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Terms & Conditions

1. Software Licence Agreement

THIS LICENCE AGREEMENT (the "Agreement") is made and entered into between Rocktime Limited acting as Supplier (the "Licensor") and the Buyer, (the "Licensee") for the provision of Software and supporting services as described in the relevant Call-Off Contract and Documentation.

The above named shall collectively be known as "Parties", and each a "Party".

WHEREAS:

The Licensor wishes to enter into an arrangement to license the use of the Product (defined in 'Call-Off Contract') to the Licensee for the Purpose (defined in 'Call-Off Contract').

IT IS HEREBY AGREED as follows:

1. Definitions and Interpretation

1.1 In this Agreement (including the Recitals and the Schedules), except to the extent that the context otherwise requires, the following terms shall have the meanings set forth below:

"Authorised Users" means individuals who have been granted authorisation by the Licensee to access and makes use of the Software in accordance with the terms and conditions of this Licence Agreement.

"Call-Off Contract" means the Crown Commercial Services G-Cloud Call-Off Contract entered into between the Licensor and the Licensee under the G-Cloud Framework.

"Commencement Date" means the date as identified within the Call-Off Contract.

"Digital Marketplace" means the Crown Commercial Supplier database accessible by public sector buyers for the purpose of buying cloud-based services such as software, support and hosting.

"Documentation" means specifications, instruction or other supporting documentation provided by the Licensor to the Licensee for the purposes of operating the Software.

"Confidential Information" means the trade secrets, confidential or sensitive information or knowledge and know-how including the confidential financial, trade, customer, product, transaction, system and processing information and data of the relevant Party;

"Event of Force Majeure" means Acts of God, explosions, war or threat of war, terrorism or threat of terrorism, actions of the armed forces or government agencies pursuant to war, terrorism or threats thereof, fire, flood, adverse weather conditions, labour disputes, strikes, lockouts or other industrial actions irrespective of where such events occur, shortage of materials or services, detention or holding of goods by any customs authorities or any national or international airworthiness authority, riots or civil commotion, sabotage, earthquakes and natural disasters, acts, omissions, restrictions, regulations, prohibitions or measures of any governmental, parliamentary or local authority;

"Expiry Date" means the date identified in the Call-Off Contract.

"Fees" means the amounts payable by the Licensee to the Licensor as set out in Schedule 4;

"Intellectual Property Rights" means patents, trademarks, service marks, rights in logos, rights in get-up, trade names, internet domain names, rights in designs, software, copyright (including rights in computer software) and moral rights, database rights, semi-conductor topography rights, utility models, processes, rights in know-how and other intellectual property rights, in each case whether registered or unregistered, and all rights or forms of protection having equivalent or similar effect anywhere in the world and registered includes registrations and applications for registration;

"Purpose" means the means the use of the licensed product for the purpose of enabling the management and processing of licence applications.

"Product" shall have the meaning as set out in Schedule 1 and shall include any constituent parts thereof, to be provided to the Licensee under the terms and conditions of this Agreement.

"Maintenance Services" means the supply to the Licensee and application to the Software of Updates and Upgrades;

"Release" means in respect of an Update or Upgrade, the release of that Update or Upgrade (as the case may be) to the Licensee of the Licensor generally (and "Released" shall be construed accordingly);

"Schedule" means any schedule attached to the main body of this Agreement;

"Services" means any services that the Provider provides to the Licensee, or has an obligation to provide to the Licensee, under this Agreement;

"Software" means the software identified in Part 1 of Schedule 1 (Software Particulars);

"Term" means the term of this Agreement, commencing in accordance with Clause 3.1 and ending in accordance with Clause 3.2;

"Update" means [a hotfix, patch or minor version update to the Software]; and

"Upgrade" means [a major version upgrade of the Software].

1.2 In this Agreement, unless the context otherwise requires:

- (a) references to Recitals and Schedules are to be construed as references to the recitals and schedules to this Agreement and references to this Agreement include its Schedules;
- (b) words importing the singular include the plural and vice versa, words importing a gender include every gender;
- (c) references to a person shall be construed as including references to an individual, firm, issuer, company, unincorporated body of persons or any state or any agency thereof;
- (d) any reference to a statutory provision shall include such provision and any regulations made in pursuance thereof as from time to time modified or re-enacted; and
- (e) headings are for convenience of reference only and shall not affect the interpretation of this Agreement.

