

General Terms and Conditions of Empyrean Digital Limited

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1. Interpretation and Definitions

1. Interpretation and Definitions: In these General Terms and Conditions, clause 12.1 shall apply regarding interpretation and clause 13 shall apply regarding the use of defined terms and phrases.

2. The Services

1. Provision of Services: We shall perform the Services and provide the Deliverables, and warrant that we shall perform the Services with reasonable skill and care and in accordance with Good Industry Practice. We shall perform the Services in accordance with any specific terms as set out in the Order.
2. Timescales: We shall be under no obligation to perform the Services with respect to milestones or timetables unless the same have been expressly agreed with you in an Order. Under no circumstances may you dissolve this Agreement on account of a failure to meet a time limit.
3. Progress reviews: Each party shall review with the other the progress of the Services at regular intervals. This will include review meetings attended by our representatives to review progress generally including actions undertaken and progress made since the previous meeting and any issues relating to the provision of the Services. We may charge for these meetings at our applicable Fee Rates as set out in the "Client interface" column of our SFIA rates table.
4. Opportunity to correct: If there is a failure or deficiency in the supply of Services by us you shall always give us a reasonable opportunity to correct such failure or deficiency.
5. Work outside scope: Any work we do outside the scope of the Services at your request or with your agreement shall (unless otherwise agreed) be performed, and fees paid, in accordance with this Agreement, applying the applicable Fee Rates as set out in the "Business Change" column of our SFIA rates table.
6. Acceptance: Where an Order specifies Acceptance Criteria for any particular Deliverables, then clauses 2.7 to 2.10 shall apply to such Deliverables. If no acceptance criteria are specified or otherwise agreed, then you shall be deemed to have accepted the relevant Deliverable on delivery.
7. Notification: We shall notify you when a Deliverable that is expressly stated in the Agreement to be subject to acceptance is ready for acceptance. You shall then review such Deliverable against the Acceptance Criteria.
8. Acceptance procedure: If such Deliverable materially meets the relevant Acceptance Criteria, you shall notify us immediately in writing, and such Deliverable shall be accepted by you. If it materially fails to meet the relevant Acceptance Criteria then you shall notify us immediately in writing, with sufficient details and comments in respect of the failure so that if we update the Deliverable to address the comments it shall meet the relevant Acceptance Criteria in all material respects. We shall then use reasonable endeavours to remedy such material defects and reissue the relevant Deliverable for review against the relevant Acceptance Criteria within 30 (thirty) days (or such longer period as is reasonable in view of the nature of the defect) from the date of your notice.
9. Deemed acceptance: You confirm that you will be deemed to have accepted the relevant Deliverable on the earlier of: (a) using the Deliverable (other than for carrying out the acceptance review) or modifying it; or (b) 14 (fourteen) days from the date that we tell you that the relevant Deliverable is ready for acceptance (if you do not inform us within this time of any material failure of the Deliverable to meet the relevant Acceptance Criteria).
10. Meaning of acceptance: Acceptance of the relevant Deliverable in accordance with the provisions of this clause 2 confirms that the Deliverable meets the requirements of this Agreement and that you may not then reject the Deliverable or make any claims in respect of any defects or problems which are subsequently discovered by you in respect of the Deliverable (although this is without prejudice to your rights and remedies under clause 6).
11. Changes: The following change control procedure shall apply: if either party wishes to change the scope of the Services involved in this Agreement or make any other change ("Change"), it shall propose the Change to the other and provide information about the impact of the Change on other aspects of this Agreement; the other party shall consider the proposed Change and, if it is accepted, the parties shall agree in writing the appropriate amendments to this Agreement; no Change shall be effective unless agreed in writing for example in the form of a Change request and signed by the parties' authorised representatives; and we may charge (at the Fee Rates as set out in the "Business Change" column of our SFIA rates table) for our time spent considering your Change requests; if a request for a Change is later withdrawn but results in a delay to the performance of the Services (and we told you of the possibility of delay caused by the request) we shall not be liable for that delay and shall be entitled to a reasonable extension of time for performing our duties and agreed timescales shall be changed accordingly.

