

Annex F

Standard Terms and Conditions of Sale

1. Definitions and interpretation

1.1 The expressions defined in the Quote shall have the same meanings in this Agreement and the following expressions have the following meanings unless inconsistent with the context:

"Agreement"

these Terms and Conditions and are applied in accordance with the Quote;

"Commencement Date"

the date stated in the Quote between digitalenergy and the Customer;

"Confidential Information"

any information of either party, whether or not specified as confidential, which is or has been disclosed to the other party in connection with the negotiation or performance of this Agreement including the terms of this Agreement and including preceding the date of this Agreement, which relates to that party's business methods, prices, marketing, sales, relationship with suppliers and licensees, know-how and in the case of digitalenergy any information relating to the Software;

"Event of Force Majeure"

any event beyond the reasonable control of a party including but not limited to fires, strikes or lock outs (of its own or other employees) insurrection or riots, embargoes, container shortages, wrecks or delays in transportation, inability to obtain supplies, failure by suppliers to provide items by their anticipated dates and the requirements or regulations of any civil or military authority;

"Intellectual Property Rights"

any and all intellectual property rights and similar rights including without limitation patents, trade marks, trade names, registered designs, design rights, rights in databases, copyright, Know-How, topography rights and all similar rights in any country (including but not limited to the United Kingdom) whether or not registered or capable of registration and including any goodwill attaching thereto applications for registration thereof and renewals and extensions of the same;

"Price"

the charges set out in the quote;

"Services"

all tasks to be carried out by digitalenergy on behalf of the Customer as specified in the quote;

"Software"

the digitalenergy software;

"Software Licence"

the licence of the digitalenergy Software;

"Terms and Conditions"

these terms and conditions; and

"Working Hours"

the hours of 9.00 am to 5.00 pm Monday to Friday but excluding bank holidays and all other public holidays.

2. Agreement

2.1 digitalenergy agrees that in consideration of the payment of the Price by the Customer in accordance with this Agreement it will use its reasonable efforts to provide the Services in accordance with the terms set out in this Agreement.

2.2 Whilst digitalenergy shall use its reasonable endeavours to comply with any delivery times, time of provision of the services by digitalenergy shall not be of the essence. In addition, digitalenergy shall not be liable for any failure or delay in providing the Services resulting from any failure or delay by the Customer in performing any of its obligations under this Agreement and with due care, skill and diligence.

2.3 The Services shall not include support or other services for:

- any use of the Software other than in accordance with the Software Licence Agreement;
- any use of the Software with software not provided or approved by digitalenergy; and
- any modification of the Software.

3. Customer's obligations

The Customer shall provide free of charge, all necessary access, stationary, electricity, telecommunication facilities, other consumables, materials and apparatus and all necessary and safe facilities for the proper undertaking of digitalenergy's obligation under this Agreement including, without limitation, such office accommodation and office and car parking space as is required by digitalenergy at the Customer's Premises and the Customer's other locations.

4. Contract price

4.1 The Price shall be charged by digitalenergy for the Services provided to the Customer by digitalenergy in accordance with the quote.

4.2 Where the nature of the Services is not indicated in full in the Quote and has not already been agreed in writing between the parties then the parties shall consult with a view to determining the Services which digitalenergy is to provide.

4.3 Any estimate or indication by digitalenergy as to the number of man days or man hours required by digitalenergy to undertake a specific task shall be construed as being an estimate only. digitalenergy shall in no circumstances be liable for a delay or for any other loss, damage or other cost of whatsoever nature (including without limitation consequential loss) suffered or incurred by the Customer where such estimate or indication is incorrect.

4.4 Where Services are agreed to be provided and where a fixed Price for the provision of the Services has been agreed between the parties then nevertheless digitalenergy shall not be bound by such fixed charge where the Customer subsequently requires an improvement, substitution or modification to the Services.

5. Payment

5.1 All payments shall be made, free from any and all deductions, withholdings and set-offs by the Customer within thirty (30) days of the date of each invoice by digitalenergy.

