

Agreement - SLA

CLAY SERVICES AGREEMENT

AGREEMENT ACCEPTANCE

These terms and conditions are accepted through acceptance of a proposal or quotation and/or, by ordering or using any CLAY services.

THE CLIENT acknowledges and agrees to these terms and conditions, and THE CLIENT represents and warrants that it has the authority to be legally bound by the agreement and to legally bind its authorized users and recipients of the services to the agreement. If THE CLIENT does not have such authority or does not agree with any of these terms of service, neither THE CLIENT or its authorized users or recipients may use the services.

CLAY SERVICES AGREEMENT

These terms and conditions constitute the foundation for recurring services between CLAY and THE CLIENT and governs the use and receipt of any of these services.

1. PARTIES

“CLAY” means CLAY LTD based at Ballafreer Beg, Union Mills, IM4 4AT, Isle of Man, with registration number 131431C and having email address of Hello@CLAY.co.im with telephone number of +44 (0)7624567890.

“THE CLIENT” means the entity as addressed within the referring proposal or quotation and authorised users and recipients of the Services.

“PARTIES” means CLAY and THE CLIENT.

“VAT” means Value-Added Tax in terms of the Value Added Tax Act 1996 (of Tynwald) with any applicable amendments as published.

“THE AGREEMENT” means any referring services agreements, annexure, email, approved quotations, and/or Invoices. All terms and conditions in the CLAY SERVICES are applicable to all forms of correspondence between THE CLIENT and CLAY.

“STATEMENT OF WORK” means the description and scope of CLAY’s obligations as defined in THE AGREEMENT.

“DELIVERABLES” means all works of service, licensing, authorship, products, and materials developed, written, prepared, assembled, integrated, modified, or otherwise provided by CLAY in relation to THE AGREEMENT. For the avoidance of doubt, the “DELIVERABLES” include the Documentation, and all intellectual property rights associated with all aspects of THE SERVICES and DELIVERABLES will remain the sole property of Clay without exception. Without limiting the generality of the foregoing, all DELIVERABLES are non-exclusive and may be provided by Clay to any or all Clay clients at the sole discretion of Clay.

"Third Party Materials" means software, tools, methodologies, ideas, methods, processes, concepts, and techniques owned by or licensed to a third party and used by CLAY.

"Default" means any breach of the obligations of either party (including but not limited to fundamental breach or breach of a fundamental term) or any default, act, omission, negligence, or statement of either party, its employees, agents, or sub-service providers in connection with or in relation to the subject of THE AGREEMENT and in respect of which such party may be liable to the other.

"Intellectual Property" includes any patents or patent applications, trade and services marks whether registered or unregistered, registered design, design rights, copyright, rights in databases, domain names, trade or business names and any other similar protected rights in any country (together with the right to apply for any of the above, if applicable).

"Personnel" means the employees, agents, contractors and approved sub-service providers

2. INTERPRETATION

In all correspondence, unless the context otherwise clearly indicates:

Reference to the singular includes the plural and vice versa, and reference to a single gender includes all genders, where applicable.

Persons will include juristic entities.



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A reference to any statutory enactment will be construed as a reference to that enactment as at the Effective Date or Commencement Date and as amended or substituted from time to time.

All headings are for ease of reference only and shall not have any bearing on interpretation.

"Days" will mean calendar days unless qualified by the word "business". A "business day" will be any day other than a Saturday, Sunday or official public holiday in the United Kingdom and the Crown dependencies.

"Business hours" will be the hours between 08H00 and 17H00 on any business day in the United Kingdom.

Unless specifically provided, any number of days prescribed will be determined by excluding the first and including the last day or, where the last day falls on a Saturday, Sunday or public holiday, the next business day.

Where figures are referred to in numerals and in words, and there is any conflict between the two, the words will prevail unless the context clearly indicates a contrary intention.

All amounts in THE AGREEMENT are exclusive of value-added tax ("VAT"), unless specifically otherwise recorded.

In the event of any conflict between these terms and conditions with any other CLAY Document, the provisions hereof shall prevail.

If any covenant, clause, obligation or provision of THE AGREEMENT, or the application thereof to any person or circumstance, shall, to any extent, be invalid or unenforceable, the remainder of THE AGREEMENT (other than such covenant, clause, obligation, or provision) and the application of such covenant, clause, obligation or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each remaining covenant, clause, obligation, and provision of THE AGREEMENT shall be fully separately valid and enforceable as permitted by law.

