

TESSELLA SERVICES AGREEMENT

DATED: 30-June-2015

TESSELLA PROJECT NO: P8879

- (1) Tessella Ltd, company registration number 1466429, whose registered office is 26 The Quadrant, Abingdon Science Park, Abingdon, Oxfordshire, OX14 3YS, UK ("Tessella"); and
- (2) United Kingdom Debt Management Office, whose office is Eastcheap Court, 11 Philpot Lane, London, EC3M 8UD ("Client").

DEFINITIONS AND SCOPE

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| <p>1 Definitions & Interpretation</p> <p>1.1 "Acceptance Date" shall be the date certified by the Superintending Officer as the date when the Tessella deliverables have been accepted.</p> <p>1.2 "Acceptance Tests" shall mean any tests specified in the Proposal and/or such other tests as may be agreed in writing between the Client and Tessella to be carried out in respect of the Tessella Services.</p> <p>1.3 "Agreement" shall mean these terms and conditions, together with the Proposal;</p> <p>1.4 "Background IP" shall mean any and all Intellectual Property Rights in any software, materials or know how used by Tessella or further developed by Tessella under this Agreement, including without limitation the Tessella Software (and customisations thereto), other than any Foreground IP.</p> <p>1.5 "Client Data" shall mean any and all data and information (in whatever form) provided by the Client or its agents and sub-contractors pursuant to this Agreement;</p> <p>1.6 "Client Hardware" shall mean any Client hardware on which the Custom Software or Tessella Software is to function as specified in the Proposal.</p> <p>1.7 "Client Premises" shall mean the place or places other than Tessella's premises to which the Custom Software or Tessella Software (as applicable) is to be delivered or where the Tessella Services are to be performed (in whole or in part), as the case may be.</p> <p>1.8 "Commencement Date" shall mean the date upon which the Services will begin to be performed by Tessella as specified in the Proposal.</p> <p>1.9 "Completion Date" shall mean the date the provision of the Services has been completed.</p> <p>1.10 "Confidential Information" shall mean all information designated as such by either party together with all other information which relates to the business, affairs, finances, trade secrets, know-how, developments, technology, computer systems, products, services, clients and potential clients and personnel of either party or information which may reasonably be regarded as the confidential information of the disclosing party.</p> <p>1.11 "Contract Price" shall mean that estimated sum so named in this Agreement or calculated in accordance with the Proposal and the Proposal, comprising of any Tessella Fee, together with any additions or deductions agreed in writing under this Agreement.</p> | <p>1.12 "Contract Price Limit" shall mean, in respect of any time and materials work to be performed by Tessella, the capped sum described in the Proposal.</p> <p>1.13 "Custom Software" shall mean any bespoke programs and associated documentation to be developed by Tessella for the Client as part of the Tessella Services (which shall not include the modification of existing Tessella Software).</p> <p>1.14 "Fees" all fees payable by the Client to Tessella as detailed in the Proposal.</p> <p>1.15 "Deliverables" shall mean those items produced for delivery to the Client as part of this Agreement as detailed in the Proposal.</p> <p>1.16 "Foreground IP" shall mean any and all Intellectual Property Rights in all works and materials developed, written or prepared by Tessella in connection with providing the Services including, without limitation, any and all reports, documentation, notes, data, diagrams, charts, designs, specifications, programs, algorithms and coding, and all work in progress relating to any of the above (but excluding any modification of the Tessella Software) and any other items specifically described as constituting "Foreground IP" in the Proposal.</p> <p>1.17 "Intellectual Property Rights" shall mean any patents, trade marks, service marks, registered designs, copyrights, design rights, database rights, rights protecting confidential information, any applications for or rights to apply for any of the above and any other intellectual property rights recognised in any part of the world, whether or not now existing or applied for, and all accrued rights of action in respect of any such rights.</p> <p>1.18 "Product Limits" shall mean the number of users, sites or other limits on Tessella Software and/or Custom Software usage specified in the Proposal or in this agreement.</p> <p>1.19 "Proposal" shall mean the document, or documents, referenced in the signatures section of this document, which includes the general requirements of the Client and Tessella's work plan to meet those requirements, as prepared for the Client by Tessella.</p> <p>1.20 "Services" shall mean any and all Tessella Professional Services (including Tessella Consultancy Services), Tessella Hosting Services, Tessella Support & Maintenance Services, the provision of Tessella Software and the provision of Tessella Hardware, as to be provided by Tessella to the Client under this Agreement and as identified in the Proposal.</p> <p>1.21 "Software Licence Terms" shall mean the software licence terms and conditions as set out in Appendix 1 to this agreement.</p> |
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and/or Custom Software will so be subject to the licensing arrangements set out in this Agreement.

