

SCHEDULE 4.2 – PROFESSIONAL SERVICES

1. APPLICATION

- 1.1 This Schedule 4.2 contains a description of Professional Services which form part of the Agreement entered into between the Parties for the provision of Services.
- 1.2 Definitions and interpretations that are specific to this schedule are set out in **Annex 1** and apply in addition to the definitions and interpretations set out in **Schedule 1 (Definitions)** of the General Conditions.

2. SERVICE DESCRIPTION

- 2.1 The Supplier shall provide the Customer with one of more of the following professional services as set forth in the applicable Proposal, Order or Statement of Work;
- 2.1.1 technical advice, design development;
 - 2.1.2 installation, configuration, testing and associated project management; and
 - 2.1.3 system handover
- herein after referred to as “**Professional Services**”
- 2.2 Unless otherwise agreed between the Parties the Professional Services will be delivered during Service Hours at the Site and on any Equipment as specified in the Statement of Works.
- 2.3 All Professional Services shall be provided on a time and material basis, unless otherwise set forth in the Order, all Professional Services will be chargeable at the Supplier’s current Tariffs.
- 2.4 The Customer shall be responsible for providing the Supplier with full and accurate details of the Customer’s requirements in accordance with paragraph 3.5 below and such Customer requirements shall form the basis of the Statement of Works.
- 2.5 For the avoidance of doubt the Supplier shall not be obliged to provide the Professional Services until the Statement of Works has been signed by both the Customer and the Supplier and the Supplier has received a written Order from the Customer.

3. CUSTOMER OBLIGATIONS

- 3.1 On and from the Effective Date and throughout the Term, the Customer shall:
- 3.1.1 ensure that any applicable Licence Agreements are valid and in force and permit the Supplier and its subcontractors to use, install and, where necessary, modify, adapt or alter the Third-Party Software for the purpose of providing the Professional Services;
 - 3.1.2 use only skilled and competent operatives in relation to the Professional Services;
 - 3.1.3 make available all such facilities and timely and appropriate access to information and its personnel as the Supplier shall reasonably require, to provide the Professional Services;
 - 3.1.4 appoint a Project Manager and the Customer shall procure that he/she shall:

- (i) liaise regularly with the Supplier’s Account Manager; and
- (ii) attend regular meetings with the Supplier’s Account Manager.

- 3.1.5 ensure that any Equipment or software maintained by a third party on behalf of the Customer is both working and configured correctly and promptly to allow the Software to operate correctly and without intervention of the Supplier, otherwise the Supplier will be entitled to recover any costs associated in such involvement, at the Suppliers standard Tariffs;
 - 3.1.6 not carry out any unauthorised alteration adaptation or modification of the Software;
 - 3.1.7 permit the Supplier access to the Customer’s Site and the Equipment during Service Hours;
 - 3.1.8 ensure that all prerequisites set out in the Statement of Works are carried out prior to the Supplier commencing work or going onto the Customer’s Site;
 - 3.1.9 ensure that all the requirements of health and safety legislation and procedures are and continue to be met with regard to the Site and the Equipment;
 - 3.1.10 maintain adequate insurance in respect of its potential liability to the personnel performing the Professional Services on behalf of the Supplier;
 - 3.1.11 make available all passwords and/or digital certificates required for the Supplier to deliver and complete the Professional Services, or supply staff with access to such information at the time of the Professional Services are being provided;
 - 3.1.12 only dispose of packaging for Deliverables that are accepted as being in full working order.
- 3.2 The Customer warrants that:
- 3.2.1 in respect of any Third Party Software;
 - (i) the Customer has entered into and has fully complied (and shall at all times fully comply) with the terms of the relevant Licence Agreement; and
 - (ii) the Supplier and its subcontractors are permitted to use, modify, adapt, install and alter the Third Party Software for the purpose of providing the Professional Services;
 - (iii) consent to such use, modification, adaptation, installation and alteration by the Supplier has been obtained by the relevant Third Party Licensor.
 - 3.2.2 the Equipment and the Third Party Software have been and will be used entirely in accordance with manufacturer’s instructions and recommendations and that no unauthorised use, alteration, adaptation, installation or