3. Your obligations and our recommendations

1. Obligations: You agree to comply with your obligations as set out in this Agreement, including the specific "Customer Responsibilities" referred to in the Order and the following general obligations to: (a) provide us and our Personnel with such information, co-operation, assistance, facilities and resources

General Terms and Conditions of Empyrean Digital Limited

Private and confidential

as we reasonably require to enable us to perform the Services; (b) act reasonably and in good faith in connection with this Agreement and the exercise of any discretion you may have under this Agreement and give prompt attention to any matter raised by us relating to your obligations and/or the performance of the Services; (c) be responsible for the commercial decisions that you make and to take into account any restrictions on the scope of our work and all other factors of which you and your other advisers are, or should be, aware; (d) implement reasonable and appropriate business continuity and disaster recovery measures to mitigate against any reasonably foreseeable risks; (e) ensure that all equipment and software you make available or provide will be free of computer viruses, spyware and other malware and will comply with their specifications; (f) maintain and be responsible for your own data and software back-up and associated restoration measures (including ensuring a reasonably frequent back-up is made of your data and software); (g) retain risk in, and title to, any hardware, software and other materials that you provide or make available to us; (h) ensure that we and our Personnel have all necessary rights and permissions to use any hardware, software and other materials provided or to be provided by you for the purposes of the Agreement; and (i) notify us of any concerns or issues you have with the Services or the performance of our obligations under this Agreement promptly and in any event within 30 days of becoming aware of the concern or issue.

2. Recommendations: To the extent that we make any recommendations or suggestions whether as part of the Services or otherwise ("Recommendations") regarding your procurement of any third party products and/or services (the "Third Party Elements"), you acknowledge that (except to the extent expressly stated otherwise in this Agreement, with specific reference being made to this clause 3.2): (a) such Recommendations should not form the sole basis for any decision or action or inaction by you; (b) the Third Party Elements may relate to third parties' products and/or services which are unconnected with us, and therefore you are responsible for checking with the relevant third party the quality, availability and/or suitability of such Third Party Elements; and (c) we will not be responsible for the quality, availability or suitability of the Third Party Elements.
3. Impact: Our ability to perform our obligations may be dependent on you fulfilling your obligations (including any Customer Responsibilities) and on any agreed assumptions set out in the Order being correct. To the extent that you do not fulfil your obligations under this Agreement or the agreed assumptions are or become incorrect, then (without prejudice to our rights and remedies): (a) we may charge you (at the Fee Rates) for resources assigned to performing the Services even if not utilised, together with any additional charges which we incur; (b) we may change the scope of the Services or the agreed milestone dates and timetables (but shall consult with you and act reasonably in doing so); (c) our charges and any estimates may be affected, and you agree to accept reasonable changes to them; and (d) we will be relieved of our obligations to the extent that we are prevented from fulfilling them in accordance with this Agreement.

4. Fees

1. Fees: You shall pay the charges and expenses for the Services as set out in this Agreement.
2. VAT: All sums payable under this Agreement are expressed exclusive of VAT and any other applicable taxes, duties and withholdings, which are payable by you at the rate and in the manner prescribed by law.
3. Payment: You shall ensure we receive payment of all invoices within 30 (thirty) days of the date of the relevant invoice. We may charge interest on overdue invoices from the date they were due until payment is made in full without further notice at the rate of 4 (four) per cent per year over the base rate of HSBC bank for the time being in force.
4. We will invoice for the Services on the basis of our fee, costs (direct costs plus a mark-up to cover expenses not directly allocated to the Services, including costs of third parties that have been engaged) and any taxes owing with respect to them. These items will be charged monthly unless both parties agree otherwise. The amount invoiced by us may differ from earlier estimates or quotations.

5. Personnel

1. Conduct of personnel: Each party shall ensure that its personnel comply with the other party's reasonable rules, regulations and practices relating to security, health and safety when on the other party's premises, provided they are made available to them reasonably in advance. If we are required to enter the premises of a third party, you shall ensure that the third party protects our Personnel as it does its own employees.
2. Replacement personnel: We may replace our personnel assigned to you from time to time and you may request such a replacement provided that you give us reasonable written justification for such request.
3. Non-solicitation: Without restricting the right of an employee freely to accept and change employment, neither party shall (during the term of this Agreement and for 6 (six) months afterwards), without the other party's written consent, offer employment to any of the other party's personnel who have been engaged in this Agreement. However, this restriction shall not apply to any person who (without having

General Terms and Conditions of Empyrean Digital Limited

Private and confidential

been approached directly or indirectly) responds to a general recruitment advert placed by or on behalf of the new employer. If either party breaches this clause, it shall promptly pay to the other party a sum equal to the annual salary of the employee in question (net of benefits) and the parties agree that this amount is a genuine pre-estimate of the loss that party is likely to suffer as a result of such breach.

