of six years thereafter (or such longer period as is required by law) do anything to invalidate the Policies.

10.5 The parties agree that the Policies are established by the Supplier as minimum requirements and are not to be considered indicative of the ultimate amounts and types of insurance which the Supplier requires. This clause shall not be deemed to limit in any way the Supplier's liability under these Terms.

11 **CONFIDENTIALITY**

11.1 Each party (the "**Receiving Party**") shall ensure in respect of all Confidential Information obtained by or on behalf of it from or relating to the other party (the "**Disclosing Party**") or the Disclosing Party's employees or agents in connection with these Terms or the performance of any Agreement by either party that the Receiving Party:

- (a) does not disclose such Confidential Information to any person except to the extent expressly permitted under clause 11.2;
- (b) maintains such Confidential Information in confidence and takes all reasonable precautions to prevent any unauthorised disclosure or use of it including taking at least the same steps to protect it as the Receiving Party does with its own confidential information; and
- (c) uses such Confidential Information only to perform its obligations or exercise or evaluate its rights under these Terms.

11.2 Each party may disclose Confidential Information received by it to those of its (and in the case of the Customer, its Affiliates') officers, employees, agents, sub-contractors and professional advisors who both:

- (a) need to know it to enable any Agreement to be performed or to enable that party to evaluate or enforce its rights or obligations under these Terms; and

- (b) are informed of the non-disclosure obligations imposed by this clause 11 and upon whom similar obligations of confidentiality are imposed by that party.

11.3 If either party becomes aware of any unauthorised disclosure of the other's Confidential Information, it shall immediately notify the other party and promptly comply with all reasonable requests to prevent further disclosure. These restrictions shall survive the expiry or termination of any Agreement.

11.4 Nothing in this clause shall prevent the Customer or its Affiliates from freely using and disclosing the materials supplied to it by or on behalf of the Supplier as part of the Services.

12 **DATA PROTECTION**

12.1 The Supplier shall comply with the Data Protection Laws applicable to it and shall not, by any act or omission, put the Customer in breach of any of the Data Protection Laws applicable to the Customer in connection with an Agreement.

12.2 In addition to and without prejudice to the provisions of clause 12.1, where, in connection with an Agreement, the Supplier acts as the Customer's data processor (as defined in the DPA) and processes personal data for and on behalf of the Customer, the Supplier shall:

- (a) process those personal data only on the instructions and with the prior written approval of the Customer;
- (b) implement appropriate technical and organisational measures to protect those personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing, and take all reasonable steps to ensure the reliability of any Supplier personnel involving in processing those personal data;
- (c) promptly inform the Customer if any personal data being processed by the Supplier on behalf of the Customer are lost or destroyed or become damaged, corrupted, or unusable;
- (d) upon written request from the Customer inform the Customer of the measures it has taken to comply with the provisions of this clause and will at its own cost implement any further steps requested by the Customer that are necessary to ensure the Customer's and/or the Supplier's compliance with the DPA; and
- (e) provide full co-operation and assistance to the Customer:
 - (i) in allowing data subjects (as defined by the DPA) to have access to those data and/or to ensure that those data are deleted or corrected if they are incorrect (or, if the Customer does not agree that they are incorrect, to have recorded the fact that the data subject considers the data to be incorrect); and
 - (ii) to comply with any order, notice, assessment or other instruction of the Information Commissioner's Office or similar or equivalent body.

12.3 The Supplier shall not disclose any personal data to any third party (including subcontractors) unless the Customer has provided specific prior written consent to this and in the event that such consent is provided, on the conditions that: (i) there is a contract in place with the third party containing obligations that are substantially the same as those set out in this clause 12; and (ii) the third party's access to and use of the personal data and all data processing activities by the third party terminate automatically and immediately on expiry or termination of an Agreement for any reason.

13 **REQUESTS FOR SERVICES**

13.1 The Customer may from time to time request that the Supplier carry out further services pursuant to these Terms. Such request must be in writing and include a reasonable description of the services required ("**Requested Services**").

