

## TERMS AND CONDITIONS FOR THE PROVISION OF SOFTWARE DEVELOPMENT SERVICES ("Software Development Services Service Specific Terms")

### 1 DEFINITIONS

- 1.1 The definitions and rules of interpretation in this clause apply in this Agreement.
- Acceptance Tests** means the tests of the Service Provider Software after installation, to be agreed in accordance with the LLD;
- Affiliate** means any entity that directly or indirectly controls, is controlled by, or is under common control with that party from time to time;
- Agreement** means in relation to a particular Service these Service Specific Terms and Conditions for Software Development Services, the Standard Terms and Conditions, and the relevant Order Form;
- Bespoke Software** means software programs developed by the Service Provider specifically for You as part of the Service Provider Software and as detailed in the HLD;
- Business** means Your business as specified in the LLD;
- Business Day** means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;
- Business Requirements Specification** means the specification agreed between You and the Service Provider which sets out Your business requirements regarding the Service Provider Software, contained in the HLD;
- Charges** means the charges to You for the Services as specified in the Order Form;
- Commencement Date** means the project start date, as defined in the LLD;
- Confidential Information** means information of commercial value, in whatever form or medium, disclosed by the party (or any of its Affiliates) to the other party (or any of its Affiliates), including commercial or technical know-how, technology, information pertaining to business operations and strategies, and information pertaining to customers, pricing and marketing and, for clarity, including (in the case of the Service Provider's information) information relating to the Application, the Service Provider Software or any of its constituent parts, the Source Code relating to the Service Provider Software or any such parts;
- Customer Hardware** means the computers and other equipment to be used by You in conjunction with the Service Provider Software, as specified in the HLD;
- Customer Representative** means a person duly authorised by You to act on its behalf for the purposes of this Agreement and identified to the Service Provider by written notice from You;
- Cybersecurity Laws** means all applicable laws, regulations, codes, guidance (from regulatory and advisory bodies, whether mandatory or not), international and national standards, industry schemes and sanctions relating to security of network and information systems and security breach and incident reporting requirements, including the Network and Information Systems Regulations 2018 (*SI 506/2018*), all as amended or updated from time to time;
- Defect** means an error in the Supported Software that causes it to fail to operate substantially in accordance with the LLD and relevant Documentation;
- Documentation** means the operating manuals, user instruction manuals, technical literature, and all other related materials supplied by the Service Provider as specified in the Operational Information;
- HLD** means the High-Level Design document which sets out the general software design at a macro level;
- Implementation Plan** means the time schedule and sequence of events for the performance of this Agreement set out in the LLD, which may be varied in accordance with clause 6;
- Intellectual Property Rights** means patents, rights to inventions, copyright and related rights, trade marks 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, 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, including the right to sue for and recover damages for past infringements;
- Licence** means the licence granted under clause 10.1;
- Licensed Software** means the Service Provider Software as specified in the HLD (except the Third-Party Software and Modified Software (Third-Party)) and all subsequent amendments and updates to such software (including by way of the New Releases) as may be provided under this Agreement;
- Licensed Users** means the employees and agents of You who use the Licensed Software, up to the maximum number specified in the Order Form;
- LLD** means the Low-Level Design document which is issued with the Order Form and contains the detailed specification of the software to be provided, the Acceptance Tests and the Training;
- Modified Software** means the standard software programs proprietary to the Service Provider and/or third parties listed in the HLD, modified or to be modified by the Service Provider under this Agreement;
- Modified Software (Service Provider)** means those elements of the Modified Software listed in the HLD which are proprietary to the Service Provider and are identified as such;
- Modified Software (Third Party)** means those elements of the Modified Software listed in the HLD which comprise Third Party Software and are identified as such;
- New Release** means a new release of all or any part of the Supported Software suitable for use by You in which previously identified faults have been remedied or to which any modification, enhancement, revision or update has been made, but which does not constitute a New Version;
- New Version** means any new version of the Licensed Software, being a version released by the Service Provider after the Acceptance Date which contains such significant differences from the previous versions as to be generally accepted in the marketplace as constituting a new product;
- Normal Working Hours** means the hours 9.00 am to 5:30 pm GMT, Monday to Friday, except English Bank Holidays;
- Open-Source Software** means any software licensed under any form of open-source licence meeting the Open Source Initiative's Open Source Definition from time to time, which is included or used in, or in the development of, the Service Provider Software, or with which the Service Provider Software is compiled or to which it is linked;
- Operational Information** means the operating manuals, user instructions and technical literature;
- Order Form** means the order form, which may be in a form provided by the Service Provider or any additional order information agreed by the Parties in writing (including e-mail), accepted by the Service Provider to order the Services subject to this Agreement;
- Professional Services** means the services to be provided by the Service Provider under this Agreement as specified in the Order Form and LLD;
- Project Manager** means the Service Provider employee who is assigned to the Work;
- Ready for Service** means installed, tested, and having passed or deemed to have passed the Acceptance Tests under and in accordance with clause 5;
- Service Commencement Date** means the date the Service is Ready for Service;
- Services** means the services to be provided by the Service Provider under this Agreement, including (but not limited to) the Licensed Software, Professional Services and/or Support Services referred to in the HLD;
- Source Code** means the source code of the software to which it relates, in the language in which the software was written, together with all related flow charts and technical documentation, all of a level sufficient to enable Your development personnel to understand, develop and maintain that software;
- Service Provider Software** means the support, the Third-Party Software, the Modified Software, the Open-Source Software, the Tools, and the Bespoke Software. References to Service Provider Software in this Agreement shall be taken to include as it is updated from time to time by a New Release;

