

**IT SERVICES AGREEMENT**

**This Agreement** is made this [ ] day of [ ] 20

between

**Astraeus Consulting Limited trading as Astraeus**

whose registered office is at

Adamson House, Centenary Way, Salford, Manchester M50 1RD and

[Insert full Client Name] (“Client”)

whose registered office is at

[Insert Client Address]

[Redacted]

**Whereas:**

1. The Client wishes to procure the services of Astraeus Personnel to undertake certain specific IT consultancy services as detailed in the Service Description, attached as Schedule 1 to this Agreement.
2. The parties wish to enter an agreement on the basis set out herein.

**Now the parties agree as follows:**

**Signed:**

\_\_\_\_\_  
**Authorised Signatory for and on behalf of the Client**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
(Print Name and Title)

**Signed:**

\_\_\_\_\_  
**Authorised Signatory for and on behalf of Astraeus**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
(Print Name and Title)

<b>Index</b>	<b>Page</b>
1. Definitions .....	3
2. Duration .....	3
3. The Services .....	4
4. Service Warranty.....	4
5. Client Obligations .....	5
6. Charges.....	6
7. Payment Terms .....	6
8. Confidentiality .....	7
9. Intellectual Property Rights.....	8
10. Change Control.....	9
11. Liability .....	9
12. Personnel .....	10
13. Insurance.....	10
14. Dispute Resolution .....	10
15. Termination.....	11
16. General.....	12
17. Entire Agreement.....	14
SCHEDULE 1 – THE SERVICES .....	15
SCHEDULE 2 – CHARGES AND PAYMENT TERMS.....	18
SCHEDULE 3 - SERVICE SPECIFIC TERMS AND CONDITIONS.....	20
SCHEDULE 4 - AGREEMENTS AND VARIATIONS .....	25

SUBJECT TO CONTRACT

## 1. Definitions

In this Agreement the following words and expressions shall have the following meanings:-

“Agreement”	this agreement constituted by these terms and conditions, the Schedules and any documents expressly incorporated by reference.
“Charges”	the charges payable by the Client for the Services referred to in Clause 6, and as set out in Schedule 2.
“Client Obligation(s)”	those things which the Client has agreed to supply or do in order for Astraeus to supply the Services as may be detailed in the Service Description in Schedule 1.
“Confidential Information”	all information and materials (whether written, visual or oral) which is identified by the parties, or any associated company of the parties, as confidential, or which by reason of its character or the circumstances or manner of its disclosure is evidently confidential, which is supplied to or obtained by the other party from the Client or Astraeus or their sub-contractors or advisors during this Agreement, which relates to the business of the Client or Astraeus.
“Deliverable(s)”	the documents, software, media and other materials that are delivered to the Client as part of the Service and more particularly as detailed in the Service Description.
“Intellectual Property Rights”	all copyright, design rights, patents, trade marks, database rights or any other intellectual property rights howsoever arising whether subsisting in the United Kingdom or any other part of the world.
“Know how”	the knowledge, skills and experience of Astraeus Personnel gained by experience of the industry and information technology.
“Manager(s)”	the account manager(s) appointed by each of the parties with responsibility for managing the day to day working relationship with the other party.
“Personnel”	employees, agents or sub-contractors of Astraeus or the Client.
“Schedule(s)”	a schedule(s) attached to these terms and conditions.
“Service(s)”	the service(s) provided by Astraeus to the Client as are more specifically defined in the Service Description in Schedule 1.
“Software”	the software or systems of the Client or its licensors for which the Client requires Astraeus to undertake Service(s).
“Astraeus Service Tools”	tools, software tools and databases, methodologies, processes, ideas, concepts, data forms, working papers used by or to be used by Astraeus in the provision of Services.
“System Environment”	the hardware, networks and connections, systems and other software which the Software works with or is dependent on.

## 2. Duration

- 2.1 This Agreement commences on the date recorded at the front of this Agreement and shall, subject to earlier termination by either party, continue for a period of [insert]

("Minimum Period") and shall continue thereafter unless and until terminated by either party under the provisions of this Agreement or upon completion of the Services detailed in the Service Description, whichever is the earlier.

- 2.2 The minimum monthly spend on the Services during the Minimum Period shall be as detailed in Schedule 2.

### **3. The Services**

- 3.1 In consideration of Astraeus supplying the Services detailed in the Service Description, the Client shall pay the Charges detailed in Clause 6 and Schedule 2, in accordance with this Agreement.
- 3.2 Astraeus shall appoint the Astraeus Manager, and the Client shall appoint the Client Manager, whose details shall be notified in writing to the other party prior to the Commencement Date.
- 3.3 The Astraeus Manager and the Client Manager shall agree appropriate methods and frequency of monitoring the Services and their fulfilment. Prior to the commencement of the Service (other than where the Services comprise the supply of Personnel or a Managed Team, where this may be omitted by agreement), the Managers will agree procedures for making agreements about the Services and agreeing variations to the scope and/or specification of the Service, all in accordance with Schedule 4 and Clause 10.
- 3.4 Astraeus will assign appropriately qualified Personnel to perform the Services and will use all reasonable endeavours to minimise changes of Personnel so assigned.
- 3.8 If the provision of the Services is delayed, varied, interrupted or suspended due to the act or omission of the Client, its employees, agents or sub-contractors or if additional work is incurred by Astraeus due to the Client's failure to promptly undertake the Client obligations set out in this Agreement, then:
- (a) Astraeus will be entitled to payment by the Client in respect of such idle or additional time incurred as a result of such delay and/or wasted time incurred; and
  - (b) Any scheduled date for the completion of any part of the Service will be deferred by a reasonable period, which shall be not less than the period of such delay.
- 3.9 Astraeus's obligation for the Services or part thereof supplied hereunder shall be discharged on completion of the Service or part thereof in accordance with this Agreement.

