



G-Cloud 10 Framework

Terms and Conditions 2018



Terms and Conditions

BLACK MARBLE LIMITED. TERMS AND CONDITIONS OF BUSINESS.

PART A: GENERAL

1. DEFINITIONS & INTERPRETATION

1.1 In these terms and conditions, the following words and phrases shall have the meanings ascribed to them below:

"Acceptance" means acceptance by the Client of the Software in accordance with Part B of the Conditions;

"Acceptance Tests Specification" means a specification detailing the Acceptance Tests, to be prepared pursuant to Part B of the Conditions;

"Acceptance Tests" means those tests which are contemplated by the Acceptance Test Specification;

"Acknowledgement" means an acknowledgement issued to the Client by a Black Marble support co-ordinator by email, telephone or the Black Marble call tracking system known as Zendesk;

"Charges" means the Charges detailed in the Purchaser Order and/or incurred and payable pursuant to conditions 9 and 10, payable in respect of the Services;

"Conditions" means these terms and conditions;

"Commencement Date" means the date detailed in the Proposal;

"Contract" means the contract between Black Marble and the Client relating to the supply of Services, incorporating the Conditions;

"Credit Facility" means the extension of a line of credit to the Client by Black Marble, the details and existence of which are evidenced in the Proposal (by way of instalment or payment plan) or correspondence submitted by Black Marble to the Client;

"Client" means the company, person or party detailed in the Proposal who purchases Services from Black Marble;

"Development Services" means services relating to the development or configuration of Software, which may be detailed in the Proposal;

"Error" means any error relating to the functionality of the Software falling within one of the categories contemplated by Part C of the Conditions;

"Excluded Error" means (i) any Error relating to hardware, operating systems or third party software which is in no way related to the Software; or (ii) any other error which is not directly or indirectly related to the Software;

"Expenses" means the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by Black Marble in connection with the Services,

"Initial Support" means the initial support relating to the correction of an Error, such support to be provided by a Black Marble support co-ordinator on any Working Day, by email, telephone or the Black Marble call tracking system known as Zendesk;

"Intellectual Property Rights" means patents, rights to inventions, copyright and related rights, trade marks, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including without limitation know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;

"Minimum Term" means the term detailed in the Proposal;

"Payment Terms" means the payment terms (if any) detailed in the Proposal;

"Proposal" means the document confirming particulars of the Contract, including (where applicable) any Specification;

"Services" means the service detailed in the Proposal, which may include the Development Services and/or the Support Services and/or which are otherwise supplied pursuant to the Contract;

"Software" means the software detailed in the Proposal;

"Special Conditions" means the special terms and conditions (if any) detailed in the Proposal;

"Specification" means any specification (including any technical or functional specification, recorded in or referred to in the Proposal);

"Supplier" means Black Marble Limited (company number 03343234) whose registered office is at Woodland House, Woodland Park, Bradford Road, Chain Bar, Cleckheaton, Bradford, West Yorkshire, BD19 6BW;

"Support Request" means a request to correct an Error which may be made by email, telephone or the Black Marble call tracking system known as Zendesk;

"Support Services" means the services detailed in the Proposal relating to the support of Software;

"Working Day" means an eight (8) hour day worked between 9.00 am and 5.00 pm on weekdays (excluding weekends and public holidays);

- 1.2 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.3 Words in the singular include the plural and in the plural include the singular.
- 1.4 A reference to the parties shall be a reference to Black Marble and Client.
- 1.5 Condition headings do not affect the interpretation of these terms and conditions.

2. APPLICATION OF CONDITIONS

- 2.1 Subject to any variation under condition 5 the Contract shall be on these Conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Client purports to apply under any Proposal, confirmation of order, specification, other document, trade custom, practice or course of dealing), which, together with the Proposal, constitutes the entire agreement and understanding between the parties in respect of the matters dealt with in it, superseding any previous agreement between the parties relating to such matters.
- 2.2 Any variation to these Conditions and any representations about the Services shall have no effect unless expressly agreed in writing and signed by a director of Black Marble.

