



Terms & Conditions

This Agreement is effective from the Date of Execution of this Agreement.

For the purposes of this Agreement, the Client and Vivanti may each be referred to as "Party" or, collectively, as the "Parties". The Parties, intending to be legally bound, hereby agree as follows:

1. Services

- (a) Vivanti will provide the services to the Client that are set out in Exhibit A to this Agreement ("Services").
- (b) Each Party will provide the resources as described in Exhibit A.

2. Value of Services

- (a) Vivanti will invoice the Client for all amounts payable to Vivanti on a monthly basis as such payments are due.
- (b) The Client will pay all invoiced amounts that are not disputed in good faith, within thirty (30) days from its receipt of such invoice.
- (c) The Client shall pay Vivanti the fees and other compensation set out in Exhibit A.
- (d) The cost of travel, accommodation and other Project related expenses, if any, shall be stated in Exhibit A or agreed by the Parties in writing.
- (e) The technical and office infrastructure for this Project will be provided to the Vivanti onsite team by the Client where relevant
- (f) All the software, hardware and tools/utilities required for performing the Project related activities will be provided at no cost to Vivanti by the Client.

3. Non-Solicitation

During the term of this Agreement and for a period of twelve (12) months thereafter, neither Party shall, directly or indirectly, solicit for employment or employ, or accept services provided by any current or former employees of the other Party who perform(ed) any work in connection with or related to the Services without prior written approval from the other Party.

4. Warranty

- (a) Vivanti warrants and represents the following for a period of thirty (30) days following delivery of any Deliverable or the performance of the Services:
 - (i) Vivanti has the proper skill, training, and background to perform the Services in a competent and professional manner;
 - (ii) the Services will be performed in accordance with this Agreement; and
 - (iii) all Deliverables shall comply with the specifications in this Agreement or other specifications as agreed to in writing by Vivanti and the Client.
- (b) To the extent permitted by law, except as expressly provided in this Agreement, Vivanti makes no other warranties of any kind or nature whatsoever, whether express or implied, including, but not limited to, warranties of merchantability or fitness for a particular purpose or use or warranties of uninterrupted or error-free performance of computer systems, applications, software, hardware or equipment.
- (c) The Client warrants that:
 - (i) it has the right and consents to provide Vivanti (and its personnel) with any software, documentation, physical and computing environment, data, information, including personally identifiable information, instruction, equipment, design, specification or other materials provided or made available by or on behalf of the Client to Vivanti for Vivanti and its personnel to use, access, collect, handle, modify, transfer or interface with ("Use") in connection with the Services ("Client Inputs"); and
 - (ii) Vivanti's and its personnel's Use of the Client Inputs will not infringe or otherwise violate the intellectual property rights or other rights of any third party.

5. Intellectual Property

- (a) Vivanti agrees that the deliverables that Vivanti specifically creates for the Client under this Agreement, and detailed under Exhibit A (collectively, the "Deliverables") will be owned by the Client.
- (b) Vivanti agrees to take all reasonably necessary actions to assure the conveyance to the Client of all right, title and interest in, to and under any Deliverables, including copyright.
- (c) Notwithstanding anything to the contrary, the Client acquires no rights in Vivanti's intellectual property or other proprietary works of authorship, pre-existing or otherwise, that have not been created specifically for the Client, including, without limitation, any derivatives, enhancements or

modifications which have been originated, developed, purchased or licensed by Vivanti or its Related Bodies Corporate, or by third parties under contract to Vivanti or its Related Bodies Corporate.

6. Confidentiality

- (a) For a period of three (3) years from the date of disclosure of the applicable Confidential Information (as defined in clause 7(c)), the Client and Vivanti shall each:
 - (i) hold the Confidential Information of the other in trust and confidence and avoid the disclosure or release thereof to any other person or entity by using the same degree of care as it uses to avoid unauthorised use, disclosure, or dissemination of its own Confidential Information of a similar nature, but not less than reasonable care; and
 - (ii) not use the Confidential Information of the other Party for any purpose whatsoever except as expressly contemplated under this Agreement.
- (b) Each Party may disclose the Confidential Information of the other only to those of its employees, personnel (including employees of Vivanti's Related Bodies Corporate), having a need to know such Confidential Information and shall take all reasonable precautions to ensure that such employees and personnel comply with the provisions of clause 7(a).
- (c) The term "Confidential Information" shall mean any and all information or proprietary materials (in every form and media) not generally known in the relevant trade or industry and which has been or is hereafter disclosed or made available by either Party (the "Disclosing Party") to the other (the "Receiving Party") in connection with this Agreement, including but not limited to, all sales and operating information, existing and potential business and marketing plans and strategies, financial information, cost and pricing information, data media, know-how, designs, drawings, specifications, source codes, technical information, concepts, reports, methods, processes, techniques, operations, devices, and the like, whether or not the foregoing information is patented, tested, reduced to practice, or subject to copyright.
- (d) The obligations of either Party under clause 7(a) will not apply to information that the Receiving Party can demonstrate:
 - (i) was in its possession at the time of disclosure and without restriction as to confidentiality;
 - (ii) at the time of disclosure, is generally available to the public or after disclosure becomes generally available to the public through no breach of agreement or other wrongful act by the Receiving Party;

- (iii) has been received from a third party without restriction on disclosure and without breach of agreement by the Receiving Party; or
 - (iv) is independently developed by the Receiving Party or its Related Bodies Corporate without regard to the Confidential Information of the Disclosing Party.
- (e) The Receiving Party may disclose Confidential Information as required to comply with law provided that the Receiving Party:
- (i) gives the Disclosing Party reasonable written notice to allow the Disclosing Party to seek a protective order or other appropriate remedy;
 - (ii) discloses only such Confidential Information as is required by law or a governmental entity; and
 - (iii) uses commercially reasonable efforts to obtain confidential treatment for any Confidential Information so disclosed.

