

These terms and conditions are supported by additional terms relative to the product or service clients have with Askey.

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1. DEFINITIONS

1.1 “Company” means Askey Data Services Limited.

1.2 “Confidential Information” means all information confidential to the Client whether relating to the Client’s business, Clients, clients, suppliers or otherwise but excluding information now or at any time hereafter becoming generally known or accessible to the public (unless due to the default of the Company hereunder) and information obtained by the Company from a third-party free of restrictions on use or disclosure.

1.3 “Contract” means the agreement between the Client and the Company covering the Services to be provided.

1.4 “Core Code” means the source library of computer programming code developed by the Company as part of the tools of its trade in respect of conducting a systems development business.

1.5 “Client” means the person, firm, company, or other organisation commissioning the Services to be carried out.

1.6 “Intellectual Property Rights” means patents, rights to inventions, copyright and neighbouring and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade

secrets), and all other intellectual property rights. In each case, whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

1.7 “Services” means the systems analysis, design, development, testing and other services or products as expressly set out in writing and to be performed under this Contract.

1.8 “Third Party Component” means an item of software written by a third-party purchased by the Company to be supplied in turn to the Client as a part of the total system developed.

1.9 “Consultancy” means the professional advice provided by the Company, either in-person or online, on how to use the applications/service purchased.

1.10 “Variation” means a change to the Services in the original Contract.

2. COMPANY OBLIGATIONS

2.1 The Company will provide the Services to the Client in accordance with the Contract. For the avoidance of doubt, nothing in this Contract shall be construed as restricting or prohibiting the Company from, at any time, providing services (whether similar to the Services) to any third-party.

2.2 Without prejudice to any other obligation of confidentiality from time to time subsisting between the Client and the Company, the Company hereby undertakes (subject to the Client’s written consent) not at any time hereafter to disclose any Confidential Information to any third-party nor to use any Confidential Information saved (in either case) as may be reasonably necessary for the purposes of providing the Services hereunder or as may be required under a court order or lawful order of a government authority.

2.3 The Company will use all reasonable endeavours to provide the Services to the Client within the estimated timings provided but all timings agreed to by the Company are business estimates only (but given in good faith). The Company will not be liable for any loss, injury, damage or expenses arising directly or indirectly from any delay and time will not and cannot ever be of the essence in respect of the Company’s performance of its obligations hereunder.

3. CLIENT OBLIGATIONS

3.1 The Client shall:

- a) ensure that the terms of the Contract and any information in the Specification are complete and accurate.
- b) co-operate with the Company in all matters relating to the Services.
- c) provide the Company with such information, instructions, and materials as the Company may reasonably require supplying the Services and ensure that such information provided promptly (or within any applicable timescale) and is complete and accurate in all material respects.
- d) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start.

- e) comply with all applicable laws, including health and safety laws; and

3.2 if the Company's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Client or failure by the Client to perform any relevant obligation:

- a) without limiting or affecting any other right or remedy available to it, the Company shall have the right to suspend performance of the Services until the Client remedies the situation. The Client relieves the Company from the performance of any of its obligations in each case to the extent the Client issue prevents or delays the Company's performance of any of its obligations.
- b) the Company shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from the Company's failure or delay to perform any of its obligations as set out in this clause 3.2.

3.3 As the Data Controller, the Client remains responsible for checking that any Data Processor it uses is competent to Process the Personal Data in accordance with all the requirements of the relevant Data Protection Legislation.

4. CLIENT RESPONSIBILITY FOR TESTING

4.1 During the performance of the Services and at their conclusion the Company will deliver a module, sub-system or complete system for acceptance by the Client. The Client will have responsibility for conducting its own testing in accordance with its own test standards and plans to accept the item delivered.

4.2 The Client will report its test findings back to the Company in a timely manner and in an agreed format. On any occasion when there is no report back to the Company within 28 days of the delivery date, the module, sub-system or complete system will be deemed accepted by the Client. Thereafter, the Client will be charged and will pay additional fees in respect of further amendments to the module, sub-system or complete system.

5. VARIATION

5.1 The Contract may only be varied by a written and agreed Variation, which may be raised by either party, using the agreed form of documentation (or if there is no agreed form of documentation, such form as is approved by the Company).

5.2 The party requesting a Variation should do so promptly whenever the need for a Variation is identified.

5.3 Each Variation shall be supported by a statement of the reason for the Variation, a description of the work involved, a quotation for any changes in fees and a statement of its impact upon any aspect of the Contract or Services, all of which must be completed within 14 days of the date of the request.

6. FORCE MAJEURE

6.1 In this clause, the following definitions apply:

Force Majeure Event means any circumstance not within a party's reasonable control including, without limitation:

- a) acts of God, flood, drought, earthquake or other natural disaster.
- b) epidemic or pandemic.
- c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off diplomatic relations.
- d) nuclear, chemical or biological contamination or sonic boom.
- e) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent.
- f) collapse of buildings, fire, explosion or accident.
- g) any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the party seeking to rely on this clause, or companies in the same group as that party);
- h) non-performance by suppliers or subcontractors (other than by companies in the same group as the party seeking to rely on this clause); and
- i) interruption or failure of utility service.