**Service Provider Standard Software** means the software programs proprietary to the Service Provider, listed in the HLD, which are to be provided to You without modification;

**Standard Terms and Conditions** means the Service Provider's standard terms and conditions agreed by You on signing the Order Form for Services

**Support Charges** means the monthly support charge as specified in the Order Form;

**Support Commencement Date** means the Acceptance Date or such other date as may be specified in the LLD;

**Support Services** means the services to be provided by the Service Provider under this Agreement as specified in the Order Form and LLD;

**Supported Software** means those Service Provider Software programs listed as Supported Software in the HLD and all subsequent amendments and updates to and New Releases of such programs;

**Support Staff** means those employees of the Service Provider connected with this Agreement, including those individuals who perform the Service Provider's obligations under this Agreement;

**Technical Specification** means the specification of the Service Provider Software contained in the HLD and agreed between the Service Provider and You;

**Third-Party Licence** means any licence of Third-Party Software or Modified Software (Third Party) granted to You pursuant to clause **Error! Reference source not found.**;

**Third-Party Software** means any Open Source Software and any software programs proprietary to third parties, listed in the HLD, which are to be provided to You without modification;

**Tools** means any tools and know-how developed, and methods invented, by the Service Provider in the course of or as a result of carrying out the Work, whether or not developed or invented specifically or used exclusively to carry out the Work;

**Training** means the training as specified in the Order Form and HLD, to be provided by the Service Provider as part of the Services;

**Virus** means any thing or device (including any software, code, file or programme) which may:

- (a) prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device;
- (b) prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or
- (c) adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices;

**Vulnerability** means any weakness in the computational logic (for example, code) found in software and hardware components that, when exploited, results in a negative impact to confidentiality, integrity, or availability, and the term Vulnerabilities shall be construed accordingly; and

**Work** means all the works, duties, and obligations to be carried out by the Service Provider under this Agreement.

## 2 SERVICES & SCOPE

2.1 The Service Provider shall supply the Service Provider Software, the Operational Information, and/or the Services (as detailed on the Order Form) to You, and where applicable, grants the Licence, in accordance with this Agreement.

2.2 The Service Provider agrees:

2.2.1 to deliver and install the Service Provider Software and/or provide the Services in accordance with the applicable HLD and/or LLD;

2.2.2 to carry out, in conjunction with You, the Acceptance Tests; and

2.2.3 subject to clause 6.2, use its reasonable endeavours to provide the Service Provider Software and/or the Services by the dates set out in the LLD, on the terms and conditions set out in this Agreement.

2.3 If requested to do so by You, the Service Provider shall:

2.3.1 provide support in accordance with this Agreement as specified in the Order Form and HLD;

2.3.2 provide the training specified as in the Order Form and HLD at the rates provided for in the Order Form; and

2.3.3 make available to You suitably qualified personnel to carry out tasks concerning the Work in accordance with this Agreement.

2.4 If required to do so by You (as per the Order Form), the Service Provider shall develop the Bespoke Software and make the modifications to the Modified Software in accordance with the requirements of the Technical Specification in all material respects.

## 3 SOFTWARE AND DOCUMENTATION

3.1 The Service Provider shall carry out the Work with reasonable diligence, and with reasonable skill and expertise, to use its reasonable endeavours to provide the Service Provider Software in all material respects in accordance with the Technical Specification.

