

## SCHEDULE 4.2 – PROFESSIONAL SERVICES

### 1. APPLICATION

- 1.1 This Schedule contains a description of Professional Services and forms part of the Agreement for the provision of Services, together with the **General Conditions** and the documents referred to in clause 1.4 of the **General Conditions** where applicable.
- 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**.
- 1.3 The Supplier agrees to fulfil the **Order** in accordance with its terms and conditions referred to above to the exclusion of all other terms and conditions, including any terms communicated to the Supplier at any time prior to, with or after acceptance of the **Order**. Where the Customer provides the Supplier with a Purchase Order in respect of the Services stated on the **Order**, the Customer will be deemed to have accepted the **Order** and the applicable terms and conditions of the Supplier to the exclusion of all others in the same way it would had it signed the **Order**.

### 2. SERVICE DESCRIPTION

- 2.1 The Supplier shall provide the Customer with one of more of the following professional and/or consultancy services as set forth in the applicable **Order** and/or **Statement of Work**;
- 2.1.1 technology advice, design and development;
  - 2.1.2 installation, configuration, testing and associated project management of Equipment and Software; and
  - 2.1.3 system handover
- herein after referred to as “**Professional Services**”
- 2.2 This Schedule consists of the terms and conditions in the body of this Schedule and, where applicable, the following supporting documents incorporated by reference into this Schedule once agreed by both parties in writing and signed by the Customer:
- 2.2.2 Statement of Work (“**SOW**”); and
  - 2.2.3 Acceptance into Service.
- together defined as “**Working Documents**”.
- 2.3 The Working Documents form part of this Schedule, and any additional documents agreed by the Parties in future which are not referred to in this Schedule shall not form part of this Schedule or the Agreement.
- 2.4 In the event of any conflict between this Schedule and any of the Working Documents, unless this Schedule expressly provides that it takes precedence over the terms in the Working Documents, the terms of the Working Documents will take precedence.
- 2.5 Subject to the above, later versions of the Working Documents once agreed between the parties in writing and signed by the Customer shall prevail over earlier ones if there is any conflict or inconsistency between them.
- 2.6 All Professional Services shall be provided on a time and material basis. Unless otherwise set forth in the Order or Statement of Work, all Professional Services will be chargeable at the Supplier’s current **Tariffs**.
- 2.7 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 SOW.

- 2.8 For the avoidance of doubt the Supplier shall not be obliged to provide the Professional Services until the SOW has been signed by both the Customer and the Supplier and the Supplier has received a written Order from the Customer.
- 2.9 The Professional Services will be delivered during Normal Working Hours unless otherwise agreed.
- 2.10 Where the SOW provides for deployment of Software or Equipment, the Customer acknowledges and accepts server reboots and/or downtime are to be expected.
- 2.11 Where the SOW does not include the supply of Software or Equipment as deliverables, it is the Customer’s responsibility to provide all necessary Software and Equipment prior to the commencement of the Professional Services.
- 2.12 Where the SOW relates to Software installation only, it is the Customer’s responsibility to ensure that the equipment the deployment will take on is compatible.

### 3. CUSTOMER OBLIGATIONS

- 3.1 The Customer shall:
- 3.1.1 provide the Supplier with all necessary information, facilities, support and services reasonably required by the Supplier for the performance of its obligations under this Schedule, including without limitation at no charge to the Supplier adequate office accommodation, a secure workspace, telephone services, access to the applicable computers, software, hardware and systems of the Customer at each relevant Site;
  - 3.1.2 provide the Supplier’s personnel with full access to the areas in which the Professional Services are to be performed at each relevant Site;
  - 3.1.3 take all reasonable steps to ensure the health and safety of the Supplier’s Consultants, employees, agents or subcontractors while they are at Site and maintain adequate insurance in respect of its potential liability to the personnel performing the Professional Services on behalf of the Supplier;
  - 3.1.4 ensure that the Customer’s Representatives cooperate fully with the Supplier and use only skilled and competent personnel in relation to the provision of the Professional Services;
  - 3.1.5 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;
  - 3.1.6 where a Project Manager is appointed by the Supplier (as detailed in the SOW), ensure that the Customer’s Representative, liaises and attends meetings with the Supplier’s Project Manager where requested; .
  - 3.1.7 ensure that any computer and operating system and any other hardware or software maintained by a third party on behalf of the Customer has been configured and is operating correctly without intervention of the Supplier, otherwise the Supplier will be entitled to recover any costs associated in such involvement, at the Suppliers standard **Tariffs**;
  - 3.1.8 permit the Supplier access to the Customer’s Site and the Equipment during Normal Working Hours;
  - 3.1.9 be fully responsible for all applications, data, interfaces, hardware and equipment within it control, including but not limited to, appropriate back-ups of all data, software, configuration and other information stored on any computer and operating system or any