SCHEDULE 4.2 – PROFESSIONAL SERVICES

- modification has taken place or will take place in breach of the Licence Agreement in place;
- 3.2.3 it has full authority and power to authorise all necessary works required to the Site to be carried out to enable any Equipment to be installed and cables laid.
- 3.3 Where personnel are supplied by the Supplier on a contract basis and are required to work in accordance with instructions given from time to time by or on behalf of the Customer, the Customer shall:
- 3.3.1 ensure that such instructions are provided with sufficient notice and detail to enable completion to the Customer's required standards;
- 3.3.2 approve personnel's leave of absence (which shall not be chargeable), which shall not be unreasonably refused;
- 3.3.3 approve and sign off personnel weekly activity reports on a weekly basis.
- 3.4 The Customer agrees to provide full responses in the shortest timescales to requests for information and assistance and acknowledges that the Supplier will not be responsible for problems arising as a result of failure to do so.
- 3.5 The Customer guarantees the accuracy, correctness, completeness and reliability of the data, information and documents made available to the Supplier, including those which originate from third parties. Unless set out in the Order or Working Documents, the Supplier may rely on and use this data, information and documentation without further verification;
- 3.6 Where project management is undertaken by the Customer, the Customer shall ensure that time scales and targets (including performance related targets and milestones) it sets are reasonably achieved.
- 3.7 The Customer shall at all times perform its obligations hereunder with due skill and care in a timely professional and reliable manner, use its reasonable endeavours to comply with any agreed timescales, and to respond to Supplier requests in under five (5) Working Days.
- 3.8 The Customer shall promptly sign off the task sheet or Acceptance into Service upon completion of the detailed schedule of work or in the case of stage projects at intervals as detailed in the relevant documents.
- 3.9 The Customer is fully responsible for evaluating the adequacy of and accepting any Deliverables.
- 3.10 The Customer hereby warrants, represents and undertakes that in so far as the Customer is aware, use by the Supplier of any information, software, hardware, documentation, drawings, Specifications, data or other materials made available by the Customer to the Supplier for the purposes of providing the Professional Services will not infringe the Intellectual Property Rights of any third party.
- 3.11 The Customer shall indemnify and hold the Supplier harmless from any and all loss, costs, damages and expenses arising out of any breach of paragraph 3.10.
- 4. SERVICE CONDITIONS**
- 4.1 On and from the Effective Date and throughout the Term, the Supplier shall:
- 4.1.1 use reasonably competent staff in the performance of the Professional Services and perform the Professional Services with reasonable care and skill and if the Supplier prefers, utilise an approved subcontractor;
- 4.1.2 appoint an Account Manager and/or Project Manager, and the Supplier shall procure that the Account Manager shall:
- (i) be responsible for the management of all Professional Services under this Schedule; and
- (ii) organise and attend regular meetings with the Customer's Project Manager as required by the Customer from time to time.
- 4.1.3 use reasonable endeavours to meet a request from the Customer for the provision of Professional Services outside of the Service Hours;
- 4.1.4 use reasonable endeavours to remedy free of charge any faulty work done by the Supplier provided that the Customer notifies the Supplier in writing of the fault within seven (7) days after the work is carried out;
- 4.1.5 provide proof of qualifications and experience of proposed personnel on request and make the same subject to interview upon reasonable request from the Customer where specialist skills are deemed necessary;
- 4.1.6 use reasonable endeavours to ensure that personnel assigned to any task remain employed in the performance of that task through to completion and if not possible, use reasonable endeavours to provide a suitable replacement within a reasonable timescale;
- 4.1.7 procure that its personnel shall, at all times while on the Customer's Site, comply with the Customer's regulations regarding health, safety, disciplinary and security matters as reasonably notified to the Supplier from time to time.
- 4.2 The Supplier agrees to provide the Professional Services on mutually convenient dates. If specific dates are agreed and the Supplier fails to perform Professional Services on such dates, the Supplier will reschedule the dates and/or Professional Services within a reasonable time, however unless set out otherwise in the Order or the Statement of Work, all time is indicative and shall not be of essence.
- 4.3 The Supplier shall during a kick off meeting, confirm the scope of the Professional Services including the

