HEAD SQUARED SOFTWARE - TERMS AND CONDITIONS

1. DEFINITIONS AND INTERPRETATION

1.1. In this agreement the following terms shall have the following meanings:

1.1.1. 'the Contract Price' means the total price for all Services supplied by or on behalf of the Supplier to the Client under the relevant invoice relating to the Services;

1.1.2. 'the Client' means any person who obtains Services from the Supplier;

1.1.3. 'the Head Licensor' means Head Squared (Holdings) Limited (Company Number: 5971817);

1.1.4. 'Invoice Value' means the sum invoiced by the Supplier to the Client in respect of the Services, including any VAT and any amount for transport or insurance;

1.1.5. 'Non-Standard Systems' means any product including, but not limited to: Macintoshes, mobile devices, internet appliances, set top boxes (STB), handhelds, PDAs, phones, web pads, tablets, game consoles, TVs, gaming machines, home automation systems, or any other consumer electronics devices or mobile / cable / satellite / television or closed system based service;

1.1.6. 'the Supplier' means Head Squared Software (a trading name of Head Squared (Heating) Limited (Company Number: 5971683);

1.1.7. 'the Parties' means the Client and the Supplier;

1.1.8. 'the Services' means the provision of any services to the Client by the Supplier, and its staff, contractors, sub-contractors or any other person engaged by the Supplier to provide Services on its behalf;

1.1.9. 'the Software' means any software provided by the Supplier to the Client, including all programme and information files, the programmes and sub-routines for storing, retrieving and displaying data, all images and graphics,. and all other documentation which are part of the software;

1.1.10. 'Standard Systems' mean PCs whether desktop or laptop devices;

1.1.11. 'System Specification' means description of the behaviour of the Software to be developed;

1.1.12. 'VAT' means value added tax or any other sales tax.

1.2. Reference to a statutory provision is a reference to that provision as modified or re-enacted or both from time to time and to any subordinate legislation made under the statutory provision.

1.3. The headings contained in this agreement are for reference purposes only and shall not be incorporated into this agreement.

2. RIGHTS AND DUTIES OF THE SUPPLIER

2.1. Subject to clause 2.2, the Supplier agrees to supply the Services to the Client in accordance with orders and/or requests received from the Client, or from any person held out by the Client of having the authority to make such an order and/or request, or from any person reasonably deemed to have the authority to make such an order and/or request on the Client's behalf.

2.2. The Supplier shall be entitled to vary the Services provided under this agreement where the Supplier deems it reasonably necessary to (on the giving of notice to the Client).

2.3. The Supplier will perform the Services with reasonable care and to the standards reasonably expected within the Software Industry.

2.4. Time shall not be of the essence for performance of the Services.

3. CLIENT'S OBLIGATIONS

3.1. To enable the Supplier to perform its obligations under this Agreement, the Client must:

3.1.1. Co-operate fully with the Supplier;

3.1.2. Provide any information reasonably required by the Supplier to design, code, test and fully document the Software;

3.1.3. Comply with all other requirements and proposals agreed between the Parties whether they are agreed in writing or otherwise.

4. TITLE

4.1. Full legal title in the Software shall not pass to the Client until the Supplier has received payment for the all monies owed by the Client to the Supplier (including any interest accruing and owing to the Supplier).

4.2. During such time as title in the Software remains in the Supplier, the Supplier shall be entitled to:

   a. inspect the Software and/or repossess it at any time and may enter the premises where they are stored or are reasonably thought to be stored; and/or
   b. require the Client to permanently remove the Software (and all copies thereof; howsoever created and stored) from all Standard Systems, Non-Standard Systems and all other places the Software is temporarily or permanently stored.

5. PAYMENT FOR THE SERVICES

5.1. The Client agrees to pay the Contract Price to the Supplier.

5.2. Payments must be made in pounds sterling to a bank account notified by the Supplier to the Client from time to time.

5.3. If the Client fails to pay the invoiced amount for any Services within the time specified in an invoice, the Supplier may, without prejudice to any other right or remedy it may have, cancel or suspend any further delivery to the Client under any order or sell or otherwise dispose of the Software that is the subject of any order by the Client and apply the proceeds of sale to the overdue payment.

5.4. Where an Invoice becomes overdue the Supplier shall be entitled to charge:

   a. a one-off administration fee of up to £40 to cover administration costs relating to the overdue invoice; and
   b. interest on the overdue invoice from the date when payment becomes due from day to day until the date of payment at a rate of 10% per annum or 4% per annum above Bank of England Base Rate (whichever is higher).

6. PRICE VARIATION CLAUSE

6.1. Where the Supplier is reasonably required to make changes to an agreed System Specification after the Contract Price has been agreed between the Parties, the Supplier reserves the right to vary the Contract Price to reflect the changes in development costs associated with the change.

6.2. The Supplier must notify to the Client in writing of any change made to the Contract Price after it has been agreed between the Parties.

7. THE LICENCE

7.1. The Client, its staff and other persons with lawful access to the Client's computer systems are entitled to use the Software on all Standard Systems for normal business purposes. "Use" means loaded in temporary memory or permanent storage on the computer.

7.2. The Client may not sell, rent, lease or sublicense the Software, without the explicit written consent of the Head Licensor.

7.3. The Client shall not modify, translate, reverse engineer, decompile or disassemble the Software or any part thereof or otherwise attempt to derive source code or create derivative works therefrom.

7.4. The Client shall not remove, alter or destroy any proprietary, trademark or copyright markings or notices placed upon or contained within the Software.

8. INTELLECTUAL PROPERTY

8.1. All intellectual property rights relating to the Software is protected by copyright laws and international treaties.

