

# CITY CLERK ORIGINAL

C-9534  
12/16/2014

## Cogmotive Reports Service Agreement

DATE: 12-16-14

### PARTIES:

- (1) COGMOTIVE LTD, a company incorporated in England and Wales (registration number 08148368) having its registered office at Suite 961, Kemp House, 152 - 160 City Road, London EC1V 2NX United Kingdom (the "Provider"); and
- (2) City of Glendale a company/entity registered in State of Arizona USA (registration number N/A) having its registered office at 5850 W. Glendale Ave  
Glendale, AZ 85301 (the "Customer").

### BACKGROUND:

- (A) The Provider operates the Platform and provides the Support Services, and the Customer wishes to be granted access to the Platform and to receive the Support Services, on the terms of this Agreement.

### AGREEMENT:

#### 1. Definitions and interpretation

##### 1.1 In this Agreement:

"Affiliate" means an entity that Controls, is Controlled by, or is under common Control with the relevant entity;

"Agreement" means this software as a service agreement (including the Schedules) and any amendments to it from time to time;

"Business Day" means any weekday, other than a bank or public holiday in England;

"Business Hours" means between 08:00 and 18:00 London time on a Business Day;

"Cancellation Date" means the first day of the following month after the Notice Period has expired.

"Change" means any change to the terms of this Agreement;

"Charges" means the amounts payable by the Customer to the Provider under or in relation to this Agreement (as set out in Schedule 3);

"Confidential Information" means the Customer Confidential Information and the Provider Confidential Information;

"Control" means the legal power to control (directly or indirectly) the management of an entity (and "Controlled" will be construed accordingly);

"Customer Confidential Information" means

- (a) any information disclosed (whether disclosed in writing, orally or otherwise) by the Customer to the Provider that is marked as

"confidential", described as "confidential" or should have been understood by the Provider at the time of disclosure to be confidential;

- (b) the terms and conditions of this Agreement; and
- (c) the Customer Materials;

**"Customer Indemnity Event"** has the meaning given to it in Clause 11.1;

**"Customer Materials"** all works and materials:

- (a) uploaded to, stored on, processed using or transmitted via the Platform by or on behalf of the Customer or by any person or application or automated system using the Customer's account; and
- (b) otherwise provided by the Customer to the Provider in connection with this Agreement;

**"Customer Representatives"** means the person or persons identified as such in Schedule 1;

**"Customisations"** means customisations to the Platform that the Provider and Customer agree the Provider will produce on behalf of the Customer;

**"Data"** means the information collected from or on behalf of the Customer by the Provider.

**"Defect"** means a defect, error or bug having an adverse effect on the appearance, operation or functionality of the Platform, but excluding any defect, error or bug caused by or arising as a result of:

- (a) an act or omission of the Customer, or an act or omission of one of the Customer's employees, officers, agents, suppliers or sub-contractors; or
- (b) an incompatibility between the Platform and any other system, application, program or software not specified as compatible in Schedule 1;

**"Documentation"** means the documentation produced by the Provider and supplied / made available on the Platform to the Customer specifying how the Platform should be used;

**"Effective Date"** means the date of execution of this Agreement;

**"Effective End Date"** means the date of termination of this Agreement;

**"Force Majeure Event"** means an event, or a series of related events, that is outside the reasonable control of the party affected (including failures of or problems with the internet or a part of the internet, Microsoft, hacker attacks, virus or other malicious software attacks or infections, power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars);

**"Intellectual Property Rights"** means all intellectual property rights wherever in the world, whether registered or unregistered, including any application or right of application for such rights (and the "intellectual property rights" referred to above include copyright and related rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trade

marks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs);

"**Microsoft**" relates to all services from Microsoft Corporation that are used by the Provider to provide services to the Customer (including but is not limited to Office 365, Microsoft Online, Exchange Online)

"**Minimum Term**" means the period specified as such in Schedule 1;