SCHEDULE 4.2 – PROFESSIONAL SERVICES

- Deliverables, the Customers obligations, data gathering tasks, project management processes and procedures and any special requirements or actions the Supplier may reasonably take in performing the Professional Services.
- 4.4 The Supplier will show the Customer drafts of the Statement of Works for discussion purposes and the drafts will be superseded by the final written Statement of Works. The Supplier shall not be responsible if the Customer chooses to rely on, act or refrain from acting on the basis of the drafts or discussions between the Customer and the Supplier.
- 4.5 The Supplier will not be responsible for any delay in the provision of the Professional Services or failure to achieve targets set by the Customer arising out of:
- 4.5.1 any breakdown in project management by the Customer; or
- 4.5.2 as a consequence of any breach by the Customer of its obligations under this Schedule 4.2;
- 4.5.3 any non-acceptance, delay or non-payment by the Customer of any charges due under this Schedule; or
- 4.5.4 as a result of an extension offered.
- 4.6 The Supplier shall not be liable for any non-delivery of Equipment (even if caused by the Supplier's negligence) unless the Customer notifies the Supplier in writing of the failure to deliver within seven (7) days of the scheduled delivery date. Any liability of the Supplier for non-delivery of Equipment shall be limited to replacing the Equipment within a reasonable time or issuing a credit note against any invoice raised for such Equipment.
- 4.7 The Supplier's obligation to provide the Professional Services is subject to any applicable Licence Agreements being in force.
- 4.8 Where the Supplier has not provided the core, underlying licences or applications to the Customer, the Supplier will not be liable for any faults, bugs or incidents relating to such core software, and any time and resources that have to be applied by the Supplier to issues found to be or related to, such core software, will be out of the scope of the Professional Services being provided and subject to separate charges.
- 4.9 The Supplier shall undertake a Systems handover to the Customer as set out in the applicable Order or Statement of Work. Any additional training required by the Customer shall be provided by the Supplier in accordance with the Supplier's current Tariffs.
- 4.10 Professional Services bought from the Supplier must be used by the Customer within twelve (12) months from the Effective Date. If not used or not allocated after twelve (12) months, the Agreement will expire and be rendered null and void.
- 5.1 In consideration for providing the Professional Services, the Customer shall pay the Supplier the Charges as set forth in the applicable Order or Statement of Work, together with:
- 5.1.1 all reasonable and properly incurred expenses;
- 5.1.2 the requisite deposit, plus
- 5.1.3 any cancellation or additional fees and/or expenses that might arise due to breach of this Schedule by the Customer.
- 5.2 The Charges are based upon the Supplier's assessment of work involved, taking into account any assumptions set out in the Order or Statement of Work and where necessary the Supplier will agree any adjustment to the Charges with the Customer.
- 5.3 The Supplier may invoice the Customer any of the following Charges in addition to those set out in any applicable Order or Statement of Work;
- 5.3.1 charges for cancelling the Professional Services in accordance with paragraph 12;
- 5.3.2 charges for expediting provision of the Professional Services at the Customer's request; or
- 5.3.3 any change to the scope of the Professional Services in accordance with paragraph 7.
- 5.4 This paragraph 5 is supplemental to clause 6 of the General Conditions and in the event that this paragraph 5 conflicts with clause 6 of the General Conditions, this paragraph shall take precedence.
- 6. ACCEPTANCE OF THE SYSTEMS**
- 6.1 Acceptance of the Systems shall be deemed to have occurred on whichever is the earliest of:
- 6.1.1 the signing by the Customer of an Acceptance into Service certificate for the Systems following successful completion of the relevant Acceptance Tests; or
- 6.1.2 the expiry of ten (10) days after successful completion of the relevant Acceptance Tests.
- 6.2 Where Professional Services have been provided to the Customer in accordance with this Schedule, and the Customer has not undertaken any required user testing, preparation of acceptance criteria or test data, acceptance tests, feedback or sign off within a period of fifteen (15) Working Days after expiry of the relevant period provided by this Schedule (other than as a consequence of the delay or fault of the Supplier) the Systems will be deemed to be accepted.
- 7. CHANGE CONTROL PROCEDURE**
- 7.1 The Customer may, by giving written notice to the Supplier at any time during the term of this Agreement, request a change in the scope of the Professional Services.
- 7.2 Within seven (7) Working Days of receipt of such notice, subject to the change being viable, the Supplier shall, at the Supplier's current Tariffs, prepare for the Customer

SCHEDULE 4.2 – PROFESSIONAL SERVICES

a written quote, chargeable in itself, for any increase or decrease in the sums payable by the Customer under this Schedule, and any effect that the requested change would have on the scope of the Professional Services.

- 7.3 Should the request made not be viable, the Supplier shall within seven (7) Working Days of the request, notify the Customer of this, qualifying why and where possible suggest an alternative, also which is chargeable.
- 7.4 Within seven (7) Working Days of receipt of the written quote referred to in paragraph 7.2, the Customer shall inform the Supplier in writing of whether or not the Customer wishes the requested change to be made. If the change is required, the Supplier shall not make the requested change until the parties have agreed and signed a written agreement specifying in particular, any changes to the scope of the Professional Services and the charges payable to the Supplier.

