

CONTRACT FRONT SHEET

This contract is made the [XXX] day of 20XX

Between:

- (1) **Ebeni Limited** (company number 05074255) whose trading address is Box House, Bath Road, Box, Corsham, Wiltshire, SN13 8AA ("**Ebeni**")
- (2) [XXX] (company number [XXXXXXXXXX]) whose registered office is at [XXXXXXXXXX] (the "Client")

It is agreed as follows:

1. The contract between Ebeni and the Client (the "Contract") comprises this Contract Front-Sheet, the attached "Contract Conditions" and the attached "Schedule of Services", which documents together shall constitute the entire agreement and understanding between the parties (superseding any previous agreements) in relation to the supply by Ebeni to the Client of the services described in the Schedule of Services. In the event of any conflict or ambiguity between such documents, the Contract Conditions shall prevail over the Schedule of Services except for any provision in the Schedule of Services which is expressly stated to vary or prevail over a particular provision in the Contract Conditions.
2. The Client acknowledges and agrees that it has not been induced to enter into the Contract in reliance upon, and does not have any remedy in respect of, any warranty, representation, statement, agreement or undertaking of any nature whatsoever other than as expressly set out in the Contract.
3. No variation, amendment or addition to the Contract shall be binding on Ebeni unless made in writing and signed by an authorised representative of Ebeni.

Signed

Signed

Name
duly authorised by Ebeni

Name
duly authorised by the Client

Dated

Dated



FS 582844

CONTRACT CONDITIONS

N.B. THESE CONDITIONS CONTAIN LIMITATIONS & EXCLUSIONS OF LIABILITY

1. Interpretation

1.1 In the Contract the following expressions have the following meanings:

"Associate"	means any person that controls the Client, is controlled by the Client or is under common control with the Client, "control" for these purposes meaning the power of a person (or persons acting in concert with it) to secure directly or indirectly that the affairs of a second person are conducted in accordance with the wishes of that first person, whether by means of the holding of shares, or the right to appoint or remove the majority of directors, by contract or otherwise;
"Client"	means the party described as such in the attached "Contract Front-Sheet" to whom Ebeni has agreed to supply the Services;
"Confidential Information"	means all identifiable methodology, know-how, experience, data, databases, flow charts, reports, tables or other material produced in relation to the Contract and all other technical or commercial information relating to the Disclosing Party (as defined in clause 5 below), its business, products and its clients and their businesses, whether in human or machine-readable form;
"Consultant"	means any individual employed or engaged by Ebeni in the provision of the Services (whether an employee or self-employed contractor of Ebeni or one of its sub-contractors, or otherwise);
"Contract"	means together these Contract Conditions, the attached "Contract Front-Sheet" and the Schedule of Services;
"Disclosing Party"	means, for the purposes of clause 3 below, the party disclosing Confidential Information or about whom Confidential Information is disclosed;
"Intellectual Property"	means patents, trademarks, trade secrets, copyright, database rights, design rights, inventions, know-how and any other industrial or intellectual property rights of any nature whatsoever, whether registered or capable of registration or not, in any part of the world and including all applications and the right to apply for any of the foregoing rights;
"Receiving Party"	means, for the purposes of clause 3 below, the party receiving Confidential Information;
"Relevant Period"	means: • the period in which Ebeni is providing the Services to the Client; and • the period of 12 months immediately after Ebeni has ceased providing the Services;
"Relevant Services"	means those services which are the same as or substantially similar to or otherwise competitive with the Services, whether required by the Client or one of its Associates for its or their own benefit or for the benefit of any other person;
"Services"	means the services which Ebeni is to supply to the Client in accordance with the Contract, as more particularly described in the attached Schedule of Services;

"Schedule of Services" means the attached "Schedule of Services", as amended from time to time in accordance with the Contract;

"Works" means any software or reports or other data, documents, information or materials (in whatever form) provided, developed or created by Ebeni in connection with the Services, including any amendments, enhancements or additions to such software etc.

1.2 In the Contract, unless the context otherwise requires:

1.2.1 any reference to a person is to be construed as a reference to any person, firm, company, corporation, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) or one or more of the foregoing;

1.2.2 any reference to any provision of a statute is to be construed as a reference to that provision as amended, re-enacted or extended at the relevant time;

1.2.3 any reference to the singular is to include the plural and vice versa;

1.2.4 any reference to the masculine gender is to include the feminine and neuter and vice versa;

the headings are for convenience only and are not to affect the interpretation of the Contract.