3.2 The Service Provider shall provide the Third-Party Software and any Modified Software (Third Party) to You under the standard licence terms provided by the relevant third parties, and You agrees to be bound to the relevant third parties by such licence terms.

3.3 The Service Provider shall provide the Service Provider Standard Software, the Bespoke Software, and any Modified Software (Service Provider) under the terms of this Agreement.

3.4 The Service Provider shall provide to You, from time to time, copies of the Documentation containing up-to-date information for the proper use and maintenance of the Service Provider Software.

3.5 You may make such further copies of the Documentation as are reasonably necessary for the use and maintenance of the Service Provider Software and for training Your personnel in use of the Service Provider Software. You shall ensure that all of the Service Provider's proprietary notices are reproduced in any such copy.

## 4 CUSTOMER HARDWARE

4.1 You shall be responsible for ensuring that each item of Customer Hardware is installed and is in working order and available to the Service Provider no later than the relevant date specified in the Implementation Plan.

## 5 ACCEPTANCE TESTS

5.1 The Service Provider shall carry out the agreed Acceptance Tests as specified in the LLD for the Software and/or Services. The Acceptance Tests shall be started as soon as reasonably possible after installation/completion.

5.2 Once Tests have been completed and confirmation of completion has been received by email from You, the Software will move to Ready for Service and the associated Charges will commence from the Service Commencement Date.

5.3 If the Software fails to pass the Acceptance Tests, You shall, within 5 Business Days from the completion of the Acceptance Tests or any part of these tests, provide a written notice to this effect, giving details of such failure(s). The Service Provider shall remedy the defects and/or deficiencies and the relevant test(s) shall be repeated within a reasonable time.

5.4 Acceptance of the Service Provider Software and/or Services shall be deemed to have occurred on whichever is the earliest of:

5.4.1 the completion of the Acceptance Tests in accordance with clause 5.1, 5.2 and 5.3; or

5.4.2 the use of the Service Provider Software and/or Services by You in the normal course of the Business.

## 6 IMPLEMENTATION AND EXTENSION OF TIME

- 6.1 The Service Provider shall use its reasonable endeavours to complete the Work in accordance with the implementation plan detailed within the LLD, subject to clause 6.2.
- 6.2 The Service Provider shall be given an extension of the timetable of any one or more of the stages in the plan, or any of its other performance obligations under this Agreement, if one of more of the following events occurs:
- 6.2.1 a variation to the Service Provider Software and/or Services is made at Your request under the change control procedures set out in clause 8;
- 6.2.2 a force majeure event occurs as described in the Standard Terms and Conditions;
- 6.2.3 a delay is caused in whole or in part by an action or omission of You or Your employees, agents, or third-party contractors.
- 6.3 If the Service Provider is entitled to an extension of time under clause 6.2, it shall give notice to You and the Customer Representative, and the Project Manager shall use reasonable endeavours to agree in writing, the extension of time required in the circumstances.
- 6.4 The parties acknowledge and agree that any dates quoted for delivery of the Work or the Support Services are approximate only, and that the time of delivery is not of the essence. The Service Provider shall not be liable for any delay in delivery of the Work or the Support Services that is caused by an event, circumstance or cause out of the Service Provider's reasonable control, or Your failure to provide the Service Provider with adequate instructions.

## 7 PAYMENT

- 7.1 You shall pay the Service Provider the Charges in respect of the Services and in accordance with the Order Form. The payment terms for the Services are described below and further detailed in the Order Form:
- 7.1.1 **License Fee** - License Fees are payable monthly in advance per User License. The first period for a new User License is charged pro rata from the date of first availability of the Services to the end of the first calendar month and monthly in advance thereafter. All fees after the first month are charged in whole months including any part month on termination.
- 7.1.2 **Support Charges** – are payable monthly in advance. The first period for Support Charges is charged pro rata from the Service Commencement Date to the end of the first calendar month and monthly in advance thereafter. The Support Charges may be invoiced as a separate item or contained within a single per user License Fee.
- 7.1.3 **Additional Service Charges** - The Service Provider may charge for additional services, including Professional Services, training and labour, and are either by quotation or at a daily rate plus reasonable expenses. Any materials used will be charged appropriately. Additional Services Charges shall be invoiced upon completion of the particular Service or monthly at the discretion of the Service Provider and where indicated on the Order Form.

