

## Atamis Ltd STANDARD TERMS & CONDITIONS

(2012)

### 1. INTERPRETATION

1.1 The definitions and rules of interpretation in this condition apply in these terms and conditions (Conditions).

Classified Data: the enriched data that has been created from the Raw Data pursuant to the provision of the Services, and excludes the Deliverables.

Company: Atamis Ltd, at registered office address Saint Line House, Mount Stuart Square, Cardiff Bay, CF10 5LR.

Confidential Information: all confidential information (however recorded or preserved) which may come into the possession of a party as a result of or in connection with the Contract regarding a) the terms of the Contract; and/or b) any information that would be regarded as confidential by a reasonable business person relating to : i) the business, affairs, clients, suppliers and plans of the disclosing party; and/or ii) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party.

Contract: the Company's Proposal to deliver the Services and the Deliverables and the Customer's acceptance of it, or the Customer's acceptance of a quotation for Services by the Company under condition 2.2.

Contract Term: the duration of the Services as written in the Proposal.

Customer: the person, firm or company who purchases Services from the Company.

Customer's Equipment: any equipment, systems, cabling or facilities provided by the Customer and used directly or indirectly in the supply of the Services.

Deliverables: all Documents, products and materials developed by the Company or its agents, subcontractors, consultants and employee in relation to the Services in any form, including computer programs, data, reports and specifications (including drafts).

Document: includes, without limitation, in addition to any document in writing, any drawing, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form.

Fees: the fees payable by the Customer to the Company in consideration of the provision of the Services and the grant of the licence to use the Deliverables and the Products, and as specified in the Proposal.

Intellectual Property Rights: all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

Losses: any and all losses, costs, damages, fines, penalties, settlement payments, awards, expenses and other charges incurred by a party.

Order: the written order provided by the Customer to the Company to procure the Deliverables and the Services in accordance with these Conditions, and may take the form of a) a purchase order from the Customer that references the Proposal, or b) acceptance of the Proposal.

Pre-existing Materials: all Documents, information and materials provided by the Company relating to the Services which existed prior to the commencement of the Contract.

Services: the services to be provided by the Company under the Contract as set out in the Proposal, together with any other services which the Company provides, or agrees to provide, to the Customer.

Products: the software application and other software tools provided by the Company or its subcontractors that facilitate access to and analysis of the Deliverables;

Raw Data: all data provided by the Customer to the Company in connection with the Contract and any derivatives thereof, including the Classified Data.

VAT: value added tax chargeable under English law for the time being and any similar additional tax.

1.2 Headings in these Conditions shall not affect their interpretation.

1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.4 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.5 A reference to writing or written includes e-mail.

1.6 Any obligation in the Contract on a person not to do something includes, without limitation, an obligation not to agree, allow, permit or acquiesce in that thing being done.

### 2. APPLICATION OF CONDITIONS

2.1 These Conditions shall: (a) apply to and be incorporated into the Contract; and (b) prevail over any inconsistent terms or conditions contained, or referred to, confirmation of order, acceptance of a quotation, or specification or other Document supplied by the Customer, or implied by law, trade custom, practice or course of dealing.

2.2 The Customer's written acceptance of a Proposal for Services by the Company, constitutes an offer by the Customer to purchase the Services on these Conditions. No offer placed by the Customer shall be accepted by the Company other than: (a) by a written acknowledgement issued and executed by the Company; or (b) (if earlier) by the Company starting to provide the Services, when a contract for the supply and purchase of the Services on these Conditions will be established. The Customer's standard terms and conditions (if any) attached to, enclosed with or referred to in any purchase order or other Document shall not govern the Contract.

2.3 Quotations are given by the Company on the basis that no Contract shall come into existence except in accordance with condition 2.2. Any quotation is valid for a period of 7 days from its date, provided that the Company has not previously withdrawn it.

### 3. INTELLECTUAL PROPERTY RIGHTS

3.1 The Customer warrants and represents to the Company that: 3.1.1 it has the authority to provide the Raw Data and to grant the licence to The Company in respect of the Raw Data pursuant to Condition 5; and 3.3.2 the use of the Raw Data by The Company in accordance with the Contract will not violate any applicable law or regulation and will not constitute an infringement or other violation of any Intellectual Property Right of any third party.