8. INTELLECTUAL PROPERTY

- 8.1 The Customer acknowledges that any and all Intellectual Property Rights in the Tools are owned by and shall remain at all times the exclusive property of the Supplier, unless otherwise agreed.
- 8.2 If any third party Intellectual Property Rights are used, the Supplier shall obtain all necessary consents, approvals or licences for the use of the same, and advise the Customer of any conditions or terms or costs attached to the same.
- 8.3 If any part of the Professional Services provided by the Supplier to the Customer, infringes or is alleged to have infringed the Intellectual Property Rights of any third party, the Supplier will, as soon as it is reasonably practicable (unless such material has been obtained from the Customer) replace the infringing part or code (as the case may be) at its own expense with non-infringing material.
- 8.4 Unless otherwise agreed, all Intellectual Property Rights arising from or relating to the Bespoke Software shall remain the exclusive property of the Supplier.

9. LIMITATION OF LIABILITY

- 9.1 Subject to clause 9 of the General Conditions (but except clause 9.4 which is superseded by this paragraph 9.1), the maximum liability of the Supplier or that of its employees or properly appointed subcontractors under this Schedule shall be limited as follows:
- 9.1.1 for up to one million pounds (£1,000,000.00) in respect of each incident or series of connected incidents giving rise to damage or loss to the Customer's tangible property;
- 9.1.2 in all cases not falling within paragraph 9.1.1, one hundred thousand pounds (£100,000.00) in aggregate.
- 9.2 The parties agree that if any limitation or provision contained or expressly referred to in this paragraph 9

and as detailed in the applicable sub-clauses in clause 9 of the General Conditions are held to be invalid under any applicable statute or rule of law, it shall, to the extent, be deemed to be omitted. If either party becomes liable for loss or damage which would otherwise have been excluded, that liability shall be subject to the other limitations and provisions set out in this paragraph 9.

- 9.3 Nothing in this Schedule 4.2 shall be taken in any way reducing or affecting a general duty to mitigate loss suffered by a party.

10. CUSTOMER INDEMNITY

- 10.1 The Customer shall indemnify and hold the Supplier harmless in respect of any claim, action, proceedings, losses, damages, expenses and costs arising out of or in connection with the Supplier's use of any Third Party Software in the course of providing the Professional Services, provided that:
- 10.1.1 the Customer is given reasonably prompt notice of such claims;
- 10.1.2 the Supplier gives reasonable cooperation to the Customer in defending such claims; and
- 10.1.3 the Customer is given sole authority to defend such claims.
- 10.2 The Customer shall indemnify and hold the Supplier harmless in respect of any claim, action, proceedings, losses or damages, expenses and costs arising out of or in connection with any breach by the Customer of this Schedule.
- 10.3 The Customer shall reimburse the reasonable costs incurred by the Supplier in complying with the provisions of this paragraph 10.

11. STATEMENTS

- 11.1 Statements are made on the basis of the information available at the time.
- 11.2 Statements, including those made about Third Party Software, Equipment or services, are not a representation, undertaking or warranty as to outcome or achievable results.
- 11.3 Statements are provided for information only and are not:
- 11.3.1 legal advice;
- 11.3.2 advice about how any regulation or compliance requirement may apply to the Customer.
- 11.4 the Supplier makes no warranties, express, implied or statutory as to the information in any Statement.
- 11.5 The Supplier will not be responsible for the way in which the Deliverables, Statements or any other output from the Professional Services is used.

12. CANCELLATION AND SUSPENSION

- 12.1 Subject to clause 7 of the General Conditions, the Supplier reserves the right to suspend provision of the Professional Services in accordance with the provisions therein.