### **4 Service Warranty**

- 4.1 Astraeus warrants that the Services will be undertaken with reasonable skill and to professional standards of care, provided that Astraeus shall not be liable for breach of

any such warranty unless that breach is reported to Astraeus within 3 months of completion of that part of the Service giving rise to the breach. Astraeus shall use reasonable endeavours to remedy the breach in a reasonable period of time and this will be Astraeus's sole liability under this warranty.

- 4.2 The warranties in this Agreement represent the sole warranties or undertakings given by Astraeus to the Client in respect of the Services and all other conditions or warranties express or implied, including those which may be implied by statute or common law are excluded from this Agreement.
- 4.3 This Agreement excludes, without limiting the generality of Clause 4.2, any warranty that the provision of the Services shall ensure that the performance and functionality of the Client's IT systems will not be affected by any legislation or regulations, statutory or otherwise, unless such a requirement is explicitly documented in the Service Description in Schedule 1.
- 4.4 Astraeus shall not be liable for any breach of this Agreement or failure to provide the Services, which results from any failure by the Client to comply with its obligations under this Agreement.
- 4.5 Astraeus shall not be liable for defects or failures in the Services caused by any inaccuracies in drawings, information, specifications or software supplied by the Client.

## **5. Client Obligations**

- 5.1 Where Astraeus Personnel are required to undertake work at the Client's premises:
- (a) the Client shall notify Astraeus of any site conditions or health and safety procedures specific to the site, which may affect Astraeus Personnel.
  - (b) the Client shall provide Astraeus Personnel, with a suitable place of work, secretarial support, telephone and other office facilities, free of charge, and access to the same amenities, such as restaurants, canteens, car parking and other amenities, as may be available to the Client's own staff of a similar standing.
  - (c) the Client shall comply in respect of the Astraeus Personnel with all statutes, by-laws, codes of practice and legal requirements to which the Client is ordinarily subject in respect of its own Personnel.
- 5.2 The Client shall provide such reasonable access to its key Personnel as may be required by Astraeus to fulfil its obligations under this Agreement and shall ensure that all information provided to Astraeus by the Client's Personnel shall be true and accurate in all material respects.
- 5.5 Subject to receiving prior notice, the Client shall provide such reasonable access to the Software and the system environment in which the Software resides or parts thereof as Astraeus may require to fulfil its obligations under this Agreement.

- 5.6 The Client shall promptly provide Astraesus with any documentation, materials, data and any other items and assistance regarding the activities and methods of the Client as may reasonably be required by Astraesus to fulfil its obligations under this Agreement.
- 5.7 The Client shall perform the Client Obligations in the manner and at the time described in the Service Description where applicable.
- 5.8 The Client warrants to Astraesus that the computer, operating systems and any software which the Astraesus Personnel may be asked to use or modify as part of any Services, are either the property of the Client or are lawfully licensed to the Client such that in either case the Client has the right (and the right to authorise a third party, and in particular, the Astraesus Personnel) to modify, enhance, alter or otherwise amend all such systems and software and will indemnify Astraesus for any liability incurred as a result of the Client's failure to obtain such consents and licences.

## **6. Charges**

- 6.1 The Charges payable by the Client in respect of the Services in the Service Description, and the right to review the Charges, shall be as detailed in Schedule 2.
- 6.2 Where Astraesus Personnel are required to travel whilst providing the Services, the Client shall be responsible for paying any travel, hotel and other out-of-pocket expenses incurred by the Astraesus Personnel, unless agreed otherwise in writing. Any such travel shall be during the normal working hours of the Astraesus Personnel, unless agreed otherwise in writing.
- 6.3 All Charges for Services by Astraesus Personnel relate to work performed during a thirty five hour week between the hours of 09.00 and 17.30 daily, excluding Saturdays, Sundays and Public Holidays, unless agreed otherwise in writing. Any work undertaken by Astraesus Personnel outside these hours, at the request of the Client, shall be charged as detailed in Schedule 2.
- 6.4 Astraesus reserves the right to make a charge for any work done by Astraesus which is attributable to the Client's failure to observe the Client Obligations in Clause 5 above or as may be more particularly detailed in the Service Description, or which is not covered by the Service(s).
- 6.5 All Charges are exclusive of any taxes (including Value Added Tax, sales taxes, duties and any other taxes) or government levies (other than those on the gains or profits of Astraesus) and these will be charged by Astraesus, and be payable by the Client, at the prevailing rate.
- 6.6 Notwithstanding the provisions of Clause 6.5, all payments by the Client shall be made free of any tax withholding. In the event that any tax withholding is due on payments under this Agreement, such tax shall be borne by the Client.