3.2 Subject to the licence granted under Condition 5 (Customer's Obligations), no Intellectual Property Rights in the Raw Data shall transfer to the Company under the Contract.

3.3 The Company warrants and represents to the Customer that: 3.3.1 The Company is the owner or authorised licensee of all Intellectual Property Rights in the

Deliverables and the Products; 3.3.2 The Company has the full authority to grant licence to the Customer in respect of the Deliverables and the Products pursuant to Condition 4; and 3.3.3 the Customer's use of the Deliverables in accordance with the Contract will not violate any applicable law or regulation and will not constitute an infringement or other violation of any Intellectual Property Right of any third party.

3.4 Subject to the licence granted under Condition 4 (Licence to use the Deliverables and the Products), no Intellectual Property Rights in the Deliverables and the Products shall transfer to the Customer under the Contract. All Intellectual Property Rights in any Derivative Works created under the Contract shall be owned by the Company, and the Customer will take all reasonable steps necessary to cause such rights to vest with the Company. All rights not expressly granted to the Customer under the Contract are reserved by the Company.

3.5 The Deliverables are proprietary to the Company and comprise a) the works of original authorship, including compiled information containing the Company's selection, arrangement, co-ordination and expression of such information or pre-existing material that the Company has created, gathered or assembled, b) confidential and trade secret information, and c) information that the Company has created, developed and maintained at great expense of time and money, such that misappropriation or unauthorised use by others for commercial gain would unfairly or irreparably harm the Company. Accordingly: 3.5.1 the Customer will not commit, and will not authorise any of its employees, agents or sub-contractors to commit any act or omission that would impair the Intellectual Property Rights of the Company in the Deliverables; 3.5.2 the Customer will not use any of the Company's trade names, trademarks, service marks or copyrighted materials, or otherwise identify the Company, in listings or advertising in any manner without the prior written approval of the Company; and 3.5.3 the Customer will reproduce the Company's copyright notice and proprietary rights legend on all authorised copies of the Deliverables which are to be disclosed to third parties in accordance with Condition 4 (Company's Obligations).

#### **4. COMPANY'S OBLIGATIONS**

4.1 The Company shall use reasonable endeavours to manage or provide the Services, and to deliver the Deliverables to the Customer, in accordance in all material respects with the Proposal.

4.2 In consideration of the applicable Fees to the Company by the Customer, the Company hereby grants to the Customer a non-exclusive, non-transferable, revocable licence to use the Deliverables and the Products for the Term subject to the terms of the Contract.

4.3 The Company shall use reasonable endeavours to meet any performance dates specified in the Proposal, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

#### **5. CUSTOMER'S OBLIGATIONS**

5.1 The Customer shall provide the Raw Data to the Company, in a timely manner, and ensure that it is accurate in all material respects;

5.2 The Customer hereby grants to the Company a perpetual, royalty-free, non-exclusive licence to use, copy and create Derivative Works of the Raw Data solely for the purposes contemplated under the Contract.

5.3 The Customer hereby grants to the Company a perpetual, royalty-free, non-exclusive licence to use, copy and create Derivative Works of the Classified Data for its business purposes, notwithstanding Condition 7 (Confidentiality) and subject to the following: 5.3.1 the Customer's name shall not be disclosed to any third party, and 5.3.2 the Classified Data will be merged with other customer data to generate industry-wide benchmarks.

5.4 The Customer shall not, without the prior written consent of the Company, at any time from the date of the Contract to the expiry of 12 months after the termination of the Contract, solicit or entice away from the Company or employ (or attempt to employ) any person who is, or has been, engaged as an employee, consultant or subcontractor of the Company in the provision of the Services.

5.5 The Products are hosted and delivered on a platform called Force.com which is provided by Salesforce.com (SFDC). The Customer agrees to abide by the conditions outlined in the SFDC Service Terms of Use available on the Company's website.

#### **6 CHARGES AND PAYMENT**

6.1 In consideration of the provision of the Services by the Company, the Customer shall pay the charges as set out in the Proposal.

