



TestWorks Group Limited  
trading as PTP (Product  
Technology Partners)

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## STANDARD TERMS AND CONDITIONS FOR SUPPLY OF GOODS AND SERVICES

OF

### TestWorks Group Limited, trading as PTP

#### 1 DEFINITIONS

In this document the following words shall have the following meanings:

- 1.1 "Supplier" means TestWorks Group Limited of The Mount, High Street, Toft, Cambridge CB23 2RL, United Kingdom and headquartered at Unit 2 Campus Five, Letchworth Garden City SG6 2JF.
- 1.2 "Customer" means the organisation or person who purchases Goods and Services from the Supplier;
- 1.3 "Proposal Document" means a statement of work, quotation or other similar document describing the Goods and Services to be provided by the Supplier;
- 1.4 "Agreement" means these Terms and Conditions together with the terms of any applicable Proposal Document;
- 1.5 "Time and Materials Contract" means a contract where the effort is paid for at an hourly rate and all expenses and materials are paid for at face value plus an administration charge
- 1.6 "Fixed Price Contract" means a contract where there is an agreed price for a fixed, pre-agreed deliverable or set of deliverables
- 1.7 "Intellectual Property Rights" means all patents, registered and unregistered designs, copyright, trade marks, know-how and all other forms of intellectual property wherever in the world enforceable;
- 1.8 "Goods" means any Goods to be provided by the Supplier to the Customer as set out in the Proposal Document;
- 1.9 "Arising Intellectual Property" means Intellectual Property Rights contained in the Goods that are created in the course of providing the Services to be provided under this Agreement, other than Intellectual Property Rights in generic software tools, routines, frameworks, and components; generic content, application building blocks; templates; analytical models; project tools; or development tools.
- 1.10 "Background Intellectual Property" means, in respect of a party, Intellectual Property Rights owned by that party as at the date of this agreement.
- 1.11 "Services" means the services to be provided under this Agreement, as set out in the Proposal Document.

#### 2 GENERAL

- 2.1 These Terms and Conditions shall apply to all contracts for the supply of Goods and Services by the Supplier to the Customer and shall apply to the exclusion of any other terms that the Customer seeks to impose or incorporate or which are implied by trade, custom, practice or course of dealing.

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2.2 Before the commencement of the Services the Supplier shall submit to the Customer a Proposal Document which shall specify the Goods and Services to be supplied and the price payable. The Customer shall notify the Supplier immediately if the Customer does not agree with the contents of the Proposal Document. Once the Customer and Supplier have agreed on the terms of the Proposal Document, the Supplier shall issue written acceptance of the Proposal Document at which point the Agreement shall come into existence. All Proposal Documents shall be subject to these Terms and Conditions.

2.3 The Supplier shall use all reasonable endeavours to complete the Services within estimated time frames set out in the Proposal Document but time shall not be of the essence in the performance of any Services.

### 3 PRICE AND PAYMENT

3.1 The price for the supply of Goods and Services are as set out in the Proposal Document. The Supplier shall invoice the Customer according to the schedule set out in the Proposal Document.

3.2 Invoiced amounts shall be due and payable according to the terms set out in the Proposal Document and time for payment shall be of the essence of the Agreement. The Supplier shall be entitled to charge interest on overdue invoices from the date when payment becomes due from day to day until the date of payment at a rate of 8.00% per annum above the base rate of the Bank of England. The Customer shall be responsible for issuing a purchase order before work can commence on the Goods and Services to be supplied.

3.3 All amounts payable by the Customer under the Agreement are exclusive of amounts in respect of value added tax chargeable from time to time ("VAT"). Where any taxable supply for VAT purposes is made under the Agreement by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.

3.4 The Customer shall pay all amounts due under the Agreement in full without any set-off, counterclaim, deduction or withholding except as required by law. The Supplier may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

3.5 The Supplier reserves the right to increase its standard daily fee rates for the charges for Time and Materials Contracts from time to time and will give the Customer prior written notice of any such increase. If such increase is not acceptable to the Customer, it shall notify the Supplier in writing within four (4) weeks of the date of the Supplier's notice and the Supplier shall have the right without limiting its other rights or remedies to terminate the Agreement by giving four (4) weeks' written notice to the Customer.

### 4 SPECIFICATION OF THE GOODS

4.1 All Goods shall be required only to materially conform to the specification defined in the Proposal Document or in existing documents defined in the Proposal Document or in documents generated by the Supplier as part of the Agreement. For the avoidance of doubt no description, specification or illustration contained in any product pamphlet or other sales or marketing literature of the Supplier and no representation written or oral, correspondence or statement shall form part of the contract unless explicitly and unambiguously referenced in the Proposal Document.