5.2 If the Customer fails to pay any monies due under or in connection with this Agreement on the due date for payment then without prejudice to any other right or remedy due to digitalenergy, digitalenergy will be entitled (without prejudice to its other rights) to:

5.2.1 suspend performance of any obligation owed by digitalenergy under this Agreement until such payment is made; and

5.2.2 require payment in full by the Customer of the Price before supplying any of the Services under this Agreement; and

5.2.3 charge interest on any overdue fees and/or payments due under this Agreement (after as well as before judgement) at the rate of 4% per annum above the base rate of Bank of Scotland for the time being in force calculated from the date on which the outstanding sum fell due to the date upon which it is paid.

5.3 All payments due under this Agreement by the Customer to digitalenergy are quoted exclusive of Value Added Tax which will be payable in addition by the Customer.

6. Intellectual Property

6.1 Where the Services include the creation and provision of Bespoke Software then such software shall belong to digitalenergy and digitalenergy shall assign the Bespoke Software to the Customer on receipt of full payment of all monies due in relation to the creation of such Bespoke Software.

6.2 The Customer acknowledges that all Intellectual Property Rights in the Software and any modification to such Software belong to digitalenergy even after the Software has been used by the Customer in relation to the Application and the Customer (and the End User) shall have no rights in or to the Software other than the rights granted to it in accordance with the terms of this Agreement.

6.3 The Customer has the automatic right at any time during the Term, at its own cost, to subscribe to the Escrow Agreement Number 31896 and retained by NCC Group, Manchester Technology Centre, Oxford Rd, Manchester, M1 7EF, (or any other successive Software Escrow Provider.

7. Confidentiality

7.1 Each party shall:

7.1.1 keep the other party's Confidential Information confidential;

7.1.2 not use the other party's Confidential Information except for the purposes of this Agreement without the prior written consent of the other party; and

7.1.3 not divulge the other party's Confidential Information to any third party except to those of its employees and advisors who need to know the information solely for the purposes of this Agreement and shall procure that each such third party is aware of and complies with these obligations as to confidentiality.

7.2 The provisions of clause 7.1 shall not apply to any Confidential Information that the receiving party can show:

7.2.1 is in the public domain other than as a result of a breach of this Agreement or any other obligations of confidentiality;

7.2.2 is required to be disclosed under operation of law, by court order or by any regulatory body of competent jurisdiction (but then only to the extent and for the purposes required); or

7.2.3 was developed independently of and without reference to any Confidential Information disclosed by the disclosing party.

7.3 Neither party shall refer to this Agreement or its subject matter or to the other party in any press release, tender, proposal, speech, article or other marketing, publicity or similar material without the prior written consent of the other.

7.4 The obligations of confidentiality in this clause 7 shall continue notwithstanding termination.

8. Warranties

digitalenergy warrants that it has full capacity and authority to enter into this Agreement.

digitalenergy warrants that the Services will be performed with reasonable care and skill.

The warranties in clause 8.1 and 8.2 are the only warranties given by digitalenergy under this Agreement.

Except as specifically stated in this clause 8, digitalenergy excludes all warranties, conditions and other terms implied by statute or common law, which but for the exclusion might or would subsist in favour of the Customer to the extent it is permitted to do so by law.

The Customer warrants that it has capacity and authority to enter into this Agreement.

9. Termination and Post Termination Provisions

This Agreement shall come into effect on date of signature and shall continue for the terms set out in the quote unless otherwise terminated pursuant to this clause 9.

[This Agreement may be terminated immediately by digitalenergy if the Customer fails to pay any sum due under this Agreement within (30) days of any due date.]

This Agreement may be terminated by either party at any time on written notice to the other if the other:

is in material or persistent breach of any of the terms of this Agreement and either that breach is incapable of remedy, or the other party fails to remedy that breach within 30 days after receiving written notice specifying the breach and requiring it to remedy that breach; or

is unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986), or becomes insolvent, or is subject to an order or a resolution for its liquidation, administration, winding-up or dissolution (otherwise than for the purposes of a solvent amalgamation or reconstruction), or has an administrative or other receiver, manager, trustee, liquidator, administrator or similar officer appointed over all or any substantial part of its assets, or enters into or proposes any composition or arrangement with its creditors generally, or is subject to any analogous event or proceeding in any application jurisdiction.