3. BASIS OF SUPPLY

- 3.1 The Proposal is valid for a period of thirty (30) days only and Black Marble may withdraw it at any time by written notice to the Client.
- 3.2 Each order or acceptance of a Proposal by the Client shall be deemed to be an offer by the Client, subject to the Conditions. The Client shall ensure that its order is complete and accurate.
- 3.3 A binding Contract shall not come into existence between Black Marble and the Client until the Client executes the Proposal or Black Marble starts to commence the Services (whichever occurs earlier).
- 3.4 The Client acknowledges that it has:
 - (a) not relied on any statement, promise or representation made or given by or on behalf of Black Marble which are not set out in the Contract; and
 - (b) satisfied itself that the Services are suitable for its own requirements.

4. DESCRIPTION

- 4.1 The description of the Services shall be as set out in the Proposal.
- 4.2 All samples, drawings, descriptive matter, specifications and advertising issued by Black Marble, and any descriptions or illustrations contained in Black Marble's catalogues or brochures are issued or published for illustrative purposes only and they do not form part of the Contract.
- 4.3 Any typographical, clerical or other error or omission in the Proposal, any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by Black Marble shall be subject to correction without any liability on the part of Black Marble.
- 4.5 The Supplier's employees, contractors and agents are not authorised to make any contractually binding representations concerning the Services. In entering into the Contract, the Client acknowledges that it does not rely on, and waives any claim for breach of, any such representations which have not been confirmed in writing by an authorised officer of Black Marble. However, nothing in these conditions limits Black Marble's liability for fraudulent misrepresentation.

4.6 Any advice or recommendation given by Black Marble or its employees, contractors or agents to the Client or its employees, contractors or agents about the Services which are not confirmed in writing by an authorised officer of Black Marble is followed or acted on entirely at the Client's own risk.

5. SCOPE AND CONFLICT

5.1 The terms and conditions detailed in this Part A (General) shall always apply to the Contract.

5.2 If with reference to the Proposal the Contract encompasses the supply of:

- (a) Development Services, the additional terms and conditions detailed in Part B of the Conditions (Development Services) shall also apply to the Contract;
- (b) Support Services, the additional terms and conditions detailed in Part C of the Contract (Support Services) shall also apply to the Contract. For the avoidance of doubt, entitlement to the Support Services shall be conditional upon the payment of additional Charges.

5.3 If there is any conflict, inconsistency or ambiguity when interpreting the Contract, the following order of precedence shall always apply:

- (a) firstly any Special Conditions;
- (b) secondly, the terms and conditions detailed in Part B of the Conditions (Development Services);
- (c) thirdly, the terms and conditions detailed in Part C of the Conditions (Support Services);
- (d) fourthly, the terms and conditions detailed in Part A of the Conditions (General);
- (e) finally, the Proposal.

6. CHANGE CONTROL

6.1 If either party requests a change to the scope or performance of the Contract, Black Marble shall, within a reasonable time, provide a written estimate to the Client of:

- (a) the likely time required to implement the change;
- (b) any variations to Black Marble's Charges arising from the change;
- (c) any other impact of the change on the terms of the Contract.

6.2 If Black Marble requests a change to the scope of the Contract, the Client shall not unreasonably withhold or delay consent to it.

6.3 If the Client wishes Black Marble to proceed with the change, Black Marble has no obligation to do so unless and until the parties have agreed in writing on the necessary variations to the price, any implementation plan and any other relevant terms of the Contract to take account of the change.

7. PERFORMANCE OF SERVICES

7.1 Any dates or times specified by Black Marble relating to the performance of the Services are estimates only. Time for performance of the Services shall not be of the essence and shall not be made so by the service of any notice.

7.2 Performance of the Services shall be within a reasonable time.

7.3 If performance of the Services is prevented or delayed by any act or omission of the Client or the Client's agents, sub-contractors or employees, the Client shall be liable to pay to Black Marble on demand all reasonable costs, Charges or losses sustained or incurred by it (including, without limitation, any direct or indirect consequential losses, loss of profit and loss of reputation, loss or damage to property, injury to or death of any person and loss of opportunity to deploy resources elsewhere), subject to Black Marble confirming such costs, charges and losses to the Client in writing.

7.4 If all or any part of the Services are purchased by the Client in advance of their performance (in block days or otherwise):

- (a) it shall be in the absolute discretion of the Client to which Services the payments shall be allocated;
- (b) if all or any part of such Services are not performed by Black Marble within a period of twelve (12) months from the date of purchase (for any reason other than Black Marbles default) such Services shall be deemed to have been performed by Black Marble and no refund or service credit shall be offered in respect of the same.