7. Limitation of Liability

- (a) To the extent permitted by law:
- (i) Vivanti shall not be liable to the Client or any other person or entity for incidental or consequential damages, including, without limitation, the loss of sales or revenues, loss of goodwill, loss of business information or loss of profits, even if advised of the possibility of such damages or loss; and
 - (ii) Vivanti's liability to the Client or any other person or entity arising out of, under or in connection with this Agreement (whether in contract, tort (including negligence), under indemnity or otherwise) is limited to, in the aggregate, the total amount paid by the Client under this Agreement.
- (b) Vivanti will not be liable to the Client, whether in contract, tort (including negligence), under indemnity or otherwise, for loss suffered under or in connection with this Agreement to the extent that the Client or its Related Bodies Corporate contributed to such loss.
- (c) The Client must take reasonable steps to mitigate its loss. Vivanti will not be responsible for any loss to the extent that the Client could have avoided or reduced the amount of the loss, by taking reasonable steps to mitigate its loss.
- (d) To the extent that there is a failure to comply with a statutory guarantee in respect of the supply of services as defined under British Consumer Protection Law, then to the extent permitted by law, Vivanti's liability is limited to one or more of the following, at Vivanti's sole discretion:

- (i) supplying the services again; or
- (ii) payment of the cost of having the services supplied again.

8. Term and Termination

- (a) This Agreement commences on the Commencement Date and will continue for the Period, unless otherwise agreed between the Parties in writing.
- (b) This Agreement may be terminated in whole or in part by either Party upon written notice to the other Party if the other Party commits a material breach of this Agreement and fails to cure such breach within thirty (30) days after receipt of notice of such breach or within any time period agreed between the Parties in writing.
- (c) Upon termination, Vivanti is entitled to recover payment for all Services and Deliverables provided or rendered through to the effective date of termination (including for work in progress), and any other amounts set out in the Exhibit A (including any substantiated demobilisation costs and termination charges).

9. Excusable Events

- (a) Vivanti is not liable for any delay or failure to provide the Services or Deliverables in accordance with the terms of this Agreement to the extent such delay or failure resulted from an Excusable Event. The Client acknowledges that Excusable Events may result in additional cost to the Client.
- (b) The term "Excusable Event" means:
 - (i) any failure of the Client or its personnel to perform its obligations under this Agreement;
 - (ii) any delay or failure of the Client to provide a Client Input, to satisfy a dependency promptly or upon the request of Vivanti or its Related Bodies Corporate, or to provide necessary information, equipment or access;
 - (iii) any assumption contained in this Agreement which is untrue or incorrect; or
 - (iv) any causes beyond Vivanti's reasonable control.

10. Remote Working

- (a) Vivanti may perform the Services from remote locations, including personal residences (Remote Locations). In doing so, Vivanti will comply with the Remote Protocols, which shall supersede any and all terms of this Agreement (including all policies, schedules, exhibits or attachments) that require any different measures. If the Client directs Vivanti to not work from Remote Locations, the performance of Services from Remote

Locations shall be deemed an impossibility for the purposes of this Agreement.

- (b) Remote Protocols means Vivanti's networking, connectivity, security and data handler protocols established by the Supplier and provided to the Client.

11. Miscellaneous

- (a) This Agreement shall be governed by and interpreted in accordance with the laws of the United Kingdom
- (b) In the event that litigation results from or arises out of this Agreement or the performance thereof, the Parties agree to reimburse the prevailing Party's reasonable attorneys' fees, court costs, and all other expenses, whether or not taxable by the court as costs, in addition to any other relief to which the prevailing Party may be entitled.
- (c) The Parties acknowledge and agree that this Agreement relates solely to the performance of services (not the sale of goods) and, accordingly, will not be governed by the Uniform Commercial Code of any State having jurisdiction. In addition, the provisions of the Uniform Computerized Information Transaction Act and United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.
- (d) Neither Party may assign or otherwise transfer any of its rights, duties or obligations under this Agreement without the prior written consent of the other Party, except either Party may, upon prior written notice to the other Party (but without any obligation to obtain the consent of such other Party), assign this Agreement or any of its rights hereunder to any Related Bodies Corporate of such Party, or to any entity who succeeds (by purchase, merger, operation of law or otherwise) to all or substantially all of the capital stock, assets or business of such Party, if such entity agrees in writing to assume and be bound by all of the obligations of such Party under this Agreement.
- (e) This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assignees.
- (f) This Agreement may be varied only by a written amendment executed by duly authorised officers or representatives of both Parties.
- (g) If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, then such provision shall be severed from this Agreement and the remaining provisions will continue in full force.
- (h) This Agreement may be executed in several counterparts, each of which will be deemed an original, and all of which taken together will constitute one single agreement between the Parties with the same effect as if all the

signatures were upon the same instrument. For purposes of this Agreement, use of a facsimile, e-mail, or other electronic medium shall have the same force and effect as an original signature.

- (i) The Client retains the exclusive right and responsibility for determining the manner and extent to which the benefit or output of Services or Deliverables may be suitable for use in connection with the Client's business operations and offerings to third parties.
- (j) This Agreement constitutes the complete and exclusive statement of the agreement between the Parties and supersedes all proposals, oral or written, and all other prior or contemporaneous communications between the Parties relating to the subject matter.