## **7. Payment Terms**

- 7.1 Astraeus shall submit invoices to the Client for any amounts due under this Agreement as detailed in Schedule 2.
- 7.2 The Client shall remit payment in respect of each invoice to Astraeus on the payment date detailed in Schedule 2.
- 7.3 Payments shall be due in full to Astraeus, and the Client shall not be entitled to exercise any right of set off, deductions, lien or any other similar right or claim.
- 7.4 If any payment in respect of the Charges is not received within 30 days of the due date for payment, Astraeus shall be entitled:
- (a) to suspend the Services pending payment, and/or
  - (b) to levy the following charges: (i) a one-off late payment charge equivalent to 5% of the value of the unpaid amount that has not been settled by the due date; and/or (ii) interest and associated charges as prescribed by the Late Payment of Commercial Debts (Interest) Act 1998.
- 7.5 Such late payment charges will be payable immediately by the Client on notification by Astraeus. In addition, the Client shall reimburse Astraeus for any expenses reasonably incurred by Astraeus in the collection of such overdue payments.

## **8. Confidentiality**

- 8.1 The parties agree that any Confidential Information provided under this Agreement will be kept confidential both during the period of this Agreement and for 2 years following the expiry or termination of this Agreement. Each party agrees to take same steps to protect the Confidential Information as it takes to protect its own confidential information.
- 8.2 Confidential Information does not include information that:
- (a) is already known to the receiving party at the time it is disclosed;
  - (b) becomes publicly known without fault of the receiving party;
  - (c) is independently developed by the receiving party;
  - (d) is approved for release by the disclosing party;
  - (e) is disclosed pursuant to legal obligations beyond the control of the disclosing and receiving parties; or
  - (f) is disclosed to appropriate governmental or self-regulatory organisations.

8.3 Each party hereby agrees that on the expiry or termination of this Agreement, it shall promptly return or destroy (as the other party may direct) all of the Confidential Information belonging to the other party in its possession.

8.4 Each party undertakes to use Confidential Information solely to perform their obligations under this Agreement.

## **9. Intellectual Property Rights**

9.1 All Intellectual Property Rights in Deliverables shall vest in Astraeus or its licensors. Astraeus hereby grants the Client a non-exclusive non-transferable licence to use the Deliverables for the purpose for which they were supplied.

9.2 The Client shall follow all reasonable instructions that Astraeus gives from time to time with regard to the use of trademarks, copyrights, database rights and other notice of ownership rights of Astraeus and/or its licensors.

9.3 Nothing in this Agreement shall prevent Astraeus from using any Know how gained, nor limit Astraeus's ownership of Astraeus Service Tools used or developed during any Service.

9.4 If the Client receives a claim from a third party alleging that their use in the UK of any Deliverables infringes that party's Intellectual Property Rights in the UK and the EEC, Astraeus will defend the Client against that claim at Astraeus's expense and pay all costs, damages, and legal fees under any final judgement or settlement made by Astraeus, provided that the Client:

- (a) Promptly notifies Astraeus in writing of the claim; and
- (b) Does not at any time admit liability or otherwise settle or compromise, or attempt to settle or compromise the claim except upon the express instructions of Astraeus; and
- (c) Allows Astraeus to control, and co-operates with Astraeus in, the defence and any related settlement negotiations.

9.5 Astraeus shall not be liable under the indemnity in Clause 9.4 if the claim has been caused by:

- (a) any correction or modification of the Deliverables performed by a party other than Astraeus, its sub-contractors or agents, or
- (b) the combination of the Deliverables with the Client's or its sub-contractors software or items, or
- (c) work done in accordance with the Client's specifications or instructions.



- 9.6 In the event of such a claim, the Client agrees to permit Astraesus to take whatever steps are necessary to enable continued use of Deliverables, or to modify them, or replace them with Deliverables that are at least functionally equivalent. If in Astraesus's opinion none of these alternatives are reasonably available, the Client shall return the Deliverable(s) giving rise to the claim upon Astraesus's written request and Astraesus will refund the Charges paid by the Client in respect of the relevant Deliverable(s).
- 9.7 This Clause sets out Astraesus's entire obligation to the Client regarding any claim of infringement of Intellectual Property Rights.
- 9.8 Some software, from third parties licensing such Software to Astraesus, delivered as part of a Service, may be subject to licensing terms and conditions which accompany them. Such terms and conditions shall take precedence over this Agreement for the supply of such software.

## **10. Change Control**

- 10.1 The Client may at any time request and Astraesus may at any time recommend changes in the Services.
- 10.2 Neither party will be obliged to agree to any requested or recommended change but neither party will unreasonably withhold its agreement to such request.
- 10.3 Astraesus will advise the Client of the likely impact of any requested or recommended change on the Charges, time scales or any other aspect of the Service Description.
- 10.4 Until such time as any change is formally agreed, Astraesus will, unless otherwise agreed, continue to perform and to be paid for Services under the Service Description as if such change had not been requested or recommended.
- 10.5 The parties will respond in writing to, or will meet to discuss, any requested or recommended change as soon as practicable, and in any event within two weeks following receipt of the request or recommendation.
- 10.6 Any agreement to a requested or recommended change will become valid as an amendment to the Service Description only when recorded in writing and signed by authorised representatives of both parties.

## **11. Liability**

- 11.1 Nothing in this Agreement shall have the effect of excluding or restricting the liability of Astraesus for death or personal injury resulting from its negligence or for proven fraud by Astraesus.
- 11.2 If Astraesus by its act, omission, negligence or default causes loss or damage to property, Astraesus's liability for one event or a series of connected events whether in contract or otherwise shall not exceed one million pounds sterling (£1,000,000).