2. Term

2.1 This Agreement and the license granted hereunder shall take effect upon the Effective Date and shall continue in full force and effect for a period defined in the Call-Off Contract or unless otherwise terminated in accordance with clause 8

3. Maintenance Services

3.1 The Licensor shall provide the Maintenance Services to the Licensee [during the Term].

3.2 The Licensor shall provide the Maintenance Services in accordance with the standards of skill and care reasonably expected from a leading service provider in the software industry.

3.3 The Licensor shall provide the Maintenance Services in accordance with Schedule 3 (Maintenance SLA).

3.4 The Licensor may suspend the provision of the Maintenance Services if any amount due to be paid by the Licensee to the Licensor under this Agreement is overdue, and the Licensor has given to the Licensee at least 30 days' written notice, following the amount becoming overdue, of its intention to suspend the Maintenance Services on this basis.

3. Grant of Rights

3.1 Subject to the Licensee's full compliance with the terms and conditions of this Agreement, the Licensor hereby grants to the Licensee a non-exclusive, non-sublicensable, non-transferable license to use the Product for the Purpose.

4. Restrictions

4.1 Except as otherwise expressly provided herein, the Licensee may not:

- (a) copy, rent, lease, sell, transfer, assign, sublicense, disassemble, reverse engineer or decompile, modify or alter any part of the Product;
- (b) use the Product on behalf of, share or permit to be shared, the Product with any third party;
- (c) use or permit to be used the Product for anything other than the Purpose;

- (d) attempt or provide a means to execute any bulk download operations, cache or otherwise store any content other than for what would reasonably be regarded as normal use including for data backup;
- (e) knowingly use the Product in connection with or to promote any products, services or materials that constitute, promote or are used primarily for the purpose of dealing in spyware, adware, spam, pornography or other offensive purposes;
- (f) knowingly use the Product in any manner or for any purpose that violates any applicable law or regulation, or any right of any person including, but not limited to, Intellectual Property Rights, or privacy rights.

5. Ownership

5.1 The Product and all Intellectual Property Rights contained therein, are and shall at all times remain the sole and exclusive property of the Licensor or its licensors.

6. Fees

6.1 Licensee shall pay to the Licensor the Fees as set out in the Call-Off Contract, which shall be exclusive of any duties, bank fees, sales tax, or excise or similar taxes due, unless expressly stated therein. The Licensor shall invoice the Licensee in advance in full for the Fees.

6.2 Payment shall be made by the Licensee and received by the Licensor in full on signing of contracts and receipt of an invoice by the licensee in respect of the Fees.

6.3 The Licensor reserves the right to suspend or limit the availability of the Product if the Licensee fails to comply with clause 6.2 above.

6.4 In the circumstance of the assignment of a licence for an instance of the Product to two (or more) licensees each licensee becomes responsible for the other parties failure to make a Payment in order to continue to gain access to the Product in compliance with clause 6.2.

7. Auditing

7.1 Both Parties agree to maintain accurate, complete and detailed records relating to this Agreement, from the Effective Date and for a period of 2 years following the termination or natural expiry of this Agreement.

8. Termination

8.1 Notwithstanding any other provisions contained herein, this Agreement may be terminated immediately:

- (a) by the Licensor if the Licensee commits any breach of the terms or conditions of this Agreement and fails to remedy such breach to the Licensor's reasonable satisfaction within 30 days after receiving written notice from the Licensor requiring the Licensee to do so;
- (b) by the Licensor or if the Licensee shall present a petition or have a petition presented by a creditor for the Licensee's winding up or the Licensee enters into compulsory or voluntary liquidation (other than for the purpose of a bona fide reconstruction or amalgamation), or the Licensee shall have a receiver of all or any of the Licensee's undertakings or assets appointed, or the Licensee shall be deemed by virtue of the applicable law to be unable to pay the Licensee's debts, or the Licensee shall cease to carry on business;
- (c) by the Licensee if the Licensor commits any breach of the terms or conditions of this Agreement and fails to remedy such breach to the Licensee's reasonable satisfaction within 30 days after receiving written notice from the Licensee requiring the Licensor to do so.

