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1. Agreed Terms and Interpretation

AGREED TERMS

The terms and conditions included in this **Module 4** form part of the Customer Contract when the Parties state that the Development Services Module forms part of the Customer Contract in Item 8 of the General Order Form.

In this Module, unless the contrary intention appears:

- 1.1 Data Dictionary** means a reference tool that describes each data item that may include field names, number of characters, data type, number of decimal places, or a description of the purpose of each field of data.
- 1.2 Designated Operating Environment** means the hardware platform/operating system combination stated in the Module Order Form upon which the Software Solution is to be installed.
- 1.3 Design Specification** means the specification to be provided in accordance with clauses 3.5 to 3.6.
- 1.4 Development Services** means the Services provided under this Module 5.
- 1.5 Exception** means the reasons that excuse the Contactor from being in breach of the Customer Contract in respect of the Licensed Software and Services provided under this Module, as stated in clause 8.
- 1.6 New Release** means software which has been produced primarily to extend, alter or improve the relevant part of Software Solution by providing additional functionality or performance enhancement (whether or not Defects in that Software Solution are also corrected) while still retaining the original designated purpose of that part of the Software Solution.
- 1.7 Quality Assurance** means a set of processes and procedures used to ensure that the Software Solution meets specified criteria with respect to quality.
- 1.8 Software Solution** means the software to be implemented, developed or created by the Contractor for the Customer and may include:
 - (a) configuration of Licensed Software which does not involve making changes to the source code of the Licensed Software;
 - (b) adaptations, translations or derivatives of the Licensed Software which are created by making changes to the source code of Licensed Software;
 - (c) configuration of Third Party Software which does not involve making changes to the source code of the Third Party Software;
 - (d) adaptations, translations or derivatives of the Third Party Software which are created by making changes to the source code of Third Party Software;
 - (e) creation of new software, including software applications and APIs,as specified in the Module Order Form. The term Software Solution expressly excludes the Licensed Software.
- 1.9 Software Support Services** means the Services the Contractor agrees to provide for the Software Solution under Module 5 of the Customer Contract.

1.10 Third Party Software means software components, plug-ins and other programs that are owned by third parties and are stated on the Module Order Form as being Third Party Software.

1.11 User means a person who is authorised to use the Supported Software.

INTERPRETATION

1.12 Other capitalised words and expressions used in this Module are contained in Part 3 of the Agreement.

2. Relationship with Other Modules

2.1 Where the Software Solution includes the configuration or adaptation, translation or creation of derivatives of Licensed Software, the Licensed Software will be provided under Module 3.

2.2 Where the Software Solution includes the configuration or adaptation, translation or creation of derivatives of Third Party Service the Customer may supply the Third Party Software as a Customer Supplied Item. In this case, the Customer must ensure that the Third Party Software:

- (a) is subject to a support and maintenance agreement that entitles the Contractor direct access to the provider of the support and maintenance service; and
- (b) does not have any New Release implemented prior to the end of the Warranty Period of the Software Solution, without the Contractor's prior written consent.

2.3 Where the Software Solution is to be the subject of Software Support Services, the Software Support Services will be provided under Module 5.

3. Design

SCOPING

3.1 The Development Services must be provided during the Contract Period. If no Contract Period is stated in the General Order Form, then the Development Services will be provided from the Commencement Date until either Party cancels the Development Services by providing 30 days Notice in Writing.

3.2 If there is no PIPP agreed at the time the Customer Contract is signed by the Parties, the Contractor must prepare a draft PIPP for the approval of the Customer prior to the commencement of the implementation, development or creation of any software. Within 7 days of receipt of the draft PIPP the Customer must:

- (a) approve the PIPP;
- (b) provide written notice of any changes to the draft PIPP that it requires, and provided those changes are reasonable, the Contractor must update the PIPP and re-submit it for approval by the Customer.

Once the PIPP has been approved by the Customer it forms part of the Customer Contract and the Contract Specifications are updated accordingly.

3.3 The PIPP for the Development Services may include:

- (a) assessment and definition of the:

- (i) Customer's existing system or the Designated Operating Environment, if necessary;
 - (ii) Customer's goals, requirements and expectations in respect of the Software Solution which shall include a statement of:
 - (A) the Contractor's understanding of the Customer's and/or User's experience and requirements in relation to the Software Solution;
 - (B) the objectives to be met by the Contractor; and
 - (C) the scope of the Software Solution;
 - (iii) required Deliverables;
 - (iv) resources required (including any resources to be made available by the Customer); and
 - (v) complexity of the project;
- (b) a feasibility study in which the Contractor makes the determination (and includes any appropriate recommendations) as to whether the Development Services proposals are capable of meeting Customer and/or User's needs and expectations taking into account budgetary, operational, technical and time considerations;
- (c) development of a strategy for the creation of the Software Solution that is appropriate for the Customer's needs and its User population covering all appropriate planning and timetabling issues associated with the Development Services including:
- (i) identification of the Services to be performed;
 - (ii) identification and procurement of necessary Products;
 - (iii) allocation of responsibilities within each Party's organisation;
 - (iv) Staging of the project;
 - (v) development of a Milestones and payment schedule; and
 - (vi) implementation of the Services;
- (d) the provision of Licensed Software and/or Third Party Software;
- (e) development of a Design Specification for the Software Solution which shall be subject to Acceptance Testing in accordance with clause 10 of Part 2;
- (f) development of the Software Solution (including prototyping if applicable) in accordance with the methodology in clause 4.1;
- (g) development of any Bespoke User Documentation;
- (h) identification of the Deliverables that are to be subject to Acceptance Testing in accordance with clause 10 of Part 2 of the Agreement;
- (i) provision of training and/or training Materials;
- (j) provision of warranty services during the Warranty Period;
- (k) provision of Software Support Services.