4. Application of TUPE - Commencement: The parties agree on the commencement of any Services to you it will not constitute a "relevant transfer" under TUPE and we will not accept any transfer of employees to us. We shall have no Employment Liabilities for any of your employees or any employees of your outgoing service provider and you shall indemnify us from and against all liabilities suffered or incurred by us as a result of any claims by your employees or employees of your outgoing service provider on the grounds that his/her employment and/or liabilities in connection with their employment, its termination or cessation however that liability arises has or should have transferred from you or a third party to us.
5. Application of TUPE – Termination: On receipt of written notice of termination of the Services and if we consider on its facts that this constitutes a "relevant transfer" under TUPE we shall send you a list of our employees who are assigned to the Services. A final list of transferring employees will be sent to you immediately before the transfer date. Each party shall ensure that it complies with its obligations under TUPE and give an indemnity to each other to the extent that any claim or Employment Liabilities arises from (a) its own failure to comply with its obligations under TUPE (b) any acts or omissions for the period for which the indemnifying party was acting in the capacity of the "employer"; and (c) any employment action intended and/or taken by you or a replacement service provider in respect of the transferring employees on the final list.

6. Intellectual property rights

1. Use of Deliverables and Materials: You have the right to use the Deliverables (subject to any restrictions on use in this Agreement and applicable third party licences) for your internal business purposes and for any other purpose agreed in this Agreement. You shall tell us if you propose that Materials and Deliverables will be provided to, or used by, a third party, so that we can agree terms regarding such provision or use and/or require the third party to enter into a direct relationship with us before any such Materials or Deliverables are made available to them. You will not sub-licence the Materials or Deliverables to or make them available to third parties without our prior written consent.
2. Use of your materials: We and our Personnel may use any documentation or materials (including systems, methodologies, tools, software, reports, correspondence and advice) supplied or made available by or on behalf of you to the extent necessary for the performance of our obligations under this Agreement.
3. Ownership: We (or our licensors) shall retain ownership of all Intellectual Property Rights in the Materials and the Deliverables.
4. Third party items: Where you are responsible for providing third party items (including software or hardware), you shall obtain any necessary licences and consents for you and us and our Personnel to use such items for the purposes of this Agreement.
5. IP Indemnity: We agree to defend you at our expense against any bona fide third party claim that the Deliverables supplied by us infringe that third party's Intellectual Property Rights and to indemnify you against all costs, damages and legal fees that a court finally awards or that are included in a settlement approved by us; and (ii) you agree to defend us at your expense from any bona fide third party claim that the possession or use of the materials or works made available by or on behalf of you infringe that third party's Intellectual Property Rights and to indemnify us against all costs, damages and legal fees that a court finally awards or that are included in a settlement approved by you.
6. Control of proceedings: The indemnities under this Agreement are subject to the party being indemnified: (a) giving the other party (i.e. the party giving the indemnity) prompt notice of any such claim as soon as it becomes aware of such claim; (b) giving the other party reasonable assistance (at the other party's reasonable cost) in connection with any such claim and not admitting liability or attempting to settle or compromise such claim without the prior written agreement of the other party (such agreement not to be unreasonably withheld or delayed); and (c) allowing the other party sole conduct and control of any such claim.
7. Alternative action: If there is a third party claim which may give rise to an indemnity claim under clause 6.5, the party giving the indemnity may (at its sole discretion): (a) obtain the right for the other party to continue using the infringing work; (b) make such modifications or amendments to the infringing work or its relevant parts so that the infringing work becomes non-infringing without incurring a material reduction in the quality or performance of the respective work; (c) (where we are the party giving the indemnity and where applicable) replace or re-perform the Services or the relevant parts of the Service with non-infringing substitutes provided that such substitutes do not entail a material reduction in the quality or performance of the respective work; or (d) (where we are the party giving the indemnity and where

General Terms and Conditions of Empyrean Digital Limited

Private and confidential

applicable) require you to promptly return the Deliverable to us and we shall refund you the fees relating to such Deliverable as your sole remedy.