11.3 In all other cases Astraesus's liability, whether in contract, by reason of negligence or otherwise will not exceed the amount paid or payable for the Service in the Service Description from which the liability arises. The parties agree that damages shall be the only remedy available.

11.4 Nothing in this Agreement shall

- (a) impose any liability on Astraesus for any loss of business, loss of profits, loss of revenue, loss of anticipated savings, loss of data, loss of goodwill, or any other category of indirect, special or consequential loss or damage whatsoever; or
- (b) impose any liability on Astraesus for any loss or damage from any defect or deficiency which Astraesus shall have physically remedied at its own expense within a reasonable time; or loss which could have been avoided by the Client following Astraesus's reasonable advice and instructions; or
- (c) impose any liability on Astraesus for any loss or damage arising out of the acts, omissions, negligence or default of the Client and its employees agents or subcontractors.

## **12. Personnel**

Until the expiry of six months after completion of the Service or termination of this Agreement, whichever is the later, neither party will solicit the employment or services of any Personnel of the other party who has been engaged in connection with the Service(s). Liquidated damages for breach of this provision payable by the party in breach of this Clause shall be equal to twenty-five percent (25%) of the annual gross salary of that person, if they were an employee engaged in the Services, or twenty-five percent (25%) of the annual fees charged for the services of that person if they provided their services other than as an employee. The parties agree that this represents a reasonable pre-estimate of loss and damage that would be caused by breach of this Clause 12 by either party and shall be enforceable as a liquidated damages clause and is not a penalty clause.

## **13. Insurance**

Both parties shall at all times during the period of this Agreement at their own expense maintain insurance adequate to provide cover in accordance with sound business practice in connection with its obligations under this Agreement (including Professional Indemnity Insurance, Employer's Liability Insurance and Public Liability Insurance) and shall on request produce evidence of such policies to the other party.

## **14. Dispute Resolution**

14.1 All disputes between the parties arising out of or relating to this Agreement or any Services shall be referred by either party to the Astraesus Manager and the Client Manger for resolution.

- 14.2 If any dispute cannot be resolved by the Astraeus Manager and the Client Manager within a maximum of 14 days after it has been referred under Clause 14.1, that dispute shall be referred to the Business Director of Astraeus and a Senior Manager of the Client for resolution.
- 14.3 If the dispute cannot be resolved by the parties' representatives nominated under Clause 14.2 within a maximum of 14 days after it has been referred under Sub-clause 14.2 the dispute may be referred onwards as follows:
- (a) if the dispute is of a technical nature, it shall be referred for final determination to an expert (the "Expert") as selected in accordance with Clause 14.4 below, who shall be deemed to act as expert and not as arbitrator; and
  - (b) in all other aspects it shall be determined pursuant to Sub-clause 16.10.
- 14.4 The Expert shall be selected by mutual agreement or, failing agreement within 14 days after a request by one party to the other, shall be chosen at the request of either party, by the President for the time being of the British Computing Society, who shall be requested to choose a suitably qualified and experienced Expert for the dispute in question.
- 14.5 Fourteen (14) days after the Expert has accepted the appointment, the parties shall submit a written report on the dispute to the Expert and to each other and seven days thereafter shall submit any written replies they wish to make to the Expert and to each other.
- 14.6 Both parties shall then afford the Expert all necessary assistance, which the Expert requires to consider the dispute including but not limited to full access to any documentation or correspondence relating to the Service(s).
- 14.7 The Expert shall be instructed to deliver his determination to the parties within 14 days after the submission of the written reports to Sub-clause 14.5.
- 14.8 Decisions of the Expert shall be final and binding on both parties and not subject to appeal.
- 14.9 The Expert shall have the same powers to require any party to produce any documents or information to him and the other party, as an arbitrator; and each party shall in any event supply to him such information which it has and is material to the matter to be resolved and which it could be required to produce on discovery.
- 14.10 The fees of the Expert shall be borne by the parties in the proportion, as shall be determined by the Expert, having regard to (including but not limited to) the conduct of the parties.

## **15. Termination**

- 15.1 Either party shall be entitled by immediate notice to terminate all or part of this Agreement if:-
- (a) the other party shall be in material breach of any of its obligations under this Agreement, and having exhausted the dispute resolution procedure detailed in Clause 14 and been notified in writing of such breach, has failed to make good such breach within 14 days; or
  - (b) a voluntary arrangement is proposed or approved or an administration receiver is appointed of any of the other party's assets or undertaking or a winding up resolution or petition is passed or presented (otherwise than for the purposes of a bona fide reconstruction or amalgamation) or if any circumstances arise which entitle the court or a creditor to appoint a receiver, administrative receiver or administrator or to present a winding up petition or make a winding up order or other similar or equivalent action is taken against or by the other party by reason of its insolvency or in consequence of debt; or
  - (c) The other party shall have a receiver, administrator or administrative receiver appointed of the whole or any part of such company's assets.
- 15.2 Either party shall be entitled to terminate this Agreement without cause upon providing the other party with not less than 6 months prior written notice.
- 15.3 The termination of this Agreement shall be without prejudice to the rights of the parties hereto subsisting at the date of such termination.
- 15.4 Upon completion of the Service or termination of this Agreement, all items, which are the property of the other party, shall be returned to the owning party on request within 10 working days.
- 16. General**
- 16.1 Any variations to this Agreement must be in writing and signed by an authorised representative of both parties (which in the case of Astraeus may only be an executive director or legal representative). Notwithstanding the foregoing, the details of a Service in the Schedules may be varied in writing by the Astraeus Manager and the Client Manager or in accordance with procedures agreed in Schedule 4.
- 16.2 Where there is a conflict between these terms and conditions and the Service Description in Schedule 1, these terms and conditions shall take precedence. Where there is a conflict between the Service Specific terms and conditions in Schedule 3 and these terms and conditions, Schedule 3 shall take precedence.
- 16.3 Words in the singular shall include the plural and vice versa, references to any gender shall include the others and reference to a person shall include a reference to any company as well as any legal or natural person.