8. CUSTOMER OBLIGATIONS

8.1 The Client shall:

- (a) provide in a timely manner such access to the Client's premises and data, and such office accommodation and other facilities, as is requested by Black Marble;
- (b) provide in a timely manner such information as Black Marble may request, and ensure that such information is accurate in all material respects; and
- (c) where the Services are performed at the Clients premises or any third premises, be responsible (at its own cost) for preparing such premises by:
 - (i) obtaining any necessary easements, wayleaves, permissions, consents or licenses, including without limitation, planning permission pursuant to the Town and Country Planning Act 1990 and building regulations consent pursuant to the Buildings Act 1984 and all associated building regulations legislation or analogous regulations in the country in which the installation of the goods is to be performed;
 - (ii) providing suitable secure space for keeping tools, fittings and materials;
 - (iii) making electrical power, sanitary facilities and running water available to Black Marble;
 - (iv) ensuring that its employees, agents or contractors do not interfere with anything installed pursuant to the Services;
 - (v) complying with all obligations and responsibilities under the Health and Safety at Work Act 1974, the Management of Health and Safety at Work Regulations 1999, the Construction (Design & Management) Regulations 2007, any approved codes of practice, industry guidance, standards and best practice, each as amended from time to time.

9. CHARGES

9.1 The Charges shall be deemed to be in UK £s (pounds sterling) and unless expressly stated otherwise, shall exclude value added tax (where applicable) at the applicable current rate and delivery Charges, which shall be payable in addition.

9.2 Where the Services are to be supplied on a time and materials basis:

- (a) the Charges payable for the Services shall be calculated in accordance with Black Marble's standard daily fee rates as detailed in the Proposal or as notified from time to time;
- (b) Black Marble's standard daily fee rates are calculated on the basis of a Working Day;
- (c) Black Marble shall be entitled to charge at an overtime rate of one hundred and thirty three percent (133%) of the normal rate for part days and for time worked by staff engaged in the delivery of the Services outside the hours referred to in condition 9.3(b) on a pro-rata basis;
- (d) Black Marble shall ensure that all staff engaged in the delivery of the Services complete time sheets recording time spent on the Services, and Black Marble shall use such time sheets to calculate the value of the invoice referred to in conditions 10.2 and 10.3;

9.3 The Supplier reserves the right, by giving notice to the Client at any time to increase any Charges to reflect any increase in the cost to Black Marble which is due to any factor beyond the control of Black Marble (including any foreign exchange fluctuation, currency regulation, alteration of duties, change in legislation or significant increase in the costs of labour), any change in the Specification requested by the Client, or any delay caused by any instructions of the Client or failure of the Client to give Black Marble adequate information or instructions.

9.4 The Charges shall be exclusive of Expenses and VAT which shall be payable by the Client in addition.

10. PAYMENT TERMS

- 10.1 Unless the Client has the benefit of a Credit Facility the Client shall settle all Black Marble's invoices immediately upon receipt, and Black Marble shall not perform the Services until it has received in full (in cleared funds) all Charges due to it in respect of the Contract.
- 10.2 If the Client has the benefit of a Credit Facility Black Marble shall issue an invoice for the payment of the Charges and any Expenses incurred (and the Client shall pay such invoice) in accordance with any Payment Terms. In the absence of any such Payment Terms, Black Marble shall at the end of each calendar month, issue an invoice for the payment of any Charges and Expenses incurred, which the Client shall pay within thirty (30) days of receipt.
- 10.3 Time for payment of every invoice shall be of the essence.
- 10.4 The Client shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Client has a valid court order requiring an amount equal to such deduction to be paid by Black Marble to the Client.
- 10.5 If the Client fails to pay Black Marble any sum due pursuant to the Contract, without prejudice to any other right or remedy available to Black Marble:
- (a) the Client shall be liable to pay interest to Black Marble on such sum from the due date for payment at the annual rate of 8% above the base lending rate from time to time of the Bank of England, accruing on a daily basis until payment is made, whether before or after any judgment. The Supplier reserves the right to claim interest, compensation and costs under the Late Payment of Commercial Debts (Interest) Act 1998;
 - (b) Black Marble may suspend further performance of the Services;
 - (c) exercise a general lien on all goods and property belonging to the Client in its possession, exercisable in respect of all sums lawfully due from the Client to Black Marble. The Supplier shall be entitled, on the expiry of fourteen (14) days' notice in writing, to dispose of such goods or property in such manner and at such price as it thinks fit and to apply the proceeds towards the amount outstanding.