Termination by either party in accordance with the rights contained in this clause 9 shall be without prejudice to any other rights or remedies of that party accrued prior to termination.

On termination of this Agreement for any reason:

each party's rights, liabilities and obligations that have accrued prior to such termination or expiry or that are expressly by implication intended to come into force upon or remain in force following such termination or expiry shall survive any such termination or expiry;

all rights granted to the Customer under this Agreement shall cease;

the Customer shall immediately pay to digitalenergy any sums due to digitalenergy under this Agreement and in respect of all charges incurred prior to termination, for which an invoice has not yet been submitted, such charges shall be payable immediately upon such submission

Liability

The Price and digitalenergy's other charges to the Customer under this Agreement are determined on

the basis of the limitations and exclusions of liability in this Agreement.

The following provisions set out digitalenergy's entire liability (including any liability for the acts and omissions of its employees, agents or sub-contractors) to the Customer in respect of:

any breach of its contractual obligations arising under or in connection with this Agreement;

any representation, statement, negligence, other tortious act or omission or breach of statutory duty arising under or in connection with this Agreement;

any damage to property.

digitalenergy is not responsible for any problems of any nature arising from the use of the Software for purposes for which it was not designed.

Subject to clause 10.7, digitalenergy's total liability under or in connection with this Agreement will not in aggregate exceed the amount of the Price paid by the Customer.

Nothing in this Agreement shall exclude the liability of either party for death or personal injury caused by its negligence or for fraudulent misrepresentation.

Neither party shall be liable to the other for any indirect or consequential loss (including, without limitation, any loss of profits, loss of business, depletion of goodwill and like loss) howsoever caused.

digitalenergy will not be liable to the Customer for any loss or corruption of data, software or database configuration held by the Customer (whether before or after termination of this Agreement) which could have been avoided (or, if less, to the extent that it could have been avoided) by the Customer keeping adequate back up copies of its data, software or database configuration in accordance with best data processing practice. The Customer must at all times keep adequate back-up copies of its data, software or database configuration off Site in accordance with best data processing practice.

This clause 10 has continuing effect after termination of this Agreement.

Force Majeure

Neither party will be liable for any breach of its obligations resulting from an Event of Force Majeure.

The party affected by an Event of Force Majeure agrees to give written notice to the other upon becoming aware of an Event of Force Majeure, that notice containing details of the circumstances giving rise to the Event of Force Majeure.

General

The relationship of the parties shall be that of independent contractors and nothing contained in this Agreement shall create a relationship of employer and employee, principal and agent or partnership between the parties.

Any notice or written communication given under or in relation to this Agreement shall be given in writing and shall be delivered by hand (in which case it shall be deemed to have been given at the time of delivery) or sent by special delivery post (in which case it shall be deemed to have been given on the second day after posting) to the other party at its address set out above or to such other address as it has previously notified to the sending party in writing.

The failure or delay of either party to enforce or to exercise, at any time or for any period of time, any term of or any right, power or privilege arising pursuant to this Agreement does not constitute and shall not be construed as a waiver of such term or right and shall in no way affect either party's right later to enforce or exercise it, nor shall any single or partial exercise of any remedy, right, power or privilege preclude any further exercise of the same or the exercise of any other remedy, right, power or privilege.

The invalidity or unenforceability of any provision of or any part of a provision of or any right arising pursuant to this Agreement shall not affect in any way the remaining provisions or rights, which shall be construed as if such invalid or unenforceable part did not exist.

This Agreement contains all the terms agreed by the parties relating to its subject matter and supersedes any prior arrangements, understandings or arrangements between them, whether oral or in writing. No representation, undertaking or promise shall be taken to have been given or implied from anything said or written in negotiations between the parties prior to this Agreement except as set out in this Agreement. Each party acknowledges and accepts that, in entering into this Agreement, it has not relied upon any representation, undertaking or promise except as set out herein.

No variation of or amendment to this Agreement shall be effective unless made in writing and signed by authorised representatives of the parties.

Nothing in this Agreement shall confer any right or benefit upon any person who is not a party to it whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

12.8 This Agreement is governed by English law and the parties subject to the exclusive jurisdiction of the English courts.