## 8 CHANGE CONTROL

- 8.1 You may, at any time during the term of this Agreement, request a change to the Service Provider Software and/or the Services.
- 8.2 If the change is accepted by the Service Provider, the Service Provider shall prepare for You an Order Form and HLD which will detail any new Charges or amendments to existing Charges.

## 9 OWNERSHIP

- 9.1 The Intellectual Property Rights in the Licensed Software, Tools and Documentation are, and shall remain, the property of the Service Provider, and You acquire no rights in or to the Licensed Software, Tools or the Documentation other than those expressly granted by this Agreement.
- 9.2 The Service Provider reserves the right to grant a licence to use the Service Provider Software and Documentation to any other party or parties.
- 9.3 You shall do, and execute or arrange for the doing and executing of, each necessary act, document and thing that the Service Provider may consider necessary or desirable to perfect the right, title and interest of the Service Provider in and to the Intellectual Property Rights in the Bespoke Software, the Tools and the Modified Software (Service Provider).
- 9.4 You shall use reasonable endeavours to prevent any infringement of the Service Provider's Intellectual Property Rights in the Licensed Software, Tools and Documentation and shall promptly report to the Service Provider any such infringement that comes to its attention. In particular, You shall:
- 9.4.1 ensure that each Licensed User, before starting to use the Licensed Software or Documentation, is made aware that the Licensed Software and Documentation are proprietary to the Service Provider and that it may only be used and copied in accordance with this Agreement;
- 9.4.2 implement suitable disciplinary procedures for employees who make unauthorised use or copies of the Licensed Software, or Documentation except as provided for in clause 1.1; and
- 9.4.3 not permit third parties to have access to the Licensed Software or Documentation without the prior written consent of the Service Provider, who may require that such third party executes a written confidentiality agreement before being given access to the same.

## 10 SOFTWARE LICENCE AND DOCUMENTATION

- 10.1 Where applicable, the Service Provider grants, subject to the terms of this Agreement, You the non-exclusive, non-transferable right to use the Licensed Software and the Documentation for any purpose related to the Business (Licensed Purposes).
- 10.2 The Licensed Software may be used only by Licensed Users, except as follows:
- 10.2.1 the Licensed Software may be used on any replacement for all or any part of Customer Hardware that has been provided, or approved in writing in advance, by the Service Provider;
- 10.2.2 the Licence may, with the prior written consent of the Service Provider, be extended to additional Licensed Users, provided that any appropriate additional fee is paid to the Service Provider before such use; and
- 10.2.3 if Customer Hardware becomes inoperable for any reason, the Licensed Software may be temporarily used on backup equipment until Customer Hardware is repaired, and You may use the Licensed Software for the purpose of testing whether any such backup equipment is suitable for use while Customer Hardware is inoperable.
- 10.3 You shall comply with the Third-Party Licences and shall indemnify and hold the Service Provider harmless against any loss or damage which it may suffer or incur as a result of Your breach of such terms howsoever arising.
- 10.4 The Service Provider may treat Your breach of any Third-Party Licence as a material breach of this Agreement.

## 11 TRANSFER OR REPRODUCTION OF LICENSED SOFTWARE

- 11.1 You may make such copies of the Licensed Software as are reasonably necessary for use in accordance with this Agreement and for the purposes of backup and security. You have no right to make, or authorise the making of, any other copies of the Licensed Software.
- 11.2 The Service Provider shall at all times own all copies of all or any part of the Licensed Software. For copies recorded on a tangible medium, You shall place on each copy of all or any part of the Licensed Software a clearly visible label indicating that the copy is the property of the Service Provider, and reproducing the Service Provider's proprietary rights notice. For electronic copies, You shall ensure that all proprietary notices contained in the Licensed Software shall be maintained in such copies and shall display when the software is run, in the same way as

in the case of the Licensed Software as supplied by the Service Provider. You shall keep all copies of the Licensed Software in a secure place when not in use and shall, at all times, keep all such copies in its possession or control.

11.3 You shall not:

- 11.3.1 sub-license, rent, lend, assign or transfer in any other way this Agreement or the Licensed Software to any person without the prior written consent of the Service Provider; and
- 11.3.2 give access to the Licensed Software through any network of computers to users who are not employees or agents of You.

## 12 USE AND ADAPTATION OF LICENSED SOFTWARE

12.1 You may use the Licensed Software with other software.

12.2 You may not make adaptations or variations of the Licensed Software without the prior consent of the Service Provider.