11. TERMINATION

- 11.1 Without prejudice to any other rights Black Marble may have under the Contract, at any time during the Contract, Black Marble shall have the right to terminate the Contract on written notice to the Client, with immediate effect, if the Client:
- (a) breaches any of the Conditions and such breach is not capable of remedy;
 - (b) breaches any of the Conditions and if such breach is remediable, fails to remedy that breach within a period of fourteen (14) days after being notified in writing to do so;
 - (c) (being a person) has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors;
 - (d) (being a body corporate) shall have a receiver or administrative receiver appointed over it or over any part of its undertaking or assets or shall pass a resolution for winding-up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or shall become subject to an administration order or shall enter into any voluntary arrangement with its creditors;
 - (e) suspends or ceases or threatens to suspend or cease, to carry on all or a substantial part of its trade or business; or
 - (f) encumbers or in any way Charges any of the Services.
- 11.2 Termination of the Contract (however occasioned) shall not affect any accrued rights or liabilities of either party.

12. QUALITY, WARRANTIES AND REMEDIES

- 12.1 The Supplier warrants that the Services shall be performed using reasonable skill and care within the meaning of the Supply of Goods and Services Act 1982.
- 12.2 The Supplier shall not be liable for a breach of the warranty in condition 12.1 unless the Client gives Black Marble written notice of the defect in the Services within seven (7) days of their performance.

- 12.3 Subject to conditions 12.1 and 12.2, if any of the Services do not conform with the warranty in condition 12.1, Black Marble shall at its option re-perform the Services or refund the price of such Services at the pro rata Contract rate.
- 12.4 Except as otherwise provided for under these Conditions, all other warranties, conditions and other terms implied by statute (including the Supply of Goods and Services Act 1982) or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 12.5 The Supplier shall have no further liability and the Client shall have no claim for a breach of the warranty in condition 12.1, if Black Marble fully complies with this condition 12.
- 13. LIMITATION OF LIABILITY**
- 13.1 The following provisions set out the entire financial liability of Black Marble (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Client in respect of:
- (a) any breach of these Conditions;
 - (c) any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 13.2 Nothing in these conditions excludes or limits the liability of Black Marble:
- (a) for death or personal injury caused by Black Marble's negligence;
 - (c) for any matter which it would be illegal for Black Marble to exclude or attempt to exclude its liability; or
 - (d) for fraud or fraudulent misrepresentation.
- 13.3 Subject to conditions 13.1 and 13.2:
- (a) Black Marble's total liability in contract, misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the price paid under the Contract;
 - (b) Black Marbles total liability for any claim in tort (including negligence and professional negligence) shall be limited to one million pounds (£1,000,000);
 - (b) Black Marble shall not in relation to the Contract, be liable to the Client (in each case whether they are direct, indirect or consequential) for each of the following:
 - (i) loss of profit;
 - (ii) loss of business;
 - (iii) loss of anticipated savings;
 - (iv) pure economic loss;
 - (v) depletion of goodwill;
 - (vi) costs, damages and expenses.
- 14. INTELLECTUAL PROPERTY RIGHTS**
- 14.1 Unless otherwise provided for in the Conditions, all Intellectual Property Rights created or arising under this Agreement shall vest absolutely in Black Marble.
- 15. CONFIDENTIALITY AND SUPPLIERS PROPERTY**
- 15.1 The Client shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Client by Black Marble or its agents, and any other confidential information concerning Black Marble's business or its products which the Client may obtain. The Client shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know the same for the purpose of discharging the Client's obligations to Black Marble, and shall ensure that such employees, agents or sub-contractors are subject to obligations of confidentiality corresponding to those which bind the Client.

15.2 All materials, equipment and tools, drawings, specifications and data supplied by Black Marble to the Client shall at all times be and remain the exclusive property of Black Marble, but shall be held by the Client in safe custody at its own risk and maintained and kept in good condition by the Client until returned to Black Marble, and shall not be disposed of or used other than in accordance with Black Marble's written instructions or authorisation.

