

## TERMS AND CONDITIONS FOR THE PROVISION OF CLOUD SERVICES

### 1. DEFINITIONS

In these conditions the following words shall have the following meanings ascribed to them: -

- (a) **“Agreement”** means these Terms and Conditions for the Provision of Cloud Services together with Schedule A (to which these Terms and Conditions for the Provision of Cloud Services are attached) and Schedule B, being the Service Level Agreement
- (b) **“Commencement Date”** means the date of this Agreement;
- (c) **“Customer”** means the person, firm or organisation in placing an order for Service with the Supplier;
- (d) **“Equipment”** means the equipment and software listed in Schedule A;
- (e) **“Manufacturer”** means the original manufacturer of the equipment or software;
- (f) **“Minimum Term of Service”** means the period starting with the Commencement Date for which a charge has been agreed as specified in Schedule A;
- (g) **“Schedule A”** means the schedule attached as Schedule A to this Agreement for the Supply of Cloud Services, which Schedule A is an integral part of this Agreement.
- (h) **“Schedule B”** means the Service Level Agreement attached as Schedule B to this Agreement for the Supply of Cloud Services, which Schedule B is an integral part of this Agreement.
- (i) **“Services”** means the services provided by the Supplier under this Agreement which shall consist of the Service criteria selected by the Customer together with any other services which the parties may agree as set out in Schedule xx;
- (j) **“Service Level Agreement (SLA)”** means the service level agreement attached hereto as Schedule B, which service level agreement sets out the description of the service to be provided as well as the agreed levels of support and standards of service
- (k) **“Supplier”** means Quantix Limited (Company Registration number 3639598);

### 2. THE SERVICE

Standard Service

- (a) The Supplier will in respect of the list of Services set out in Schedule A;
  - (i) make reasonable endeavours to provide the Services within the scope of the Service Level Agreement.
- (b) The Services does not include: -
  - (i) provision of new releases and new versions of software that may be installed from time to time on the Equipment;

### 3. OTHER SERVICES AT ADDITIONAL CHARGE

The Supplier may provide the following **“Additional Services”** subject to an additional charge at its then current rates, subject to technical qualification, agreed in advance: -

- (i) assistance with the writing of device drivers, with the program development or with the writing or correcting of code;
- (ii) on-site technical support;

Where Additional Services are to be provided the provision of such Additional Services shall be covered by the terms of this Agreement.

- (a) The Supplier shall retain all title, rights of ownership and copyright to any work prepared or developed under this Agreement.

- (b) Copyright subsists in all operating software, Supplier's proprietary software supplied by Supplier under licence and all documentation relating thereto (whether printed or stored magnetically).
- (c) The Customer shall retain and keep safe one copy of all software and/or documentation provided by the Supplier under this Agreement.
- (d) The Supplier shall at any time be entitled to examine and copy for the purposes of verification the Customer's retained copy software and/or documentation.
- (e) Save as permitted under this Agreement, the Customer will not copy or permit the software or documentation to be copied, in whole or in part, except with the Supplier's express written permission. Any copies made shall include all of the Supplier's copyright or proprietary notices.

#### **4. CHARGES AND TERMS OF PAYMENT**

The charges for the Services shall be as specified in Schedule A.

- (a) Payment shall be made in full without any deduction or set-off within thirty days of the date of invoice.

If the Customer fails to pay any invoice in accordance with the Supplier's payment terms then, without prejudice to its other rights and remedies, the Supplier shall be entitled to (i) suspend deliveries due to the Customer under any Agreement, and (ii) charge interest on the sum outstanding on a day to day basis from the date of invoice until the date payment is made at the rate of 4% per annum above the base rate ruling from time to time of Lloyds TSB plc.

- (b) The charges are exclusive of Value Added Tax (and/or any similar tax which may be imposed from time to time) which will be applied in accordance with UK legislation in force at the tax point date.
- (c) Any work requested by the Customer which is not included in this Agreement will be charged at the Supplier's then current rates. A copy of current rates will be provided on request.
- (d) If the Customer cancels by less than 24 hours notice any appointment forming part of the Service, the Supplier may charge for the Service which would have been performed but for such cancellation.
- (e) All Services must be ordered by the Customer and supplied by Quantix by the end of the Term. Quantix shall not be liable for the provision of any Services and the Customer shall not be entitled to claim for any credit or refund in respect of Services which are not ordered by and supplied to the Customer by the end of the Term.