1. SERVICE PROVISION BASIS

All services to be provided by CLAY to THE CLIENT fall under this agreement and are detailed under one or more respective Annexures and/or duly accepted proposals or quotations. These along with their respective definitions and related terms and conditions form THE AGREEMENT.

Each Annexure and/or duly accepted quotation falling under this Agreement constitutes its own individual sub-agreement between CLAY and THE CLIENT and shall be in force per the period and terms indicated therein.

Any time-based services not covered by any Annexure will be treated as additional works and performed on a Time and Materials basis per CLAY's prevailing rates schedule.

2. SERVICE LEVELS

CLAY shall endeavour to provide services within specified time frames and in accordance with the Incident Priority/Problem Severity classifications defined in the table which follows.

PRIORITY	DESCRIPTION AND IMPACT	SLA
Priority 1 (Critical)	System, its files, and/or functions are breached, exfiltrated, changed, deleted, or otherwise compromised.	Response: 15 mins
Priority 2 (High)	System is under attack but no breach by malicious party was successful, and no system components were compromised.	Response: 24 hours
Priority 3 (Medium)	System is showing failed logon attempts or other events generated by THE CLIENT network systems or users and not part of a cybersecurity threat.	Response: 48 hours



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Note that response time does not imply resolution time as at times the required works to achieve resolution is unknown and would require a process of investigation as part of the resolution process.

3. AUTHORISED CONTACTS

THE CLIENT is required to keep CLAY updated as to who their contacts are which are permitted to request services, obtain information, and/or otherwise transact on behalf of THE CLIENT with CLAY under this agreement.

THE CLIENT is therefore required to regularly email through an Authorised Contacts list to Accounts@CLAY.co.im clearly indicating any changes which CLAY needs to be aware of.

Any user not on the Authorised Contacts list may be automatically denied service to protect THE CLIENT's interests.

4. CONSEQUENCES OF TERMINATION

In the event of service termination, following settlement of any outstanding amounts, CLAY will assist with transition of the respective terminated service to another provider for a period of up to 30 days after the date of termination should this be required.

During this transition, CLAY shall be entitled to remuneration for any assistance on a time and materials basis. On termination, any accumulated services will expire, and CLAY shall have no further liability in this regard.

5. THE CLIENT'S RESPONSIBILITIES

Provide access, services, equipment, information, and input as is required for CLAY to perform its obligations under this agreement.

Ensure they have appropriate and adequate IT related insurance as advised by their insurance brokers.

Ensure their account is settled promptly in line with their CLAY credit terms.

Advise CLAY immediately of any changes which may impact this Agreement.

6. CLIENT FAILURE

Should THE CLIENT fail to comply with any of their obligations in terms of this agreement for a period of more than five days after receiving a written request from CLAY to do so, the failure will constitute a material breach of this agreement.

Under no circumstances may THE CLIENT resign from this agreement, withhold, or defer payment, be entitled to a reduction in any charge or have any other right for remedy against CLAY if CLAY interrupts the Services to THE CLIENT as it would be entitled to do so if THE CLIENT is in breach.

7. INDEMNITY AND LIMITATION OF LIABILITY

Where handling THE CLIENT's data, systems, and property, CLAY will take all reasonable precautions to avoid accidental loss, unauthorized access, damage and/or destruction.

However, in the event of loss, unauthorized access, damage, or destruction CLAY cannot be held responsible and the client hereby indemnifies CLAY against any such losses unless caused by gross negligence on the part of CLAY. For this reason, CLAY highly recommends that THE CLIENT has their own appropriate Data Loss, Business Interruption, Cyber Risk, Equipment, and all other professionally recommended and applicable insurance policies in place through THE CLIENT's insurance brokers.



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8. FEE STRUCTURE, CHARGES AND PAYMENT TERMS

Charges are based on the items and services provided as specified under one or more respective Annexures and/or duly accepted quotations or proposals.

During the initial period of each annexure, quantities may increase without extending the initial period however they may not decrease until the initial period has lapsed.

THE CLIENT will pay CLAY the charges for THE SERVICES per their respective account credit terms as listed on each invoice/statement, failing which interest will be raised on the overdue payment.

CLAY reserves the right to suspend all services on unpaid accounts at its discretion.