13.2 Upon receipt of such request, the parties shall agree whether the Requested Services are additional to the Service ("**Additional Services**") or fall within the scope of the Service or any ancillary performance obligations. If the parties disagree as to which category of service the Requested Services fall into, such dispute shall be resolved according to the procedure set out in clause 15.

13.3 If the parties agree that the Requested Services are Additional Services, the following shall apply:

(a) the Customer shall provide the Supplier with such further information as the Supplier may reasonably request (promptly following its receipt of the request from the Customer) to evaluate the request for the Additional Services;

(b) within 15 Working Days of the parties agreeing that the relevant services are Additional Services as described above, the Supplier shall provide the Customer with a written quotation for the Additional Services, specifying what changes (if any) will be required to the Charges and the reasons for such changes and what other adjustments (if any) will be required to the Agreement. The Supplier shall use all reasonable endeavours to ensure that the quotation provided by it minimises the adjustments required to these Terms other than those described in the Customer's request submitted pursuant to clause 13.1 and shall ensure that any proposed increase in the Charges does not exceed its reasonable estimate of the development and/or other cost of such a change; and

(c) if within 15 Working Days of receipt of the Supplier's quotation the Customer elects in writing to the Supplier to accept the quotation, these Terms and any Agreement shall be amended in accordance with the quotation by a written amendment signed by both parties as required by clause 20. If the Customer does not accept the Supplier's quotation in the manner set out above or elects by notice to the Supplier to decline it, the Customer's request for the Additional Services will be deemed to have been withdrawn and these Terms shall continue unchanged.

13.4 If the parties agree that the Requested Services fall within the scope of the Service and/or any ancillary performance obligations, the Supplier shall supply the Requested Services at no additional cost to the Customer.

TERMINATION

- 14.1 These Terms shall, unless terminated earlier in accordance with its terms, expire automatically on the expiry date specified agreed between the parties.
- 14.2 The Customer may terminate an Agreement in whole or in part at any time by giving the Supplier thirty (30) days written notice.
- 14.3 The Supplier may terminate an Agreement at any time by giving the Customer thirty (30) days written notice.
- 14.4 An Agreement may be terminated:
- (a) by either party immediately on giving notice in writing to the other if the other commits any material or persistent breach of any term of these Terms and (in the case of a material breach capable of being remedied) fails to remedy the breach within thirty (30) days after the receipt of a request in writing from the other party to do so (such request to contain a warning of such party's intention to terminate); or
 - (b) by either party immediately on giving notice in writing to the other if the other party has a receiver or administrative receiver appointed over it or over any part of its undertaking or assets or passes a resolution for winding-up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction makes an order to that effect or if the other party becomes subject to an administration order or enters into any voluntary arrangement with its creditors or ceases or threatens to cease to carry on business.
- 14.5 The Customer shall have the right, without prejudice to its other rights and remedies, to terminate an Agreement immediately by written notice to the Supplier if the Supplier:
- (a) undergoes a change of Control which does not result in control passing to a company that, immediately prior to the change in question, was a member of the Supplier's Group; or
 - (b) sells all of its assets or is merged or re-organised in circumstances where it is not the surviving entity.
- 14.6 Termination of an Agreement shall be without prejudice to any accrued rights of either party and shall not affect the coming into force or the continuance in force of any provision of these Terms which is expressly or by implication intended to come into or continue in force on or after expiry or termination of this Agreement. Without limiting the generality of the foregoing, the following provisions shall survive expiry or termination of an Agreement: clauses 4, 8, 9, 10, 11, 12, 14, 15, 16, and 18 – 31 of these Terms
- 14.7 Upon expiry or termination of an Agreement for whatever cause (including for breach by the Customer), the Supplier shall with reasonable charge:
- (a) provide to the Customer the Service and such details and information the Customer reasonably needs to have the Service resumed either by itself or by a third party;

- (b) co-operate with the Customer to ensure a transfer of all of the Customer's data held by or on behalf of the Supplier back to the Customer (or to a replacement supplier) in such format as the Customer may reasonably require and with no disruption to the operation of the Service; and
- (c) until such time as the transfer described above is completely, preserve all such data and all back-ups of such data.