- 16.4 If any of the terms and condition of this Agreement shall be, or be held by any competent authority to be invalid or unenforceable in whole or in part the validity of the remaining terms and conditions and/or the remainder of the provision in question shall continue in full force and effect.
- 16.5 Neither party shall be liable to the other for failure to fulfil its obligations hereunder to the extent that this failure results from any cause beyond its reasonable control.
- 16.6 The rights and obligations of the Client under this Agreement shall be personal and shall not be assigned, transferred, or sub contracted without the prior written consent of Astraeus. Astraeus shall be entitled to assign or sub contract all or any of its rights and obligations hereunder to any associated company of Astraeus and to any other person, subject to the prior written consent of the Client which shall not be unreasonably withheld or delayed.
- 16.7 Neither party shall, without the prior written consent of the other (which shall not be unreasonably withheld or delayed):
- (a) furnish the name of the other as a reference;
  - (b) utilise the name of the other for publicity purposes; or
  - (c) make public statements about the other.
- 16.8 Any notice required to be given hereunder shall be sent by either (i) pre-paid first class post (ii) registered post (iii) recorded delivery post (iv) facsimile transmission (v) e-mail transmission. Notice served by post under methods (i), (ii) or (iii) shall be sent to the party to whom it is addressed at their last known address or place of business and shall be deemed to be served on the day following or if that day be a Sunday the second day following that upon which it shall be shown to have been posted. Notice served by facsimile or e-mail transmission under methods (iv) and (v) shall be sent to the party to whom it is addressed at their last known facsimile number or e-mail address respectively, and shall be deemed to be served on the same day unless it can be shown that the facsimile or email transmission did not successfully reach its intended destination.
- 16.9 The parties agree that the waiver or granting of time to remedy a breach of any terms of this Agreement shall not in any way prejudice or affect the subsequent enforcement of such terms and shall not be deemed to be a waiver of any subsequent breach.
- 16.10 This Agreement shall in all respects be governed by and construed in accordance with English Law, and subject to Clause 14, the parties agree to submit to the exclusive jurisdiction of the English Courts.
- 16.11 Nothing in this Agreement shall create a partnership, joint venture or the relationship of principal and agent or employer and employee between the parties.

16.12 Both parties agree that the terms of this Agreement shall not be enforceable by a third party by virtue of the Contracts (Rights of Third Parties) Act 1999, and this Agreement can be rescinded or varied by agreement between the parties according to the above terms without the consent of any such third party. For the purposes of this clause a third party means any person who is not party to this contract.

**17. Entire Agreement**

17.1 This Agreement and the documents referred to in it, constitute the entire agreement and understanding of the parties in respect of the Services and supercedes any previous agreement between the parties relating to the subject matter of this Agreement.

17.2 Each of the parties acknowledges and agrees that in entering into this Agreement and 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 as a warranty.

17.3 Nothing in this Clause 17 shall, however, operate to limit or exclude any liability for fraud.

SUBJECT TO CONTRACT

## **SCHEDULE 1 – THE SERVICES**

*(Service Descriptions are to be attached here as they are agreed by the parties)*

### **1A - Example Service Description for a Service to a Specification**

*This will as a minimum detail: the service to be provided, the Deliverables & any specific Customer obligations*

#### **Specification of the Service**

*description of services to be undertaken by Astraeus or the resources to be supplied by Astraeus, working day times if they differ from Astraeus standard day*

#### **Deliverables**

*any items, documents or things to be delivered to the Client from the Services*

#### **Client Obligations & Dependencies**

*any actions or decisions the client has agreed to do; facilities that the client has agreed to supply/make available; or items or deliverables that the client has agreed to supply for this Schedule of Work.*

#### **Premises**

*place where Service is to be undertaken*

### **1B - Example Service Description for the Supply of Personnel**

#### **Role & Personnel Description**

*Short description of the role to be fulfilled and the knowledge skills & experience required of the Astraeus Personnel.*

#### **Premises**

*Location where Astraeus Personnel are to be based*

#### **Placement Period**

*Period for which Client has agreed to placement of Astraeus Personnel*

#### **Working Hours and Days**

*The hours and days on which it is agreed the Astraeus Personnel shall work. Note this should not on average exceed 48 hours per week.*

## **1C - Example Service Description for a Managed Team**

### **Project Scope**

*Short description of the type of work to be undertaken by Astraeus Personnel e.g. support system x, or to develop programs in project beta or to undertake packages of work as passed to the Astraeus Team Manager from time to time..*

### **Astraeus Managed Team**

*Number of Personnel required to perform specified roles and the knowledge, skills and experienced that Client requires team members to have.*

### **Premises**

*Location where Astraeus Managed Team is to be based*

### **Project Period**

*Period for which Client has agreed to use the Astraeus Managed Team*

### **Working Hours and Days**

*The hours and days on which it is agreed the Astraeus Managed Team shall work, if it varies from ITS working day. Note this should not on average exceed 48 hours per week per person.*