4.2 To the extent that the Goods are to be manufactured in accordance with a specification supplied by the Customer, the Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with the Supplier's use of the specification. This clause 4.2 shall survive termination of the Agreement.

### 5 DELIVERY

5.1. The date of delivery specified by the Supplier is an estimate only. Time for delivery shall not be of the essence of the Agreement and the Supplier shall not be liable for any loss, costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods.

5.2 All risk in the Goods shall pass to the Customer upon delivery. Delivery shall be completed on the Goods' arrival at the delivery location as specified in the Proposal Document.

## 6 TITLE

Title in the Goods shall not pass to the Customer until the Supplier has been paid in full for the Goods.

## 7 CUSTOMER'S OBLIGATIONS

7.1 To enable the Supplier to perform its obligations under this Agreement the Customer shall:

7.1.1 co-operate with the Supplier;

7.1.2 provide the Supplier with any information reasonably required by the Supplier;

7.1.3 obtain all necessary permissions and consents which may be required before the commencement of the Services; and

7.1.4 comply with such other requirements as may be set out in the Proposal Document or otherwise agreed between the parties.

7.2 The Customer shall be liable to compensate the Supplier for any expenses incurred by the Supplier as a result of the Customer's failure to comply with Clause 7.1.

7.3 Without prejudice to any other rights to which the Supplier may be entitled, in the event that the Customer unlawfully terminates or cancels the Goods and Services agreed to in the Proposal Document, the Customer shall be required to pay to the Supplier as agreed damages and not as a penalty the full amount of any third party costs to which the Supplier has committed and in respect of cancellations on less than five working days' written notice the full amount of the Goods and Services contracted for as set out in the Proposal Document, and the Customer agrees this is a genuine pre-estimate of the Supplier's losses in such a case. For the avoidance of doubt, the Customer's failure to comply with any obligations under Clause 7.1 shall be deemed to be a cancellation of the Goods and Services and subject to the payment of the damages set out in this Clause.

7.4 In the event that the Customer or any third party, not being a sub-contractor of the Supplier, shall omit or commit anything which prevents or delays the Supplier from undertaking or complying with any of its obligations under this Agreement, then the Supplier shall notify the Customer as soon as possible and:

7.4.1 the Supplier shall have no liability in respect of any delay to the completion of any project;

7.4.2 if applicable, the timetable for the project will be modified accordingly;

7.4.3 the Supplier shall notify the Customer at the same time if it intends to make any claim for additional costs.

## 8 ALTERATIONS TO THE PROPOSAL DOCUMENT

8.1 The parties may at any time mutually agree upon and execute new Proposal Documents. Any alterations in the scope of Goods and/or Services to be provided under this Agreement shall be set out in the Proposal Document, which shall reflect the changed Goods and/or Services and price and any other terms agreed between the parties.

8.2 The Supplier shall have the right to make any changes to the Proposal Document to reflect changes to the Goods or Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Goods or Services, and the Supplier shall notify the Customer in any such event.

8.3 The Customer may at any time request alterations to the Proposal Document by notice in writing to the Supplier. On receipt of the request for alterations the Supplier shall, as soon as reasonably possible, advise the Customer by notice in writing of the effect of such alterations, if any, on the price and any other terms already agreed between the parties.

8.4 Where the Supplier gives written notice to the Customer agreeing to perform any alterations on terms different to those already agreed between the parties, the Customer shall, within 5 working days of receipt of such notice or such other

period as may be agreed between the parties, advise the Supplier by notice in writing whether or not it wishes the alterations to proceed.

- 8.5 Where the Supplier gives written notice to the Customer agreeing to perform alterations on terms different to those already agreed between the parties, and the Customer confirms in writing that it wishes the alterations to proceed on those terms, the Proposal Document shall be amended to reflect such alterations and thereafter the Supplier shall perform this Agreement upon the basis of such amended terms.
- 8.6 For avoidance of doubt, where the Agreement forms a Time and Materials Contract, the Proposal Document will define the hourly rate of labour and the administration charge rate for materials and expenses and the Supplier will deliver Goods and Services as agreed between the Supplier and the Customer by verbal or written agreement during the course of providing said Goods and Services.

## 9 WARRANTY

- 9.1 For Fixed Price Contracts, the Supplier warrants that as from the date of delivery for a period of 12 months the Goods and all their component parts, where applicable, are free from any defects in design, workmanship, construction or materials. For the avoidance of doubt, no such warranty is provided for Goods and all their component parts supplied under a Time and Materials Contract.
- 9.2 The Supplier warrants that the Services performed under this Agreement, regardless of whether via a Fixed Price Contract or Time and Materials Contract, shall be performed using reasonable skill and care, and of a quality conforming to generally accepted industry standards and practices.
- 9.3 Except as expressly stated in this Agreement, all conditions and warranties whether express or implied, by operation of law or otherwise, are hereby excluded in relation to the Goods and Services to be provided by the Supplier.