Payment shall be made by means of Electronic Funds Transfer to CLAY's bank account.

All outstanding CLIENT invoices must be settled prior to the processing of any additional procurement orders.

Deliveries are subject to the availability and stock levels of the manufacturers and fluctuate significantly due to the global chip-set shortages and staff shortages throughout the supply chain.

Delivery dates are an indication and have been known to fluctuate significantly. Clay will do all we can to ensure a speedy delivery of your purchases but under the current climate, delays are expected.

Payment must be settled within 2 weeks of the invoice date and is not subject to the delivery of the procured items.

Prices change daily and the prices quoted in the proposal will be finalised at the time of placing the order.

9. SEVERABILITY

If any covenant, clause, obligation or provision of this Agreement, or the application thereof to any person or circumstance, shall, to any extent, be invalid or unenforceable, the remainder of this Agreement (other than such covenant, clause, obligation or provision) and the application of such covenant, clause, obligation or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each remaining covenant, clause, obligation and provision of this agreement shall be separately valid and enforceable to the fullest extent as permitted by law.

10. ASSIGNMENT

Neither party may assign the benefit of THE AGREEMENT or any interest thereunder except with the prior written consent of the other party.

Further, if CLAY wishes to assign or novate THE AGREEMENT to another third party, THE CLIENT agrees that it shall not unreasonably withhold or delay its consent to such assignment or notation.

11. INTELLECTUAL PROPERTY

All intellectual property originally owned by the parties, their clients, vendors and/or suppliers shall always remain the sole property of such parties, their client's vendors and/or suppliers.

12. VARIATION AND AMENDMENT

Any requirement for an amendment or change to THE AGREEMENT shall only be valid if it is reduced to writing and signed by both parties.



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In the event the parties cannot agree upon changes, the parties shall in good faith seek to agree any proposed changes using the dispute resolution procedures provided for herein.

No indulgence on the part of any party in exercising any right conferred upon such party shall constitute a waiver or novation of any such right, nor shall any single or partial exercise of any right preclude any other or future exercise thereof nor preclude the exercise of any other right.

Except to the extent of any misrepresentation or breach of warranty which constitutes fraud, THE AGREEMENT along with these terms and conditions, constitutes the entire agreement between the parties relating to the deliverables.

13. CLAY PERSONNEL

The Personnel shall be always regarded as employees, agents or sub-service Providers of CLAY and no relationship of employer and employee shall arise between THE CLIENT and any Personnel under any circumstances regardless of the degree of supervision that may be exercised over the Personnel by THE CLIENT.

CLAY warrants that its Personnel will be entitled to work in the United Kingdom and the Crown dependencies or any other country in which services are performed by CLAY and will, to the extent applicable, arrange for suitable permits for its Personnel with the assistance of THE CLIENT where necessary.

CLAY will ensure that its Personnel comply with all reasonable requirements made known by THE CLIENT concerning conduct at any THE CLIENT's premises, remotely or any other premises upon which services are to be performed. CLAY will always ensure that such Personnel act in a lawful and proper manner in accordance with these requirements.

THE CLIENT may not refuse to admit, or order the removal from any premises occupied by or on behalf of it, any Personnel whose admission or presence would be required by CLAY for the performance of its obligations under THE AGREEMENT unless THE CLIENT has notified CLAY in advance of its intention to do so together with the reason/s justifying such a decision, which reason/s must be lawful.

14. NON-SOLICITATION

During THE AGREEMENT and for a period of 12 (twelve) months thereafter for whatsoever reason, both CLAY and THE CLIENT shall not employ, offer employment to or solicit, in any manner whatsoever, any employees of the other Party without the prior written consent of the other Party.

The Parties' obligations in respect of this clause will survive the termination of THE AGREEMENT.

15. INDEMNITY AND LIABILITY

THE CLIENT agrees to indemnify and hold CLAY free from liability in respect of all claims, made by THE CLIENT and/or Third Parties, in respect of, *inter alia*,

- a. Data leak and/or loss of whatsoever nature;
- b. Delays leading to loss, whether direct or consequential;
- c. Loss of profits and funds of whatsoever cause;
- d. Infiltration of and/or access to software systems by unauthorized Third Parties;
- e. Loss of whatsoever nature caused by Third Party software, whether installed and/or used by CLAY or not; and
- f. Loss of whatsoever nature caused by THE CLIENT and/or THIRD PARTIES adding to, deleting from, modifying or otherwise interfering with the software and/or systems installed, provided and/or used by CLAY;

unless such loss or damage is caused by any wilful misconduct or gross negligence on the part of CLAY.



