AMX Bridges and Structures Asset Management Software

TERMS AND CONDITIONS

Lot 2 Cloud Software | G-Cloud 11

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1. INTRODUCTION

The following outlines the standard Terms and Conditions of operation for AMX Solutions.

2. DEFINITIONS

“Agreement” means this document.

“Fees” means the charges to be paid by the Customer to the Supplier.

“Service” means the service to be provided by the Supplier.

"Service Levels" means the levels of service to which the Supplier is to provide the Service.

"Effective Date" means the date at which the Service shall commence.

"Software" means any software used by the Supplier in the supply of the Service

"Customer Data" means all data or information supplied by the Customer.

“Intellectual Property Rights” means all patents, copyrights, design rights, trademarks, service marks, trade secrets, database rights and other rights in the nature of intellectual property rights (whether registered or unregistered) and all applications for the same, anywhere in the world.

3. THE SERVICE

1.1 Provision of Service

The Supplier shall provide the Service, in accordance with the Service Levels outlined and in accordance with the terms and conditions of this Agreement.

Interruptions to the Service not defined in the Service Levels may be required but shall only be made with the prior agreement of the Customer (such agreement will not be unreasonably withheld or delayed) and when the Supplier, in its reasonable opinion, believes it is necessary to improve or maintain the Service. The Supplier shall take all steps necessary to minimise the frequency, length and impact of all such interruptions.

1.2 Term of Service

The Service shall take effect on the Effective Date, and shall continue for one year, unless terminated in accordance with Clause 7.

4. WARRANTIES

The Supplier warrants and undertakes to the Customer that:

- it has the right power, capacity and authority to enter into this Agreement and to perform the Service.
- the Product will perform substantially in accordance with any agreed specification between the parties at the date of this Agreement.
- the fitness of the Product is not warranted for any particular purpose.

- the Product is not warranted to be error free or that all defects therein will be corrected except for those errors which the Licensor is obliged to correct, or any errors identified in the first 60 months after delivery which will be dealt with as under the maintenance agreement.
- save as expressly set forth in this Agreement, all conditions or warranties, express or implied, statutory, collateral or otherwise are hereby excluded.
- it will inform the Customer as soon as possible should any problems arise.

5. CHARGES, PAYMENT AND CREDITS

1.3 Charges

In accordance with the terms of this Agreement, the Customer shall pay all Fees including any associated Value Added Tax, in accordance with prevailing legislation.

1.4 Terms of Payment

The Customer shall pay all due Fees in full within 30 days of receipt of a valid invoice. The Supplier reserves the right to charge interest on overdue accounts.

Postal invoice shall be deemed to be received at the expiration of 72 hours after being placed in the post (having been correctly addressed).

6. USE OF SOFTWARE AND CUSTOMER DATA

1.5 Intellectual Property Rights

During the term of the Service, the Supplier grants to the Customer a nonexclusive, non-transferrable right to use the Software insofar as that is necessary to the Customer receiving the full benefit of the Service, on the understanding that the intellectual property rights of the Software remain with the Supplier. On termination of the Agreement, for any reason, the Customer's right to use the Software is terminated forthwith. The Supplier warrants that it is empowered to grant a license of the Software in the terms of this Agreement.

1.6 Customer Data

The Supplier acknowledges that the Customer Data shall at all times remain the property of the Customer. The Supplier and Customer shall take all reasonable precautions (having regard to the nature of their respective obligations under this Agreement) to preserve the integrity of the Customer Data, and to prevent any corruption or loss occurring. On termination of the Agreement for any reason, the Supplier shall provide the Customer with the Customer Data in its entirety, in a suitable transferable form.

1.7 Data Protection

The Supplier and Customer each warrant that they will duly observe their obligations under GDPR which arise in connection with the Service, including all statutory obligations which apply by law from time to time.

1.8 Confidentiality

Both Supplier and Customer shall keep confidential and shall not disclose any information or documents provided by the other that relates to their products, customers, business, accounts, finance or contractual arrangements, or other dealings transactions or affairs, including the Service, for ten years from the termination of the Service unless such disclosure is necessary to perform the Service, or the information or documents come into the public domain otherwise than through a breach of this Agreement or such disclosure is necessary for compliance with statutory or regulatory (including stock exchange) requirements. If either party becomes aware of any breach of this Clause by any of its personnel or other third-party it shall promptly notify the other party.

7. TERMINATION

The Supplier may terminate this Agreement at any time upon sixty (60) days written notice.

Without prejudice to any other right to which it may be entitled, Customer may give notice in writing to Licensee terminating this Agreement with immediate effect if Licensee is in material breach of any of its obligations hereunder and fails to remedy such breach within thirty (30) days of notice in writing requiring such remedy.

This Agreement shall terminate forthwith if the Customer makes any composition with its creditors or has an administrative receiver appointed of any of its assets or if an order is made or a resolution is passed for the winding-up of Customer or an order is made for the appointment of an administrator or, being a natural person or partnership, becomes insolvent or enters into any arrangement with his creditors or has a bankruptcy petition presented against him or if Customer takes or suffers any action under any jurisdiction similar or analogous to any of the above.

In the event of termination of this Agreement howsoever occasioned the licences and rights granted to the Customer shall terminate and the Customer shall destroy all copies in whole or in part of the Software in the possession or control of the Customer. Within 15 days of termination, the Customer shall certify in writing to Supplier that such destruction has been completed.

Neither party shall be relieved or discharged from any obligations which accrued prior to termination and termination hereof shall not prejudice the effect of any of the provisions of this Agreement that expressly or by implication come into or continue in effect on or following termination hereof.

8. ENTIRE AGREEMENT

This Agreement embodies the entire agreement between the Customer and the Supplier in relation to the Service. Any amendments to this Agreement during its term will be expressly agreed in writing between the parties.

9. FORCE MAJEURE

Neither party shall be in breach of its obligations under this Agreement or under any liability for any delay, loss or damage due to any cause beyond its reasonable control, including but not limited to acts of nature, Government intervention, strikes and lockouts and delays by suppliers.

10. LAW

This Agreement shall be construed in accordance with English Law and the parties agree to submit to the exclusive jurisdiction of the Courts of England and Wales.

11. ASSIGNATION

The Supplier may not assign or otherwise transfer this Agreement or any of its rights and duties hereunder whether in whole or in part to any other party. Any such action or attempt there at shall be deemed a material breach of this Agreement.

12. LIABILITY

Notwithstanding anything contained in this Agreement the Supplier shall be liable for fraud death or personal injury to any person caused by the Supplier's negligence.

The liability of either party to the other for direct loss or damage whether in contract, tort or otherwise arising out of or in connection with the subject matter of the Agreement shall in respect of any one incident or series of incidents attributable to the same cause be limited to and shall not in any circumstances exceed the value of £15,000 (fifteen thousand pounds)

Neither the Supplier nor the Customer shall in any circumstances be liable whether in contract, tort or otherwise for any consequential or indirect loss or damage howsoever arising and of whatsoever nature.

13. WAIVER

Failure by the Licensor to exercise or enforce any rights hereunder shall not be or be deemed to be a waiver of any such right nor prevent enforcement thereof thereafter.

14. DISPUTES

The parties shall make every reasonable effort to resolve any dispute or difference arising out of this Agreement without third party intervention. In the event of the parties being unable to settle such dispute or difference the case shall be referred to the English Courts who shall have exclusive jurisdiction to determine disputes arising from this agreement, although either party may elect to first refer the matter to a mediator. The non-referring party shall cooperate with such referral. Failing resolution of the dispute by mediation, the dispute may be referred by either party for final decision to The English Courts.