



# 7Y Technology – a Division of 7Y Services Ltd

## Business Terms

These Terms ("Terms") shall govern the supply of Services provided by 7Y Technology ("7YT"), a division of 7Y Services Ltd as set forth in the Statement of Work executed by Client and 7YT to which these Terms are attached. The Statement of Work and the Terms shall together be known as the "Agreement". If there is a conflict between these Terms and the terms of any Statement of Work, the Statement of Work shall take priority over the Terms. Words defined in these Terms shall have the same meaning when used in the Statement of Work and vice versa.

### **Section 1. Fees, Expenses**

Client shall pay 7YT the professional fees and the related expenses in accordance with the Statement of Work.

### **Section 2. Client Responsibilities**

As a prerequisite to 7YT's delivery of Services, Client shall (i) fulfill the Client Responsibilities and ensure that all Project Assumptions are accurate; (ii) provide 7YT with reliable, accurate and complete information, as required; (iii) make timely decisions and obtain required management approvals; and (iv) furnish 7YT personnel with a suitable office environment and adequate resources and supplies, as needed. In addition, 7YT shall be entitled to rely on all Client decisions and approvals. Nothing in this Agreement shall require 7YT to evaluate, advise on, modify, confirm, or reject such decisions and approvals, except as expressly agreed to in the Statement of Work.

### **Section 3. Confidentiality**

(a) Except as set out in this Section 3, neither party will disclose to any third party without the other's prior written consent any confidential information concerning the other's business which is either marked "confidential" or is by its nature clearly confidential, including the terms of this Agreement.

(b) A consent referred to in subsection 3(a) shall not be required for disclosure by either party of any confidential information: (i) to its officers, employees and agents and, in the case of 7YT, its subcontractors and affiliates, to the extent required to enable such parties to carry out their obligations under this Agreement, and such parties shall be required to observe the same restrictions as are set out in this Section 3; (ii) to its professional advisers who are bound to such party by a duty of confidence which applies to any information disclosed; (iii) to the extent required by applicable law; (iv) to the extent that the relevant confidential information is in the public domain otherwise than by breach of this Agreement by the party wishing to make the disclosure; (v) which is disclosed to the party wishing to make the disclosure by a third party who is not in breach of any confidentiality obligation; (vi) which the party wishing to make the disclosure lawfully possessed prior to obtaining it from the other party.

(c) Notwithstanding the foregoing, Client recognises that 7YT owns intellectual property rights, methodologies, processes, techniques, ideas, concepts, trade secrets and know-how either embodied in the Deliverables the Services or developed or supplied in connection with this Agreement or otherwise (the "7YT Knowledge"). The 7YT Knowledge is derived from a number of sources, including assignments for other clients. 7YT may include Client's confidential information in the 7YT Knowledge for use in internal knowledge sharing activities and in developing solutions for other clients on the basis that 7YT will protect the confidentiality of the information and the source of the information concerned.

(d) All presentations, reports, documents, Deliverables and other advice given, including this Agreement, are for Client's use only and must not be disclosed to any third party without 7YT's prior written consent save as set out in this Section 3. Client agrees to take all steps necessary to procure that the aforementioned items are not disclosed to or used by any third party without 7YT's prior written consent.

### **Section 4. Deliverables**

Subject to the fulfilment of Client's obligations under this Agreement, 7YT grants to Client and Client accepts a non-exclusive, non-transferable licence to use, copy, distribute internally, and upgrade the deliverable items specifically described in the Statement of Work (the "Deliverables") for its internal business purposes only. Client shall not, without 7YT's prior written consent, modify, alter, translate, adapt, disassemble, decompile or reverse engineer any element of the Deliverables or merge any element of the Deliverables with any other product or equipment unless expressly permitted by this Agreement or by law. 7YT shall retain all right, title and interest in and to: (i) the Deliverables, including but not limited to all patent, copyright, trademark and other intellectual property rights therein; and (ii) the 7YT Knowledge. Client expressly acknowledges that 7YT may use the Deliverables and the 7YT Knowledge for any purpose.