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THE CLIENT shall therefore, at its own cost, be obliged to insure against Data Loss, Business Interruption, Cyber Risk, IT Equipment loss and any other applicable insurances as recommended by its Insurance Broker and maintain those policies for the duration of THE AGREEMENT and thereafter as applicable.

16. CONFIDENTIALITY

1. Each Party undertakes to, during the operation and after termination of THE AGREEMENT, keep confidential all Confidential Information. The Receiving Party agrees to only use the Confidential Information to provide the DELIVERABLES and not to disclose or use any Confidential Information for its own or anyone else's benefit. The Receiving Party may only release Confidential Information to employees and or sub-contractors reasonably requiring such information in order to provide the DELIVERABLES (in respect of THE AGREEMENT) and who are bound by written confidentiality obligations no less stringent than those contained in THE AGREEMENT, prior to such release. The Receiving Party will not release or disclose Confidential Information to any other party unless so required by Law.
2. If either of the Parties is uncertain about whether any information is to be treated as Confidential Information, it will be obliged to treat such information as Confidential.
3. Neither Party will use the Confidential Information of the other Party, without having secured the prior written approval of the other Party.
4. The obligations of confidentiality placed on the Receiving Party in terms of this clause will cease to apply in respect of any information or data which the Receiving Party can show:
 - a. at the time of disclosure, is or has become generally lawfully available and lawfully known by the public and or any competitors of the Disclosing Party in a manner other than by the negligence or default of the Receiving Party or by breach of this Agreement by the Receiving Party; or
 - b. has lawfully become known by or come into the lawful possession of the Receiving Party, on a non-confidential basis from a source other than the Disclosing Party having the legal right to disclose same, provided that such knowledge or possession is evidenced by the written records of the Receiving Party; or
 - c. is disclosed pursuant to a requirement or request by operation of Law, regulation, or court order, to the extent of compliance with such requirement or request only; or
 - d. to have been developed for the Receiving Party at any time independently of any information disclosed by the Disclosing Party; or
 - e. is disclosed by the Receiving Party with the prior written approval of the authorised representative of the Disclosing Party, provided that:
 - i. the onus will always rest on the Receiving Party to establish that such information falls within the exclusions set out in clauses 7.4.a to 7.4.e and
 - ii. such information will not be deemed to be within the foregoing exclusions merely because the information is embraced by more general information in the public domain or in the Receiving Party's possession.
5. If the Receiving Party is required to disclose Confidential Information as contemplated in clause 7.4.c, the Receiving Party will:
 - a. as soon as possible advise the Disclosing Party thereof in writing prior to making any disclosure, if there is no restriction on the Receiving Party to inform the Disclosing Party; and



- b. take steps to limit any disclosure to the minimum extent required to satisfy such requirement to the extent that it lawfully and reasonably can; and
 - c. afford the Disclosing Party an opportunity to intervene in the proceeding, if possible; and
 - d. comply with the Disclosing Party's requests where possible as to the manner and extent of any such disclosure.
6. The Parties' obligations of confidentiality under THE AGREEMENT will survive beyond the termination of THE AGREEMENT.

17. PUBLICITY

Neither party will publish, use, or allow the publication or the use of such advertising, sales promotions, press releases or publicity material regarding the other party without securing the prior written approval of the other party.

18. CLAY'S RESPONSIBILITIES

CLAY will perform its obligations under THE AGREEMENT with the highest standards of professional competence and integrity.

CLAY will perform its duties in line with THE CLIENT's established policies, processes and procedures as specified and guided by THE CLIENT where applicable noting that it is THE CLIENT's responsibility to bring these established policies, processes, and procedures to CLAY's attention before entering into THE AGREEMENT.

19. THE CLIENT'S RESPONSIBILITIES

THE CLIENT warrants that it has full capacity and authority to enter into THE AGREEMENT with CLAY.

THE CLIENT warrants that it will pay its accounts with CLAY in accordance with its payment terms as stipulated by CLAY.

THE CLIENT undertakes to promptly comply with any reasonable request by CLAY for information, including information concerning

THE CLIENT's operations and activities that relates to THE AGREEMENT as may be necessary in order for CLAY to perform its obligations relating to THE AGREEMENT.