15 **DISPUTE ESCALATION PROCEDURE**

- 15.1 If any dispute or difference shall arise between the parties concerning these Terms or any of their respective obligations under any Agreement either party may nominate a representative to attempt to settle that dispute. The parties will ensure that these representatives consider the dispute as soon as practicable.
- 15.2 In the event that the persons appointed under clause 15.1 are also unable to resolve the dispute or difference within ten (10) Working Days of the referral, the parties shall have no further obligation to follow this resolution procedure. Each party shall notify the other party immediately in writing of any changes to the above representatives from time to time.
- 15.3 In no event shall the provisions of this clause operate to prevent a party from seeking interim relief in respect of any dispute or difference.

16 **NOTICES**

- 16.1 All notices which are required to be given under these Terms shall be in writing and shall be sent to the contact details as the recipient may designate in accordance with the provisions of this clause. Any such notice may be delivered by hand or by pre-paid special delivery letter or by facsimile transmission with receipt confirmed by telephone to the recipient's contact person (set out in clause 16.2) or by email (provided that where a notice is sent by email such notice shall be deemed not to have been sent if a notification of the recipient being out of the office is received) and shall be deemed to have been served if by hand when delivered, if by special delivery two Working Days after posting, if by facsimile transmission when successful transmission is confirmed and if by email when sent.
- 16.2 The contact details for the supplier shall be as follows:
 - Contact Person: Thomas Valaitis, Director
 - Address: Chakray UK Ltd,
3 High St
Warwick
CV34 4AP
 - Telephone No: 01926 411827
 - Email address: thomasv@chakray.co.uk

17 **REPRESENTATIONS AND WARRANTIES AS TO CORPORATE POWERS**

Each party represents and warrants to the other party that in respect of itself:

- (a) it is duly incorporated and validly existing under the laws of the jurisdiction in which it is incorporated (or, if different, has its principal place of

business) and is fully qualified and empowered to own its assets and carry out its business; and

- (b) it has full power to enter into (and to exercise its rights and perform its obligations under) these Terms and an Agreement when executed will constitute valid, lawful and binding obligations on it, in accordance with its terms.

18 **TRANSFER AND DIVESTED ENTITIES**

18.1 The Customer may transfer the benefit (subject to the burden) of any part or all of an Agreement to any Affiliate or to a Divested Entity or, if required by a Competent Authority, to a Competent Authority, provided that in any of the foregoing cases it gives prior written notice to the Supplier.

18.2 Where the Customer wishes to transfer its rights and obligations under these Terms to another person (in whole or part), the Supplier shall, if requested to do so by the Customer, promptly enter into a novation agreement (in a form similar in all material aspects to these Terms and the Agreement and provided that the Customer pays the Supplier's reasonable costs) with the Customer and that other person, which provides for the other person to assume the relevant rights and obligations of the Customer (including accrued rights and obligations) under these Terms and the Customer to cease to be a party to the Agreement (to the extent that it relates to such rights and obligations), but makes no other substantial provisions.

18.3 Where an Affiliate becomes a Divested Entity then, if the Customer notifies the Supplier in writing the Supplier shall continue to treat the Divested Entity as an Affiliate for the purposes of an Agreement and the references in these Terms to Affiliates shall be deemed to include a reference to such Divested Entity. In such case, either party may refer any dispute or difference relating to the terms of the new agreement and any alteration in the fees payable by the Customer or the Divested Entity for resolution in accordance with clause 15.

18.4 Subject to the foregoing provisions of this clause 18, no party shall assign, transfer, charge, hold on trust, sub-contract or in any other manner make over to any third party the benefit and/or burden of these Terms without the prior written consent of the other party. Such consent is not to be unreasonably withheld, provided however that any consent given to sub-contracting shall not relieve the Supplier from any liability or obligation under these Terms (including the Schedules) and the Supplier shall remain responsible for the acts, omissions, defaults or negligence of any sub-contractor including the Hosting Service Provider (and the agents, employees or contractors of any sub-contractor).