"**Notice Period**" means the period that the Customer or the Provider may terminate this Agreement as set out in Clause 15;

"**Permitted Purpose**" means using the platform for the purposes of generating reports;

"**Personal Data**" has the meaning given to it in the Data Protection Act 1998;

"**Platform**" means the software platform known as Cogmotive Reports that is owned and operated by the Provider, and that will be made available to the Customer as a service via the Internet under this Agreement;

"**Provider Confidential Information**" means:

(a) any information disclosed (whether disclosed in writing, orally or otherwise) by the Provider to the Customer that is marked as "confidential", described as "confidential" or should have been understood by the Customer at the time of disclosure to be confidential;

(b) the terms and conditions of this Agreement;

"**Provider Indemnity Event**" has the meaning given to it in Clause 11.3;

"**Provider Representatives**" means the person or persons identified as such in Schedule 1;

"**Refund Payment**" means a payment to the Customer as defined Clause 15.6

"**Representatives**" means the Customer Representatives and the Provider Representatives;

"**Schedule**" means a schedule attached to this Agreement;

"**Services**" means all the services provided or to be provided by the Provider to the Customer under this Agreement, including the Support Services;

"**Support Services**" means support and maintenance services provided or to be provided by the Provider to the Customer in accordance with Schedule 2;

"**Term**" means the term of this Agreement; and

"**Upgrades**" means new versions of, and updates to, the Platform, whether for the purpose of fixing an error, bug or other issue in the Platform or enhancing the functionality of the Platform.

1.2 In this Agreement, a reference to a statute or statutory provision includes a reference to:

- (a) that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and
  - (b) any subordinate legislation made under that statute or statutory provision.
- 1.3 The Clause headings do not affect the interpretation of this Agreement.
- 1.4 The ejusdem generis rule is not intended to be used in the interpretation of this Agreement.

## **2. Term**

This Agreement will come into force on the Effective Date and will continue in force until the Effective End Date, upon which it will terminate automatically, unless terminated earlier in accordance with Clause 15.

## **3. The Platform**

- 3.1 The Platform will automatically generate an account for the Customer promptly following the Effective Date, enabling the Customer to access the Platform.
- 3.2 Subject to the limitations set out in Clause 3.3 and the prohibitions set out in Clause 3.4, the Provider hereby grants to the Customer a non-exclusive licence to use the Platform for the Permitted Purpose via any standard web browser in accordance with the Documentation during the Term.
- 3.3 The licence granted by the Provider to the Customer under Clause 3.2 is subject to the following limitations:
  - (a) the Platform may only be used by the employees, agents and sub-contractors of the Customer and:
    - (i) where the Customer is a company, the Customer's officers;
    - (ii) where the Customer is a partnership, the Customer's partners; and
    - (iii) where the Customer is a limited liability partnership, the Customer's members;
  - (d) the Customer must comply at all times with the terms of the acceptable use policy set out in Schedule 4, and must ensure that all users of the Platform agree to and comply with the terms of that acceptable use policy; and
- 3.4 Except to the extent mandated by applicable law or expressly permitted in this Agreement, the licence granted by the Provider to the Customer under this Clause 3 is subject to the following prohibitions:
  - (a) the Customer must not sub-license its right to access and use the Platform or allow any unauthorised person to access or use the Platform;
  - (b) the Customer must not frame or otherwise re-publish or re-distribute the Platform;
  - (c) the Customer must not alter or adapt or edit the Platform save as expressly permitted by the Documentation;

- 3.5 For the avoidance of doubt, the Customer has no right to access the object code or source code of the Platform, either during or after the Term.
- 3.6 All Intellectual Property Rights in the Platform shall, as between the parties, be the exclusive property of the Provider.
- 3.7 The Customer shall use all reasonable endeavours to ensure that no unauthorised person will or could access the Platform using the Customer's account.
- 3.8 The Customer must not use the Platform in any way that causes, or may cause, damage to the Platform or impairment of the availability or accessibility of the Platform, or any of the areas of, or services on, the Platform.
- 3.9 The Customer must not use the Platform:
  - (a) in any way that is unlawful, illegal, fraudulent or harmful; or
  - (b) in connection with any unlawful, illegal, fraudulent or harmful purpose or activity.