CLAY shall give THE CLIENT reasonable notice of any information it requires in accordance with the provisions relating to THE AGREEMENT.

THE CLIENT agrees to provide CLAY or its representatives such access to and use of its facilities as is necessary to allow CLAY to perform its obligations under THE AGREEMENT.

THE CLIENT warrants that any instruction or direction issued to CLAY in relation to the accessing of THE CLIENT's information, which may amount to a violation or a breach of privacy for one of THE CLIENT's employees or users, would be in accordance with its internal conditions of employment and policy of use and therefore permissible.

CLAY will in all instances in carrying out a request of this nature act as THE CLIENT's agent in reliance on the express warranty recorded herein and shall not be liable in any manner to any person for infringement of privacy.



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THE CLIENT will ensure that its facilities and equipment which CLAY requires in order to fulfil the duties of THE AGREEMENT are available and functional. Should this not be the case THE CLIENT will not hold CLAY responsible for degradation of services or a lack of service delivery.

THE CLIENT will ensure that its software and technology is legally obtained and correctly licensed.

THE CLIENT will provide CLAY with all relevant established policies, processes, and procedures where applicable which are relevant to the services CLAY will need to perform in terms of THE AGREEMENT.

THE CLIENT will ensure that their facilities, at which place CLAY would perform works relating to THE AGREEMENT, meet all legislative health and safety requirements.

20. CLIENT REPRESENTATION

For the purposes of THE AGREEMENT, THE CLIENT is required to appoint a representative to represent their interest.

Any change of THE CLIENT's representative is required to be communicated in writing to CLAY within 5 (five) working days of this change occurring.

21. OWNERSHIP, RESTRICTIONS AND RISK

Clay is not transferring to THE CLIENT, or any other party any intellectual property rights, title, discovery, improvement, or proprietary rights related to THE SERVICES, or the deliverables provided to THE CLIENT as part of the Services

All intellectual property rights, data, copyrights, registrations, reports, or any works of authorship developed in performance of THE SERVICES or any documentation relating to the operation and use of the Services made available by Clay during its provision of the Services (the "Documentation") will be the sole property of Clay or its licensors.

Any DELIVERABLES remain the property of CLAY until paid for in full.

Risk in any equipment, licenses, infrastructure or software supplied will transfer to THE CLIENT on delivery of the equipment, licenses, infrastructure or software to THE CLIENT's Premises. THE CLIENT is therefore obliged to have the appropriate measures in place to protect and insure the delivered items against loss and/or damage.

22. ENGAGEMENT

THE CLIENT agrees to engage CLAY and CLAY agrees to provide the DELIVERABLES detailed within THE AGREEMENT.

All DELIVERABLES to be provided by CLAY will be as defined in the THE AGREEMENT.

CLAY is not authorised to undertake any work for THE CLIENT, which is not the subject, or within contemplation, of THE AGREEMENT authorised and agreed upon by THE CLIENT.

CLAY will perform its obligations in accordance with the time schedule(s) as and where set out in THE AGREEMENT, save that CLAY will not be liable under this clause if it is unable to meet such obligation within the time required as a direct result of any act or omission by THE CLIENT and CLAY has used its best endeavors to advise THE CLIENT of such act or omission. In the event of such delay, any time deadlines detailed in the relevant AGREEMENT shall be extended by a period equal to the period of that delay or on such terms otherwise agreed upon.



The Parties acknowledge and agree that their engagement and THE AGREEMENT shall not constitute, create, or give effect to a joint venture, pooling arrangement, principal/agency relationship, partnership or formal business organization of any kind and neither CLAY nor THE CLIENT shall have the right to bind the other to any Third Party without the other's express prior written consent.

Any written consent required to be given by either party in terms of the provisions herein, must be given by a Director in the case of CLAY, or by a Manager, Partner, Member or Director, where applicable and duly authorised on the part of THE CLIENT.

23. UNFORSEEN COMPLICATIONS

Should CLAY encounter any unforeseen complications which are critical in nature and as such prevent the continuation of THE AGREEMENT, CLAY reserves the right to halt all works and reschedule for a future time once the unforeseen complication has been resolved to a satisfactory level where any risk is reasonably mitigated.