2. **Supply of Services**

2.1 Ebeni shall supply and the Client shall pay for the Services subject to and in accordance with the Contract.

2.2 The Client shall provide or make available to Ebeni and its Consultants at the times set out in the Schedule of Services or otherwise in a timely manner in accordance with any reasonable directions given by Ebeni:

2.2.1 the facilities, information, deliverables and personnel (if any) specified in the Schedule of Services;

2.2.2 all such other co-operation, assistance, safe facilities and relevant accurate information and materials as may reasonably be required by Ebeni and its Consultants from time to time in connection with the provision of the Services.

2.3 The Client warrants and undertakes to Ebeni that:

2.3.1 any information and materials (in whatever form) that the Client provides or makes available to Ebeni will not, and the use of any such information or materials by Ebeni in connection with the provision of the Services will not, infringe the Intellectual Property or other rights of any other person.

2.3.2 it shall comply in all respects with its obligations under the Data Protection Act 1998 in respect of any personal data made available to, or received from, Ebeni in connection with the provision of the Services.

2.4 The Client acknowledges that dates and timescales may be agreed with Ebeni (whether in the Schedule of Services or otherwise) in relation to the provision of the Services, including (but not limited to) the dates on which particular phases or projects are to start and/or on which one or more Consultants are to attend at the Client's premises and/or on which particular training courses or other events are to be held for the benefit of the Client and its personnel. If the Client wishes to alter any such dates of timescales or fails to ensure that the specified personnel attend particular training courses or other events, Ebeni shall use all reasonable endeavours to re-schedule the relevant Services but:

2.4.1 Ebeni shall not be liable to the Client in respect of any consequential delays caused to the provision of other elements of the Services;

2.4.2 Ebeni shall be entitled (without prejudice to any other right or remedy it may have) to vary its fees to cover any additional costs incurred as a result.

2.5 During the Relevant Period and in connection with the procurement of Relevant Services, the Client shall not and shall procure that none of its Associates shall (without the express prior written consent of Ebeni) directly or indirectly:

- 2.5.1 offer to engage or engage (on whatever basis, whether as an employee, self-employed contractor or otherwise) any of the Consultants and whether or not the Consultant in question would be committing any breach of his contract with Ebeni by accepting such engagement;
- 2.5.2 solicit or seek to entice away from Ebeni any of the Consultants;
- 2.5.3 otherwise interfere or seek to interfere with the relationship between Ebeni and any of the Consultants.

3. Confidentiality

- 3.1 The Receiving Party undertakes to the Disclosing Party that:
 - 3.1.1 it shall not at any time disclose or reveal the Confidential Information to any person other than those officers, employees, sub-contractors and professional advisors of the Disclosing Party who it is necessary should receive and consider the same for the purposes of the Contract ("Permitted Recipients");
 - 3.1.2 it shall procure that each Permitted Recipient to whom Confidential Information is to be disclosed is made aware of and shall observe the terms of this clause 3 as if that person had given the undertakings contained in this clause 3 directly;
 - 3.1.3 it and any Permitted Recipient shall use the Confidential Information solely for the purposes of the Contract, that is to say to the extent that such use is necessary to comply with the Receiving Party's obligations or exercise its rights under the Contract;
 - 3.1.4 it and each Permitted Recipient shall treat and safeguard as private and confidential all Confidential Information;
- 3.2 The provisions of clause 3.1 shall not apply to the whole or any part of the Confidential Information to the extent that it:
 - 3.2.1 is or becomes public knowledge other than as a result of a breach of an obligation of confidentiality;
 - 3.2.2 is required to be disclosed by law.
- 3.3 Whenever requested by the Disclosing Party, the Receiving Party shall:
 - 3.3.1 return and ensure that any Permitted Recipients return to the Disclosing Party all matter provided by the Disclosing Party in tangible form which constitutes any Confidential Information, or any part of it, together with any copies;
 - 3.3.2 destroy (or if kept electronically, expunge) and ensure that any Permitted Recipients destroy (or expunge, as the case may be) any notes, memoranda or other records or working materials (in whatever medium) which contain any Confidential Information.

4. Intellectual Property

- 4.1 In producing any Works for the Client, Ebeni shall not knowingly infringe the Intellectual Property of any third party but does not guarantee that the Works and/or their use by the Client (to the extent permitted by the Contract) will not infringe the Intellectual Property of a third party.
- 4.2 Unless otherwise specified in the Contract, the Intellectual Property in all Works shall belong to Ebeni, but to the extent that Ebeni has agreed to make available any such Works to the Client as part of the Services, the Client shall be entitled to use such Works for those of its own internal purposes anticipated by the Contract.
- 4.3 If the Contract specifies that certain Works are to belong to the Client (subject always to clause 4.1 above), then:-
 - 4.3.1 Ebeni shall not be deemed to have assigned the Intellectual Property in such Works to the Client unless and until the Client has paid Ebeni in full for all Services attributable to the production of those Works;
 - 4.3.2 for the avoidance of doubt, nothing in the Contract shall be deemed to prohibit or restrict Ebeni from re-using or exploiting for whatever purpose it thinks fit any generic expertise or know-how acquired by it or its Consultants in the course of providing the Services.