8. Exclusions: The indemnities in clause 6.5 shall not apply to the extent that: (a) the claim arises due to compliance by the party giving the indemnity with a specification or instructions provided by the other party; (b) the claim arises in a territory other than that where the respective Deliverables, materials or works are provided; (c) the party being indemnified has caused or contributed to the events which gave rise to the claim under the indemnity; (d) the claim results from or is in connection with any alteration or modification of the Deliverable or materials by the party being indemnified (which, where we are the party being indemnified, is outside the scope of the Services or proper performance of our obligations under this Agreement); or (e) the claim results from the combination, operation or use of any Deliverable or materials with any data, equipment, product, system or intellectual property not supplied by the indemnifying party (which, where we are the party being indemnified, is outside the scope of the Services or proper performance of our obligations under this Agreement).
9. IPR notices: Neither party shall delete or obscure any proprietary information or notices relating to Intellectual Property Rights (if any) appearing on documentation or materials provided by the other party (including the Materials and the Deliverables).
10. Know how: Despite any provision to the contrary in this Agreement, we retain the right to use all know-how and residual knowledge obtained in connection with the Services and nothing in this Agreement shall prevent us from using any know-how, methodologies, ideas or concepts acquired before or during the performance of the Services, for any purpose, subject always to our obligation not to disclose your Confidential Information under clause 7.

7. Confidentiality and use of information

1. Duty of confidentiality, non disclosure and use: Each party shall, in relation to the other's Confidential Information: (a) keep it secret and confidential; (b) use it only for purposes connected to this Agreement; (c) disclose it only to such employees, directors, agents and Group Companies as need to know (and to our subcontractors and our or our parent or subsidiary companies' professional advisors) on condition that they are informed by the disclosing party of its confidential nature and are directed to deal with it on terms no less onerous than in this clause 7; (d) not otherwise disclose it to third parties without the other party's prior written consent; and (e) make copies of it only to the extent necessary for the purposes of this Agreement.
2. Permitted disclosure: The obligations of confidentiality in clause 7.1 shall not prevent any disclosure of information which: (a) is in, or has become part of, the public domain other than by a breach of this Agreement; (b) becomes available to the disclosing party in a lawful manner from a third party who, to the best of the disclosing party's knowledge, is lawfully entitled to disclose the same; (c) can be proven was independently developed by or for the disclosing party; (d) is required to be disclosed under any applicable law, stock exchange requirement, or by order of a court or governmental body or authority of competent jurisdiction, provided that, to the extent it is permitted to do so, the disclosing party notifies the other party as soon as reasonably possible on becoming aware of the obligation to disclose; (e) is disclosed with the other party's prior consent; or (f) is trivial or obvious.
3. Return/destruction: Each party shall, on written request, either return or destroy the other party's Confidential Information in its possession except that each party shall be entitled to keep copies or records for archive, legal or tax purposes (and such copies shall continue to be Confidential Information and subject to the obligations of confidentiality in this Agreement).

8. Limitations of liability

1. Personal injury, death and fraud: Despite any provision to the contrary, nothing in this Agreement limits or excludes either party's liability to the extent it relates to: death or personal injury caused by its negligence; fraud; fraudulent misrepresentation; or any liability which may not be lawfully limited or excluded.
2. Liability for indirect loss: Neither party shall be liable however that liability arises, for consequential, special, incidental or indirect losses.
3. Liability for loss of profit etc: Without prejudice to clause 8.2, neither party shall be liable however that liability arises for the following losses whether direct, consequential, special, incidental or indirect losses: (i) loss of profits; (ii) loss of revenue; (iii) loss of business; (iv) loss of contracts; (v) loss of anticipated savings; (vi) loss of goodwill; or (vii) loss of data.
4. Mitigation: Each party agrees to use all reasonable endeavours to mitigate any losses which it may suffer under or in connection with this Agreement (including in relation to any losses covered by an indemnity) and any amounts it seeks from the other party in respect of any liability.
5. Your acts/omissions: You agree that we shall not be liable for any failure by us to comply with our obligations under this Agreement to the extent that such failure is a result of any act and/or omissions of you or your Personnel.