12.3 You may not disassemble, decompile, reverse translate or in any other manner decode the Licensed Software, except as permitted by law.

## 13 SUPPORT SERVICES

13.1 When providing Support Services for Licensed Software, the Service Provider shall supply You with New Releases in machine-readable form together with related amendments to the Documentation. The Service Provider may make such New Releases available and will notify You when such New Releases are available.

13.2 The Service Provider shall notify You promptly in writing of the issue of any New Version, specifying the following:

- 13.2.1 the charge for delivery and installation of the New Version;
- 13.2.2 the licence fee payable for the New Version;
- 13.2.3 in what way the New Version differs from the previous version in terms of functionality, performance and compatibility;
- 13.2.4 the terms on which the Service Provider will make the New Version available.

13.3 For the avoidance of doubt, nothing in this Agreement shall oblige the Service Provider to provide, or You to take, any New Version. In the event that You decide not to purchase a New Version, the Service Provider shall be entitled to:

- 13.3.1 increase the Charges by an amount proportionate to the increased costs to the Service Provider of continuing to provide a Licence and Support Services in relation to an older version of the Licensed Software; or
- 13.3.2 terminate this Agreement.

13.4 When providing Support Services for Licensed Software and/or for Bespoke Software that has a user interface, the Service Provider shall ensure that support is available by telephone and e-mail during Normal Working Hours to provide assistance to You in respect of the following:

- 13.4.1 remedying Defects in the Supported Software;
- 13.4.2 carrying out any preventative maintenance/Service that the Service Provider shall deem necessary (at its sole discretion); and
- 13.4.3 providing advice on the use of the Supported Software.

13.5 The Service Provider shall use reasonable endeavours to correct Defects notified to it by You in a timely manner appropriate to the seriousness of the circumstances in accordance with the following procedure:

- 13.5.1 You shall promptly notify the Service Provider of all Defects and provide written detail as to the nature and impact of the Defect;
- 13.5.2 if a notified Defect halts or substantially impairs Your operations which use the Supported Software, the Service Provider shall:
  - 13.5.2.1 use all reasonable efforts to correct the Defect as soon as possible; and
  - 13.5.2.2 keep You informed of progress towards correction of the Defect.
- 13.5.3 in the case of Defects other than those specified in clause 13.5.2, the Service Provider shall start work on correcting the Defect as soon as the Service Provider's workload allows and shall use commercially reasonable efforts to correct the Defect.
- 13.5.4 the method of correcting the Defect will be at the sole discretion of the Service Provider.

13.6 Where specified in the HLD, the Service Provider shall use reasonable efforts to ensure the accurate migration of any data but gives no warranties as to the completeness or accuracy of such migration. You shall be responsible for checking the accuracy and completeness of the migrated data and shall promptly give sufficient details to the Service Provider of any inaccuracies or omissions in order to permit the Service Provider to correct them. If such data includes personal data, the Service Provider shall return all copies of such personal data to You on completion of the data migration process.

## 14 TRAINING

14.1 The Service Provider undertakes to provide the Training to You in consideration of the Charges specified in the Order Form.

14.2 Any additional training required by You shall be provided by the Service Provider at the Service Provider's standard rates then in force.

## 15 SUPPORT SERVICES: YOUR OBLIGATIONS

15.1 You shall not, without the Service Provider's prior written approval, allow any person other than a representative of the Service Provider to modify, repair or maintain any part of the Supported Software.

15.2 You shall co-operate with the Service Provider in any manner reasonably required by the Service Provider in order to carry out the Work, including provision of information and data, making available suitably qualified employees and contractors of You and:

- 15.2.1 provide access to Your systems for the purpose of carrying out diagnostics and correction of Defects, provided that system access shall be direct or remote, at the Service Provider's option;
- 15.2.2 provide such further access for the Support Staff to Your premises as is necessary to carry out the Service Provider's obligations under this Agreement. You shall obtain for the Service Provider all permissions necessary to obtain such access;
- 15.2.3 when the Support Staff are working on at Your premises, provide facilities and supplies reasonably required by the Service Provider, such as power and computer consumables.

15.3 You shall, at Your own expense, provide the equipment necessary to enable the access referred to in clause 15.2.1 in accordance with the specifications set out by the Service Provider.

15.4 You may, acting reasonably, restrict access to certain areas of its premises or systems on security grounds.

15.5 You agree that if the access referred to in clause 15.2 is not provided by You, the Service Provider shall have no responsibility to complete the Work and shall have no liability to You for its failure to do so.