## 10 INDEMNIFICATION

The Customer shall indemnify the Supplier against all claims, costs and expenses which the Supplier may incur and which arise, directly or indirectly, from the Customer's breach of any of its obligations under this Agreement, including any claims brought against the Supplier alleging that any Goods and/or Services provided by the Supplier in accordance with the Proposal Document infringes a patent, copyright or trade secret or other similar right of a third party.

## 11 LIMITATION OF LIABILITY

- 11.1 Except in respect of fraud, death or personal injury due to negligence for which no limit applies, the entire liability of the Supplier to the Customer whether in contract, tort (including negligence), breach of statutory duty or otherwise, in respect of any claim whatsoever or breach of this Agreement, whether or not arising out of negligence, shall be limited to the price paid by the Customer for the Goods or Services to which the claim relates.
- 11.2 In no event shall the Supplier be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty or otherwise, for any loss of business, loss of opportunity or loss of profits or for any other indirect or consequential loss or damage whatsoever arising under or in connection with this Agreement. This shall apply even where such a loss was reasonably foreseeable or the Supplier had been made aware of the possibility of the Customer incurring such a loss.
- 11.3 Nothing in these Terms and Conditions shall exclude or limit the Supplier's liability for death or personal injury resulting from the Supplier's negligence or that of its employees, agents or sub-contractors.

## 12 TERMINATION

- 12.1 Either party may terminate this Agreement immediately notice in writing to the other if:
- 12.1.1 the other party commits a material breach of this Agreement and, in the case of a breach capable of being remedied, fails to remedy it within 30 calendar days of being given written notice from the other party to do so;
- 12.1.2 the other party passes a resolution for winding up (other than for the purpose of solvent amalgamation or reconstruction), or a court of competent jurisdiction makes an order to that effect;

- 12.1.3 the other party ceases to carry on its business or substantially the whole of its business; or
  - 12.1.4 the other party is unable to pay its debts as they fall due, is declared insolvent, or convenes a meeting of or makes or proposes to make any arrangement or composition with its creditors; or a liquidator, receiver, administrative receiver, manager, trustee or similar officer is appointed over any of its assets; or
  - 12.1.5 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 12.1.2 to 12.1.4 (inclusive);
- 12.2 Termination of a Time and Materials Contract by the Customer for any reason other than those laid out in 12.1 must be made in writing and with one months' notice. During this notice period:
- 12.2.1 The Supplier must make all reasonable endeavours to redeploy staff; the Customer will remain liable for the labour charges at the agreed hourly rate for labour that cannot be utilised reasonably elsewhere by the Supplier
  - 12.2.2 The Customer shall not be liable for any labour charges after the notice period
  - 12.2.3 The Supplier shall make all reasonable endeavours to ensure no more material or expenses cost is incurred by the Customer, except with the express, written instruction of the Customer
- 12.3 Without limiting its other rights or remedies, the Supplier may:
- 12.3.1 terminate the Agreement with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Agreement on the due date for payment;
  - 12.3.2 suspend the supply of Services or all further deliveries of Goods under the Agreement if the Customer fails to pay any amount due under this Agreement on the due date for payment, the Customer becomes subject to any of the events listed in clause 12.1.2 to 12.1.5 or the Supplier reasonably believes that the Customer is about to become subject to any of them; or
  - 12.3.3 terminate the Agreement for any reason by giving the Customer at least one month's prior written notice and may refund the Customer a proportion of the fees paid in advance on the most recent invoicing milestone for a Fixed Price Contract where no costs have yet been committed by the Supplier in respect of the latest milestone.
- 12.4 On termination of the Agreement for any reason:
- 12.4.1 the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has yet been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
  - 12.4.2 the Customer shall return all of the Supplier's materials and confidential information that it may have supplied to Customer during the term of the Agreement and any Goods which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
  - 12.4.3 the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry; and
  - 12.4.4 clauses which expressly or by implication have effect after termination shall continue in full force and effect.

## 13 INTELLECTUAL PROPERTY RIGHTS

- 13.1 Nothing in this Agreement shall affect either party's ownership of its Background Intellectual Property and neither party grants any rights in respect of its Background Intellectual Property to the other except as expressly stated in this Agreement.
- 13.2 All Arising Intellectual Property produced from or arising as a result of the performance of this Agreement for the Customer shall, so far as not already vested, become the absolute property of the Customer upon payment in full for the Good to which it relates, and the Supplier shall do all that is reasonably necessary to ensure that such rights vest in

the Customer by the execution of appropriate instruments or the making of agreements with third parties, at the Customer's cost. Supplier shall retain ownership of all other Intellectual Property Rights in the Goods and hereby grants to the Customer a limited, non-exclusive right to use such Intellectual Property Rights to the extent necessary to make use of the Goods.