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- other hardware or software, and maintain an adequate disaster recovery plan, unless agreed otherwise;
- 3.1.10 ensure that all prerequisites set out in the Working Documents are completed prior to the Supplier attending the Customer's Site and/or performing the Professional Services;
- 3.1.11 ensure that all the requirements of health and safety legislation and procedures are and continue to be met with regard to any computer and operating system and any other hardware or software at the Site;
- 3.1.12 make available all passwords and/or digital certificates required for the Supplier to perform the Professional and Consultancy Services, or make personnel available with access to such information at the appropriate time; and
- 3.1.13 only dispose of packaging for Deliverables that are accepted as being in full working order.
- THIRD PARTY SOFTWARE**
- 3.2 The Customer warrants that:
- 3.2.1 in respect of any Third Party Software;
- (i) it has entered into and has fully complied (and shall at all times fully comply) with the terms of the relevant Licence Agreement;
- (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, and;
- (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 computer and operating system and any other hardware or software has been and will be used entirely in accordance with manufacturer's instructions and recommendations and that no unauthorised use, alteration, adaptation, installation or modification has taken place or will take place in breach of any manufacturer warranty and/or 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 Following commencement of Professional Service, the Customer agrees to provide full responses in the shortest timescales to requests for information and assistance and acknowledges and in any event the same Working Day. The Customer further acknowledges that the Supplier will not be responsible for any delays, failure to complete items of work or additional time spent in obtaining information and assistance sought.
- 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. .
- 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 The Supplier shall perform the Professional Services:
- 4.1.1 using appropriately qualified and skilled personnel;
- 4.1.2 in accordance with this Schedule and the SOW;
- 4.1.3 with reasonable care and skill and in accordance with Good Industry Practice; and
- 4.1.4 to conform with all statutory requirements and applicable regulations relating to the Professional Services.
- 4.2 Where a Project Manager is appointed by the Supplier (as detailed in the SOW), the Project Manager will be chargeable and shall be responsible for the management of all Professional Services under this Schedule and will organise and attend regular meetings with the Customer's Representative as required by the Parties from time to time.
- 4.3 The Supplier shall use reasonable endeavours to:
- 4.3.1 provide the Professional Services on the date or dates and to meet any milestones specified in the SOW;
- 4.3.2 ensure that the Deliverables conform with the requirements set out in the SOW;
- 4.3.3 ensure that it has sufficient, suitable, experienced and appropriately qualified personnel to perform the Professional Services;
- 4.3.4 ensure that throughout the provision of the Professional Services, the Supplier's personnel remain the employees or subcontractors of the Supplier and will remain under the overall control of the Supplier, if

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not possible, use reasonable endeavours to provide a suitable replacement within a reasonable timescale;

- 4.3.5 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.
- 4.4 Without prejudice to the Customer's right to terminate this Agreement for material breach, the Customer's sole remedy against the Supplier for any failure on the part of the Professional Services and/or the Deliverables to meet the requirements set forth in the SOW will be to require the Supplier to use reasonable endeavours to correct such failure, free of additional charge and within a reasonable time.

### STATEMENT OF WORK

- 4.5 The Supplier shall prior to the Services Start Date, confirm the scope of the Professional Services including the Deliverables, the Customer's obligations, data gathering tasks, project management processes and procedures and any special requirements or actions the Supplier may reasonably take in performing the Professional and Consultancy Services.
- 4.6 The Supplier will provide the Customer a draft of the Statement of Works for discussion purposes and any drafts will be superseded by the final written SOW. 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.
- 4.7 The Supplier agrees to provide the Professional Services in accordance with the SOW, where specific dates are agreed between the Parties and the Supplier fails to meet such dates, the Supplier will reschedule the dates 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.
- 4.8 The Supplier shall undertake a systems handover to the Customer as set out in the applicable Order or SOW and recorded in the Acceptance into Service documentation. Any additional training required by the Customer thereafter shall be provided by the Supplier in accordance with the Supplier's current **Tariffs**.