#### **4. Support Services and Upgrades**

- 4.1 During the Term the Provider will provide the Support Services to the Customer, and may apply Upgrades to the Platform, in accordance with the service level agreement set out in Schedule 2.
- 4.2 The Provider may sub-contract the provision of any of the Support Services without obtaining the consent of the Customer.

#### **5. Customisations**

- 5.1 From time to time the Provider may customise the Platform under agreement by both parties.
- 5.2 From the date when a Customisation is first made available to the Customer, the Customisation shall form part of the Platform under the Agreement, and accordingly from that date the Customer's rights to use the Customisation shall be governed by Clause 3.
- 5.3 The Customer acknowledges that the Provider may make any Customisation available to its other Customers.
- 5.4 All Intellectual Property Rights in the Customisations shall, as between the parties, be the exclusive property of the Provider.
- 5.5 The Customer will provide the Provider with:
  - (a) such access to the Customer's computer systems and such other co-operation as is required by the Provider (acting reasonably) to enable the performance by the Provider of its obligations under this Clause 5;
  - (b) all information and documents required by the Provider (acting reasonably) in connection with the performance by the Provider of its obligations under this Clause 5; and
  - (c) any legal, accountancy or taxation advice reasonably required to ensure

the compliance of the Customisations with applicable laws, regulations and standards.

## **6. Management**

- 6.1 The Customer will ensure that a Customer Representative will give all instructions in relation to this Agreement to a Provider Representative, and the Provider:
- (a) may treat all such instructions as the fully authorised instructions of the Customer; and
  - (b) will not comply with any other instructions in relation to this Agreement without first obtaining the consent of a Customer Representative.
- 6.2 The parties will hold contract management meetings by telephone and/or via the Internet at the reasonable request of either party.
- 6.3 A party requesting a contract management meeting to be held will give to the other party at least 3 Business Days' notice of the meeting.
- 6.4 Wherever necessary to enable the efficient conduct of business, the Customer will be represented at a contract management meeting by at least one Customer Representative and the Provider will be represented at a contract management meeting by at least one Provider Representative.

## **7. Customer Materials**

- 7.1 The Customer grants to the Provider during the Term a non-exclusive licence to store, copy and otherwise use the Customer Materials on the Platform for the purposes of operating the Platform, providing the Services, fulfilling its other obligations under this Agreement, and exercising its rights under this Agreement.
- 7.2 Subject to Clause 7.1, all Intellectual Property Rights in the Customer Materials will remain, as between the parties, the property of the Customer.
- 7.3 The Customer warrants and represents to the Provider that the Customer Materials, and their use by the Provider in accordance with the terms of this Agreement, will not:
- (a) breach any laws, statutes, regulations or legally-binding codes;
  - (b) infringe any person's Intellectual Property Rights or other legal rights; or
  - (c) give rise to any cause of action against the Provider or the Customer or any third party,
- in each case in any jurisdiction and under any applicable law.
- 7.4 Where the Provider reasonably suspects that there has been a breach by the Customer of the provisions of this Clause 7, the Provider may suspend any or all of the Services and/or the Customer's access to the Platform while it investigates the matter.
- 7.5 Any breach by the Customer of this Clause 7 will be deemed to be a material breach of this Agreement for the purposes of Clause 15.

## **8. Trial period**

The first 14 days of the Term shall be a trial period, during which all of the provisions of this Agreement shall apply, save as follows:

- (a) the Customer shall have no obligation to pay the Charges in respect of the trial period;
- (b) either party may terminate the Agreement immediately by giving written notice to the other party at any time before the end of the trial period (in which case no liability to pay any Charges in respect of Platform access or Support Services will arise);
- (c) The Provider may extend the trial period at the written request of the Customer.