### **Client Obligations & Dependencies**

*Any specific items, decisions, actions or access that the Client needs to do in order that Astraeus can undertake the Project*

## **1D - Example Service Description for Software Development Services**

### **Software Specification**

*Full and descriptive document detailing the Software to be developed, also list any software from third parties of Astraeus or packaged software owned by Astraeus. This should not include any software that the Client has agreed to supply.*

### **Acceptance Test(s)**

*Details of the criteria of the Acceptance Test(s), to be specific tests of what the Developed Software will do versus the Software Specification and NOT business needs to be met or business benefits.*

### **Project Plan**

*The plan of the work which gives a breakdown of the work and details the responsibilities of both Astraeus and the Client and the timing thereof..*



**Client Obligations & Dependencies**

*All things that are the responsibility of the client, such as access to people and provision of facilities to Astraeus; software and other items to be supplied; decisions that the Client needs to make and by when; actions that they will do e.g. loading the Software and testing it in a given time period*

**Premises**

*Location where Software will be delivered and tested and if applicable location of Astraeus development team.*

**1E - Example Service Description for Support Maintenance and Enhancement Services**

*Insert if applicable the standard Service Description for Support, Maintenance and Enhancement Services*

**Signed:**

\_\_\_\_\_  
**Authorised Signatory for and on behalf of the Client**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
(Print Name and Title)

**Signed:**

\_\_\_\_\_  
**Authorised Signatory for and on behalf of Astraeus**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
(Print Name and Title)

## **SCHEDULE 2 – CHARGES AND PAYMENT TERMS**

### **Charges (Time and Materials)**

Prices for Astraeus Personnel are as in the table below and shall be charged on a time and materials basis:

<b>Astraeus Personnel Job Title</b>	<b>Charge per (hour/day/week)/£</b>

### **Supplementary Charges**

For work in excess of 35 hours per week or work outside the hours of 08:00 to 18:00 – Charge is 1.5 times the rates in the above table.

Expenses, travel & subsistence will be charged in addition. All charges quoted are exclusive of VAT.

### **Charges (Fixed Fee for Project Service Delivery)**

The price for the Project Service as detailed in the service Description shall be a total of [INSERT] plus VAT, which shall be broken down into the following deliverables or milestones:

<b>Deliverable/Milestone</b>	<b>Charge per Deliverable or Milestone upon completion</b>

### **Minimum Period – Monthly Spend**

Notwithstanding the above Charges, it is agreed by the parties that the minimum sum which shall be charged by Astraeus per month for the duration of the Minimum Period (as defined in Clause 2.1) shall be [INSERT].

### **Price Variations**

Astraeus shall be entitled to amend the above Charges from the first day of each calendar year, in accordance with the percentage increase of the current Consumer Price Index (CPI), by giving the Client not less than 1 month's prior written notice.

**Payment Terms**

Invoices will be issued to the Client monthly in arrears.

All invoices shall be settled by the Client within 15 days of date of invoice.

SUBJECT TO CONTRACT

## **SCHEDULE 3 - SERVICE SPECIFIC TERMS AND CONDITIONS**

### **3A - Supply of Services to a Specification**

None

### **3B - Supply of Personnel on a T&M basis**

#### **3B1 Astraerus Personnel**

3B1.1 If, in the Client's reasonable opinion, and within five working days of commencing work for the Client, an Astraerus Personnel does not have the knowledge, skills and experience reasonably expected by the Client, then the Client shall inform Astraerus immediately, with confirmation in writing being provided within 48 hours. In such circumstances, Astraerus shall use its reasonable endeavours to offer to the Client a replacement Astraerus Personnel as soon as is reasonably practicable.

3B1.2 Astraerus shall not provide any guidance or instruction to the Astraerus Personnel in relation to the work forming the Service and the Client shall be responsible for directing and controlling work undertaken by Astraerus Personnel.

3B1.3 Astraerus shall be entitled to substitute any Astraerus Personnel during the provision of a Service as follows:

- (a) at any time if the substitution is to ensure compliance with its obligations under the Working Time Regulations, or due to illness, death or injury or termination of the Astraerus Personnel's contract with Astraerus; and
- (b) upon giving reasonable notice for holidays or training; and
- (c) upon giving the Client one week's notice if the substitution is for any other reason.

3B1.4 Astraerus Personnel shall complete a timesheet for all work undertaken. The Client agrees that its signature on a timesheet is confirmation of both the quality and quantity of services provided. Failure to sign a timesheet, without written and justifiable reasons being supplied to Astraerus, shall not alter the Client's liability to pay for the services provided or any expenses incurred.

#### **3B2 Intellectual Property**

3B2.1 This clause 3B2 shall take precedence over and replace Clause 9.1 and 9.2 of the terms and conditions.

3B2.2 The parties acknowledge that the Intellectual Property Rights of the parties which subsisted prior to the placement of the Astraerus Personnel shall remain vested in the owning party.

3B2.3 Intellectual Property Rights in all Deliverables developed by Astraerus Personnel as part of work undertaken during a placement shall be vested in the Client upon payment of the relevant Charges therefor. Until such time as payment is made, Astraerus shall grant the Client a non-transferable licence to use the Deliverables.

3B2.4 The Client grants the relevant Astraesus Personnel the right to use the Software and the Deliverables (once ownership is vested in the Client) on a non-exclusive non-transferable basis for the purposes of fulfilling Astraesus's obligations.