15.6 You shall appoint and maintain for the duration of this Agreement an individual to serve as primary contact with the Service Provider for the purpose of the provision of the Services and shall notify the Service Provider of the name of the individual on their appointment.

15.7 You shall comply, as soon as reasonably practicable, with all the Service Provider's reasonable requests for information or assistance.

## 16 EXPORT

16.1 Neither party shall in any circumstances export, directly or indirectly, any technical data acquired from the other party under this Agreement (or any products, including software, incorporating any such data) in breach of any applicable laws or regulations (Export Control Laws), including United States export laws and regulations, to any country for which the United States or any other government or any agency thereof at the time of export requires an export licence or other governmental approval without first obtaining such licence or approval.

16.2 Each party undertakes:

- 16.2.1 contractually to oblige any third party to whom it discloses or transfers any such data or products to make an undertaking to it in similar terms to the one set out above; and
- 16.2.2 if requested, to provide the other party with any reasonable assistance, at the reasonable cost of the other party, to enable it to perform any activity required by any competent government or agency in any relevant jurisdiction for the purpose of compliance with any Export Control Laws.

## 17 WARRANTIES

17.1 The Service Provider warrants and represents that:

- 17.1.1 the Licensed Software and Documentation are proprietary to the Service Provider (except where otherwise stated in the HLD and that, as far as it is aware, it has the right to license all Intellectual Property Rights in and to the Licensed Software and Documentation to You, and to provide the Services to You;
- 17.1.2 it is in compliance with, and will perform the Services in compliance with, all applicable law and regulations (save for Cybersecurity Laws).

17.2 The sole remedies for breach of the warranties in clause 17.1.1 are set out in clause 18.

17.3 The warranties set out in clause 1.1 are in lieu of all other express or implied warranties or conditions, including implied warranties or conditions of satisfactory quality and fitness for a particular purpose, in relation to this Agreement. Without limitation, the Service Provider specifically denies any implied or express representation that the Service Provider Software will be fit:

- 17.3.1 to operate in conjunction with any hardware items or software products other than with those that are identified in the Documentation as being compatible with the Service Provider Software; or
- 17.3.2 to operate uninterrupted or error-free.

17.4 The Service Provider does not warrant or guarantee that it will be able to rectify all Defects, nor that any Defect which does not materially affect Your operations using the Supported Software will be corrected before the issue of the next New Release.

17.5 Any unauthorised modifications, use or improper installation of the Service Provider Software by, or on behalf of, You shall render all the Service Provider's warranties and obligations under this Agreement null and void.

17.6 The Service Provider shall not be obliged to rectify any particular Defect if attempts to rectify such Defect other than normal recovery or diagnostic procedures have been made by Your personnel or third parties without the permission of the Service Provider.

17.7 You acknowledge that the only warranties in relation to the Third-Party Software and the Modified Software (Third Party), or the supply thereof, are those contained in the licence from the third-party Service Provider(s) of the same, and that to the extent that any of such warranties are given to the Service Provider, it will pass on the benefit of such warranties to You.

17.8 Any Open-Source Software provided by the Service Provider shall be used according to the terms and conditions of the specific licence under which the relevant Open-Source Software is distributed, but is provided "as is" and expressly subject to the disclaimer in clause 17.3.

17.9 The Service Provider does not warrant or guarantee that the System or the Services, when taken in whole or in part, will:

- 17.9.1 comply with Cybersecurity Laws, or
- 17.9.2 contain no Vulnerabilities,

and it shall be Your sole responsibility to ensure that the HLD and/or the Technical Specification detail all of Your cybersecurity requirements, including any requirements that might be imposed on Your business, operations or systems under Cybersecurity Laws, in sufficient detail so they can be implemented by the Service Provider as part of the Work.

17.10 You:

- 17.10.1 warrant to the Service Provider that You will at all times comply with all applicable laws and regulations with respect to Your activities under this Agreement and in connection with any part of the Service Provider Software and/or Services;
- 17.10.2 shall ensure, in relation to Your use of any Software or Services pursuant to this Agreement, that no Virus or Vulnerability is introduced to the Service Provider Software or the network and information systems of the Service Provider;
- 17.10.3 shall indemnify the Service Provider against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by the Service Provider arising out of any non-compliance by You with this clause 17.10.