5. Fees & Payment Arrangements

- 5.1 The Client shall pay to Ebeni:
- 5.1.1 the fees stated in the Schedule of Services;
 - 5.1.2 unless otherwise stated in the Schedule of Services, all travel, accommodation, subsistence and other expenses reasonably incurred by Ebeni in supplying the Services;
 - 5.1.3 plus any value added tax on such fees and expenses, if applicable.
- 5.2 Ebeni shall be entitled to invoice the Client for the fees, expenses and tax described at clause 5.1 above, together with any other sums payable under the Contract:
- 5.2.1 at the times specified in the Schedule of Services; or
 - 5.2.2 if no such times are specified, on completion of the Services or monthly in arrears (that is to say, at any time after the end of each calendar month in respect of Services provided during that month), whichever is the earlier.
- 5.3 Each invoice raised by Ebeni shall be payable by the Client within 30 days of the date on which it was raised without set-off, counterclaim or deduction of any kind.
- 5.4 In the event that any sum payable under the Contract is not paid by the due date for payment, Ebeni shall be entitled (but without prejudice to any other right or remedy it may have):
- 5.4.1 to charge the Client interest on the amount outstanding from time to time at the rate per annum of 8% over the base rate of Barclays Bank plc applicable at the due date, such interest to accrue on a daily basis from the due date until the date of payment in cleared funds (whether before or after the date of any judgement); and/or
 - 5.4.2 to suspend the further provision of any Services to the Client until the sum in question has been paid in full.

6. Warranties & Liability

- 6.1 Subject to clause 6.2 below, Ebeni warrants to the Client that it shall provide the Services using all reasonable care and skill, but unless the Schedule of Services expressly states otherwise, Ebeni does not give any particular warranty in respect of any software or other Works provided as part of the Services and all warranties, conditions or other terms implied by statute, common law or otherwise are excluded to the fullest extent permitted by law.
- 6.2 Where the Schedule of Services specifies that one or more Consultants are to be provided by Ebeni on a "time-hire" basis, the Client acknowledges that each such Consultant shall, whilst providing the Services, be deemed to be under the supervision, direction and control of the Client and accordingly, whilst Ebeni shall use its reasonable endeavours to ensure that each such Consultant is suitably qualified to provide the Services in question:
- 6.2.1 the Client shall be responsible for all acts, errors and omissions of the Consultant whilst engaged in providing the Services; and
 - 6.2.2 Ebeni shall have no responsibility to the Client for any loss, damage, costs, claims or other liabilities whatsoever arising out of the negligence, dishonesty, misconduct or lack of skill of the Consultant.
- 6.3 Where as part of the Services, Ebeni makes recommendations to the Client concerning changes to the Client's business, the Client shall be free to accept or reject such recommendations, but to the extent that the Client elects to implement any of Ebeni's recommendations, Ebeni shall not (for the avoidance of doubt) be liable to the Client for the consequences of such implementation insofar as the Client fails to implement such recommendations in the manner suggested by Ebeni and within the periods suggested by Ebeni or, where no such periods are specified, promptly.
- 6.4 Where the Schedule of Services requires particular Services to be delivered by particular dates or within particular timescales, Ebeni shall use all reasonable endeavours to meet such dates or timescales, but time shall not be of the essence.
- 6.5 In respect of any claim by the Client relating to the Services (whether for breach of contract, negligence or otherwise), the Client shall notify Ebeni in writing (giving full details of the claim) within twelve (12) months of the date on which the Services in question were or should have been provided, and shall afford Ebeni a

reasonable opportunity to remedy the breach or failure in question, failing which all liability in respect of such claim shall be excluded.

6.6 Neither party shall be liable to the other in respect of, and shall not be deemed to be in breach of the Contract as a result of, any failure or delay in complying with its obligations under the Contract where such failure or delay is caused by circumstances beyond the reasonable control of that party including (but not limited to) the sickness or other incapacity of any of its staff (whether employees or sub-contractors), provided that lack of funds shall not of itself be interpreted as a cause beyond the reasonable control of such party.