General Terms and Conditions of Empyrean Digital Limited

Private and confidential

6. Post termination: Subject to clause 8.1, neither party shall be liable for any claim made more than two (2) years from the earlier of (a) when the cause of action came (or if earlier ought reasonably to have come) to the attention of the claiming party; or (b) the termination or expiry of this Agreement.
7. Your payment obligations: Despite any provision to the contrary, nothing in this clause 8 shall exclude or restrict your obligation to pay charges or sums due to us under this Agreement.
8. Our advice: In relation to any particular transaction, specific advice should always be sought by you, and all material information provided to us. Our advice is provided for the purposes described in this Agreement. Its applicability will depend on the particular circumstances of which we were aware in respect of how it was going to be used, and we disclaim any responsibility for the use of our advice for a different purpose, in a different context or by a third party.
9. Reasonableness: You and we agree that the limitations and exclusions of liability contained in this Agreement are reasonable in view of the nature and extent of the obligations accepted by each party under this Agreement and the level of the fees and charges and that this clause 8 shall prevail over all other clauses in this Agreement.
10. Insurance: Nothing in this Agreement shall oblige us to take out or maintain insurance or insurance cover which is either: unavailable in the insurance market with reputable insurers; or is offered by insurers on terms such that the relevant insurance is not generally purchased by service providers similar in size and nature to us.
11. Indemnity: You will indemnify us against any and all claims of third parties arising from or connected to the Services unless such claims result from intent or wilful recklessness on the part of our executive staff. This indemnity is also stipulated on behalf of the persons, both individually and jointly, assigned to work on the Deliverables.

9. Termination and Suspension

1. Termination: Each party is entitled to terminate this Agreement immediately by notice in writing if the other party: (a) has committed a material breach of this Agreement and fails to remedy such breach (if capable of remedy) within 30 (thirty) days of receiving written notice from the non breaching party specifying the breach and requiring it to be remedied (or such longer period as is reasonable in view of the nature of the breach); or (b) suffers an Insolvency Event.
2. Non payment: In addition to our other rights (including any right to terminate), we may (by notice in writing) suspend the Services in whole or in part if any invoice raised by us is overdue and you continue to be in default for 30 (thirty) days after receiving written notice from us that such invoice is overdue.
3. Consequences of termination: On any termination (which includes expiry) of this Agreement, the provisions of this Agreement, which are expressed and/or intended to survive termination will survive including clauses 1, 2.4, 3, 4, 5.3, 6, 7, 8, 9.3 to 9.5, 11, 12, 13 and 14. You shall pay all fees and other charges due prior to the date of termination or expiry. Any termination of this Agreement shall not affect any accrued rights or remedies of either party at the date of such termination.
4. Exit assistance: Any exit assistance we provide, such as assisting with the handover of our provision of the Services back to you or another supplier you may appoint, shall (unless otherwise agreed) be performed, and fees paid, in accordance with this Agreement, applying the applicable Fee Rates as set out in the "Service management" column of our SFIA rates table.
5. Payment: You are obliged to pay us (1) for any Services that have been provided under this Agreement up to the date of the expiry or termination of the Agreement and for which we have not previously been paid; (2) in advance for any exit assistance that we are to provide; and (3) where any Services are subject to a minimum duration, for any such Services yet to be provided which shall not be provided as a result of the termination of the Agreement, except in circumstances where the Agreement is terminated by you pursuant to clause 9.1.

10. Data protection

1. Personal Data: If in the course of performing the Services, we process your Personal Data: (a) you and we agree that you are the Data Controller and we are the Data Processor and you acknowledge that you are solely responsible for determining the purposes and the means of us processing the Personal Data in the course of performing our obligations under this Agreement; (b) we shall comply with your reasonable instructions; and (c) you shall ensure that any Personal Data you provide is lawfully provided.
2. Technical Measures: We acknowledge that as Data Controller you have certain security obligations. We shall use reasonable endeavours to implement technical and organisational measures to protect Personal Data you provide to us. You shall inform us if you have any specific data security requirements whereupon we shall agree to implement additional measures in respect of such specific requirements, subject to agreement through the agreed process for making changes.