10.6 The Client will be responsible for making any hardware upgrades or changes as reasonably determined by Tessella to support the new Updates.

11 Tessella Support and Maintenance Services - Exclusions

11.1 Tessella shall not be obliged to provide the Tessella Support & Maintenance Services where:

11.1.1 errors are due to:

- a) modifications to the Tessella Software and/or Custom Software made by any person other than Tessella (unless Tessella has approved such modifications in advance);
- b) the use of any Version of the Tessella Software and/or Custom Software other than either of the two (2) latest Versions or use of the Tessella Software and/or Custom Software which does not incorporate mandatory Updates;
- c) incorrect use of the Tessella Software and/or Custom Software or operator error;
- d) using the Tessella Software and/or Custom Software on or with equipment not supplied or approved by Tessella;
- e) any failure of the Tessella Hardware or Client Hardware, or its power supply, networks or environment;
- f) the use of any Third Party Software or third party hardware not supplied by Tessella; or
- g) any failure by the Client to update hardware on recommendation from Tessella or implement any of Tessella's recommendations from previous errors.
- h) the Client has attempted to correct an error without Tessella's knowledge or consent

11.1.2 the Client has failed:

- a) to notify Tessella within 7 days of the error being discovered; or
- b) has failed to provide first line support (where it is obliged to do so in accordance with the Proposal).

12 Tessella Support and Maintenance Services - Client's Obligations

12.1 The Client will:

- 12.1.1 ensure correct operation and use of the Tessella Software and/or Custom Software and of the equipment on which it is run;
- 12.1.2 keep and test full back-up copies of Client Data at a frequency appropriate to the data recovery requirements of the Client;
- 12.1.3 ensure that all users of the Tessella Software and/or Custom Software are using the latest mandatory Updates;
- 12.1.4 carry out regular processes or procedures which are part of the operating instructions of the Tessella Software and/or Custom Software;

Clauses 13 to 19 intentionally omitted.

GENERAL TERMS

20 Invoicing and Payment

20.1 The Client will pay Tessella any applicable Fees in accordance with the Proposal.

20.2 If at any time the Client wishes to increase the Product Limits, the Client will inform Tessella of details of the increase required. Subject to the Client paying to Tessella an additional payment (which Tessella will determine and notify to the Client) ("Upgrade Fee"), the licence terms in clause 5 (if included) will automatically be extended to cover such increased usage, or, if in Tessella's opinion a different product or module would be more suitable, then the licence terms referred to in clause 5 (if included) will cover such product or module, with effect from (and including) the date on which Tessella receives payment of the relevant Upgrade Fee. Any Upgrade Fees which become payable under these Licence Terms will be deemed to form part of the Tessella Software Fee.

20.3 All prices of Tessella Hardware are Ex Works and are exclusive of delivery, packaging, packing, shipping, carriage, insurance, VAT and other charges and duties.

20.4 The Client acknowledges that the Tessella Hardware Fee as set out in the Proposal is, save in respect of the initial purchase of Tessella Hardware under the Proposal, indicative only and Tessella reserves the right to increase the Tessella Hardware Fee to reflect any increase in cost to Tessella.