8.2 Termination or natural expiration of this Agreement shall be without prejudice to any accrued rights of either Party or amounts payable in respect of the Fees, and shall not affect obligations which are expressed not to be affected by termination or expiry hereof.

8.3 Termination of this Agreement by the Licensor under Clause 8.1 above shall be without prejudice to any claim which the Licensor may have against the Licensee for any loss or damage (including, without limitation, consequential loss or damage) suffered by the Licensor as a result.

8.4 In the event of termination or natural expiration of this Agreement, the Licensee undertakes that immediately upon the effective date of such termination or expiration, the Licensee and any parties acting on the Licensee's behalf shall:

(a) cease use of the Product; and

(b) within 30 days expunge, or where appropriate return to the Licensor, any and all of the Product that remains howsoever in the possession of the Licensor.

9. Representations and Warranties

9.1 Each Party represents and warrants to the other that it has the right and authority to enter into this Agreement and to perform all of its respective obligations and undertakings and to grant the rights set forth herein. Each Party further represents and warrants to the other that it is duly organised, validly existing and in good standing under the applicable laws, and that the execution, delivery and performance of this Agreement does not and shall not conflict with or violate any constitutional documents of such Party or the terms of any agreement between it and any third party.

9.2 The Licensor warrants that the Product does not violate or infringe any patent, copyright, trademark, Intellectual Property Rights, rights of privacy, or rights of proprietary, of any third party.

9.3 It is the Licensee's responsibility to ensure that the Product is suitable for the Licensee's intended purposes. Licensor provides no warranties as to the function or use of the Product, whether express, implied or statutory, including, without limitation, any implied warranties of merchantability or fitness for particular purpose.

10. Liability and Indemnification

10.1 The Licensee undertakes to indemnify the Licensor against all liabilities, claims, demands, expenses, actions, costs, damages or loss arising out of breach or alleged breach by the Licensee in regard to the Licensee's obligations under this Agreement. Such indemnity shall survive the termination of this Agreement.

10.2 The Licensor shall not be liable to the Licensee for consequential, indirect, special or exemplary damages including but not limited to damages for loss of profits, business or anticipated benefits whether arising under tort, contract, negligence or otherwise whether or not foreseen, reasonably foreseeable or advised of the possibility of such damages.

10.3 No responsibility is assumed by the Licensor for any injury and/or damage to persons or property as a matter of product liability, negligence or otherwise, or from any use or operation of any methods, products, instructions or ideas contained in any item or Product supplied by the Licensor under this Agreement.

10.4 The express terms of this Agreement are in lieu of:

(a) all warranties, conditions, undertakings, terms and obligations implied by statute, common law, trade usage, course of dealing or otherwise including but not limited to any implied warranties of merchantability or fitness for any particular purpose all of which are hereby excluded to the fullest extent permitted by law; and

(b) any implied terms as to the performance of computers or networks when used in conjunction with the Product, materials, information, goods, services, technology and/or editorial content provided under this Agreement.

10.5 Nothing in this Agreement shall exclude or limit either Party's liability for:

(a) death or personal injury resulting from the negligence of either Party or their servants, agents or employees;

(b) fraud or fraudulent misrepresentation; or

(c) breach of any implied condition as to title, or the ability to exercise any right granted under this Agreement.

10.6 Nothing in this Agreement shall prevent the Licensor from claiming for amounts lawfully due under the terms of this Agreement or operate to limit any liability resulting from any infringement or breach of Intellectual Property Rights by the Licensee.

10.7 Where the Licensor is liable to the Licensee for negligence, breach of contract or any other cause of action arising out of this Agreement, such liability shall not exceed the amount equal to the total sum of the Fees (exclusive of all taxes) paid by the Licensee to the Licensor since the Effective Date.

11. Confidentiality

11.1 Each Party will treat as confidential all Confidential Information obtained from the other under this Agreement. The Parties agree that they will not without the prior written consent of the other disclose Confidential Information to any person or entity or use the same except for the purposes of complying with their respective obligations pursuant to this Agreement.

11.2 Clause 11.1 does not prohibit disclosure of Confidential Information to:

- (a) the receiving Party's own personnel (including employees, agents and permitted contractors) who need to know of the Confidential Information provided that such personnel are first made aware of the confidential nature of the Confidential Information and the receiving Party's obligations in relation to it and themselves agree in writing to treat the Confidential Information confidentially; or
- (b) the receiving Party's auditors, professional advisers, any person or organisation having a statutory or regulatory right to request and receive that information, including without limitation a relevant tax authority.