#### **5. ALTERATION OF ANNUAL CHARGE**

- (a) The Supplier shall be entitled, on each anniversary of the Commencement Date, to increase its annual charge for the Service.  
Such increase shall not normally exceed the percentage increase averaged over the previous 12 months of the Retail Prices Index published by HM Government.
- (b) In the event that a proposed increase is greater than the increase detailed in 5(a) above, the Supplier shall give the Customer not less than 30 days notice to that effect. The customer may, within 30 days of receipt of such notice, appeal in writing against such alteration, which the Customer finds unacceptable. If no acceptable solution has been found following such appeal, the Customer may terminate this agreement by giving the Supplier 30 days notice in writing, the charges payable during such period of notice being at the previously agreed rate.

#### **6. TERM OF AGREEMENT**

After the initial Minimum Term of Service, this Agreement shall continue in effect from year to year thereafter until terminated by either party on 180 days written notice to expire on the anniversary of the Commencement Date. Failure to give the necessary 180 days notice of termination will automatically trigger a minimum payment of 50% of the contract value.

The ongoing Minimum Term of Service for all subsequent years is one year, unless otherwise stated within Schedule A. No refund will be provided during this minimum period, and if staggered payment plans have been agreed, all monies outstanding will become due.

## **7. CONFIDENTIALITY**

- (a)** Each party (hereafter called the “Receiving Party”) undertakes to keep and maintain all Confidential Information (which term shall include all information marked or notified to the Receiving Party as confidential or proprietary together with all information which would in the normal course of business be regarded as confidential or proprietary) in the strictest confidence and not to disclose such information to any third party without the prior written consent of the other.
- (b)** Each party shall ensure that its employees and sub-contractors:
  - (i)** shall only be given access to Confidential Information received from the other party on a “need to know” basis for the purpose of this Agreement;
  - (ii)** shall have been made aware of the requirements of confidentiality set out in this Agreement;
  - (iii)** shall not cause or permit the Confidential Information to be disclosed to any third party.
- (c)** The provisions of this clause 8 shall not prevent either party from disclosing any Confidential Information where it can demonstrate and document that such information: -
  - (i)** was in its possession (with full right to disclose) prior to receiving it from the other party; or
  - (ii)** is or subsequently developed or received by it from a third party.
- (d)** The provisions of this clause 8 shall apply throughout the full course of this Agreement and for five years thereafter.

## **8. WARRANTY**

- (a)** The Supplier warrants that: -
  - (i)** the Service provided under this Agreement will be provided with reasonable skill and care;
  - (ii)** it will use suitably qualified and experienced personnel in the provision of the Service under this Agreement;
- (b)** The Customer acknowledges that where products supplied under this Agreement interface with computer systems and software, which are outside the scope of this Agreement (including, for avoidance of doubt, computer systems and software previously supplied by the Supplier) the Supplier shall not be liable pursuant to this clause 8.

## **9. LIABILITY**

- (a)** Neither party shall be liable for failure to perform its contractual obligations, other than an obligation to make payment, if such failure results from Act of God, governmental act, fire explosion, accident, industrial dispute, or any other cause beyond the party’s control.
- (b)** The Supplier indemnifies the Customer in respect of: -
  - (i)** Direct physical damage to the Customer’s property, which is established to be the result of negligence by the Supplier or its servants or agents while on the Customer’s premises for the purpose of this Agreement. In respect of the Equipment, liability is limited to the prompt making good by repair or replacement of any Equipment or part thereof damaged or destroyed as a result of such negligence. The Supplier’s liability for direct damage to property other than the Equipment is limited to £1,000,000 in respect of any event or series of related events;
  - (ii)** Direct physical injury or death of any person resulting from the negligence of the Supplier or its servants or agents.