20.5 Where any of the Services are provided on a time and materials basis, Tessella will charge fees on an hourly basis unless agreed otherwise with the Client. Where it is agreed to charge daily rates these are calculated on the basis of an eight hour day worked between 9:00am and 6.00pm on weekdays, whether or not the full eight hours are actually worked.

20.6 Where applicable, Tessella will invoice the Client for the first Tessella Support & Maintenance Services Fee on the Commencement Date. Tessella will invoice the Client for any subsequent Tessella Support & Maintenance Services Fees annually in advance of each anniversary of the Commencement Date. Other charges relating to the Tessella Support & Maintenance Services which become payable by the Client under this Agreement will be invoiced by Tessella at the appropriate time.

20.7 The Client shall pay the Hosting Fee in respect of the Initial Period in accordance with the Proposal. In respect of any subsequent period, the Client shall pay the Hosting Fee at least [10] Working Days in advance of each anniversary of the Commencement Date.

20.8 All fees specified in this Agreement are exclusive of VAT and other sales taxes and duties which may be chargeable on any of the Services provided by Tessella to the Client pursuant to the terms and conditions of the Agreement. Such taxes and duties shall be paid by the Client at the rate and in the manner for the time being prescribed by law.

20.9 Unless otherwise stated in the proposal, Tessella reserves the right to charge (in addition to the Contract Price) its reasonable travel, subsistence and out-of-pocket expenses incurred in the course of providing the Services.

- subsequently implemented in accordance with the remaining provisions of this clause 24.
- 24.3 Following the investigation (if any) carried out pursuant to clause 24.2, Tessella will provide to the Client written details of the effect of the requested change. Tessella will use its reasonable endeavours to provide the Client with such details within ten (10) Working Days (or such longer period as may be agreed) after receipt of the Client's written instruction to proceed with the investigation.
- 24.4 All changes will be subject to the mutual agreement of Tessella and the Client. If the parties agree to implement a requested change, the details of the change (including the changes which are required to be made to the Services, Proposal, the Contract Price, the Contract Price Limit, and the consequential amendments (if any) to this Agreement) will be recorded in writing and signed by the parties, at which point this Agreement will be deemed to be modified accordingly.
- 24.5 Tessella will not be obliged to implement any requested change unless and until such time as it has been confirmed and agreed in writing by the parties.
- 24.6 Until such time as any change is agreed in writing, Tessella will, unless otherwise agreed, continue working on the Services as if such a change had not been requested.
- 25 Access to the Client Premises/Facilities**
- 25.1 The Superintending Officer shall afford to the authorised personnel of Tessella at all reasonable times and with prior agreement which shall not be unreasonably withheld such access to the Client Premises, IT systems and equipment, and will provide Tessella, free of charge, any and all information, assistance and facilities which Tessella reasonably requires in order to fulfil its obligations under this Agreement.
- 25.2 The Client will obtain all necessary licences, permissions and consents:
- 25.2.1 for the use by, or disclosure to, Tessella of any and all Third Party Software, communications infrastructure and Client Data which are provided by the Client in connection with the performance of the Agreement;
- 25.2.2 necessary to enable Tessella to perform the Services;
- and shall indemnify Tessella in respect of any losses, costs or damages incurred by Tessella as a result of a breach of this clause 25.2.
- 26 Proposal**
- 26.1 The Client will determine whether or not the Proposal will satisfy the Client's requirements (and the Client agrees that this is the responsibility of the Client and not of Tessella).
- 26.2 The parties acknowledge that the Proposal contains a complete and exhaustive description of the functionality required from the Tessella Software and/or Custom Software and/or the Services, and the parties shall not refer to any other document or communication in determining such functionality or requirements. Any changes to the Proposal must be agreed by the parties in accordance with clause 24 (Change Control).
- 27 Termination**
- 27.1 The Agreement may be terminated immediately by either party at any time by giving notice in writing to the other if:
- 27.1.1 the other party commits any material breach of the Agreement which is not capable of being remedied; or
- 27.1.2 the other party has committed a material breach of the Agreement or part of the Agreement (as appropriate) and where capable of remedy has failed to remedy it within twenty eight (28) days of having been given written notice to do so; or
- 27.1.3 the other party is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986, or if the other party has a receiver or administrative receiver appointed over it or over any part of its undertaking or assets, or it passes a resolution for winding-up (except for the purpose of a bona fide scheme of solvent amalgamation or reconstruction), or if a court of competent jurisdiction makes an order to that effect, or if it becomes subject to an administration order, or if it enters into any voluntary arrangement with its creditors, or if any similar process to any of the above is begun in any jurisdiction, or if it ceases or threatens to cease to carry on business.
- 27.2 Either party may terminate the Agreement at any time by giving at least ninety (90) days notice in writing to the other.
- 27.3 Without prejudice to its other rights under the Agreement, Tessella may at its sole discretion elect to suspend performance of the Services or part of the Services until further notice in the event that the Client is in breach of a material term of this Agreement.
- 27.4 Termination of the Agreement shall not prejudice any rights of either party that had arisen on or before the date of termination.
- 27.5 On termination or expiry of the Agreement, any indebtedness of the Client to Tessella will become immediately due and payable.
- 27.6 During the three (3) months immediately following termination or expiry of the Agreement, Tessella will provide to the Client such assistance as the Client may reasonably require in relation to the hand-over of the relevant Services to the Client or to such other provider as the Client may nominate. Tessella may invoice the Client for, and the Client will pay for, such assistance at Tessella's standard time and materials rates from time to time in force.
- 27.7 On termination of the Agreement by Tessella under clause 27.1, any licence the Client has to use the Tessella Software and/or Custom Software pursuant to this Agreement will cease immediately and within thirty (30) days of termination, the Client will certify to Tessella that all copies of the Tessella Software and/or Custom Software, in any form, have been destroyed or returned to Tessella.
- 27.8 Clauses 1, 5, 9, 19, 25, 27.4 - 27.8 and 29 - 43(inclusive) of this Agreement will survive termination or expiry of the Agreement (for whatever reason).
- 28 Free Issue Materials**
- 28.1 All material or equipment supplied by the Client for use in this Agreement shall be kept by Tessella strictly for use in this Agreement and shall not be re-allocated to any other work whatsoever without the prior written consent of the Client.

