

TERMS AND CONDITIONS FOR THE PROVISION OF CONSULTANCY SERVICES

1 DEFINITIONS

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

- (a) "**Acceptance Form**" means the Supplier's standard technical services acceptance form which is signed by the Customer to signify acceptance of the Product and/or the Service;
- (b) "**Agreement**" means these terms and conditions and any schedules hereto together with the front sheet signed by the Customer and the Supplier and the Supplier's quotation;
- (c) "**Customer**" means the person, firm or organisation placing an order for Service with the Supplier;
- (d) "**Equipment**" means any equipment or software or telecommunications links required on the Customer's site to complete the Service;
- (e) "**Product**" means any service, product, item of equipment, hardware, software, microchip, semiconductor (or other item containing, using or dependent upon any of the foregoing) supplied by the Supplier under this Agreement including, in the case of the Service, any hardware or software provided to the Customer by the Supplier as part of such Service or used by the Supplier as part of such Service;
- (f) "**Service**" means the services to be provided under this Agreement as described in Clause 2;
- (g) "**Supplier**" means Quantix Limited (Company Registration number 36639598);

2 THE SERVICE

- (a) The Service will be defined and documented in a quotation provided to the Customer which shall form part of this Agreement and is attached as Schedule A.
- (b) The Service shall commence on the date agreed between the parties and shall be deemed complete on signature by the Customer of an Acceptance Form.
- (c) Where the Service is performed on a time and materials basis rather than a fixed price, the Supplier shall supply, if requested, completed time sheets to verify its charges. The information contained in such timesheets shall be conclusive evidence of the time spent by the Supplier.
- (d) The Supplier may subcontract any or all of the works forming part of the Service to a competent subcontractor.

3 CUSTOMER'S RESPONSIBILITIES

- (a) The Customer shall provide a representative on site who shall sign the Acceptance Form on completion of the Service to his satisfaction. Signature of the Acceptance Form shall not be unreasonably withheld or delayed.
- (b) The Customer shall provide, at its expense, such technical and other information as the Supplier shall request in connection with its performance of the Service.
- (c) The Customer shall provide, such access to its computer and other equipment as the Supplier shall require for the provision of the Service. If, on arrival at the Customer's site, the Supplier's engineer finds that sufficient access to the equipment is not provided, the Supplier shall not be obliged to perform the Service and may charge the Customer for costs and expenses reasonably incurred.
- (d) The Customer shall take all reasonable precautions to protect the health and safety of the Supplier's personnel whilst on the Customer's site, including ensuring the presence or availability of a representative during such visits.
- (d) Where required for the Service, the Customer, at the Customer's expense, shall make available and keep in good working condition the following: -
 - (i) one item of media of any type used on the Equipment for storage or diagnostic programs;
 - (ii) any items of media originally supplied by the manufacturer for maintenance purposes;
 - (iii) such consumables as may be reasonably required to perform the Service.
- (e) The Customer shall be responsible for ensuring adequate backup copies of its operating system, application software and data files are kept.

4 CHARGES AND TERMS OF PAYMENT

- (a) The charges for the Service shall be as specified either on the face of this Agreement or within Schedule A.
- (b) Unless otherwise agreed, the charges are payable by the Customer as follows:
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 Banking Group.
- (c) 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.
- (d) 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) 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 COPYRIGHT AND TITLE

- (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.

6 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 purposes 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 6 shall not prevent either party from disclosing any 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 independently developed or received by it from a third party; or
 - (iii) is or subsequently comes into the public domain other than by breach of this Agreement.
- (d) The provisions of this clause 6 shall apply throughout the full term of this Agreement and for five years thereafter.

7 WARRANTY

- (a) The Supplier warrants that:-
 - (i) the Service will be provided with reasonable skill and care;
 - (ii) it will use suitably qualified and experienced personnel in the provision of the Service;
 - (iii) cabling installed under this Agreement will be free from defects in workmanship and materials for a period of one year from the date of installation.
- (b) The warranty period in relation to cabling can be extended by written agreement between the parties.
- (c) In the event of any breach of the warranties given in this clause 7 the Customer's sole remedy shall be the repair or replacement, at the Supplier's sole discretion, of the item concerned.

8 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) In view of the disproportion between the acts or omissions likely to constitute breach or negligence on its part and the consequences for the Customer, the Supplier excludes all liabilities not expressly included in this Agreement, and in particular the Supplier shall have no liability for: -
 - (i) Destruction of or damage to the Customer's data. (The Customer must keep a copy of all data from which it shall exclude the Supplier notwithstanding any requests made by its employees or agents);
 - (ii) 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 set out in (b) above, the maximum liability of the Supplier shall be the value of the contract (excluding VAT).

9 EMPLOYEES

- (a) Without the prior consent in writing of the other, neither party shall during the term of this Agreement or for six months thereafter solicit, procure, or attempt to procure the employment of any persons employed in the provision of the Service. 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. If either party fails to adhere to this term, then a sum equal to the yearly wage of the employee whose services have been solicited or procured, will be payable to the party that has suffered the loss of personnel.
- (b) Notwithstanding any degree of supervision exercised by either party over employees of the other, in no circumstances shall the relationship of employer and employee be deemed to arise between either party and any employee of the other.

10 WHOLE AGREEMENT

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

11 HEADINGS

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

12 ASSIGNMENT

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

13 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 thereof or the exercise of any power or right.

14 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.

15 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

16 VARIATIONS

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

17 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, or if serious doubt arises as to its solvency, 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 under 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.

18 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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