- (c) The Customer indemnifies the Supplier in respect of: -
- (i) Direct physical damage to the Supplier's property, which can be established to be the result of negligence by the Customer or its servants and agents. The Customer's liability for direct physical damage is limited to £1,000,000 in respect of any one event or series of related events;
  - (ii) Direct physical injury to, or death of any person resulting from the negligence of the Customer or its servants or agents.
- (d) The Supplier excludes all liabilities not expressly included in this Agreement, and in particular the Supplier shall have no liability for any loss of profits, goodwill, revenue, production, anticipated savings, use or contracts or any form of special, indirect or consequential losses whatsoever.
- (e) In any event other than (b) above the maximum liability of the Supplier shall be the amount invoiced to and paid by the Customer during the first year of the Agreement (excluding VAT).

#### **10. REBATE SCHEME**

Within this Agreement, the Customer is eligible to rebate arrangements as set out in Schedule B.

#### **11. EMPLOYEES**

- (a) Without the prior consent in writing of the other, neither party shall during the Term of this Agreement or for six (6) months thereafter, solicit, procure or attempt to procure the employment of any persons employed in the provision of the Services and with whom the party had contact as a result of the provision of the Services. The Customer will extend this provision to its own customers, where the Supplier is undertaking work on behalf of the Customer for a third party.
- (b) Notwithstanding any degree of supervision exercised by either party over employees of the other, in no circumstance shall the relationship of employer and employee be deemed to arise between either party and any employee of the other.

#### **12. WHOLE AGREEMENT**

This Agreement represents the entire agreement between parties. Each party warrants that no representation not recorded in this Agreement has been made which has induced the other to enter into this Agreement.

#### **13. HEADINGS**

Headings are for convenience only and shall not affect the construction of the conditions of this Agreement.

#### **14. ASSIGNMENT**

Neither party shall assign this Agreement without the prior written consent of the other party (not to be unreasonably withheld or delayed).

#### **15. WAIVER**

No failure, delay, relaxation or indulgence on the part of either party in exercising any power or right conferred upon such party in this Agreement shall operate as a waiver of such power or right nor shall any single or partial exercise of any such power or right preclude any other or further exercise of any power or right.

#### **16. NOTICES**

Any notice given under this Agreement by either party to the other must be in writing and shall be effected by personal delivery, telex, or registered mail postage and shall in the case of telex be deemed to be received on the same date as it was sent and in the case of postage within 48 hours after the date of posting if posted in

the United Kingdom. Notices sent by first class post shall be sent to the address of the party set out on the face of this Agreement or to such other address notified in writing by that party to the other for such purposes.

**17. SEVERABILITY**

The various provisions of this Agreement are severable and if any provision is held to be invalid or unenforceable by any court of competent jurisdiction such invalidity or unenforceability shall not affect the validity or enforceability of any of the other provisions unless the result goes to the root of this Agreement or radically affects it.

**18. VARIATIONS**

No variation is valid unless signed by authorised signatories of both parties.

**19. RIGHT OF TERMINATION**

- (a) If, at any time either party makes default or commits any breach of its obligations under this Agreement and (upon receiving written notification from the other of such default or breach) fails to remedy the default or breach within 14 days, or is involved with any legal proceedings concerning its solvency, or commences liquidation or threatens to cease trading, then the other party shall immediately become entitled (without prejudice to its other rights) to terminate this Agreement forthwith by notice in writing to the other.
- (b) Upon termination of this Agreement by the Supplier for whatever reason the Supplier shall, without prejudice to its other rights and remedies, be paid: -
  - (i) the outstanding balance of charges due in respect of any works or Services carried out or provided in accordance with the provisions of this Agreement prior to the date of termination and;
  - (ii) the price of equipment or services ordered by the Supplier on behalf of the Customer for which the Supplier has paid or is legally bound to pay.
- (c) Termination of this Agreement for whatever reason shall not bring to an end any provision hereof which expressly or by implication comes into or continues in force after the date of termination.
- (d) Notwithstanding anything else contained herein, this Agreement may be terminated by the Supplier in respect of any of the Equipment forthwith on giving notice in writing to the Customer if said item of Equipment shall become obsolete or if the Supplier is no longer able to obtain spare or replacement parts or other necessary support on commercially reasonable terms. In this event a pro rata refund of the pre-paid maintenance charge shall be made.

**20. LAW AND JURISDICTION**

This Agreement shall be governed by and construed in accordance with English Law and the parties hereto submit to the jurisdiction of the English Courts.

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