6.2 The Customer shall pay each invoice submitted to it by the Company, in full and in cleared funds, within 30 days of receipt to a bank account nominated in writing by the Company.

6.3 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay the Company on the due date, the Company may: (a) charge interest on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of HSBC, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgement and the Customer shall pay the interest immediately on demand. The Company may claim interest under the Late Payment of Commercial Debts (Interest) Act 1998; and (b) suspend all Services until payment has been made in full.

6.4 Time for payment shall be of the essence of the Contract.

#### **7 CONFIDENTIALITY**

7.1 Each party shall, and shall procure that its employees shall, keep secret and confidential all Confidential Information of the other party. Each party undertakes not to disclose the other's Confidential Information to any third party without the other party's written consent, other than its responsible employees to whom disclosure is in good faith necessary for the proper performance of their duties in connection with the Contract and then provided that such party ensures that its employees are aware of and comply with these confidentiality obligations.

7.2 The obligations of confidentiality under Condition 7.1, shall not apply to any Confidential Information which: 7.2.1 was known to the recipient before its receipt from the disclosing party; or 7.2.2 is lawfully in the public domain or possession of a third party other than by reason of a breach of a confidentiality obligation; or 7.2.3 is independently developed without access to the other party's Confidential Information; or 7.2.4 is authorised for release by the written consent of the disclosing party.

#### **8 LIMITATION OF LIABILITY**

8.1 Nothing in these Terms excludes or limits the liability of either party (including, without limitation, their employees, agents and subcontractors) for a) death or personal injury caused by its negligence; b) breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or c) fraud or fraudulent misrepresentation.

8.2 If the Company fails to provide the Services in accordance with the Contract, its sole liability shall be to provide remedial Services or (as The Company may determine in its reasonable discretion) refund to the Customer any Fees paid by the Customer for the affected Services for the period during which the Services were so affected on a pro rata basis.

8.3 Subject to Condition 8.1, the aggregate liability of either party to the other under or in connection with the Contract, whether arising from tort (including negligence), breach of contract or otherwise, shall in no event exceed the amount of the total Fees paid by the Customer under the Contract.

8.4 Subject to Condition 8.1, neither party shall be liable for any loss of profits, business or goodwill, loss of data, interruption of business or any type of special, indirect or consequential loss, even if such loss was reasonably foreseeable or such party has been advised of the possibility of incurring the same.

#### **9 DATA PROTECTION**

9.1 The parties acknowledge and agree that the Customer is the Data Controller and the Company is the Data Processor in respect of all Personal Data pertaining to

the Customer's Raw Data.

9.2 In respect of all Personal Data pertaining to the Customer Data the Company shall: 9.2.1 only carry out processing on the Customer's instructions from time to time; and for the avoidance of doubt, the processing of Personal Data which is reasonably required for the purpose of the Company performing its obligations under the Contract shall constitute processing in accordance with the Customer's instructions; 9.2.2 implement appropriate technical and organizational measures to protect such Personal Data against unauthorised or unlawful processing and accidental destruction or loss (including ensuring the reliability of its employees); 9.2.3 implement procedures to ensure that unauthorised persons will not have access to Personal Data; 9.2.4 promptly refer to the Customer any request, notices or other communications from data subjects, from any applicable data protection authority or any other law enforcement authority, for the Customer to resolve; and 9.2.5 provide such reasonable assistance and information to the Customer as the Customer may reasonably require to allow the Customer to comply with the Customer obligations under the DPA including the rights of data subjects and subject-access rights, or with notices served by the Information Commissioner.

9.3 The Customer will comply with its obligations under the DPA and the Consumer Credit Act 1974 in relation to the Contract.

## **10 INDEMNITY**

10.1 To the extent permitted by applicable law, the Customer shall indemnify, defend and hold the Company and its licensors harmless from and against any Losses incurred in respect of third party claims arising as a result of or otherwise in connection with the use of the Deliverables: 10.1.1 by the Customer, except where such use by the Customer is in accordance with these Terms; and 10.1.2 by individuals or entities which have not been authorised under the Contract to have access to and/or use the Deliverables; in each case provided that the Customer shall not have any obligation to indemnify against any losses to the extent that they arise from the breach of contract by, or the negligence or wilful misconduct of, the Company.