DESIGN PROCESS

- 3.4** The Contractor must prepare a Design Specification for the Software Solution by the date specified in the PIPP.
- 3.5** Unless otherwise agreed, the Contractor must create a Design Specification for the Software Solution that:
- (a) is based on, and is consistent with, the Contract Specifications; and
 - (b) will enable the Software Solution to be installed in the Designated Operating Environment.
- 3.6** The Design Specification must provide a detailed technical explanation of how the Software Solution will provide the functions specified in the Contract Specifications, including, as applicable, details of processes, visual displays, screen layouts, system flowcharts, user interfaces, data flow diagrams, estimates of transaction and data volumes, prototypes and any associated Data Dictionary.
- 3.7** Where the Software Solution includes Licensed Software or is based on Third Party Software, nothing in this Module requires the Contractor to provide any explanation or documentation relating to:
- (a) the Licensed Software that the Contractor does not make generally available to its customers; and
 - (b) any Third Party Software.
- 3.8** The Contractor must keep the Customer informed at all stages while the Design Specification is being prepared so that the Customer will have a reasonable knowledge of the content of the Design Specification by the time the Design Specification is delivered by the Contractor for Acceptance Testing.
- 3.9** If the Customer has any objection to the Design Specification provided by the Contractor it must notify the Contractor within the Acceptance Testing Period of any alterations it reasonably requires. The Contractor must not unreasonably refuse to amend the Design Specification to take account of the Customer's reasonable requirements.
- 3.10** The Design Specification will, when Accepted by the Customer become part of the Contract Specifications.
- 3.11** The Contractor acknowledges that the Customer is relying on the Contractor's expertise in preparing the Design Specification.

4. Development

DEVELOPMENT PROCESS

- 4.1** The Contractor's methodology for the development of the Software Solution must as a minimum:
- (a) identify and control software components of, and changes to, the New Materials in the Software Solution to maintain the integrity and traceability of the New Materials in the Software Solution at all stages of the development;
 - (b) ensure concurrent control, development and supply of Documentation relating to the New Materials in the Software Solution;

- (c) control the issue of development revisions of the New Materials in the Software Solution and associated documentation;
- (d) identify the extent of the performance of the Contractor in accordance with the Contract Specifications;
- (e) ensure that the New Materials in the Software Solution are developed and documented in a way which would enable future modification without further reference to the Contractor;
- (f) reference and document procedures for corrective action in respect of the Software Solution and associated documentation prior to Acceptance Testing, including:
 - (i) adoption of a system to report problems and deficiencies;
 - (ii) examination of problem and deficiency reports to determine their causes, and to prepare corrective measures;
 - (iii) analysis of deficiency trends, to ensure the Software Solution conforms to the Contract Specifications;
 - (iv) review of corrective measures, to determine their effectiveness; and
 - (v) provision for ensuring that timely corrective action is taken by reviewing deficiencies and tracking their clearance;
- (g) include a Quality Assurance and reporting program that is carried out through each stage of the design and development of the New Materials in the Software Solution and involves continually monitoring and assessing the quality of the New Materials in the Software Solution against criteria set out in the Contract Specifications; and
- (h) adhere to any other requirements specified in the Customer Contract.

SOURCE CODE

- 4.2** Where ownership of any New Materials is to be retained by the Contractor, the Contractor agrees to enter into an Escrow Agreement for the New Material, at the request and expense of the Customer, unless it is stated in the Module Order Form that the source code for the New Material is not to be placed in escrow.
- 4.3** Where the Contractor is required to enter into an Escrow Agreement for New Materials, the Contractor must deliver the Escrow Materials for the New Materials to the Escrow Agent:
- (a) within 7 days of the date when the Software Solution passes its final Acceptance Test; and/or
 - (b) at such other times are stated in the PIPP.
- 4.4** The Contractor agrees to inform the Customer as to the purpose and use of the software tools, object libraries or similar routines owned by the Contractor or any other party, in the production of the Software Solution.
- 4.5** If the tools, object libraries or similar routines are required to maintain or enhance the Software Solution, the Contractor must grant a licence for those tools, object libraries or similar routines in accordance with clause 13 of Part 2.