15.3 This condition 15 shall survive termination of the Contract, however arising.

16. UNFORSEEABLE DELAYS

16.1 The Supplier reserves the right to defer the performance of the Contract (without liability to the Client) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of Black Marble including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials.

17. REGULATORY COMPLIANCE

17.1 If a licence, consent, permission or any government or other authority is required in relation to the Contract, the Client shall obtain the licence or consent at its own expense and if requested, produce the evidence to Black Marble on demand. Failure to obtain any licence or consent shall not entitle the Client withhold or delay payment or terminate the Contract.

18. COMMUNICATIONS

18.1 All communications between Black Marble and the Client regarding the Contract shall be in writing and delivered by hand, first class post or fax to:

- (a) (in case of communications to Black Marble) its registered address or any other address notified in writing from time to time; or
- (b) (in the case of the communications to the Client) the address detailed in the Proposal or any other address notified in writing from time to time.

19. NON SOLICITATION

19.1 The Client shall not, without the prior written consent of Black Marble, at any time from the date of the Contract to the expiry of six (6) months after the completion of the Services, solicit or entice away from Black Marble or employ or attempt to employ any person who is, or has been, engaged as an employee or sub-contractor of Black Marble.

19.2 Any consent given by Black Marble in accordance with condition 19.1 shall be subject to the Client paying to Black Marble a sum equivalent to twenty percent (20%) of the then current annual remuneration of Black Marble's employee or sub-contractor or, if higher, twenty percent (20%) of the annual remuneration to be paid by the Client to such employee or sub-contractor.

20. DISPUTE RESOLUTION

20.1 In the event of any bona fide dispute or difference arising between the parties in connection with the Contract (excluding any dispute relating to non payment of the price by the Client, for whatever reason), the parties shall attempt to resolve such dispute or difference in good faith and without recourse to legal proceedings.

20.2 If the parties are unable to resolve such dispute or difference within fourteen (14) days of initial discussions between the parties taking place, either party may request the other in writing that the matter be referred to senior representatives of the parties with authority to settle the dispute, who shall attempt to resolve the dispute within thirty (30) days of the written request to do so.

20.3 If the dispute or difference is not resolved as a result of a meeting of the senior representatives of the parties pursuant to condition 20.2 above, or if no meeting of the senior representatives occurs within the prescribed time periods set out in that condition, either party may request the Centre for Dispute Resolution ("CEDR") in writing to appoint an independent expert.

20.4 If either party so requests CEDR to appoint an independent expert, such party must instruct CEDR to ensure that the expert:

- (a) acts as an expert and not an arbitrator;
- (b) affords the parties the opportunity within reasonable time limits to make representations to him;
- (c) informs each party of the representations of the other;

- (d) affords each party the opportunity within reasonable time limits to make submissions to him on the representations of the other; and
- (e) notifies the parties of his decision, with reasons as quickly as practicable.

20.5 The fees and expenses of the expert including the cost of his nomination shall be borne equally by the parties who shall bear their own costs as to the submission and determination of the dispute or difference by the expert, save as where otherwise directed by the expert.

20.6 The expert determination is to be conclusive and binding on the parties except where there is fraud or a manifest error or on a matter of law.

21. GENERAL

21.1 The Supplier may assign the Contract or any part of it to any third party. The Client shall not be entitled to assign the Contract or any part of it without the prior written consent of Black Marble.

21.2 Each right or remedy of Black Marble under the Contract is without prejudice to any other right or remedy of Black Marble whether under the Contract or not.

21.3 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

21.4 Failure or delay by Black Marble in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.

21.5 Any waiver by Black Marble of any breach of, or any default under, any provision of the Contract by the Client shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.

21.6 Each of the parties acknowledges and agrees that in entering into the Contract it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) other than as expressly set out in the Contract. The only remedy available to either party in respect of any such statement, representation, warranty or understanding shall be for breach of contract under the terms of the Contract.

21.7 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

21.8 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.

PART B: DEVELOPMENT SERVICES

22. INTELLECTUAL PROPERTY RIGHTS

22.1 All Intellectual Property Rights in any Software created by Black Marble in its performance of the Development Services (including any Software) shall, subject to payment of the Charges in full pursuant to condition 10, be assigned in full to the Client.