11. Freedom of Information Act

General Terms and Conditions of Empyrean Digital Limited

Private and confidential

1. FOIA request: This clause 11 applies only if you are a “public authority” (as defined in FOIA) or otherwise are, or become, subject to FOIA. Where you receive a Request, we shall, if requested by you and at your cost, provide you with reasonable assistance. We shall not be required to supply a copy of any FOIA Information that is also held by you (or a third party acting on your behalf) or to convert any FOIA information into a different format.
2. FOIA disclosure: Where you receive a Request that may involve Empyrean Digital CI you shall (a) as soon as reasonably practicable notify us and provide us with a copy of the Request validated by you; (b) fully consult with us and take into account our views on disclosure; and (c) consider in good faith all relevant exemptions to disclosure under FOIA.
3. Your obligations: You shall have in place an effective process to handle Requests and you undertake to disclose Empyrean Digital CI only when and to the minimum extent strictly necessary for you to respond to a Request so as to comply with your obligations under FOIA. You agree to indemnify and hold us harmless in respect of any loss, damage, claim, liability, cost or expense incurred by us arising from, or in connection with, a breach of this clause 11 or the disclosure of any Empyrean Digital CI in response to a Request where at the time of such disclosure the Empyrean Digital CI was exempt from disclosure under FOIA or where you were otherwise not obliged by FOIA to disclose the Empyrean Digital CI.
4. Duration: The provisions of this clause 11 shall continue only for a period of 5 (five) years after the expiry or termination for any reason of this Agreement.

12. General

1. Interpretations: In this Agreement: (a) headings are inserted for convenience of reference only and shall not affect the interpretation or construction of this Agreement; (b) any references to legislation include references to any amending and supplemental legislation; (c) the words and phrases “including” (and any similar words) shall be deemed to be immediately followed by the words “without limitation”; (d) references to clauses, paragraphs, schedules or annexes are to clauses, paragraphs, schedules or annexes of this Agreement unless otherwise stated; (e) references to the singular include the plural and vice versa; and (f) references to a “person” include an individual, company, firm, partnership, public body, charity or other legal entity.
2. Entire agreement: This Agreement contains the entire agreement between the parties with respect to the subject matter of this Agreement and supersedes all other written and oral communications, arrangements or understandings between the parties relating to such subject matter. The express terms, conditions and warranties in this Agreement are in lieu of all terms, conditions, warranties, representations, statements, undertakings and obligations whether express or implied by statute, common law, custom, usage or otherwise all of which are hereby excluded to the fullest extent permitted by law. The parties hereby confirm that they have not relied on any statement, representations, assurance, warranty, communications or other matter (“Representation”) which has not been expressly stated in this Agreement and that the only rights and remedies available to them arising out of a Representation shall be for breach of contract. Despite any provision to the contrary, nothing in this clause or this Agreement limits or excludes either party’s liability for fraudulent misrepresentation or fraud. In the event of conflict between the Call Off Agreement and other elements of this Agreement, the Call Off Agreement will prevail. In the event of conflict between these General Terms and Conditions and any Additional Conditions, the Additional Conditions will prevail.
3. Our obligations and freedom to deliver: We are free to carry out the Services in any manner unless otherwise expressly stated in this Agreement. Our obligations in respect of our performance of any Services are limited to those obligations expressly stated in this Agreement.
4. Purchase orders: The applicability of any of your purchasing conditions or other conditions to us is expressly excluded. Any acceptance by us of a purchase order shall not have any legal effect and shall only be relevant for the purpose of referencing invoices.
5. Publicity: Any publicity to be issued or announcement to be made in connection with this Agreement shall only be issued or made subject to the parties’ prior written consent, such consent not to be unreasonably withheld or delayed. However, you agree we may make public reference to the nature of the services provided, the term and value of the deal and the fact that a contract has been signed and both parties may (subject to clauses 7.1 and 7.2) make announcements to their professional advisers, Group Companies or subcontractors.
6. Third party rights: A person who is not a party to this Agreement shall not have any rights under or in connection with it.
7. Assignment and sub-contracting: Neither party may assign, novate, sub-contract or otherwise transfer this Agreement (in whole or in part) or any of its rights and obligations under this Agreement without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed), except that we shall not need your consent for any such transfer to any Group Company.