6.7 Neither party shall be liable to the other by reason of any negligence or any other tortious action or any representation (unless fraudulent), or any implied warranty, condition or other term, or under the express terms of the Contract, for any:

6.7.1 loss of or corruption to data or computer files;

6.7.2 loss of anticipated savings or revenues; or

6.7.3 loss of profits; or

6.7.4 loss of business opportunities; or

6.7.5 loss of goodwill; or

6.7.6 damage to reputation; or

6.7.7 indirect, special or consequential loss or damage, costs, expenses or other such claims for compensation whatsoever;

(whether caused by the negligence of the party in question, its employees, agents or sub-contractors or otherwise) which arises out of or in connection with the Contract.

6.8 The entire liability of Ebeni under or in connection with the Contract shall not in any event exceed:

6.8.1 the total fees payable to Ebeni in respect of the Services; or

6.8.2 the limit of any professional indemnity insurance cover that Ebeni may hold at the relevant time, in so far as such insurance covers the liability in question;

whichever is the greater.

6.9 The Client's remedy in respect of any claim relating to the Services (whether for breach of contract, negligence or otherwise) is against Ebeni and accordingly none of the Consultants or any other individuals employed or engaged by Ebeni directly or indirectly in relation to the Services shall be liable personally to the Client in relation to any negligence in the provision of the Services or otherwise under or in connection with the Contract.

6.10 Notwithstanding any other provisions in this clause 6, nothing in the Contract shall be deemed to operate as a limitation or exclusion of liability in respect of death or personal injury caused by the negligence of either party or its employees, agents or subcontractors; or for fraud (including, but not limited to, fraudulent misrepresentation); or otherwise as prohibited by law.

7. Termination

7.1 Either party may terminate the Contract immediately by serving written notice to that effect on the other party at any time after the occurrence of any of the following events:

7.1.1 the other party makes any voluntary arrangement with its creditors or (being an individual or a firm) becomes bankrupt or (being a corporate entity) enters administration or goes into liquidation (otherwise than for the purposes of solvent amalgamation or reconstruction); or

7.1.2 a security holder takes possession, or a receiver or administrative receiver is appointed, over all or any material part of the property or assets of the other party; or

7.1.3 anything analogous to any of the foregoing occurs to the other party under the law of any jurisdiction; or

7.1.4 the other party ceases, or threatens to cease, to carry on business; or

7.1.5 the other party commits a material breach of any of the provisions of this Contract and in the case of a breach capable of remedy, fails to remedy the same within 30 days after receipt of a written notice specifying the breach and requiring it to be remedied.

- 7.2 For the purposes of clause 7.1.5 above, the Client shall be deemed to have committed a material, irremediable breach of the Contract in the event that it has failed on more than 2 occasions during any 6 month period to pay invoices raised by Ebeni by the due date for payment and/or has failed to pay any one invoice raised by Ebeni within 60 days of the due date for payment.
- 7.3 Any termination of the Contract shall be without prejudice to any other rights or remedies a party may be entitled to under the Contract or at law and shall not affect any accrued rights or liabilities of either party nor the coming into or continuance in force of any provision of this Contract which is expressly or by implication intended to come into or continue in force on or after such termination and in particular (but without limitation) the following clauses shall continue in full force and effect in accordance with their terms:
- 7.3.1 clause 2.5 (Non-Solicitation);
 - 7.3.2 clause 3 (Confidentiality);
 - 7.3.3 clause 6 (Liability);
8. **General**
- 8.1 Any notice served under the Contract shall be in writing and shall be sent by first class post, hand delivery or fax to the address/number for the relevant party stated in the Contract or otherwise notified to the other party for this purpose. Any such notice shall (if properly addressed) be treated as having been duly received: if despatched by first class, registered post - 48 hours from the time of posting to the relevant party; or, if despatched by hand delivery - at the time of actual delivery; or, if despatched by fax - 24 hours after the time of the despatch.
- 8.2 The Client is not entitled to assign any of its rights under the Contract without the prior written consent of Ebeni.
- 8.3 No delay or failure on the part of Ebeni in enforcing any provision in the Contract is to be treated as a waiver or as having created a precedent or in any way as having prejudiced Ebeni's rights under the Contract. The rights and remedies provided in the Contract are cumulative and are additional to any rights or remedies provided by law.
- 8.4 If any provision in the Contract is declared void or unenforceable by any court or other body of competent jurisdiction, or is otherwise rendered so by any applicable law, such provision shall to the extent of such invalidity or unenforceability be treated as severable and all other provisions of the Contract not affected by such invalidity or unenforceability shall remain in full force and effect.
- 8.5 Unless expressly stated in the Contract, nothing in the Contract shall confer any rights on any person under the Contracts (Rights of Third Parties) Act 1999.
- 8.6 The Contract shall be governed by and construed in accordance with English law and any dispute arising under or in connection with the Contract shall be subject to the exclusive jurisdiction of the English courts, to which each of the parties irrevocably submits.