## **9. Charges**

- 9.1 The Provider will issue invoices for the Charges to the Customer in accordance with the provisions of Schedule 3.
- 9.2 The Customer will pay the Charges to the Provider within 30 days of the date of issue of an invoice issued in accordance with Clause 9.1.
- 9.3 All Charges stated in or in relation to this Agreement are stated exclusive of tax, unless the context requires otherwise. Tax will be payable where required by the Customer to the Provider in addition to the principal amounts.
- 9.4 Charges must be paid using such payment details as are notified by the Provider to the Customer from time to time.
- 9.5 If the Customer does not pay any amount properly due to the Provider under or in connection with this Agreement, the Provider may:
  - (a) charge the Customer interest on the overdue amount at the rate of 8% per year above the base rate of Barclays Bank PLC from time to time (which interest will accrue daily and be compounded quarterly); or
  - (b) claim interest and statutory compensation from the Customer pursuant to the Late Payment of Commercial Debts (Interest) Act 1998.
- 9.6 The Provider may vary the Charges payable under Paragraphs 2.2 and 2.3 of Schedule 3 *on and from any anniversary of the Effective Date* by giving to the Customer not less than 30 days' written notice of the variation.
- 9.7 The Provider may suspend access to the Platform and the provision of the Services if any amounts due to be paid by the Customer to the Provider under this Agreement are overdue.

## **10. Warranties**

- 10.1 The Customer warrants to the Provider that it has the legal right and authority to enter into and perform its obligations under this Agreement.
- 10.2 The Provider warrants to the Customer:

- (a) that it has the legal right and authority to enter into and perform its obligations under this Agreement;
- (b) that it will perform its obligations under this Agreement with reasonable care and skill;
- (c) that the Platform will perform substantially in accordance with the Documentation (subject to any Upgrades and Customisations);
- (d) that the Platform will be hosted in accordance with the requirements set out in Schedule 1, and will be available to the Customer in accordance with the uptime commitments given in Schedule 2;
- (e) the Platform (excluding for the avoidance of doubt the *Customer Materials*) will not:
  - (i) breach any laws, statutes, regulations or legally-binding codes;
  - (ii) infringe any person's Intellectual Property Rights or other legal rights; or
  - (iii) give rise to any cause of action against the Provider or the Customer or any third party,

in each case

- (f) the Platform is and will remain free from viruses and other malicious software programs.

10.3 The Customer acknowledges that:

- (a) complex software is never wholly free from defects, errors and bugs, and the Provider gives no warranty or representation that the Platform will be wholly free from such defects, errors and bugs;
- (b) the Provider does not warrant or represent that the Platform will be compatible with any application, program or software not specifically identified as compatible in Schedule 1; and
- (c) the Provider will not and does not purport to provide any legal, taxation or accountancy advice under this Agreement or in relation to the Platform and (except to the extent expressly provided otherwise) the Provider does not warrant or represent that the Platform will not give rise to any civil or criminal legal liability on the part of the Customer or any other person.

10.4 All of the parties' warranties and representations in respect of the subject matter of this Agreement are expressly set out in the terms of this Agreement. To the maximum extent permitted by applicable law, no other warranties or representations concerning the subject matter of this Agreement will be implied into this Agreement.

## 11. Indemnities

11.1 Subject to the Provider's compliance with Clause 11.2, the Customer will indemnify and will keep indemnified the Provider against all liabilities, damages, losses, costs and expenses (including legal expenses and amounts paid upon legal advice in settlement of any disputes) suffered or incurred by the Provider

and arising as a result of any breach by the Customer of Clause 7.3 (a "**Customer Indemnity Event**").