24. DELIVERY AND ACCEPTANCE

Acceptance of any of the DELIVERABLES will be regarded as complete, when such Deliverable or such part of the Deliverables would have successfully satisfied any relevant acceptance criteria as set out in THE AGREEMENT and in the absence of such acceptance criteria, on agreement between the parties.

Invoices or deliveries not objected to in writing by THE CLIENT within 10 Business Days of delivery shall be presumed to be correct. The said presumption shall shift the onus of demonstrating the way it is incorrect or defective to THE CLIENT.

25. CHARGES, RATES AND PAYMENT

CLAY shall invoice THE CLIENT and the invoice will be payable in accordance with THE CLIENT's payment terms as stipulated by CLAY.

THE CLIENT will pay to CLAY the charges at the rates as detailed within THE AGREEMENT.

Unless otherwise agreed in THE AGREEMENT, THE CLIENT will reimburse to CLAY all reasonable and proper expenses incurred directly and solely in connection with THE AGREEMENT, provided that all such expenses:

- a. are agreed by THE CLIENT in advance; and
- b. are supported by relevant receipts.

CLAY shall increase its rates and fees annually in line with the rate of inflation.

Where the payment of any invoice or part thereof is not made in accordance with the payment terms, CLAY shall be entitled to charge cumulative interest, calculated daily on the outstanding amount at the prevailing prime rate of its bankers from the date the amount has become due until the date it has been settled in full. CLAY reserves the right to suspend services and collect any equipment supplied the moment payment for any invoice in relation to THE AGREEMENT is in arrears.

Unless specified, all fees and other sums detailed within THE AGREEMENT and STATEMENT OF WORK are exclusive of VAT.

VAT will be payable at the applicable rate and will be shown separately on each invoice.

THE CLIENT will not be entitled to withhold payment of any amount payable to CLAY to satisfy any claim of THE CLIENT arising from this or any other agreement between THE CLIENT and CLAY, nor will THE CLIENT be entitled to set off such an amount against the amount payable to CLAY in terms of this or any other agreement.



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26. TERM AND TERMINATION

THE AGREEMENT shall commence on the date specified and shall remain in effect until termination or otherwise for as long as is needed to complete the STATEMENT OF WORK.

However, either party may terminate THE AGREEMENT forthwith by notice in writing to the other party when the other party is unable to pay its debts as they fall due or commits any act or omission which would be an act of insolvency in terms of the UK Insolvency Act, 1986 (as amended), or if any action, application, or proceeding is made with regard to it for:

- a. a voluntary arrangement or composition or reconstruction of its debts; or
- b. the presentation of an administrative petition; or
- c. its winding-up or dissolution; or
- d. the appointment of a liquidator, trustee, receiver, administrative receiver or similar officer; or
- e. any similar action, application or proceeding in any jurisdiction to which it is subject.

Termination in accordance with the provisions herein shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to either party and all provisions which are to survive THE AGREEMENT or impliedly do so shall remain in force and in effect.

On termination of THE AGREEMENT the ownership of all DELIVERABLES will vest in CLAY until fully paid for. To that extent CLAY shall be entitled to remove same from the possession, or from under the control, of THE CLIENT.

If any of the deliverables and property referred to above are in electronic form and contained on non-detachable storage devices, THE CLIENT, at their costs, will provide CLAY with unencrypted copies of same on appropriate media and will irretrievably destroy and delete the copies so held.

If THE AGREEMENT is terminated by THE CLIENT, THE CLIENT will pay to CLAY all outstanding fees (duly apportioned if applicable) relating to the work undertaken by CLAY up until the date of such termination.

THE CLIENT will also pay the costs of any goods and materials ordered by CLAY in relation to work for which CLAY has paid or is legally obliged to pay for on behalf of THE CLIENT. In this case, on receipt of such goods or materials, CLAY will promptly deliver such goods and materials to THE CLIENT or otherwise as THE CLIENT may direct.

27. FORCE MAJEURE

Neither party shall be liable to the other for any delay in performance or failure to perform its obligations in accordance with THE AGREEMENT where such delay or failure is due to circumstances beyond its reasonable control, such circumstances including but not restricted to fire, flood, government act, act of God and legislative constraints ("force majeure event").

Notwithstanding CLAY's obligations in terms of THE AGREEMENT, the death, disability, long term sickness and or resignation of a member of CLAY's personnel related to the provision of niche or exceptionally specialized services will be regarded as a force majeure event.