### ACCEPTANCE OF SYSTEMS

- 4.9 Acceptance of the Systems shall be deemed to have occurred on whichever is the earliest of:
- 4.9.1 the signing by the Customer of the Acceptance into Service documentation for the Systems following successful completion of the relevant Acceptance Tests; or
- 4.9.2 the expiry of five (5) Working Days after a request from the Supplier to the Customer to perform Acceptance Tests unless the Customer has provided a written report detailing the basis upon which the Acceptance Tests had not been successfully completed with reference to the SOW or Order.
- 4.10 Acceptance of the Systems constitutes agreement by the Customer that the Services and Deliverables have been completed, delivered, and comply with any requirements specified within the Order and/or SOW.
- 4.11 The Services shall not be deemed to have failed the Acceptance Tests by reason of any failure to provide any criteria, function or requirement not specified in the SOW.

- 4.12 The Supplier shall use reasonable endeavours to remedy, free of charge, any error or non-conformity relating to the services delivered with reference to the Order and/or SOW where the Customer notifies the Supplier within 10 Working Days from the date Acceptance of the Systems has been deemed to have occurred in accordance with paragraph 4.9 above.

### EXCLUSIONS

- 4.13 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
- 4.13.1 any breakdown in project management by the Customer; or
- 4.13.2 as a consequence of any breach by the Customer of its obligations under this Schedule;
- 4.13.3 any non-acceptance, delay or non-payment by the Customer of any charges due under this Schedule; or
- 4.13.4 as a result of an extension offered.
- 4.14 If the Supplier's performance of its obligations under this Schedule are prevented or delayed by any act or omission of the Customer, its employees, agents or subcontractors, the Supplier shall not be liable for any costs, charges or losses sustained or incurred by the Customer arising directly or indirectly from such prevention or delay.
- 4.15 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.
- 4.16 The Supplier's obligation to provide the Professional Services is subject to any applicable Licence Agreements being in force.
- 4.17 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.
- 4.18 Where the Customer purchases Professional Services in advance and without reference to an agreed SOW, the Services must be used by the Customer within twelve (12) months from the Effective Date unless another period is specified in the Order. The Professional Services and Agreement will be deemed to have expired 12 months from the Effective Date or such other period stated within the Order.

## 5. CHARGES AND PAYMENT

- 5.1 Where the Order or SOW provides for payment milestones upon completion of work, the Supplier will use reasonable endeavours to invoice the Customer for the Charges relating to the Professional Services which have been delivered within 5 Working Days of the date Acceptance of the Systems has been deemed to have occurred in accordance with paragraph 4.9. In all other cases the Supplier shall be entitled to invoice the Customer monthly in arrears for Charges as detailed in the Order and/or Statement of Work relating to Professional Services delivered.
- 5.2 In consideration for providing the Professional Services, the Customer shall pay the Supplier the Charges as set forth in the applicable Order or SOW, together with any of the following:

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- 5.2.1 all reasonable and properly incurred expenses, including but not limited to travel and other out of pocket expenses;
  - 5.2.2 reasonable time spent by the Consultant(s) in travelling, where the distance travelled is further than 35 miles from the Chess Office closest to the geographical location of the Customer Site;
  - 5.2.3 the requisite deposit;
  - 5.2.4 any work completed by the Supplier at the Customer's request outside the scope set out in the SOW and if no fee is agreed for this work the Supplier shall be paid on a time and materials basis at the Supplier's **Tariffs** applicable at the time, unless the Parties otherwise agree in writing; and
  - 5.2.5 cancellation or additional fees and/or expenses that might arise due to breach of this Schedule by the Customer.
- 5.3 The Charges are based upon the Supplier's assessment of work involved, taking into account any assumptions set out in the Order or SOW and where necessary the Supplier will agree any adjustment to the Charges with the Customer.
- 5.4 The Supplier may invoice the Customer for any of the following Charges in addition to those set out above;
- 5.4.1 Cancellation Charges, Rescheduling Charges and/or Termination Charges in accordance with paragraphs 10 and 11;
  - 5.4.2 charges for expediting provision of the Professional Services at the Customer's request; or
  - 5.4.3 any change to the scope of the Professional Services in accordance with paragraph 6.
- 5.5 This paragraph 5 is supplemental to clause 6 of the General Conditions and if this paragraph 5 conflicts with clause 6 of the General Conditions, this paragraph shall take precedence.