17.11 Except as expressly provided in this Agreement and to the fullest extent permitted by applicable law:

- 17.11.1 You shall be solely responsible, as against the Service Provider, for any opinions, recommendations, forecasts or other conclusions made or actions taken by You, any client of You or any other third party based (wholly or in part) on the results obtained from the use of the Software or the Services by You;
- 17.11.2 the Service Provider shall have no liability for any damage caused by errors or omissions in any information or instructions provided to the Service Provider by You in connection with the Services; and
- 17.11.3 all warranties, representations, conditions, and all other terms of any kind whatsoever implied by statute or common law are excluded from this Agreement.

## 18 INTELLECTUAL PROPERTY RIGHTS

18.1 Subject to Clause 18.5, the Service Provider warrants and undertakes that the receipt, supply and use of the Services by You shall not infringe or violate the Intellectual Property Rights of any third party, including rights of copyright and any other intellectual property rights, privacy or confidentiality (any such claim against You arising from or relating to such receipt, supply and use of the Services by You shall be referred to herein as an "IPR Claim").

18.2 Subject to Clauses 18.5 and 18.6, in the event of an IPR Claim, the Service Provider shall:

- 18.2.1 Subject to Clause 18.6.2, have sole conduct of (and in its reasonable opinion) be entitled to settle any IPR Claim (at no cost to You); and
- 18.2.2 consider and, if determined by the Service Provider, defend the IPR Claim diligently using competent legal advisers and/or counsel and using all reasonable endeavours to avoid bringing Your reputation or good name into disrepute.

18.3 You undertake to the Service Provider that You will not:

- 18.3.1 use any of the Services with any content, designs, specifications, equipment, software or other services that have not been supplied by the Service Provider or on its behalf;
- 18.3.2 make any modification to the Services without the Service Provider's prior written permission; or
- 18.3.3 use any of the Services in a manner that the Service Provider has not agreed in writing.

18.4 You will cease the activity or conduct that resulted in its breach of clause 18.3 forthwith upon the Service Provider providing written notice of the same or where You become aware, or ought reasonably to have become aware, that such activity or conduct had resulted or would result in such breach.

18.5 Without prejudice to any other rights or remedies provided by law or in equity to the Service Provider, no IPR Claim shall arise (and accordingly the Service Provider shall have no liability to You in respect of any losses suffered or incurred by You) if it relates to or is connected with Your breach of clause 18.3.