11.2 The Provider will:

- (a) upon becoming aware of an actual or potential Customer Indemnity Event, notify the Customer;
- (b) provide to the Customer reasonable assistance in relation to the Customer Indemnity Event;
- (c) allow the Customer the exclusive conduct of all disputes, proceedings, negotiations and settlements relating to the Customer Indemnity Event; and
- (d) not admit liability in connection with the Customer Indemnity Event or settle the Customer Indemnity Event without the *prior written* consent of the Customer.

11.3 Subject to the Customer's compliance with Clause 11.4, the Provider will indemnify and will keep indemnified the Customer against all liabilities, damages, losses, costs and expenses (including legal expenses and amounts paid upon legal advice in settlement of any disputes) suffered or incurred by the Customer and arising as a result of any breach by the Provider of Clause 10.2(e) (a "**Provider Indemnity Event**").

11.4 The Customer will:

- (a) upon becoming aware of an actual or potential Provider Indemnity Event, notify the Provider;
- (b) provide to the Provider reasonable assistance in relation to the Provider Indemnity Event;
- (c) allow the Provider the exclusive conduct of all disputes, proceedings, negotiations and settlements relating to the Provider Indemnity Event; and
- (d) not admit liability in connection with the Provider Indemnity Event or settle the Provider Indemnity Event without the prior written consent of the Provider.

## **12 Limitations and exclusions of liability**

12.1 Nothing in the Agreement will:

- (a) limit or exclude the liability of a party for death or personal injury resulting from negligence;
- (b) limit or exclude the liability of a party for fraud or fraudulent misrepresentation by that party;
- (c) limit any liability of a party in any way that is not permitted under applicable law; or
- (d) exclude any liability of a party that may not be excluded under applicable law.

- 12.2 The limitations and exclusions of liability set out in this Clause 12 and elsewhere in the Agreement:
- (a) are subject to Clause 12.1;
  - (b) govern all liabilities arising under the Agreement or in relation to the subject matter of the Agreement, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty; and
  - (c) will not limit or exclude the liability of the parties under the express indemnities set out in the Agreement.
- 12.3 Neither party will be liable in respect of any loss of profits, income, revenue, use, production or anticipated savings.
- 12.4 Neither party will be liable for any loss of business, contracts or commercial opportunities.
- 12.5 Neither party will be liable for any loss of or damage to goodwill or reputation.
- 12.6 Neither party will be liable in respect of any loss or corruption of any data, database or software.
- 12.7 Neither party will be liable in respect of any special, indirect or consequential loss or damage.
- 12.8 Neither party will be liable for any losses arising out of a Force Majeure Event.
- 12.9 The Provider's liability in relation to any event or series of related events will not exceed the total amount paid and payable by the Customer to the Provider under the Agreement during the 3 month period immediately preceding the event or events giving rise to the claim.
- 12.10 The Provider's aggregate liability under the Agreement will not exceed the total amount paid and payable by the Customer to the Provider under the Agreement.

### **13. Data protection**

- 13.1 The Customer warrants that it has the legal right to disclose all Personal Data that it does in fact disclose to the Provider under or in connection with this Agreement.
- 13.2 The Provider warrants that:
- (a) it will act only on instructions from the Customer in relation to the processing of any Personal Data performed by the Provider on behalf of the Customer; and
  - (b) it has in place appropriate security measures (both technical and organisational) against unlawful or unauthorised processing of Personal Data and against loss or corruption of Personal Data processed by the Provider on behalf of the Customer.

### **14. Confidentiality and publicity**

- 14.1 The Provider will:

- (a) keep confidential and not disclose the Customer Confidential Information to any person save as expressly permitted by this Clause 14
- (b) protect the Customer Confidential Information against unauthorised disclosure by using the same degree of care as it takes to preserve and safeguard its own confidential information of a similar nature, being at least a reasonable degree of care; and
- (c) without prejudice to the generality of Clause 14.1(b), deploy and maintain the security systems and technologies detailed in Schedule 1 in relation to the Customer Confidential Information held on the Platform.