### 6. CHANGE CONTROL PROCEDURE

- 6.1 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 a SOW.
- 6.2 Within seven (7) Working Days of receipt of such notice, subject to the change being viable and receipt of all information reasonably requested by the Supplier, the Supplier shall prepare for the Customer a written quote for any increase or decrease in the Charges payable by the Customer under this Schedule, and any effect that the requested change would have on the scope of the and/or SOW. The Supplier also reserves the right to charge the Customer in accordance with its Tariff in relation to any work undertaken in preparing its quote in response to a change request.
- 6.3 Should the request made not be viable, the Supplier shall within seven (7) Working Days of the request, notify the Customer, qualifying why and where possible suggest an alternative. The Supplier also reserves the right to charge the Customer in accordance with its Tariff in relation to any work undertaken in preparing its response to a change request.
- 6.4 Within seven (7) Working Days of receipt of the written quote referred to in paragraph 6.2, the Customer shall inform the Supplier in writing of whether 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 SOW specifying any changes to the scope of the Professional Services and the Charges payable to the Supplier.

### 7. INTELLECTUAL PROPERTY

- 7.1 Unless otherwise expressly agreed in this Agreement (or the Working Documents as appropriate) or as set out below, no Intellectual Property Rights of either Party are transferred or licensed as a result of this Agreement.
- 7.2 Subject to any other terms expressly agreed by the Parties, each Party grants the other a licence of such Intellectual Property Rights as are necessary to enable the other Party to fulfil its obligations under this Agreement and provide or make use of the Professional Services supplied under this Agreement (as the case may be) but not otherwise.
- 7.3 Except where in relation to Third Party Software, the Customer acknowledges and agrees that any and all Intellectual Property Rights in the Tools and Deliverables are owned by and shall remain at all times the exclusive property of the Supplier, unless otherwise expressly agreed between the Parties in the SOW.
- 7.4 If any Third-Party Software is used, the Supplier shall obtain all necessary consents, approvals or licences, and shall advise the Customer of any conditions or terms or costs attached to the same.
- 7.5 The Customer shall indemnify and keep indemnified and hold harmless the Supplier from and against any losses, damages, liability, costs (including legal fees) and expenses incurred by the Supplier as a result or in connection with any action, demand or claim that the proper use or possession of any Customer Materials, infringes the Intellectual Property Rights of any third party.
- 7.6 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 at its own expense, as soon as it is reasonably practicable:
- 7.6.1 procure for the Customer the right to continue using and possessing the Deliverables; or
  - 7.6.2 modify or replace the infringing part of the Deliverables, to avoid the infringement or alleged infringement
- unless such infringement or alleged infringement is from the use of Customer Materials.
- 7.7 Unless otherwise agreed, all Intellectual Property Rights arising from or relating to the Bespoke Software shall remain the exclusive property of the Supplier.

### 8. LIMITATION OF LIABILITY

- 8.1 Subject to clause 9 of the **General Conditions** (except clause 9.4 which is superseded by this paragraph 8.1), in no event shall the maximum liability of the Supplier (whether in contract, tort (including negligence) or otherwise) and in respect of all claims, losses or damages arising out of or in connection with the Professional Services, or performance or non-performance of the Supplier's obligations under this Agreement, exceed:
- 8.1.1 one million pounds (£1,000,000) in respect of each incident or series of connected incidents giving rise to damage or loss to the Customer's tangible property; or
  - 8.1.2 the greater of one hundred thousand pounds (£100,000) and 100% of all Charges paid or payable by the Customer under the applicable Order and/or SOW