party's Confidential Information in its possession or under its control.

- 30.7 For the avoidance of doubt, nothing herein shall be construed as to prevent Tessella from using data processing techniques, ideas or know how gained during the performance of this Agreement in the pursuit of its normal business, to the extent that this does not result in the disclosure of Confidential Information or an infringement of any valid patents, copyrights or other intellectual property right of the Client.

31 Public Relations

- 31.1 No public announcement or other publicity relating to the Agreement will be made or issued at any time by either party without the prior written consent of the other (such consent not to be unreasonably withheld or delayed), provided that nothing will prevent either party from:
- 31.1.1 making a brief press announcement of the Agreement as part of their public relations strategy; and/or
 - 31.1.2 making reference to the fact that the Client is a client of Tessella to which Tessella provides the Services in marketing materials;
 - 31.1.3 using endorsements from the Client in testimonials;

32 Limitation of Liability

- 32.1 Neither party excludes or limits liability to the other party for death or personal injury caused by that party's negligence, or for fraud.
- 32.2 Subject to clauses 32.1, 16.2 and 25.2, in no circumstances will either party (or, in the case of Tessella, its licensor) be liable to the other for any loss of profits, loss of savings, loss of use, loss of business, loss of opportunity, loss or spoiling of data, lost or wasted management time or time of other employees, or for any indirect, special or consequential loss, whether arising from negligence, or breach of contract, or in any other way, even if the other party was advised of or knew of the likelihood of that loss or type of loss arising.
- 32.3 Subject to clauses 32.1 and 32.2, Tessella's aggregate liability in a calendar year under or in connection with the Agreement in respect of a claim or a series of claims arising from the same or related event(s) will be limited to the fees paid by the Client to Tessella in that calendar year.
- 32.4 Except as expressly provided in the Agreement, all other representations, warranties, terms, conditions, undertakings and obligations whether express or implied by statute, common law, custom, trade usage, course of dealing or otherwise, are excluded to the fullest extent permitted by law.
- 32.5 Tessella will not be liable to the Client under this Agreement for loss or damage suffered by the Client which arises from:
- 32.5.1 modifications to the Tessella Software made by any person other than Tessella;
 - 32.5.2 using the Tessella Software or the Custom Software on or with equipment not supplied or approved by Tessella; or
 - 32.5.3 failure on the part of the Client to comply with its obligations under the Agreement.