General Terms and Conditions of Empyrean Digital Limited

Private and confidential

8. **Waiver:** No provision of this Agreement shall be waived unless agreed to be waived by both parties in writing. If any provision is waived, then that waiver shall operate for that instance only and not future instances, unless agreed otherwise by both parties in writing. No single or partial exercise of any power or right by a Party shall preclude any other or further exercise thereof or the exercise of any other such power or right.
9. **Severability:** If any provision of this Agreement becomes void or unenforceable under applicable law it shall be deemed to be deleted from this Agreement and the remaining provisions of this Agreement shall continue unaffected. In such circumstances, the parties shall (acting promptly and in good faith) use their reasonable endeavours to agree a replacement for such deleted provision which lawfully achieves the intent of the deleted provision and is as close as reasonably possible to it.
10. **Variations:** No alteration, variation or addition to this Agreement shall be valid unless agreed in writing by the authorised representatives of each party.
11. **No partnership:** Nothing in this Agreement (or any proposal or correspondence), is intended to create a legal partnership, joint venture or employment relationship between you (or any person) and us.
12. **Force majeure:** Neither party shall be liable for delay or failure to perform its obligations to the extent that such delay or failure results from a Force Majeure Event. The party affected by a Force Majeure Event shall give the other party written notice as soon as reasonably possible containing details of the circumstances giving rise to the Force Majeure Event.
13. **Notices:** Any notice given under this Agreement must be in writing, marked for the attention of the relevant contact people as specified in the Order, and sent or delivered by first class post (or special delivery or next Business Day courier service), or fax transmission to the other party at its address specified in the Order (or such other address as is notified by such party in writing). Any notice: (a) delivered by hand shall be deemed to have been given when deposited at the appropriate address; (b) sent by post (as above) or courier shall be deemed to have been given 48 (forty eight) hours after it is sent to the appropriate address; and (c) sent by facsimile shall be deemed to have been given on transmission to the correct number (as evidenced by a fax transmission report generated by the fax machine confirming successful transmission to that number), provided that such notice is confirmed by dispatching a copy of the notice together with a copy of the successful fax transmission report within 48 (forty eight) hours using one of the methods in (a) or (b) above. A notice will be deemed to be served on the date that the recipient acknowledges that it received the notice, if the notice is not sent in compliance with this clause 12.13.
14. **Dispute resolution:** The parties shall promptly escalate any dispute arising out of or relating to this Agreement to their relevant representatives as set out in the Order and if the matter is not resolved within 20 (twenty) days of such referral to a senior member of the management of each party where the parties shall continue to try to resolve the issue within a further 30 (thirty) days.
15. **Mediation:** If the dispute is not resolved following escalation, where appropriate, the parties may seek to resolve disputes by mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure. Neither party may initiate any legal action until the processes in this Agreement have been completed, unless such Party has reasonable cause to do so to avoid damage to its business or to protect or preserve any right of action it may have.
16. **Exclusive Remedies:** You agree that where a remedy for a particular breach or default is expressed in this Agreement then that remedy (unless otherwise expressly stated in this Agreement) is the sole and exclusive remedy in the event of such a breach or default occurring.
17. **Compliance with law:** Each party shall be responsible for its compliance with any laws which apply to its business. We shall not be responsible for making changes to the Services or Systems or installing new Systems so as to ensure any requirement for compliance with any law or industry or regulatory codes (except to the extent required to comply with the previous sentence). Where changes or maintenance or new installations are needed to ensure such compliance, they do not form part of the Services.
18. The Agreement will come into being at the moment when you confirm the Agreement (orally or in writing or electronically or tacitly) or at the moment when work on performing the Services is commenced.