18.6 In relation to any IPR Claim of which You become aware, You shall:

- 18.6.1 promptly notify the Service Provider of the IPR Claim (such notice to summarise in reasonable detail the nature of the relevant claim (if practicable to do so and in so far as it is known) and, as far as is reasonably practicable, any amounts claimed);
- 18.6.2 obtain such authorisation(s) as is reasonably required in order for the Service Provider to have conduct of and/or to settle the IPR Claim;
- 18.6.3 provide the Service Provider (at the Service Provider's cost) with all assistance reasonably required in order for it to conduct and/or settle the IPR Claim, including giving the Service Provider and its professional advisers access at reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within Your power or control, so as to enable the Service Provider and its professional advisers to examine them and to take copies (at the Service Provider's expense) for the purpose of assessing the Claim; and
- 18.6.4 not admit, compromise or settle any part of the IPR Claim without first obtaining the Service Provider's prior written Agreement (such Agreement not to be unreasonably delayed or withheld).
- 18.7 In respect of any Service that is the subject of an IPR Claim (except any IPR Claim arising from Clause 18.3) the Service Provider shall (at no cost to You) either:
- 18.7.1 procure the right for You to continue to use the Services in accordance with this Agreement; or
- 18.7.2 modify or replace the Service (or any part of either) with non-infringing substitutes provided that any substitute shall be materially the same in scope, functionality and performance as the Service and shall come at no additional cost, unless agreed otherwise by the parties.
- 18.8 The Service Provider shall not in any circumstances have any liability for any Claim:
- 18.8.1 caused or contributed to by Your use of the Licensed Software, Documentation, or Services (as the case may be) in combination with software not supplied or approved in writing by the Service Provider (other than the operating system of any Customer Hardware, provided that the Service Provider was notified in writing of the identity of this operating system before this Agreement was entered into);
- 18.8.2 based on use of any version of the Licensed Software other than the latest version supplied by the Service Provider, if such claim could have been avoided by the use of such supplied version; or
- 18.8.3 where the claim for infringement arises in respect of a feature of the Licensed Software which was specified by You in the Business Requirements Specification.
- 18.9 If use of the Licensed Software, Documentation or Services becomes, or in the opinion of qualified legal counsel is likely to become, the subject of any such Claim, the Service Provider may:
- 18.9.1 replace all or part of the Licensed Software, Documentation or Service (as the case may be) with functionally equivalent software or documentation or services without any charge to You;
- 18.9.2 modify the Licensed Software, Documentation or Service (as the case may be) as necessary to avoid such Claim, provided that the same (as amended) functions in substantially the same way as it did before modification;
- 18.9.3 procure for You a licence from the relevant claimant to continue using the Licensed Software, Documentation or Service (as the case may be).
- 18.10 If:
- 18.10.1 use of the Licensed Software, Documentation or Service (as the case may be) is determined in a court of law to be infringing;
- 18.10.2 the Service Provider is advised by a barrister of at least ten years' call that use or possession by You of the Licensed Software or Documentation or Services in accordance with this Agreement is likely to constitute infringement of a third party's rights; or
- 18.10.3 if an injunction or similar order is granted in connection with a Claim which prevents or restricts the use or possession by You of the Licensed Software or the Documentation or Services in accordance with this Agreement, and the Service Provider is unable, after best efforts, to procure for You the right to continue using the Licensed Software, Documentation or Services (as the case may be) or to provide You with functionally equivalent non-infringing software, documentation or services, this Agreement and the Licence will be terminated.
- 18.11 Notwithstanding any other provision in this Agreement, clause 1.1 shall not apply to the extent that any claim or action referred to in that clause arises directly or indirectly through the possession, use, development, modification or maintenance of any Third-Party Software or Modified Software (Third-Party) or through the breach of any Third-Party Licence by You.
- 18.12 Nothing in this clause shall restrict or limit Your general obligation at law to mitigate a loss You may suffer or incur as a result of an event that may give rise to a claim.
- 19 TERMINATION**
- 19.1 Without prejudice to any rights that have accrued under this Agreement or any of its rights or remedies, either party may at any time terminate this Agreement with immediate effect by giving written notice to the other party if any warranty given in clause 17 is found to be untrue or misleading.
- 19.2 On termination of the Agreement, You shall either return to the Service Provider or, at the Service Provider's option, destroy all physical copies of the Licensed Software and Documentation, and shall ensure that any digital copies of the Licensed Software on hard discs or other storage means associated with any computer equipment owned or controlled by You are permanently deleted. Any digital copies shall be considered permanently deleted, for the purposes of this clause 19.2 where they have been put beyond use by You.
- 19.3 On termination of this Agreement for any reason, each party shall as soon as reasonably practicable:
- 19.3.1 return, destroy or permanently delete (as directed in writing by the other party) any documents, handbooks, CD-ROMs or DVDs or other information or data provided to it by the other party containing, reflecting, incorporating, or based on Confidential Information belonging to the other party. If required by the other party, it shall provide written evidence (in the form of a letter signed by its Director no later than 14 days after termination of this Agreement that these have been destroyed and that it has not retained any copies of them (except for one copy that it may use for audit purposes only and subject to the confidentiality obligations in this Agreement), provided that You may retain copies of any Service Provider Confidential Information incorporated into the Service Provider Software or to the extent necessary to allow it to make full use of the Services and any rights granted under any Licence or Third-Party Licence which is still in force;
- 19.3.2 permanently delete any proprietary software belonging to the other party and not the subject of a current licence granted by the other party from its IT network and hard disks or other storage means associated with any computer equipment owned or controlled by the other party. Each party shall provide written confirmation in the form of a letter signed by its Director no later than 14 days after termination of this Agreement that this software has been deleted;
- 19.3.3 return all of the other party's equipment and materials, failing which, the other party may enter the relevant premises and take possession of them, provided, regarding Your rights under this clause 19.3.3, that You have (if appropriate) paid the Service Provider in full for such equipment and materials. Until these are returned or repossessed, the party in possession shall be solely responsible for their safe-keeping, and any electronic data shall be considered deleted, for the purposes of this clause 19.3, where it has been put beyond use by the deleting party.

**By signing below, You confirm that You have read these Software Development Services Service Specific Terms and agree to be bound by them, together with the Netcentrix Standard Terms and Conditions set out in, or deemed to form part of this Agreement and the Charges detailed within the Order Form.**

**SIGNATURES**

[[SertifiSStamp\_1]]

[[SertifiSStamp\_2]]