Appendix 2

Terms and Conditions of Contract

Cloud Computing Services

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**THIS AGREEMENT** is made on [Date]

**BETWEEN:**

1. Moixa Technology Ltd, a company registered in England and Wales and having its registered office at 150 Aldersgate Street, London, EC1A 4AB, with registered company number 05631091 (“**MTL**”);
2. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ a company registered in \_\_\_\_\_\_\_\_\_\_ and having its registered office at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ with registered company number \_\_\_\_\_\_\_\_ (the “**Service Provider**”).

**WHEREAS:**

MTL has requested and the Service Provider has agreed to provide Cloud Computing Services to MTL subject to the terms and conditions of this agreement.

# APPOINTMENT

## MTL appoints the Service Provider, and the Service Provider accepts such appointment, to provide Cloud Computing Services as described in Annex A – Service Requirements (the “Services”).

## The Service Provider will perform its obligations hereunder to the best of its ability as evidenced in Annex B – Service Delivery Evidence.

# DURATION

## The Services will be provided for 2 years from [start date] (the “Delivery Period”). The Delivery Period may be terminated at any time by either party giving 1 months’ notice, or pursuant to clause 13. The Delivery Period may be extended for two 6 month periods by written agreement between the parties.

#  CHARGES AND PAYMENT

## In consideration of the provision of the Services, MTL shall pay the monthly price throughout the Delivery Period.

## Invoices will be rendered by the Service Provider to MTL at the end of each month and will be payable within 14 days of receipt by MTL.

# SERVICE PROVIDER’S STAFF

##  The Service Provider’s staff must:

## be appropriately experienced, qualified and trained to supply the Services;

## apply all due skill, care and diligence in faithfully performing those duties;

## obey all lawful instructions and reasonable directions of MTL and provide the Services to the reasonable satisfaction of MTL; and

## respond to any enquiries about the Services as soon as reasonably possible.

# BUSINESS CONTINUITY AND DISASTER RECOVERY

## The Service Provider will have a clear business continuity and disaster recovery plan when delivering the Services.

# CONFIDENTIALITY

## During and after the Delivery Period the Service Provider must keep MTL fully indemnified against all losses, damages, costs or expenses and other liabilities (including legal fees) arising from any breach of the Service Provider's obligations under the Data Protection Act (DPA).

# INTELLECTUAL PROPERTY RIGHTS

## Neither party to this agreement will acquire any right, title or interest in or to the Intellectual Property Rights (IPRs) of the other party or its licensors.

# PROTECTION OF INFORMATION

## The Service Provider must:

## only process MTL personal data as necessary for the provision of the Services or as required by law or any regulatory body; and

## take reasonable steps to ensure that any Service Provider’s Staff who have access to MTL’s personal data act in compliance with the Service Provider's security processes.

## The Service Provider must obtain prior written consent from MTL to transfer MTL’s personal data to any other person (including any subcontractors) for the provision of the Services.

# MTL DATA

The Service Provider must not remove any proprietary notices in MTL data.

## The Service Provider will not store or use MTL data except if necessary to fulfil its obligations.

## The Service Provider will preserve the integrity of MTL data processed by the Service Provider and prevent its corruption and loss.

## If the Service Provider suspects that MTL data has or may become corrupted, lost, breached or significantly degraded in any way for any reason, then the Service Provider will notify MTL immediately and will (at its own cost if corruption, loss, breach or degradation of MTL data was caused by the action or omission of the Service Provider) comply with any remedial action reasonably proposed by MTL.

## The Service Provider agrees to use the appropriate organisational, operational and technological processes to keep MTL data safe from unauthorised use or access, loss, destruction, theft or disclosure.

## The provisions of this clause will apply throughout the Delivery Period and for as long as the Service Provider holds MTL data.

# SECURITY

## The Service Provider will use software and the most up-to-date antivirus definitions available from an industry-accepted antivirus software seller to minimise the impact of malicious software.

## If malicious software causes loss of operational efficiency or loss or corruption of Service data, the Service Provider will help MTL to mitigate any losses and restore the Services to operating efficiency as soon as possible.

## Responsibility for costs will be at the:

## Service Provider’s expense if the malicious software originates from the Service Provider software or the Service data while the Service data was under the control of the Service Provider, unless the Service Provider can demonstrate that it was already present, not quarantined or identified by MTL when provided; or

## MTL’s expense if the malicious software originates from MTL software or the Service data, while the Service data was under MTL’s control.

## The Service Provider will immediately notify MTL of any breach of security.

# HANDOVER TO REPLACEMENT SERVICE PROVIDER

## At least 10 working days before the end of the Delivery Period, the Service Provider must provide any:

## data (including MTL data), personal data and confidential information in the Service Provider’s possession, power or control; and

## other information reasonably requested by MTL.

## On reasonable notice at any point during the Delivery Period, the Service Provider will provide any information and data about the Services reasonably requested by MTL (including information on volumes, usage, technical aspects, service performance and staffing). This will help MTL understand how the Services have been provided and to run a fair competition for a new Service Provider.

## This information must be accurate and complete in all material respects and the level of detail must be sufficient to reasonably enable a third party to prepare an informed offer for replacement services and not be unfairly disadvantaged compared to the Service Provider in the buying process.

# LIMITATION OF LIABILITY

## Notwithstanding anything else contained in this agreement neither party shall be liable to the other for any indirect or consequential loss (including, without limitation, loss of profits, loss of revenue, failure to realise expected savings and/or loss of goodwill), or for any special, indirect, exemplary, incidental, consequential or punitive damages howsoever arising.