### **Section 5. Acceptance**

Client shall accept Deliverables which (i) conform to the requirements of the Statement of Work or (ii) where applicable, successfully complete the acceptance test plan described in the Statement of Work/Specification. Unless otherwise agreed upon by the parties in the Statement of Work, Client will promptly give 7YT notification of any non-conformance of the Deliverables with such requirements ("Non-conformance"), and 7YT shall have a reasonable period of time, based on the severity and complexity of the Non-conformance, to correct the Non-conformance. If Client uses the Deliverables before acceptance, fails to promptly notify 7YT of any Non-conformance, or unreasonably delays the beginning or carrying out of acceptance testing, then the Deliverables shall be deemed to have been accepted by the Client.

### **Section 6. Warranty**

(a) 7YT warrants that the Services shall be performed with reasonable skill and care.

(b) The Schedule and any timetables in this Agreement are for estimating purposes only and time shall not be of the essence in respect thereof.

(c) In the event of a breach of warranty by 7YT, 7YT's sole obligation shall be to correct any breach of this warranty, provided that Client gives 7YT written notice within thirty (30) days of such breach occurring.

(d) 7YT does not warrant and is not responsible for any third party products or services. Client's sole and exclusive rights and remedies with respect to any third party products or services are against the third party vendor and not against 7YT.

(e) This Section 6 and the obligation in Section 5 set out 7YT's only warranties concerning the Services and any Deliverables, and except for those warranties, all warranties, representations, conditions and terms whether express or implied by statute, common law or otherwise shall be excluded from the Agreement to the fullest extent permitted by law, including, without limitation, any implied warranties of satisfactory quality or non-infringement (other than in the event of death or personal injury caused by 7YT's negligence or fraudulent misrepresentations).

### **Section 7. Risk Allocation**

(a) Notwithstanding any other provisions of this Section 7, 7YT will accept unlimited liability for death, personal injury or damage arising from its negligence or any fraudulent misrepresentations made by 7YT.

(b) Client agrees that 7YT's total liability relating to this Agreement (whether in contract tort under statute or otherwise) for any claims, actions, proceedings, demands, losses, damages, costs, charges, (including defence costs) or other consequences (together "Losses") suffered by Client arising out of or in connection with the Services, however caused, shall be limited as set out in this Section 7.

(c) 7YT will not be liable for any Losses, except to the extent that such Losses have resulted directly from 7YT's breach of contract or tort (including without limitation negligence or breach of statutory duty or other default and in no event (subject to subsection 7(a)) shall 7YT's liability exceed the fees paid or payable to 7YT for the Services or Deliverables giving rise to the liability.

(d) Subject to section 7(a) 7YT shall have no liability for indirect losses or loss of profits business contracts opportunities or savings howsoever such losses arise.

(e) Any action against 7YT must be brought within eighteen (18) months after the cause of action arises.

(f) Client and 7YT acknowledge and agree that the allocation of risk and liability contained in this Agreement is reasonable in all the circumstances, having regard to all relevant factors and the ability of the Client to rely on its own insurance arrangements and other resources available to it.

### **Section 8. Personnel**

(a) While 7YT shall attempt to comply with Client's request for the provision of Services by specific individuals, 7YT shall be responsible for assigning and re-assigning its personnel, as appropriate, to perform the Services.

(b) During the provision of the Services, and for a period of six (6) months following completion, or termination of the Services, neither party will either directly or indirectly solicit or employ the personnel of the other party engaged directly in the Project. Further, should Client breach this term and employ a member of the 7YT Project Team, Client agrees to pay 7YT a sum equal to two months gross salary of individual(s) concerned.

(c) Client agrees that, having regard to 7YT's interest in limiting the personal liability and exposure to litigation of employees, Client will not bring any claim in respect of losses against any of 7YT's directors or employees personally.

### **Section 9. Termination**

(a) This Agreement may be terminated at any time (i) by the Client upon thirty (30) days' written notice to 7YT, or (ii) by 7YT in the event of a professional conflict upon ten (10) days' written notice to Client.