14.2 The Customer will:

- (a) keep confidential and not disclose the Provider Confidential Information to any person save as expressly permitted by this Clause 14;
- (b) protect the Provider Confidential Information against unauthorised disclosure by using the same degree of care as it takes to preserve and safeguard its own confidential information of a similar nature, being at least a reasonable degree of care.

14.3 Confidential Information of a party may be disclosed by the other party to that other party's officers, employees, agents, insurers and professional advisers, provided that the recipient is bound in writing to maintain the confidentiality of the Confidential Information disclosed.

14.4 The obligations set out in this Clause 14 shall not apply to:

- (a) Confidential Information that is publicly known (other than through a breach of an obligation of confidence);
- (b) Customer Confidential Information that is in possession of the Provider prior to disclosure by the Customer;
- (c) Customer Confidential Information that is received by the Provider, and Provider Confidential Information that is received by the Customer, from an independent third party who has a right to disclose the relevant Confidential Information; or
- (d) Confidential Information that is required to be disclosed by law, or by a governmental authority, stock exchange or regulatory body, provided that prior to disclosing and Confidential Information under clause 14.4(d) the disclosing party shall, to the extent practical and permitted by law, use reasonable endeavors to notify the other party of such disclosure.

14.5 Neither party will make any public disclosure relating to this Agreement (including press releases, public announcements and marketing materials) without the prior written consent of the other party.

## 15. Termination

15.1 Either party may terminate this Agreement immediately by giving written notice to the other party if the other party:

- (a) commits any breach of any term of this Agreement, and:

- (i) the breach is not remediable; or
    - (ii) the breach is remediable, but the other party fails to remedy the breach within 30 days of receipt of a written notice requiring it to do so; or
  - (b) persistently breaches the terms of this Agreement (irrespective of whether such breaches collectively constitute a material breach).
- 15.2 Either party may terminate this Agreement immediately by giving written notice to the other party if:
- (a) the other party:
    - (i) is dissolved;
    - (ii) ceases to conduct all (or substantially all) of its business;
    - (iii) is or becomes unable to pay its debts as they fall due;
    - (iv) is or becomes insolvent or is declared insolvent; or
    - (v) convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;
  - (b) an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party;
  - (c) an order is made for the winding up of the other party, or the other party passes a resolution for its winding up; or
  - (d) (where that other party is an individual) that other party dies, or as a result of illness or incapacity becomes incapable of managing his or her own affairs, or is the subject of a bankruptcy petition or order.
- 15.3 Either party may terminate this Agreement by giving at least 30 days' written notice of termination to the other party.
- 15.4 If the Provider stops or makes a good faith decision to stop operating the Platform generally, then the Provider may terminate this Agreement by giving at least 60 days' written notice of termination to the Customer.
- 15.5 The Provider may terminate the Agreement immediately by giving written notice of termination to the Customer where the Customer fails to pay to the Provider any amount due to be paid under the Agreement by the due date.
- 15.6 The Customer has the right to cancel the Agreement by notifying the Provider in writing and giving not less than 30 days notice, the 'Notice Period'. The cancellation will take effect from the cancellation date, which will be the first day of the following month after the notice period has expired.

A Refund will be payable only where an upfront annual payment has been made where the term covered has more than one month remaining after the cancellation date and where the Customer chooses to cancel the Agreement.

A Refund payment will be calculated from the cancellation date after the minimum term in Schedule 1 has been deducted along with fees covering the period of the Agreement in which Services were provided to the nearest month. A Refund payment will be based on fees paid pro-rata for the remaining annual period from the cancellation date minus an administration fee that will be the lesser amount of either \$500, or 10 percent.