19 **ENTIRE AGREEMENT**

These Terms supersede and extinguish any prior drafts, and all previous contracts, arrangements, representations, warranties of any nature whether or not in writing between the parties relating to its subject matter.

20 **VARIATIONS/AMENDMENTS**

No variation or amendment to these Terms shall be valid and binding unless in writing and signed by an authorised representative of each party.

21 **CONFLICTS**

In the event of any conflict or inconsistency, the provisions of these Terms shall prevail.

22 **RELATIONSHIP OF THE PARTIES**

Nothing in these Terms and no action taken by the parties pursuant to these Terms shall be construed as creating a partnership or joint venture of any kind between the parties or as constituting either party as the agent of the other party for any purpose whatsoever. No party shall have the authority to bind the other party or to contract in the name of or create a liability against the other party in any way or for any purpose.

23 **REMEDIES NOT EXCLUSIVE**

Except as expressly provided under these Terms, the rights and remedies contained in these Terms are cumulative and are not exclusive of any other rights or remedies provided by law or otherwise.

24 **NO WAIVER**

No failure to exercise and no delay in exercising on the part of either party of any right, power or privilege under these Terms shall operate as a waiver of it. Nor shall any single or partial exercise of any right, power or privilege preclude the enforcement of any other right, power or privilege. Nor shall the waiver of any breach of a provision be taken or held to be a waiver of the provision itself. For a waiver to be effective it must be made in writing.

25 **SEVERANCE**

25.1 Each of the provisions contained in these Terms shall be construed as independent of every other such provision, so that if any provision of these Terms shall be determined by any Competent Authority to be illegal, invalid and/or unenforceable then such determination shall not affect any other provision of an Agreement, all of which other provisions shall remain in full force and effect (subject to clause 25.2).

25.2 If any provision of these Terms shall be determined to be illegal, invalid and/or unenforceable, but would be legal, valid and enforceable if amended, the parties shall consult together in good faith and agree the scope and extent of any modification or amendment necessary to render the provision legal, valid and enforceable and so as to give effect as far as possible to the intention of the parties as recorded in these Terms.

26 **COUNTERPARTS**

These Terms may be executed in any number of counterparts but shall not be effective until each party has executed at least one counterpart. Each counterpart when executed shall be an original, but all the counterparts together shall constitute one document.

27 **FURTHER ASSURANCE**

Each party will at the request and expense of the other party execute any document and do any thing reasonably necessary to implement these Terms and

use all reasonable endeavours to procure that a third party executes any deed or document and does any thing reasonably necessary to implement these Terms.

28 **ANNOUNCEMENTS**

Save as required by law, existing contractual obligations or any Competent Authority to which either party is subject (wherever situated), no party shall make any public announcement, issue any press release or make any form of statement to the public about any Agreement or any ancillary matter without the prior written consent of the other party, which shall not be unreasonably withheld or delayed.

29 **COSTS**

Save as otherwise stated in these Terms, each party shall bear its own costs in relation to the negotiation, preparation, execution and carrying into effect of an Agreement.

30 **THIRD PARTIES**

Except where these Terms expressly provides otherwise, a person who is not a party to these Terms has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term but this does not affect any right or remedy of a third party which exists or is available apart from under that Act.

31 **GOVERNING LAW AND JURISDICTION**

- 31.1 These Terms and any non-contractual obligations arising in connection with it shall be governed by English law.
- 31.2 Subject to clause 31.4, the English courts shall have exclusive jurisdiction to determine any dispute arising in connection with these Terms, including disputes relating to any non-contractual obligations.
- 31.3 Each party irrevocably waives any objection which it may now or later have to proceedings being brought in the English courts (on the grounds that the English courts are not a convenient forum or otherwise).
- 31.4 Nothing in these Terms shall prevent either party from applying to the courts of any other country for injunctive or other interim relief.