33 Offers of Employment

- 33.1 Each of Tessella and the Client hereby undertakes to the other that during the currency of this Agreement and for the period of twelve (12) months following upon its termination or expiry it will not directly or by its agent or otherwise induce or endeavour to induce any employee of the other to leave his/her employment.
- 33.2 In the event of the Client soliciting, enticing away, engaging or hiring an employee of Tessella who has worked on a project for the Client within twelve months of the termination or completion of the Services without obtaining the prior written agreement of Tessella, the Client shall:
- 33.2.1 inform Tessella without delay;
 - 33.2.2 pay Tessella a fee of either:
 - a) 40% of the initial annual salary; or
 - b) 160% of the employee's income from Tessella over the previous three months;
 whichever is the higher.
- 33.3 In the event of the Tessella soliciting, enticing away, engaging or hiring an employee of Client who has worked with Tessella in relation to the Services within twelve months of the termination or completion of the Services without obtaining the prior written agreement of Client, Tessella shall:
- 33.3.1 inform Client without delay;
 - 33.3.2 pay Client a fee of either:
 - a) 40% of the initial annual salary; or
 - b) 160% of the employee's income from Client over the previous three months;
 whichever is the higher.

34 Force Majeure

Neither party shall have any liability under or be deemed in breach of the Agreement for any delays or failures in performance of the Agreement which result from circumstances beyond the reasonable control of that party including, without limitation, fire, explosion, flood, tempest, unusually adverse weather conditions, failure or shortage of power supplies, war, hostilities, riot or acts of terrorism ("Force Majeure"). The party affected by such circumstances shall promptly notify the other party in writing when such circumstances cause a delay or failure in performance and when they cease to do so. If circumstances continue for a continuous period of one (1) month, either party may terminate the Agreement by written notice to the other party. For the avoidance of doubt, nothing in this clause 34 will excuse the Client from any payment obligations under this Agreement.

35 Notices

All notices to be given under the Agreement must be in writing and must be sent to the address of the intended recipient given at the beginning of the Agreement, or any other address or any fax number or any email address which the intended recipient may from time to time designate by notice given in accordance with the provisions of this clause 35. Any such notice must be delivered by hand, or sent by courier, or sent by first class prepaid letter (if Client is in the United Kingdom only) or by fax or by email and will be deemed to have been served:

- 35.1 if by hand, when left at the address for service;

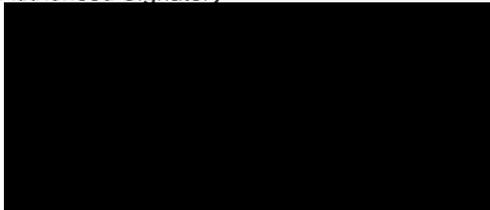
SIGNATURES

Project title: Matlab Support
Proposal letter:
Project description: NPD/P8879/CD/PD/ dated 30 June-2015
Service agreement: NPD/P8879/CD/CI/ dated 30-June-2015

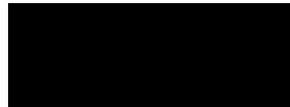
Signed for and on behalf of
Tessella Ltd

Signed for and on behalf of
United Kingdom Debt
Management Office

Authorised Signatory



Authorised Signatory



Name: [Redacted]

Name: [Redacted]

Title: [Redacted]

Title: [Redacted]

Date:

Date: 21-Jul-15