### 3C - Supply of a Managed Team

#### 3C1 The Managed Team

3C1.1 Astraesus shall use all reasonable endeavours to provide a managed team(s) of Personnel with a project leader and other Personnel with the knowledge, skill and experience requested by the Client as may be detailed in the Service Description in the format of Schedule 1C. The Client may request changes in the composition of the Managed Team from time to time using the change control procedure. For the avoidance of doubt, the Client will not be able to select a Managed Team on the basis of naming individual Astraesus Personnel.

3C1.2 A Astraesus Managed Team shall be managed on a day to day basis by a project leader, who will, amongst other duties:

- (a) act as principal interface with the Client;
- (b) allocate work to Personnel in the managed team;
- (c) organise the composition of the managed team such that the numbers and roles of Personnel satisfy the requirements of the Client in the Service Description;
- (d) report on the activities of the managed team to the Client Manager.

### 3D - Supply of a Software Development Service

"Acceptance Test(s)"	the test(s) detailed in a Service Description in the format of Schedule 1D to be undertaken by the Client and which test that the Software has the functionality in the Software Specification
"Developed Software"	the software of various types all of which together has the functions specified in the Software Specification.
"Software Specification"	any specification of Developed Software set out in the Service Description.
"Systems Environment"	the hardware, networks and connections, system and other software which the Software works with or is dependent on.

#### 3D1 Service Warranty

3D1.1 This clause 3D1 shall take precedence over and replace Clause 4.1 of the terms and conditions.

3D1.2 Astraesus warrants that on the date of delivery and for 3 months thereafter, the Developed Software will conform in all material respects with its Software Specification, provided that the Software has not been modified other than by Astraesus and

provided that the Client has maintained and operated the Software in accordance with Astraerus's instructions on use.

- 3D1.3 During the warranty period in Clause 3D1.2, Astraerus will investigate any alleged error in the Software reported in writing, such investigation may include testing the Software at the premises or by remote dial up access. Astraerus shall provide an appropriate resolution and/or avoidance information to any errors found. This will be Astraerus's sole liability under this warranty. The Client shall provide such information regarding any alleged error which Astraerus may reasonably require and such reasonable assistance as Astraerus may request to investigate any error.
- 3D1.4 Astraerus reserves the right to charge for any service resulting from the Client's failure to make reasonable use of information in their possession, or where investigation shows no error in the Software or for other matters outside the scope of this warranty.
- 3D1.5 No warranty is offered by Astraerus nor shall any warranty be implied that the Software shall have the functionality as detailed in the Software Specification when the Software is used in the Systems Environment.

**3D2. Acceptance**

For each Service detailed in a Service Description in the format of Schedule 1.4D:

- 3D2.1 The Client shall conduct the Acceptance Test(s) in accordance with and by the dates specified in the Project Plan. Astraerus may, at its option, attend such tests.
- 3D2.2 During the Acceptance Test(s), Astraerus shall have the opportunity of rectifying any errors properly reported by the Client or taking such error avoidance action as it deems necessary and the Client shall have the opportunity of re-testing until the Developed Software passes said Acceptance Tests.
- 3D2.3 The Software will be deemed to have been accepted by the Client on completion of the Acceptance Tests, if :-
- (a) the Client signs an acceptance certificate for the Software; or
  - (b) a period of 5 working days passes from Astraerus's notification of completion of the Acceptance Tests and the Client has not notified Astraerus in writing of any reason for rejecting the Software; or
  - (c) the Client puts the Developed Software into live operational use.
- 3D2.4 If at the end of the Acceptance Test(s) the Developed Software has failed to pass the Acceptance Test(s) then Astraerus shall agree with the Client a time period to remedy the defects and then resubmit the Developed Software to the Client for a rerun of the Acceptance Test(s) in accordance with this Clause 3D2.
- 3D2.5 On acceptance of the Developed Software, the provisions of this Agreement relating to this Service Description shall be deemed to have been completed by Astraerus save for the warranty obligations.

## **3E - Supply of a Support, Maintenance and Enhancement Service**

### **3E1 Services**

3E1.1 Astraeus will use all reasonable endeavours to provide each Service in accordance with the Service Description. Each Service may comprise of the provision of support and maintenance on the Software and the development of enhancements to the Software each of which may result in amendments, deletions or the development of new software, the Deliverables.

3E1.2 Services under the Service Description will be provided by the numbers and the types of Astraeus Personnel that have been specified in the Service Description. Where Astraeus, using all reasonable endeavours find that the level of service agreed can no longer be maintained with the agreed numbers and type of Astraeus Personnel, then the parties shall discuss this and agree an appropriate solution, which may require additional Astraeus Personnel to be utilised on these Services either on a temporary or permanent basis.

### **3E2 Client Obligations**

3E2.1 The Client shall ensure that the Software is correctly used and that its Personnel are properly trained to use the same.

3E2.2 Subject to receiving prior notice, the Client shall provide such reasonable access to the Software and the System Environment or parts thereof as Astraeus may require to fulfil its obligations under the Service Description.

3E2.3 The Client will provide sufficient and timely evidence with calls for support services to enable Astraeus to analyse and diagnose the cause.

3E2.4 The Client shall promptly provide Astraeus with any documentation, materials, data and any other items and assistance regarding the Software and its use by Client Personnel as may reasonably be required by Astraeus to fulfil its obligations.