## **11 TERM & TERMINATION**

11.1 Unless otherwise mutually agreed by the Customer and the Company, the Contract shall come into effect on the date on which the Company issues a written acknowledgement of an Order.

11.2 The Contract shall continue for the Contract Term.

11.3 Either party may terminate the Contract with immediate effect at any time by serving written notice thereof on the other party if: 11.3.1 the other party is in material breach of any obligation under the Contract and where such breach is capable of remedy, fails to remedy it within thirty (30) days of written notice requesting that such breach is remedied; or 11.3.2 any distress or execution is levied on the other party's property or assets; or if the other party makes or is offered to make any arrangement or composition with its creditors or commits any act of bankruptcy; or if any bankruptcy petition is presented against the other party; or if any resolution or petition to wind up the other party is passed or presented; or if a receiver, administrative receiver or administrator of the whole or any part of the other party's business, property or assets is appointed; or if the other party becomes unable to pay its debts as they fall due, or is deemed to be unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986.

11.4 Upon expiry or termination of the Contract for any reason: 11.4.1 the Customer shall be entitled to continue to use any charts, graphs or other derivative products that contain de minimis extracts of the Deliverables for its internal purposes only, and all other rights of the Customer to use the Deliverables whether pursuant to Condition 4 or otherwise shall cease; and 11.4.2 neither party shall have any further right or obligation with respect to the other party except as set out in this Condition 11 and in the following additional Conditions, which shall survive such expiry or termination: Condition 2 (Application of Conditions), Condition 3 (Intellectual Property), Condition 5 (Customer Obligations), Condition 7 (Confidentiality), Condition 8 (Limitation of Liability), Condition 9 (Data Protection), Condition 10 (Indemnity), Condition 12 (Rights of Third Parties) and Condition 13 (General).

11.5 The expiry or termination of the Contract as provided for under these Terms shall not prejudice or affect any right of action or remedy which has accrued or thereafter accrues to a party under the Contract or at law.

## **12 RIGHTS OF THIRD PARTIES**

12.1 Subject to Condition 12.2, the parties to the Contract do not intend that any of these Conditions will be enforceable by any person that is not a party to the Contract by virtue of the Contracts (Rights of Third Parties) Act 1999.

12.2 The Customer acknowledges that the Company is entering in the Contract as an authorised licensee and distributor of information from third party data providers. Accordingly the parties acknowledge that companies referenced in the Proposal which are third party data providers, which may include but are not limited to ProcurEdge and Dunn & Bradstreet, are intended third party beneficiaries of the Contract.

## **13 GENERAL**

13.1 The Company may, from time to time and subject to Customer's prior written consent (which shall not be unreasonably withheld or delayed) change the Services, provided that such changes do not materially affect the nature or quality of the Services and, where practicable, it will give the Customer at least 1 months' notice of any change.

13.2 Subject to condition 13.1, no variation of the Contract or these Conditions [or of any of the documents referred to in them] shall be valid unless it is in writing and signed by or on behalf of each of the parties.

13.3 Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

13.4 The Contract constitutes the whole agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter.

13.5 Each party that has rights under the Contract is acting on its own behalf and not for the benefit of another person.

13.6 The Contract, and any dispute or claim arising out of or in connection with it or its subject matter, shall be governed by, and construed in accordance with, the law of England and Wales.

## **14 NOTICES**

14.1 Any notice or other communication required to be given under the Contract shall be in writing and shall be delivered personally, or sent by pre-paid first-class post, recorded delivery or by commercial courier to the other party and for the attention of the person specified in the Proposal, or as otherwise specified by the relevant party by notice in writing to the other party.

14.2 Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at the address and for the contact referred to in the Purchase Order or, if sent by pre-paid first-class post or recorded delivery, on the second business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

14.3 This condition 14 shall not apply to the service of any in any proceedings or other documents in any legal action.

14.4 A notice required to be given under the Contract shall be validly served if sent by e-mail and receipt is confirmed.