8.2. All intellectual property rights such as but not limited to patents, trademarks, copyrights or trade secret rights related to the Software are the property of and remain vested in the Head Licensor.

9. TERMINATION

9.1. The Supplier may terminate this agreement summarily by notice in writing to the Client if:

9.1.1. the Client commits any material breach of any of the provisions of this agreement and, in the case of a breach capable of remedy, fails to remedy the same within 30 days after receipt of a written notice giving full particulars of the breach and requiring it to be remedied;

9.1.2. the Client makes any voluntary arrangement with its creditors or becomes subject to an administration order;

9.1.3. the Client is declared bankrupt or insolvent;

9.1.4. the Client goes into liquidation, except for the purposes of amalgamation or reconstruction;

9.1.5. a receiver is appointed over any of the property or assets of the other party.

9.2. For the purposes of clause 9.1.1, a breach shall be considered capable of remedy if the party in breach can comply with the provision in question in all respects other than as to the time of performance provided that time of performance is not of the essence.

9.3. The Supplier shall be entitled to terminate this agreement by giving not less than 30 days' written notice to the Client if there is at any time a material change in the management, ownership or control of the Client.

10. TERMINATION CONSEQUENCES

10.1. On the expiry or other termination of this agreement:

10.1.1. all outstanding invoices shall become immediately payable by the Client;

10.1.2. any invoices not yet submitted for Services or Software, shall become immediately payable on receipt of invoice; and

10.1.3. the Supplier shall be entitled to keep the full amount of any deposit paid by or on behalf of the Client.

11. WARRANTY

11.1. The Client expressly acknowledges and agrees that use of the Software is at its own risk and that the software is provided "as is" without any warranties or conditions whatsoever.

11.2. The Supplier disclaims all warranties, express or implied, including but not limited to warranties related to: non-infringement, lack of viruses, accuracy or completeness of

responses or results, implied warranties of merchantability and fitness for a particular purpose.

11.3. The Supplier does not warrant that the operation of the Software will be uninterrupted or error free. The Supplier does not offer any warranties as to the accuracy or completeness of the information contained in any of the Software.

11.4. The Supplier is not required to provide any support facilities for use of Software on Non-Standard Systems. Use of the Software on Non-Standard Systems is at the Client's sole risk.

11.5. The Client acknowledges that the Software is not intended for use in control of aircraft, air traffic, aircraft navigation or aircraft communications; or in the design, construction, operation or maintenance of any nuclear facility.

11.6. This Agreement does not affect any statutory rights the Client may have.

12. LIMITATION OF LIABILTY

12.1. Subject to the other sub-clauses within clause 12, the Supplier limits its liability in contract, tort, negligence, breach of statutory duty or otherwise to 50% of the Contract Price.

12.2. The Supplier accepts no liability for indirect or consequential loss, such as loss of profits, business, costs, expenses (unless such losses were reasonably foreseeable to both Parties when this contract was entered into) or any other form of economic loss.

12.3. Nothing in this Agreement shall exclude or restrict the liability of either party for:

12.3.1. death or personal injury resulting from that party's negligence; or

12.3.2. fraud or fraudulent misrepresentation.

12.4. Nothing in this Agreement shall exclude or restrict the liability of either party in respect of any liability which cannot be excluded or restricted by law.

13. ASSIGNMENT

13.1. The Supplier shall be entitled to assign the rights and obligations under this Agreement at any time to any other party by notice in writing to the Client.

13.2. The Client may not assign the rights and obligations under this agreement without the prior written consent of the Supplier.

14. ENTIRE AGREEMENT

14.1. This Agreement must be read in conjunction with all written materials provided by the Supplier to the Client prior to the date of this Agreement and the agreed System Specification. Unless expressly provided elsewhere in this agreement, this agreement may be varied only by a document signed by both parties.

15. WAIVER

15.1. Failure by the Supplier to enforce at any time or for any period any one or more of the rights conferred under this agreement shall not be a waiver of them or of the right at any time subsequently to enforce all or any of the rights hereunder.

16. SEVERABILITY

16.1. 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 severed 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.

17. FORCE MAJEURE

17.1. This agreement shall be suspended in the event of national emergency, act of war (whether declared or undeclared), prohibitive governmental regulations, breakdown of plant machinery, strike or industrial dispute, shortage of materials or failure of or delay in receiving supplies, Act of God, inclement weather, fire, the finding of endangered or protected plants or species, or if any other cause beyond the reasonable control of the parties renders performance of this agreement impossible. If such period of suspension exceeds 100 days, then the Supplier may upon giving written notice to the Client require that this agreement be terminated forthwith, and all money due to the Supplier must be paid immediately.

18. THIRD PARTY RIGHTS

18.1. The parties to this agreement do not intend that any term of it shall be enforceable by a third party as defined in the Contracts (Rights of Third Parties) Act 1999 under the provisions of that Act.

19. NOTICES

19.1. Any notice required to be given under this Agreement shall be in writing and signed by the person giving it and may be delivered personally or sent by facsimile transmission or other electronic means or by first class post to the address set out above in respect of each of the parties or to such other address as may otherwise be notified by either party to the other as being an alternative address for service.

19.2. Any notice so served shall be deemed to be received:

19.2.1. if delivered personally, on the day of delivery;

19.2.2. if sent by facsimile transmission or other electronic means, on the day of transmission provided it is sent during business hours on a business day and if not on the next business day; and

19.2.3. if sent by post, 48 hours after the date of posting.

20. GOVERNING LAW AND JURISDICTION

20.1. This agreement shall be governed by and construed in accordance with the Laws of England and the parties hereby submit to the exclusive jurisdiction of the English Courts.

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