SCHEDULE 4.2 – PROFESSIONAL SERVICES

- 12.2 If the Customer gives notice in writing cancelling an Order not less than ten (10) Working Days before the Professional Services are due to commence then no charge shall be made by the Supplier.
- 12.3 If the Customer gives notice in writing cancelling an Order not more than nine (9) Working Days and not less than five (5) Working Days before the Professional Services are due to commence then the Customer shall pay the Supplier fifty percent (50%) of the agreed fee or if no fee has been agreed fifty percent (50%) of the fee that the Supplier anticipated charging in respect of the Order. In all other cases the Customer shall pay the Supplier the full fees.
- 12.4 Upon receipt of a valid notice of cancellation, the Supplier shall at its discretion terminate provision of the Professional Services.
- 12.5 The Customer shall give the Supplier a minimum of two (2) Working Days' notice for the postponement of scheduled on-site and off-site Professional Services, or the Customer will be liable to recompense the Supplier for the notice days at the Supplier's current Tariffs.
- 12.6 Once both parties sign the Working Document or Schedule then no cancellation of an Order for the Professional Services will be permitted unless the Supplier agrees in writing.
- 13. TERMINATION**
- 13.1 This paragraph 13 is supplemental to clause 8 of the General Conditions and in the event that this paragraph 13 conflicts with clause 8 of the General Conditions, this paragraph shall take precedence.
- 13.2 Either party may terminate provision of the Professional Services without cause by giving at least three (3) months written notice to the other party.
- 13.3 Immediately following suspension or termination of the Professional Services (whether partial or in respect of all the Professional Services) the Customer shall forthwith pay to the Supplier:
- 13.3.1 all outstanding fees and charges (together with VAT where appropriate) and interest;
- 13.3.2 in respect of all Professional Services delivered but for which no invoice has been submitted, the Supplier may submit an invoice, which shall be payable immediately upon receipt;
- 13.3.3 any outstanding fees and charges payable by instalments, which would have become due and payable by the Customer if the Professional Services had not been terminated;
- 13.3.4 all liabilities, claims, costs, losses and expenses incurred and/or accrued by the Supplier, and;
- 13.3.5 any committed costs or losses payable to a Third Party Supplier incurred as a result of such suspension or termination, which the Supplier cannot reasonably mitigate.
- 13.4 Termination of the Professional Services shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of this Schedule which existing on or before the date of termination.
- 13.5 Upon termination of the Contract, the Customer shall within fourteen (14) days cease all use of the Supplier Software and return Supplier Software (and all copies of the whole or any part thereof) to the Supplier, or if requested by the Supplier, destroy all copies of the same.
- 14. NON-SOLICITATION**
- 14.1 The Customer shall, during the continuance of the Contract, or within a period of six (6) months from termination, whether on behalf of itself or a third party, solicit or seek to entice away any employee of the Supplier or Third Party Supplier. In the event of a breach of this paragraph 14, the Customer shall pay a sum equal to six (6) months gross pay of the employee concerned being a pre-estimate of the cost of recruitment and training a replacement.

ANNEX 1 - DEFINITIONS

“Account Manager” means the Supplier’s account manager as may be agreed from time to time between the Customer and the Supplier;

“Bespoke Software” means any computer software, applications or programmes which have been developed by the Supplier for the Customer;

“Contract” means the contract for the supply of the Professional Services comprising of this Schedule 4.2, and any other documents specifically referred to in writing by the Supplier and the Customer as forming part of the contract;

“Deliverables” means all Equipment, products, documents and materials developed or provided by the Supplier in relation to the provision of the Professional Services;

“Equipment” means the hardware at the Site whether or not such hardware is situated at the Site prior to commencement of the Contract, and whether provided by the Supplier or not;

“License Agreement” shall mean any license or terms under which the Customer is permitted to use Third Party Software;

“General Conditions” means the Supplier’s standard terms and conditions for the provision of the Services as set forth on the Supplier’s website at www.chessict.co.uk and which forms part of the Contract;

“Licence Agreement” shall mean any licence or terms under which the Customer is permitted to use Third Party Software;

“Professional Services” means the services set forth in this Schedule 4.2 as further defined in paragraph 2.1;

“Project Manager” means the project manager appointed by each the Customer and the Supplier for the purposes of managing the relationship between the parties under the Contract;

“Service Hours” means standard working hours that shall not exceed seven (7) hours each day from Monday to Friday between the hours of 09:00 and 17:00, excluding public holidays unless otherwise agreed;

“Software” means the Bespoke Software and the Third Party Software;

“Specification” means the description (if any) of the Professional Services set out or referred to in any Working Document;

“Statements” means the surveys, statements, presentations, recommendations, advice, reports, opinions and other communication provided by the Supplier as part of the Professional Services;

“Systems” means Equipment, Bespoke Software, Third Party Software or any other software owned or used by the Customer in relation to which Professional Services are provided by the Supplier;

“Third Party Licensor” means any third party with which the Customer has entered into a Licence Agreement in the terms of which the Customer uses software;

“Third Party Software” means the object code from software, applications and programs used or to be used on the Equipment or which the Supplier shall make available to the Customer during the course of providing the Professional Services, including any improvements of the same developed

from time to time, where such software has been created by a Third Party Licensor pursuant to the terms of a License Agreement between the Third Party Licensor and the Customer;

“Tools” means any software, specifications, reports, diagrams, instructions, materials or other know how used by the Supplier for the purposes of providing the Professional Services to the Customer;

“Working Document” means any Project Initiation Document (PID), Statement of Works (SOW), Acceptance into Service, Operational Support Plan (OSP) or Order detailing work to be completed, which may be paper or electronic format (email);