13. Definitions

1. **Definitions:** In these General Terms and Conditions, the following definitions apply: "Acceptance Criteria": the acceptance criteria for any particular Deliverables as specified in an Order; "Agreement": the Call Off Agreement entered into under the Framework Agreement between the Government Procurement Service and Empyrean Digital Limited incorporating these General Terms and Conditions together with any other documents and conditions which are applicable to the Services in the relationship between us and you ("Additional Conditions") and to which the Call Off Agreement expressly refers; "Empyrean Digital CI": Confidential Information or other commercially sensitive information disclosed by Empyrean Digital Limited (whether owned by us or not) under this Agreement; "Change Control Procedure": the change control procedure set out in clause 2.11; "Change": has the meaning given to it in

General Terms and Conditions of Empyrean Digital Limited

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clause 2.11; “Confidential Information”: information (including confidential or sensitive commercial financial marketing and/or technical information in written, electronic or any other form or medium) which is marked “confidential” or “secret” or is, by its nature, clearly confidential; “Data Controller”: the party which determines the purposes and means of processing the Personal Data; “Data Processor”: the person who processes the Personal Data on behalf of the Data Controller; “Deliverables”: the items identified as the “Deliverables” that we deliver, or are required to deliver, as referred to or described in the Order; “Employment Liabilities” any losses, costs, demands, damages, claims (actual and threatened) or expenses (including any legal and other professional expenses) and all losses, damages, compensation and other liabilities incurred by either party arising out of or in connection with the employment or termination of employment of any person; “Fee Rates”: the fee rates set out in the Order, or if none then our current fee rates; “FOIA”: the Freedom of Information Act 2000 and any statutory instruments made pursuant to it; “FOIA Information”: information held by or on behalf of you within the meaning of Section 3(2) of FOIA; “Force Majeure Event”: any event outside the reasonable control of a party affecting its ability to perform any of its obligations (other than an obligation of payment) under this Agreement; “General Terms and Conditions”: these general terms and conditions; “Good Industry Practice”: the exercise of that degree of skill and diligence which would reasonably and ordinarily be expected from a skilled and experienced person engaged in the same type of undertaking under the same or similar circumstances; “Group Company”: (in relation to each party) any subsidiary or holding company from time to time of a party, or any subsidiary from time to time of a party’s holding company (as such words are defined in Section 1159 of the Companies Act 2006 as amended); “Insolvency Event”: an event where (a) a party passes a resolution for winding up (save for the purpose of amalgamation or reconstruction where the amalgamated or reconstructed company agrees to adhere to this Agreement), or suffers a winding-up order being made against it or it goes into administration; (b) a receiver or administrative receiver is appointed or an encumbrancer takes possession of the undertaking or assets (or any part thereof) of a party; (c) a party is unable to pay its debts (within the meaning of Section 123 of the Insolvency Act 1986) or ceases or threatens to cease to carry on its business or enters into a composition with its creditors; or (d) any event analogous to any of those described in (a) to (c) above that affects the other party in any jurisdiction; “Intellectual Property Rights”: any intellectual property rights including patents copyrights database rights design rights trade marks and domain names anywhere in the world and any applications or rights to apply relating to the same; “Materials”: all materials used, developed, or provided by us (including systems, software, reports, correspondence and advice) other than those materials provided by or on behalf of you; “Order”: document pertaining to the Agreement which sets out specific Deliverables; “Personal Data”: information relating to an identified or identifiable living natural person in respect of which you are the Data Controller and which we process on your behalf; “Personnel”: a party’s directors, officers, employees, workers, agents, third party service providers, successors, and assignees; “Request”: a request under Section 8 of FOIA; “Services: the services performed, or to be performed by us, as described or referred to in the Order, together with the provision of the Deliverables; “Systems”: any software, hardware, processes, methodologies and/or systems utilised or used by you (including any of your software, third party software or hardware and any other software which is stored on any medium or device and/or embedded within any apparatus); “TUPE”: Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended from time to time; “we”, “us”, “ours”, “Empyrean Digital”: Empyrean Digital Limited; and “you”, “yours”, “the Customer”: the Authority or Contracting Body whose details are set out in an Order.

14. Law

1. Governing law: This Agreement and any dispute or claim arising in connection with it shall be governed by the laws of England and Wales (or Scotland, if the Customer so requests in an Order).
2. Jurisdiction: Subject to clauses 12.14 and 12.15, this Agreement shall be subject to the exclusive jurisdiction of the courts of England and Wales (or Scotland, if the Customer so requests in an Order).