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- in aggregate in all cases not falling within paragraph 8.1.1.
- 8.2 The parties agree that if any limitation or provision contained or expressly referred to in this paragraph 8 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 8.
- 8.3 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.
- 9. STATEMENTS**
- 9.1 Statements are made based on the information available at the time.
- 9.2 Statements, including those made about Third Party Software, Equipment or services, are not a representation, undertaking or warranty as to outcome or achievable results.
- 9.3 Statements are provided for information only and are not:
- 9.3.1 legal advice; or
- 9.3.2 advice about how any regulation or compliance requirement may apply to the Customer.
- 9.4 The Supplier makes no warranties, express, implied or statutory as to the information in any Statement.
- 9.5 The Supplier will not be responsible for the way in which the Deliverables, Statements or any other output from the Professional Services is used.
- 10. SUSPENSION, CANCELLATION AND POSTPONEMENT**
- 10.1 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.
- 10.2 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, no Charges will be applied by the Supplier.
- 10.3 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, the Supplier reserves the right to invoice the Customer fifty percent (50%) of the agreed Charges as stated in the Order or where applicable the SOW or if no Charges are stated fifty percent (50%) of the Charges that the Supplier anticipated charging in respect of the Order or where applicable the SOW. In all other cases the Supplier reserves the right to invoice the Customer one hundred percent (100%) of the Charges stated in the Order or where applicable the SOW or if no Charges are stated one hundred percent (100%) of the Charges that the Supplier anticipated charging in respect of the Order or where applicable the SOW ("**Cancellation Charges**").
- 10.4 Once the Supplier commences delivery of the Professional Services then no cancellation of an Order for the Professional Services will be permitted unless the Supplier agrees in writing.
- 10.5 Should the Customer wish to proceed with the provision of Professional Services following service of a notice of cancellation, the Customer will be required to enter a new Agreement with the Supplier.
- 10.6 If the Customer gives notice in writing, to re-schedule or postpone the delivery of the Professional Services from the date agreed with the Supplier to a date no later than 3 months from the date agreed.:
- 10.6.1 not less than ten (10) Working Days before the Professional Services are due to commence then no additional Charges will be applied in relation to the rescheduling of delivery;
- 10.6.2 not more than nine (9) Working Days but not less than five (5) Working Days before the Professional Services are due to commence then the Supplier reserves the right to invoice the Customer rescheduling charges calculated at twenty-five percent (25%) of the agreed Charges stated in the Order (or where applicable the SOW) or if no Charges are stated twenty-five percent (25%) of the Charges that the Supplier anticipated charging in respect of the Order or where applicable the SOW; and
- 10.6.3 less than five (5) Working Days before the Professional Services are due to commence then the Supplier reserves the right to invoice the Customer rescheduling charges calculated at fifty percent (50%) of the Charges stated in the Order (or where applicable the SOW) or if no Charges are stated fifty percent (50%) of the Charges that the Supplier anticipated charging in respect of the Order or where applicable the SOW ("**Rescheduling Charges**").
- 10.7 The Customer agrees that the Cancellation Charges and Rescheduling Charges are a fair assessment of the of the losses and damages the Supplier will suffer in the event of Cancellation of the Order or Postponement of delivery of the Professional Services.
- 10.8 The Supplier may at its sole discretion apply a reduction to the Charges payable for Professional Services that have been rescheduled where the Customer has paid the Rescheduling Charges in full. Save for where a reduction is agreed by the Supplier and confirmed in writing, payment by the Customer of Rescheduling Charges does not extinguish or otherwise affect the Customer's liability to pay the Charges for the Professional Services in accordance with the Order and/or SOW.
- 11. TERMINATION**
- 11.1 This paragraph 11 is supplemental to clauses 2 and 8 of the **General Conditions**. If this paragraph 11 conflicts with clauses 2 or 8 of the **General Conditions**, this paragraph shall take precedence.
- 11.2 The Agreement shall commence on the date of this Agreement and shall automatically expire upon completion of the Order and/or SOW unless otherwise terminated earlier in accordance with this paragraph 11 and/or clause 8 of the **General Conditions**.
- 11.3 Following commencement of the Professional Services either party may terminate the Agreement, an Order or a SOW without cause by giving at least thirty (30) days' written notice to the other party.
- 11.4 Where the Agreement, an Order or a SOW is terminated following commencement of the Professional Services, other than where the Customer terminates the Agreement under clause 8.1 of the **General Conditions** or where the Supplier terminates under paragraph 11.3 above or pursuant to clauses 8.3.1 to 8.3.3 of the **General Conditions**, the Supplier reserves the right to invoice the Customer one hundred percent (100%) of the remaining Charges stated in the Order or where applicable the SOW or if no Charges are stated one hundred

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percent (100%) of the remaining Charges that the Supplier anticipated charging in respect of the Order or where applicable the SOW (“**Termination Charges**”).

- 11.5 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:
- 11.5.1 all outstanding fees and charges (together with VAT where appropriate) and interest;
  - 11.5.2 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;
  - 11.5.3 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;
  - 11.5.4 all liabilities, claims, costs, losses and expenses incurred and/or accrued by the Supplier, and;
  - 11.5.5 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.
- 11.6 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.
- 11.7 Upon termination of the Agreement, 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.

### 12. NON-SOLICITATION

- 12.1 The Customer shall, during the continuance of the Agreement, 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 12, 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;

**“Acceptance Tests”** means any tests or criteria stated in a Statement of Work in relation to any Deliverables or Bespoke Software;

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

**“Chess Office(s)”** means Chess’ offices located in Alderley Edge, Burnley, Glasgow, Bury St Edmonds, or Borehamwood (as applicable).

**“Customer Materials”** means all documents, information, items and materials in any form, whether owned by the Customer or a third party, which are provided by the Customer to the Supplier in connection with the provision of Professional Services;

**“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 Agreement, 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](http://www.chessict.co.uk) and which forms part of the Agreement;

**“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 Agreement;

**“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), Statement of Works (SOW), Acceptance into Service, or Order detailing work to be completed, which may be paper or electronic format (email);