5. Acceptance Tests and Use

- 5.1** It is acknowledged and agreed by the Customer that the Contractor is relying on the Customer undertaking Acceptance Tests in accordance with clause 10 of Part 2 before using any part of the Software Solution for its business purposes and/or in a production environment.
- 5.2** It is acknowledged and agreed by the Customer that if the Customer uses the Software Solution for its business purposes and/or in a production environment before the Software Solution has passed its Acceptance Tests in accordance with clause 10.9 of Part 2 (as opposed to where the Software Solution is merely deemed to have passed its Acceptance Tests under clause 10.13) the Customer is taking a significant risk in using untested software, and accordingly the Contractor is not liable for any loss, damage or expense caused by such use of the Software Solution.

6. Ancillary Services

DATA MIGRATION

- 6.1** The Contractor must provide data migration services, if specified in the Order Documents.

INSTALLATION

- 6.2** The Contractor must provide Installation services, if specified in the Module Order Form.

TRAINING

- 6.3** The Contractor must provide training to enable the Customer including its Personnel, to operate the Software Solution on the Designated Operating Environment, if specified in the Module Order Form.

OTHER SERVICES

- 6.4** The Parties may agree that other Services may be provided by the Contractor during the Contract Period. The details of those Services, including the scope of the Services and the Prices that are payable for them, must be set out in the Order Documents or if the Services are requested after the Commencement Date, on a Change Request and the Variation Procedures in Schedule 4 – Variations Procedures will apply.

7. Specific Warranties

SCOPE

- 7.1** Where the Development Services are provided on a fixed price basis:
- (a) the Contractor warrants that the Software Solution (other than any Customer Supplied Item) will meet the Contract Specifications in all material respects for the Warranty Period, subject to the Exceptions; and
 - (b) if an unmodified version of the Software Solution (other than any Customer Supplied Item) fails to perform in accordance with the requirements of the Customer Contract and the Customer provides the Contractor with written notice of the Defect within the Warranty Period, then the Contractor must, at its option, promptly remedy those Defects, implement a Workaround or replace the relevant part of the Software Solution, at its own expense. Any remedy that is implemented is warranted only during the remainder of the Warranty Period.

- 7.2** Owing to the nature of the subject matter, but subject to clauses 7.1, 7.3, 7.4 and 8, the Contractor expressly excludes any warranty that:
- (a) the Software Solution will be error free
 - (b) the Software Solution will operate without interruption;
 - (c) it will correct all program errors;
 - (d) the Software Solution will be compatible with any hardware, software or data not supplied by the Contractor (except for the Designated Operating Environment or as specified in the Contract Specification);
 - (e) the Software Solution will meet the Customer's requirements.
- 7.3** The Customer must provide reasonable assistance to the Contractor in order to assist the Contractor to identify and resolve the Defect, including installing patches and Workarounds.
- 7.4** The Contractor warrants from the Commencement Date until the end of the Warranty Period in relation to the Development Services that:
- (a) the Contractor will provide the Development Services in accordance with the requirements of the Contract Specifications and with due care and skill;
 - (b) where specified in the Module Order Form, the Contractor has established quality assurance arrangements for the provision of the Development Services and will comply with and maintain those quality assurance arrangements during the Contract Period;
 - (c) it will comply with all licensing terms and conditions regulating the use of any Third Party Components that are provided to it by the Customer when using the Third Party Components in the Development Services.

8. Exceptions

- 8.1** The Contractor is not liable for any breach of the Customer Contract which arises as the result of:
- (a) any Customer Supplied Item not operating in accordance with its documentation or the requirements in this Customer Contract;
 - (b) modifications to the Software Solution that were effected or attempted by a person other than the Contractor or its authorised representative;
 - (c) any act, error, fault, neglect, misuse or omission of the Customer;
 - (d) damage caused by the operation of the Software Solution other than in accordance with recommended operating procedures, User Documentation or otherwise than in accordance with the directions or recommendations of the original IP owner, authorised distributor or the Contractor;
 - (e) any Virus, denial of service attack or other malicious act that adversely affects the Software Solution, except to the extent that:
 - (i) the attack or malicious act is an attack or malicious act of the Contractor; or
 - (ii) the Contract Specifications include a requirement to protect against Viruses, denial of service attacks or other malicious acts, and the Customer's damages

are caused solely by a failure to meet that obligation in the Contract Specification;

- (f) improper use or mismanagement by the Customer; or
- (g) an Event.

8.2 Where the Contractor has been requested to provide any remedy and the item that was requested to be remedied is determined not to be a Defect (or to be a Defect in a Customer Supplied Item) then the Contractor is entitled to charge the Customer for the costs and expenses (calculated using the rates set out in the Customer Contract, or if none are stated, at the Contractor's then current commercial rates) that arise out, of or in connection with identifying and attempting to remedy that item.