### **3E3 Intellectual Property**

3E3.1 This clause 3E3 shall take precedence over and replace Clause 9.1 and 9.2 of the terms and conditions.

3E3.2 The parties acknowledges that the Intellectual Property Rights of the parties which subsisted as at the commencement of any Service shall remain vested in the owning party.

3E3.3 If the Software was owned by the Client or its licensors prior to commencement of the Services, then Intellectual Property Rights in all Deliverables developed under such Service Description shall be vested in the Client upon payment of the relevant Charges and Astraeus shall grant the Client a non-transferable licence to use the Deliverables until payment is made. For Astraeus owned Software, Astraeus shall grant the Client a non-transferable, non-exclusive licence to use the Deliverables.

3E3.4 For Software owned by the Client or its Licensors, the Client grants Astraeus the right to use the Software and the Deliverables (once ownership is vested in the Client) on a non-exclusive non-transferable basis for the purposes of fulfilling Astraeus's obligations.

SUBJECT TO CONTRACT



## **SCHEDULE 4 - AGREEMENTS AND VARIATIONS**

### *1. Basic provisions about exchanging and authenticating documents*

1.1 The parties may attach to this Agreement an agreed protocol or a third party protocol on electronic signatures or encryption or other such matters so as to

1.1.1 regulate the manner in which documents may be exchanged; or

1.1.2 determine when a party is to be taken to have authorised any particular document.

Where such a protocol is attached, that protocol will be decisive as to the way in which documents should be exchanged and/or authenticated.

1.2 Where there is no such protocol, the parties may exchange documents in any form of writing. For the avoidance of any doubt, this therefore includes hard copy or transmission by fax or email and all such documents will be presumed to have come from the person named as the sender at the time and date stated and to be authentic as to their contents in the absence of proof to the contrary.

#### *Agreements reached in the course of a Service*

1.3 The parties may agree to attach to this Agreement a procedure detailing the specific requirements as to how agreements should be concluded or evidenced in the course of a Service. Where they do so, that procedure will be decisive as to the way agreements should be concluded or evidenced. Where there is no such procedure, or to the extent that the terms of that procedure are silent, the following clauses will apply.

1.4 On any matter relating to the conduct of the Service within the Service Description and its scope, the parties may agree those matters relevant to conducting a Service by assent made by the parties' representatives working on the Service. Such assent may be given orally.

1.5 Where any agreement on a matter within the scope of the Service is evidenced in writing (such as by meeting minutes or the keeping of an updated list of requirements resulting from workshops or any other form of record comprising the configuration management for the Service), that written document will stand as a valid record of the matters stated as agreed, but only where that written document has been agreed by both parties, each showing its agreement in writing.

### *2. Agreements to vary the Service in line with Change Control as detailed in Clause 10*

An agreement on a matter outside the scope of the Service or which is intended to vary the scope will not be effective unless

- 2.1 it is in writing;
- 2.2 both parties have indicated their assent to that agreement in writing following the change control procedure detailed in Clause 10;
- 2.3 the variation being agreed to the scope of the Service is stated with sufficient precision;
- 2.4 the changes required in the resources (human and otherwise) are described;
- 2.5 any changes to the future estimated sums payable by the User are provided; and
- 2.6 the consequential changes required to the rest of the Service and its Deliverables and any consequential effects in terms of anticipated limitations to the functional or non-functional requirements within the scope of the Service Description are set out.

Astraeus may set out estimates for the matters in clauses 2.4 to 2.6 of this Schedule 4 and may indicate, where it is appropriate to do so, only high level estimates of any of the changes in those clauses and stating the reason for the imprecision. Where Astraeus does so, Astraeus is under no liability for those estimates ultimately proving incorrect for any reason given by Astraeus, provided it has in giving those estimates discharged its obligations under clause 4.1 (legal obligations of reasonable care and skill).

### 3. *Authority of Parties' representatives when they make Agreements*

The parties will name in writing those individuals ("Authorised Representatives") for each party who are authorised to make change control agreements to vary the scope of the Service, before the Service commences or before such representatives may agree change controls. The following provisions apply to the authority of the parties' personnel when they purport to make any Agreements:

- 3.1 Where an agreement relates to a matter within the scope of the Service, the parties' representatives making such an agreement do not need to be specifically named in writing to the other party. Each party warrants to the other that its representative making that agreement is duly authorised to make that agreement.
- 3.2 Where an agreement relates to varying the scope (and therefore requires Writing according to Clause 2 of this Schedule 4 above) each party warrants to the other that (a) each person named in writing as being authorised to agree such changes has sufficient authority to make such an Agreement and that (b) that person can validly nominate a substitute in writing either generally or for a specific purpose to do so as well.
- 3.3 The provisions on authority in this Clause 3 will apply notwithstanding any lack of actual authority of that person according to the internal authorisation procedures of the party

for which he or she works. Each party must, if necessary, ratify any such apparent agreement made at the earliest opportunity and undertakes that it will not in such circumstances seek subsequently to rely on any lack of actual authority to render void any such apparent agreement.

4. *Resolution of disputes as to Scope*

Disputes as to what is included within the scope of the Service are to be dealt with under the dispute resolution procedure in Clause 14 of the Agreement. Where there is dispute as to whether a particular variation to the Service Description should or should not have been made in writing, it must be dealt with in accordance with Clause 14.

SUBJECT TO CONTRACT