6.2 Provided that it has complied with Clause 6.3, if a party is prevented, hindered or delayed in or from performing any of its obligations under this agreement by a Force Majeure Event (**Affected Party**), the Affected Party shall not be in breach of this agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

6.3 The Affected Party shall:

(a) as soon as reasonably practicable after the start of the Force Majeure Event but no later than 10 days from its start, notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the agreement; and

(b) use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

6.4 In the event that such conditions of Force Majeure continue or are expected to continue for more than 2 months, the parties shall consult together to find a mutually acceptable solution and in default the Company shall have the right to terminate this agreement in accordance with clause 9.4.

7. LIABILITY

7.1 The Company shall (save in respect of Third Party Components) indemnify and hold harmless the Client from and against all costs, claims, demands and expenses accruing to the Client arising out of any claim or cause of action with respect to any loss of or damage to any property or any personal injury or death of any person which is occasioned whether directly or indirectly by any act or omission on the part of the Company, its agents or employees.

7.2 The Client shall indemnify and hold harmless the Company from and against all costs, claims, demands and expenses accruing to the Company arising out of any claim or cause of action with respect to any loss of or damage to any property or any personal injury or death of any person which is occasioned whether directly or indirectly by any act or omission on the part of the Client, its agents or employees.

7.3 Clauses 7.1 and 7.2 will not apply where the party concerned is able to demonstrate that such death or personal injury, or loss or damage, was not caused or contributed to by its default or negligence, or the default or negligence of its staff or subcontractors, or by any circumstances under its control.

7.4 If supplied with a system/application, the Client is solely responsible for the use, application and effect of the system in the Client's operational environment, including but not limited to all supporting procedures, processes, audits, checks, internal controls, ensuring the actual and timely performance of all maintenance and other tasks within the area of application, business continuity and contingency systems.

7.5 Each party shall indemnify the other against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the indemnified party arising out of or in connection with the breach of the UK Data Protection Legislation by the indemnifying party, its employees or agents, provided that the indemnified party gives to the indemnifier prompt notice of such claim, full information about the circumstances giving rise to it, reasonable assistance in dealing with the claim and sole authority to manage, defend and/or settle it.

7.6 The Company's maximum aggregate liability for any and all losses, claims, demands, damages, costs and/or expenses of any kind whatsoever arising out of or in connection with any order confirmation and/or these Terms and Conditions (whether in contract, tort, by statute or otherwise) shall not, in total, exceed the amount actually paid by the Client to the Company for the Services.

7.7 All warranties and conditions, express or implied by law or otherwise with respect to the Services are hereby excluded and the Company shall not be liable to the Client for any loss or damage whatsoever (including without prejudice to the generality of the foregoing any liability in contract, negligence or any other tort for any indirect, consequential or economic loss or for loss of profit or opportunity of any kind) arising directly or indirectly in connection with the Services or otherwise except insofar as any exclusion or limitation of the Company's liability hereunder is prohibited void or unenforceable by law.

8. INTELLECTUAL PROPERTY RIGHTS

8.1 Each party acknowledges the existence of the other's intellectual property at the commencement of this Contract and neither party obtains any right to the other's intellectual property by entering this contract.

8.2 The Company shall retain ownership of and all Intellectual Property Rights in the Core Code and any additions or improvements to it.

8.3 The Company shall retain Intellectual Property Rights in any reusable new or improved technique, program component, sub-routine or method that adds to the Company's know-how or other intellectual property that arises in the performing of the Services.

8.4 The Company shall not infringe the Intellectual Property Rights of any third party and shall indemnify the Client against all claims, costs and expenses that the Client may suffer because of any such infringement.

9. TERMINATION

9.1 The Client has the right to terminate the contract at any time but must provide a minimum of 3 months' written notice to the Company at sales@asckey.com. If no notice is received in this time, the Client shall pay a sum (such sum to be decided at the Company's discretion acting properly) as compensation for the value of lost fees.

9.2 The Company may terminate the agreement at any time by giving notice of 3 months. You, as the Client, accept that you will have no claim for any compensation because of our decision to terminate the Agreement.

9.3 Either party may terminate forthwith if the other party adopts a resolution for its winding up (unless the same be part of a solvent reconstruction or amalgamation) or if any petition is presented for the appointment of an administrator or a receiver or to wind up the other party or a receiver or an administrative receiver is appointed in respect of any part of the other party's undertaking or assets or if the other party suffers any other action in consequence of debt or if the other party is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 (or any re-enactment or further enactment thereof) or if the other party makes or attempts to make any arrangement or composition with or for the benefit of its creditors or ceases to carry on business or if any event analogous to any of the foregoing under any foreign jurisdiction occurs.

9.4 Either party may terminate if the other party is in breach of this Contract and fails in the case of a breach capable of remedy to remedy the same or in the case of a breach not capable of remedy to pay reasonable compensation in either case within 14 days of a written notice requiring the defaulting party to remedy such breach or (as the case may be) pay such reasonable compensation (which shall be specified in such notice).