The affected party shall not be relieved of its obligations hereunder in accordance with clause 17.1 or 17.2 unless, as soon as reasonably possible after the start of the force majeure event, the affected party notifies the other party of the force majeure event, the date on which it started, its anticipated duration and the effect of the force majeure event on the affected party's ability to perform its obligations under THE AGREEMENT.

If a force majeure event continues for a period of more than sixty (60) days, either party may terminate THE AGREEMENT by giving not less than seven (7) days written notice to the other.



28. LAW, JURISDICTION AND COSTS

THE AGREEMENT shall be governed by and construed in accordance with the law of England and Wales and each party agrees to submit to the exclusive jurisdiction of the relevant Courts.

If CLAY institutes legal proceedings against THE CLIENT for the recovery of damages, the payment of any amounts outstanding or for any other reason associated with THE AGREEMENT, THE CLIENT agrees to pay CLAY's legal costs, to include all collection charges.

29. DISPUTE RESOLUTION

Should any dispute arise between the parties in connection with the interpretation or application of the provisions of THE AGREEMENT or its breach or termination or the validity of any documents furnished by the parties pursuant to the provisions of THE AGREEMENT, that dispute will, unless resolved amongst the parties, be referred to and be determined by arbitration in terms of this clause.

Any party to THE AGREEMENT may demand that a dispute be determined in terms of this clause by written notice given to the other party.

This clause will not preclude any party from obtaining interim relief on an urgent basis from a court of competent jurisdiction pending the decision of the arbitrator.

The arbitration will be held:

- a. In London, UK; and
- b. With only the legal and other representatives of the parties to the dispute present; and
- c. In accordance with the formalities and procedures set out by the arbitrator, it being the intention that the arbitration will be held and completed as soon as possible; and
- d. On the basis that the arbitrator will be entitled to decide the dispute in accordance with what he considers to be just and equitable in the circumstances.

The arbitrator will be acceptable to both parties and if the matter in dispute is principally:

- a. A legal matter, a practicing advocate of London of at least twenty (20) years standing; or
- b. An accounting matter, a practicing-chartered accountant of London of at least twenty (20) years standing; or
- c. Any other matter, an independent person.

Should the parties to the dispute fail to agree whether the dispute is principally a legal, accounting or other matter within seven (7) days after the arbitration was demanded, the matter will be deemed to be a legal matter.

The decision of the arbitrator will be final and binding on the parties to the dispute and may be made an order of any court to whose jurisdiction the parties are subject at the instance of any of the parties to the dispute.

The arbitrator will be entitled to make such award, including an award for specific performance, an interdict, damages, or a penalty or otherwise as he in his sole discretion may deem fit and appropriate and to deal as he deems fit with the question of costs, including if applicable, costs of the solicitor and THE CLIENT scale, and his own fees.



The provisions of this clause:

- a. Constitute an irrevocable consent by the parties to any proceedings in terms hereof and no party will be entitled to withdraw therefrom or claim at any such proceedings that such provisions do not bind it; and
- b. Are severable from the rest of THE AGREEMENT and will remain in effect despite the termination of or invalidity for any reason of THE AGREEMENT.

30. RESTRICTIONS ON USE OF THE SERVICES

THE CLIENT may not use or otherwise access the Services in a manner that exceeds its authorized use.

If THE CLIENT exceeds its authorized use of the Services, then, THE CLIENT will promptly notify Clay and immediately:

- a. disable or correct impermissible use; or
- b. purchase additional Services to correspond to actual use.

THE CLIENT agrees that it regularly review its use of the Services and will provide Clay with assistance sufficient to verify its compliance with these Terms of Service.

Clay may suspend or terminate THE CLIENT's access to the Services immediately upon non-compliance identified in such review, in addition to exercising any other rights or remedies Clay may have at law or in contract.

31. BREACH

In the event of any of the parties committing any breach of the terms and conditions of THE AGREEMENT, and failing to remedy such breach within fourteen (14) days of receiving notice to rectify the breach complained of from the other party, then the aggrieved party shall have the right, notwithstanding anything to the contrary contained hereinbefore and without prejudice to any other rights as to damages or otherwise which may pertain in law, either:

- a. to enforce performance of the defaulting party's obligations in full in terms of THE AGREEMENT; or
- b. to cancel THE AGREEMENT; and
- c. in either case, recover from the defaulting party any damages which the aggrieved party may have sustained by reason of the said breach.



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