(b) This Agreement may be terminated by either party upon written notice in the event that the other party fails to comply with the terms of this Agreement, and the failure continues for a period of thirty (30) days following receipt by the party in default of written notice specifying the failure.

(c) 7YT shall be entitled to terminate this Agreement in the event that the Client has a receiver or administrative receiver appointed or passes a resolution for winding up or a court of competent jurisdiction makes an order to that effect or if the Client becomes subject to an administration order or enters into a voluntary arrangement with its creditors.

(d) Client shall pay 7YT for all Services rendered and expenses incurred as of the date of termination, and shall reimburse 7YT for all reasonable costs associated with any termination.

(e) Except for matters related to confidentiality or intellectual property rights the parties shall first attempt to resolve any dispute or alleged breach internally by escalating it through management and, prior to pursuing litigation, use a mutually acceptable alternative dispute resolution process.

### **Section 10. General**

(a) Neither party shall use the other party's name, trademarks, service marks, logos, trade names and/or branding without the other party's prior written consent. Notwithstanding anything herein to the contrary, 7YT may reference or list Client's name and/or a general description of the Services/Project in its sales literature. Client also agrees that upon reasonable prior notice from 7YT, Client will be willing to provide a reference for 7YT (e.g. in the form of analyst telephone calls, client telephone calls, presentations, and the like).

(b) Neither party shall be liable for any delays or failures by it in performance of its obligations due to circumstances beyond its reasonable control.

(c) This Agreement may not be assigned or otherwise transferred by either party without the prior express written consent of the other party (d) Any notices given pursuant to this Agreement shall be in writing, delivered to the address of the receiving party set forth in the Statement of Work, and shall be considered given when received.

(e) No term of this Agreement shall be deemed waived, and no breach of this Agreement excused, unless the waiver or consent is in writing signed by the party granting such waiver or consent.

(f) If any term or provision of this Agreement is determined to be illegal or unenforceable, such term or provision shall be deemed struck from the Agreement, and all other terms and provisions shall remain in full force and effect.

(g) This Agreement does not make either party an agent or legal representative of the other party, and does not create a partnership or joint venture. Both parties are independent contractors and principals for their own accounts.

(h) Any provisions of this Agreement which by their nature extend beyond the expiry or termination of this Agreement shall survive such expiration or termination.

(i) This Agreement constitutes the entire understanding and agreement between Client and 7YT with respect to the Services described in the Statement of Work, supersedes all prior oral and written communications, and may be amended, modified or changed (including changes in scope or nature of the Services or fees as described in the Statement of Work) only in writing when signed by or on behalf of both parties. No antecedent negotiations between 7YT and Client shall be construed as a representation inducing a person to enter into this or any other agreement and, in any event, both parties agree that they have not relied on any representations of the other save as set out in this Agreement and that liability for any representations not contained in this Agreement (if any are held to have been made) is hereby excluded. Notwithstanding the preceding sentence, nothing in this Agreement shall limit or exclude either party's liability to the other for any fraudulent misrepresentations.

(j) Client acknowledges that: (i) 7YT and Client may correspond or convey documentation via Internet e-mail unless Client expressly requests otherwise, (ii) neither party has control over the performance, reliability, availability, or security of Internet e-mail, and (iii) 7YT shall not be liable for any loss, damage, expense, harm or inconvenience resulting from the loss, delay, interception, corruption, or alteration of any Internet e-mail due to any reason beyond 7YT's reasonable control.

(k) Save in respect of any assignee of 7YT pursuant to the provisions of subsection (c) above, nothing in this Agreement shall confer any rights on any third party not being 7YT or the Client. For the avoidance of doubt, any rights conferred on third parties pursuant to the Contracts (Rights of Third Parties) Act 1999 shall be excluded.

(l) This Agreement shall be governed by and construed in accordance with the laws of England and Wales. Any dispute which may arise between the parties concerning this Agreement shall be determined by the English Courts and the parties hereby submit to the exclusive jurisdiction of the English Courts for such purpose.