9.5 If the Company terminates this Contract, then the Client shall forthwith at its own cost and as directed by the Company return to the Company or destroy all materials and records embodying any part-system delivered (and certify to the Company that it has done so), reimburse the Company all expenses and pay to the Company all fees falling due up to the date of termination and a sum equal to the Company's loss of profit resulting from such termination, and all outstanding licences under the Intellectual Property Rights in accordance with Clause 8 shall forthwith and automatically be revoked.

10. DATA PROTECTION

10.1 In this clause, the following definitions apply:

Controller, Processor, Data Subject, Personal Data, Personal Data Breach, processing and appropriate technical and organisational measures: as defined in the Data Protection Legislation.

Data Protection Legislation: the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications);

UK Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

10.2 Both parties will comply with all applicable requirements of the Data Protection Legislation. This Clause 9 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation. In this Clause 9, Applicable Laws means (for so long as and to the extent that they apply to the Company) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law; and Domestic UK Law means the UK Data Protection Legislation and any other law that applies in the UK.

10.3 The parties acknowledge that for the purposes of the Data Protection Legislation, the Client is the Controller, and the Company is the Processor.

10.4 Without prejudice to the generality of Clause 10.2, the Client will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Company and/or lawful collection of the Personal Data by the Company on behalf of the Client for the duration and purposes of this agreement.

10.5 Without prejudice to the generality of Clause 10.2, the Company shall, in relation to any Personal Data processed in connection with the performance by the Company of its obligations under this agreement:

- a) process that Personal Data only on the documented written instructions of the Client unless the Company is required by Applicable Laws to otherwise process that Personal Data. Where the Company is relying on Applicable Laws as the basis for processing Personal Data, the Company shall promptly notify the Client of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Company from so notifying the Client.
- b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Client, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised

or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures. Those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it.

- c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
- d) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Client has been obtained and the following conditions are fulfilled:
 - i. the Client or the Company has provided appropriate safeguards in relation to the transfer.
 - ii. the data subject has enforceable rights and effective legal remedies.
 - iii. the Company complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - iv. the Company complies with reasonable instructions notified to it in advance by the Client with respect to the processing of the Personal Data.
- e) assist the Client, at the Client's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators.
- f) notify the Client without undue delay on becoming aware of a Personal Data Breach.
- g) at the written direction of the Client, delete or return Personal Data and copies thereof to the Client on termination of the agreement unless required by Applicable Law to store the Personal Data; and
- h) maintain complete and accurate records and information to demonstrate its compliance with this Clause 10.

10.6 Either party may, at any time on not less than 30 days' notice, request to revise this Clause 10 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall if agreed by both parties apply when replaced by attachment to this agreement).

11. SUBCONTRACTING

11.1 The Company shall have the right to subcontract any part of the Contract to a subcontractor of its choosing. The Company shall remain responsible for the acts and omissions of any of its subcontractors.

11.2 The Company will ensure that its subcontractors sign a confidentiality agreement which is wholly consistent with the Company's confidentiality undertaking to the Client.

12. NOTICES

12.1 Any notice or other communication given to a party under or in connection with this agreement shall be in writing addressed to the Commercial Director at sales@askey.com.

12.2 Any notice or communication shall be deemed to have been received:

- a) if delivered by post, at the time the notice is left at the proper address; or
- b) if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 12.2(b), business hours mean 8.30am to 5.00pm Monday to Thursday and 8.30am to 4.00pm Friday, on a day that is not a public holiday in the place of receipt.

12.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

13. CONSULTANCY

13.1 The Company shall use reasonable endeavours to supply a consultancy service to the Client in accordance with these Terms and Conditions and as specified in the Contract.

13.2 The Company shall use reasonable endeavours to meet any specified dates, but any such dates shall be anticipated dates only and may be subject to alteration.

13.3 Notwithstanding the above sub-clauses, the Company reserves the right to cancel the consultancy provision at any time, without incurring additional liability to the Client. The Company will work with the Client to agree new dates that suit both parties.

13.4 All intellectual property rights in or arising out of or in connection with the consultancy service, including any associated materials shall be owned by the Company. No reproductions, scans or copies (wholly or in part) shall be made of the material without the prior written consent of the Company.

13.5 Consultancy costs are either agreed and incorporated into the Contract or can be agreed as an additional fee to the agreed Contract.

14. MISCELLANEOUS

14.1 Neither party shall be deemed by virtue of this Contract to be an agent or the partner of the other and each party will make clear in all dealings with third parties that it has no authority to make representations on behalf of the other or to bind the other contractually with any third party.

14.2 If any of the terms of this Contract are held to be void or unenforceable by any reason of law they shall be void or unenforceable to that extent only and no further and all other terms shall remain valid and fully enforceable.

14.3 The Client shall not have any right of set-off.

14.4 No indulgence granted by either party to the other in relation to any term hereof shall be deemed a waiver of such term or prejudice the later enforcement of that or any other term hereof.

14.5 The headings in this Contract are for convenience only and shall not affect its interpretation.

14.6 This agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this agreement or its subject matter or formation.

14.7 Unless it expressly states otherwise, this agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.