- 13.3 The Customer hereby grants to the Supplier a royalty-free, permanent, non-exclusive, worldwide, sub-licensable licence to use its Background Intellectual Property to the extent necessary to perform the Services and provide the Goods.
- 13.4 Nothing in this Agreement shall prevent the Supplier from re-using in the course of its business, any techniques, ideas and know-how or similar residual knowledge gained during the term of the Agreement in the furtherance of its normal business to the extent that this does not involve a disclosure of the Customer's confidential information or an infringement of Intellectual Property Rights owned by the Customer.

#### 14 CONFIDENTIALITY

A party (receiving party) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (disclosing party), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and Services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Agreement and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Agreement. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause 14 shall survive termination of the Agreement.

#### 15 FORCE MAJEURE

- 15.1 Neither party shall be liable for any delay or failure to perform any of its obligations if the delay or failure results from events or circumstances outside its reasonable control, including but not limited to acts of God, strikes, lock outs, accidents, war, fire, the act or omission of government, highway authorities or any telecommunications carrier, operator or administration or other competent authority, or the delay or failure in manufacture, production, or supply by third parties of equipment or Services ("**Force Majeure Event**"), and the party shall be entitled to a reasonable extension of its obligations after notifying the other party of the nature and extent of such events.
- 15.2 The Supplier shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Agreement as a result of a Force Majeure Event.
- 15.3 If the Force Majeure Event prevents the Supplier from providing any of the Services and/or Goods for more than 6 weeks, the Supplier shall, without limiting its other rights or remedies, have the right to terminate this Agreement immediately by giving written notice to the Customer.

#### 16 INDEPENDENT CONTRACTORS

The Supplier and the Customer are contractors independent of each other, and neither has the authority to bind the other to any third party or act in any way as the representative of the other, unless otherwise expressly agreed to in writing by both parties. Nothing in the Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, nor constitute either party the agent of another party for any purpose. The Supplier may, in addition to its own employees, engage sub-contractors to provide all or part of the Services being provided to the Customer and such engagement shall not relieve the Supplier of its obligations under this Agreement or any applicable Proposal Document.

#### 17 ASSIGNMENT

The Customer shall not be entitled to assign its rights or obligations or delegate its duties under this Agreement without the prior written consent of the Supplier. The Supplier may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Agreement and may subcontract or delegate in any manner any or all of its obligations under the Agreement to any third party.

18 ENTICEMENT OF STAFF

During the performance of the Agreement and for a period of 12 months after the Agreement has ended, the Customer will not offer employment or create or accept any other form of business association with the personnel of the Supplier.

19 SEVERABILITY

If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any Court of competent jurisdiction such provision shall be deemed modified to the minimum extent necessary to make it valid and enforceable, or deemed deleted if such modification is not possible, and the remainder of the provisions herein shall continue in full force and effect as if this Agreement had been agreed with the invalid illegal or unenforceable provision eliminated.

20 WAIVER

The failure by either party to enforce at any time or for any period any one or more of the Terms and Conditions herein shall not be a waiver of them or of the right at any time subsequently to enforce all Terms and Conditions of this Agreement.

21 NOTICES

Any notice to be given by either party to the other may be served by email, fax, personal service or by first class post to the address of the other party given in the Proposal Document or such other address as such party may from time to time have communicated to the other in writing, and if sent by email shall unless the contrary is proved be deemed to be received on the day it was sent, if sent by fax shall be deemed to be served on receipt of an error free transmission report, if given by letter shall be deemed to have been served at the time at which the letter was delivered personally or if sent by first class post shall be deemed to have been delivered at 9.00am two business days after posting.

22 ENTIRE AGREEMENT

This Agreement contains the entire agreement between the parties relating to the subject matter and supersedes any previous agreements, arrangements, undertakings or proposals, oral or written. Unless expressly provided elsewhere in this Agreement, this Agreement may be varied only by a document signed by both parties.

23 NO THIRD PARTIES

Nothing in this Agreement is intended to, nor shall it confer any rights on a third party.

24 VARIATION

Except as set out in this Agreement, no variation of the Agreement, including the introduction of any additional terms and conditions shall be effective unless it is agreed in writing and signed by the Supplier.

25 GOVERNING LAW AND JURISDICTION

This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and the parties hereby submit to the exclusive jurisdiction of the English courts to settle any such dispute or claim (including non-contractual disputes or claims)