#  TERMINATION

## Either party may terminate this agreement immediately upon written notice to the other if the other:

## commits any material breach of any term of this agreement and which (in the case of a breach capable of being remedied) shall not have been remedied within 30 days of a written request to remedy the same;

## convenes a meeting with its creditors or if a proposal is made for a voluntary arrangement within Part 1 of the Insolvency Act 1986 or a proposal is made for any other composition scheme or arrangement with (or assignment for the benefit of) its creditors or if the other is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or if a Trustee, Receiver or Administrator or similar officer is appointed in respect of all or any part of the business or assets of the other or if a petition is presented (and such petition results in a winding up order or is not restrained, withdrawn or discharged within 30 days of presentation) or a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding up of the other or for the making of an administration order (otherwise than for the purpose of a solvent amalgamation or reconstruction) or any analogous action is taken; or

## ceases to carry on business.

## Any termination of this agreement shall be without prejudice to any other rights or remedies a party might be entitled to under the agreement or at law and shall not affect any accrued rights or liabilities of either party, nor shall it affect the rights or obligations of either party which are intended to survive termination.

# NOTICES

## Any notices to be served on either of the parties by the other shall be sent by prepaid recorded delivery, registered post, or by electronic mail, and shall be deemed to have been received by the addressee within 48 hours of posting or 24 hours if sent by electronic mail to the correct electronic mail address.

# ENTIRE AGREEMENT

## This agreement constitutes the entire understanding and agreement between the parties in relation to its subject matter and no representations, warranties or undertakings, express or implied, statutory or otherwise, made by or on behalf of either of the parties hereto and which are not contained in this agreement shall give rise to any liability on the part of the maker thereof.

## No amendment, waiver or variation of this agreement shall be binding on the parties unless set out in writing, expressed to amend this agreement and signed by or behalf of each party.

# ASSIGNMENT

## The Service Provider may not assign this agreement without MTL’s prior written consent.

# WAIVER

## No delay by either party in enforcing the provisions of this agreement shall prejudice or restrict the rights of that party, nor shall any waiver of its rights prevent the subsequent enforcement of that term and shall not operate as a waiver of any subsequent breach.

# THIRD PARTIES

## Nothing in this agreement is intended to confer any benefit on any third party (whether referred to herein by name, class, description or otherwise) or any right to enforce any term contained in this agreement.

#  SEVERABILITY

## In the event that any or part of any term, condition or provision contained in this agreement shall be determined by any competent authority to be invalid, unlawful or unenforceable to any extent such term, condition or provision shall to that extent be severed from the remaining terms, conditions and provisions which shall continue to be valid and enforceable to the fullest extent permitted by law.

# LAW AND JURISDICTION

## This agreement shall be construed and governed in accordance with English law and the parties hereby agree to submit to the non-exclusive jurisdiction of the English courts.

**IN WITNESS WHEREOF**, the parties have caused this agreement to be executed by their authorised representatives on the date set out above.

|  |  |  |
| --- | --- | --- |
| For and on behalf of  |  | For and on behalf of  |
| **Moixa Technology Ltd** |  | **[Service Provider Company Name]**  |
| By: | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  | By: | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Name: | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  | Name:  | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Title:  | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  | Title:  | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

# ANNEX A

# SERVICE REQUIREMENTS

# CORE SERVICES

## MTL require the following core services:

### Cloud Based Computer Processing - to provide scalable compute capacity in the cloud in order to run servers for MTL’s ‘GridShare’ product;

### Hosted Search and Analytic Tools - to enable the interrogation of MTL’s datasets; and

### Streaming Data Buffer and Processor - to transfer data from MTL’s devices.

# TECHNICAL SUPPORT

## MTL require the following technical support:

### Access to dedicated technical support 24 hours a day 7 days a week via email, chat, or telephone;

### Support service levels agreements suitable for running production systems;

### 24 hour response time for general queries or information requests;

### 12 hour response time for problems with a system;

### 4 hour response time for problems with a production system; and

### 1 hour response time for a production system being down.

# ADDITIONAL SERVICES

## MTL require the following additional services:

### Visualisation Tool - to enable MTL to quality assure and test on an ongoing basis;

### IoT Device Management - to facilitate the connection of MTL’s IoT devices including security, onboarding, monitoring and remote management;

### Data Monitoring Service - to track and log data flows and issue alarms when required as well as updating the services automatically;

### API Gateway - to facilitate the publishing and maintenance of published APIs;

### Serverless Computing - to allow MTL to deploy code;

### Non-Relational Database Service - to store MTL data;

### Cloud Storage Platform - to save MTL data;

### Storage Distribution Service - to increase performance on static and dynamic web content;

### Auto Deployment Tool - to enable the automatic deployment of tools across MTL’s entire cloud system;

### DNS Management - to enable the setting up and management of the domain name system connected with MTL’s website;

### Container Deployment - to enable the deployment of containers (for libraries, tools, code and runtime environments) to avoid MTL needing to build the environment; and

### Container Image Management Tool - to enable the storing, management and deployment of container images, including rolling back versions.

# ANNEX B

# SERVICE DELIVERY EVIDENCE

# EVIDENCE OF ABILITY TO PROVIDE CORE SERVICES

## [The Service Provider’s response to this Service Requirement as set out in their completed Bidder Response Form]

# EVIDENCE OF ABILITY TO PROVIDE TECHNICAL SUPPORT

## [The Service Provider’s response to this Service Requirement as set out in their completed Bidder Response Form]

# EVIDENCE OF ABILITY TO PROVIDE ADDITIONAL SERVICES

## [The Service Provider’s response to this Service Requirement as set out in their completed Bidder Response Form]