11.3 Clause 11.1 does not apply to information which the receiving Party can show by reference to documentary or other evidence:

- (a) was rightfully in its possession before the start of discussions between the Parties relating to this Agreement;
- (b) is already public knowledge or becomes so at a future date (save for as a result of breach of clause 11.1);
- (c) is received from a third party who is not under an obligation of confidentiality in relation to the information; or
- (d) is developed independently without access to, or use of or knowledge of, the Confidential Information.

11.4 The obligations of confidentiality under this clause 11 shall survive the termination of this Agreement until such time as the Confidential Information enters the public domain other than through the fault of the recipient Party.

12. Force Majeure

12.1 Neither Party shall be responsible to the other for any delay or failure in carrying out obligations under this Agreement if the delay or failure is caused by an Event of Force Majeure. The affected Party shall notify the other of any such circumstances as soon as possible.

13. Assignment

13.1 The Licensee shall not be entitled to assign, transfer or novate rights and obligations under this Agreement without prior written consent from the Licensor which shall not be unreasonably withheld.

13.2 In the case of a shared licence between licensees should one licensee negate its responsibilities the other licensee party becomes responsible in entirety for the licence.

14. Extraction Services

14.1 Upon expiry or termination of the "Call-Off Contract", the Licensor shall provide the Licensee with the option to request a copy of the Licensee's data stored within the Software. The data will be provided in a standard format to be agreed upon between the Licensee and Licensor.

14.2 The Licensor reserves the right to charge the Licensee a reasonable fee for the extraction of data and its delivery. The amount chargeable shall be determined at the time of termination or expiry.

14.3 With the termination or expiry of the agreement, the Licensee must submit written request for the supply of data within a reasonable period in order to ensure that the Licensor is able to conform to its obligations under GDPR and clauses specific to erasure of data as part of the "Call-Off Contract".

14.4 In the event that the Licensee does not make request for the supply of data upon termination or expiry of the agreement, the Licensor will at its discretion delete or destroy Licensee's data in order to conform to GDPR and data retention policies.

15. Miscellaneous

15.1 Any notice required to be given pursuant to this Agreement shall be in writing and sent either by hand, by prepaid recorded delivery or registered post or by prepaid first class post, by fax confirmed by first class post, or by e-mail which has been received, as evidenced by receipt by the sender of a read receipt, to the relevant Party, and any such notice shall be deemed to have been received by the addressee at the time of delivery or in the case of prepaid first class post, two days after posting.

15.2 Any amendment or variation to this Agreement shall be made only by express written agreement between the Parties.

15.3 The failure of either Party to exercise or enforce any right conferred upon it by this Agreement shall not be deemed to be a waiver of any such right or operate so as to bar the exercise or enforcement thereof at any time(s) thereafter, as a waiver of another or constitute a continuing waiver.

15.4 Without prejudice to the rights of either Party in respect of actions relating to fraudulent misrepresentation, this Agreement and any documents referred to herein constitute the entire understanding between the Parties with respect to the subject matter thereof and supersedes all prior agreements, negotiations and discussions between the Parties relating thereto.

15.5 The Parties agree that monetary damages may not be a sufficient remedy for the damage which may accrue to a Party by reason of failure by any other Party to perform certain of its obligations hereunder. Any Party shall therefore be entitled to seek injunctive relief, including specific performance, to enforce such obligations.

15.6 The unenforceability of any single provision of this Agreement shall not affect any other provision hereof. Where such a provision is held to be unenforceable, the Parties shall use their best endeavours to negotiate and agree upon an enforceable provision which achieves to the greatest extent possible the economic, legal and commercial objectives of the unenforceable provision.

15.7 A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to rely upon or enforce any term of this Agreement but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

15.8 Nothing in this Agreement shall be deemed to constitute a partnership between the Parties nor, save as expressly set out herein, constitute either Party the agent of the other Party.

15.9 This Agreement shall be governed by and construed in accordance with English law and each Party irrevocably submits to the exclusive jurisdiction of the English courts over any claim, dispute or matter arising under or in connection with this Agreement or its enforceability.