22.2 The Client grants to Black Marble a non exclusive, perpetual, royalty free right and licence to utilise and commercially exploit any Software and other deliverables created by Black Marble in its performance of the Services.

22.3 Neither party shall acquire or claim any title to any of the other's Intellectual Property Rights and will not, at any time, do, or omit to do, anything which is likely to prejudice the other's ownership of such Intellectual Property Rights.

23. TESTING AND ACCEPTANCE

23.1 If the Proposal specifies the requirement for substantive Acceptance Tests, Black Marble shall:

- (a) write an Acceptance Tests Specification acceptable to the Client, setting out the test data and environment required, the sequence for performing those tests and the acceptance criteria; and
- (b) conduct the Acceptance Tests in accordance with the Acceptance Tests Specification, unless otherwise agreed in writing.

- 23.2 If the Proposal does not specify the requirement for substantive Acceptance Tests, the acceptance criteria for determining the success or failure of the Software shall be that the Software is built and functions materially in accordance with the Proposal, minor errors excluded.
- 23.3 Black Marble shall give the Client at least seven (7) Working Days prior written notice of the start of the Acceptance Tests and the Client shall be entitled to attend and observe them.
- 23.4 Acceptance shall be deemed to have occurred:
- (a) when the Software meets the acceptance criteria in the Acceptance Tests Specification as; or
 - (b) after the elapse of seven (7) Working Days from the commencement of the Acceptance Tests, unless the Client has communicated with Black Marble, specifying any non-compliance of the Software with the Acceptance Tests;
 - (c) if the Software is placed into operational use by the Client.
- 23.5 For the avoidance of doubt, if during the Acceptance Tests the Client notifies Black Marble of any defects or omissions which materially affect the Client's ability to use the Software in accordance with the Contract, Black Marble shall be responsible for rectifying the same at its own cost.
- 23.6 Black Marble shall raise a problem report if the Software fails any Acceptance Test, identifying the test which failed and the respects in which it failed. However, no Acceptance Test shall be deemed to have failed as a result of any deficiency which:
- (a) was discovered by the Client in an earlier test but which had not been notified in writing to Black Marble previously;
 - (b) was of a trivial nature having no adverse effect on the performance of the Software.
- 23.7 Black Marble shall at its own cost correct any failure of the Acceptance Tests, and shall then repeat those parts of the Acceptance Tests which previously failed, until they are passed.
- 23.8 For the avoidance of doubt, the cost of carrying out the Acceptance Tests until the Software has passed such Acceptance Tests shall be borne by Black Marble.
- 23.9 Following successful completion of the Acceptance Tests both Black Marble and the Client shall within three (3) Working Days, sign an acceptance certificate for the Software, following which, Acceptance shall be deemed to have taken place.
- 24. SOFTWARE WARRANTY**
- 24.1 Black Marble warrants that the Software shall function materially in accordance with the Proposal and be free from material defects in design, materials and workmanship for a period of thirty (30) days following Acceptance.
- 24.2 Black Marble shall, free of charge, remedy any breach of the warranty at condition 24.1 which is notified by the Client in writing during the period of thirty (30) days following Acceptance.

PART C: SUPPORT SERVICE

25. SUPPORT REQUESTS

25.1 If the Software suffers an Error, the Client shall have the right to make a Support Request during any Working Day, following which Black Marble shall issue an Acknowledgement.

25.2 In relation to any Support Request, Black Marble shall provide Initial Support within the following timescales:

Level	Error	Timescale
1	The Software is entirely non-functional.	1 working hour from Acknowledgement.
2	The Software is functioning but an error exists which is preventing the use of a material component of the Software.	4 working hours from Acknowledgement.
3	The Software is functioning but an error exists which is not preventing the use of a material component of the Software.	7 working hours from Acknowledgement.

26.3 If any Error is not corrected as part of the Initial Support or is regarded as an Excluded Error, Black Marble shall at the request of the Client, provide Development Services on a time and materials basis (pursuant to condition 9.2) in an effort to correct such Error.

26.4 Black Marble shall use its reasonable endeavours to correct any Error as quickly as possible, but without any guarantee of the timescale in which the Error will be corrected.

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Revision 2.0