## **16. Effects of termination**

- 16.1 Upon termination of this Agreement, all the provisions of this Agreement will cease to have effect, save that the following provisions of this Agreement will survive and continue to have effect (in accordance with their terms or otherwise indefinitely): Clauses 1, 9.5, 11, 12, 14.1 to 14.4, 16 and 19.
- 16.2 Termination of this Agreement will not affect either party's accrued liabilities and rights as at the date of termination.
- 16.3 Within 30 days following the termination of the Agreement, the Provider will:
- (a) irrevocably delete from the Platform all Customer Confidential Information; and
- 16.4 A party may retain any document (including any electronic document) containing the Confidential Information of the other party after the termination of this Agreement if:
- (a) that party is obliged to retain such document by any law or regulation or other rule enforceable against that party;

## **17. Notices**

- 17.1 Any notice given under this Agreement must be in writing (whether or not described as "written notice" in this Agreement) and must be delivered personally, sent by recorded signed-for post, or sent by fax or email, for the attention of the relevant person, and to the relevant address or fax number or email address given below (or as notified by one party to the other in accordance with this Clause).
- 17.2 A notice will be deemed to have been received at the relevant time set out below (or where such time is not within Business Hours, when Business Hours next begin after the relevant time set out below):
- (a) where the notice is delivered personally, at the time of delivery;
  - (b) where the notice is sent by recorded signed-for post, 48 hours after posting; and
  - (c) where the notice is sent by fax or email, at the time of the transmission (providing the sending party retains written evidence of the transmission).

## **18. Force Majeure Event**

- 18.1 Where a Force Majeure Event gives rise to a failure or delay in either party performing its obligations under this Agreement (other than obligations to make payment), those obligations will be suspended for the duration of the Force Majeure Event.

18.2 A party who becomes aware of a Force Majeure Event which gives rise to, or which is likely to give rise to, any failure or delay in performing its obligations under this Agreement, will;

(a) forthwith notify the other; and

(b) will inform the other of the period for which it is estimated that such failure or delay will continue.

18.3 The affected party will take reasonable steps to mitigate the effects of the Force Majeure Event.

## **19. General**

19.1 No breach of any provision of this Agreement will be waived except with the express written consent of the party not in breach.

19.2 If a Clause of this Agreement is determined by any court or other competent authority to be unlawful and/or unenforceable, the other Clauses of this Agreement will continue in effect. If any unlawful and/or unenforceable Clause would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the Clause will continue in effect (unless that would *contradict the clear intention of the parties, in which case the entirety of the relevant Clause will be deemed to be deleted*).

19.3 Nothing in this Agreement will constitute a partnership, agency relationship or contract of employment between the parties.

19.4 This Agreement may not be varied except by a written document signed by or on behalf of each of the parties.

19.5 Each party hereby agrees that the other party may freely assign any or all of its contractual rights and/or obligations under this Agreement to any Affiliate of the assigning party or any successor to all or a substantial part of the business of the assigning party from time to time. Save as expressly provided in this Clause or elsewhere in this Agreement, neither party may without the prior written consent of the other party assign, transfer, charge, license or otherwise dispose of or deal in this Agreement or any contractual rights or obligations under this Agreement.

19.6 Neither party will, without the other party's prior written consent, either during the term of this Agreement or within 6 months after the date of effective termination of this Agreement, engage, employ or otherwise solicit for employment any employee, agent or contractor of the other party who has been involved in the performance of this Agreement.

19.7 Each party agrees to execute (and arrange for the execution of) any documents and do (and arrange for the doing of) any things reasonably within that party's power, which are necessary to enable the parties to exercise their rights and fulfil their obligations under this Agreement.

19.8 This Agreement is made for the benefit of the parties, and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree any amendment, waiver, variation or settlement under or relating to this Agreement are not subject to the consent of any third party.

19.9 Subject to Clause 12.1:

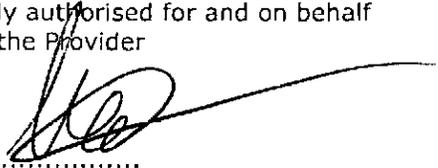
(a) this Agreement and the acceptable use policy referred to in herein constitutes the entire agreement between the parties in relation to the subject matter of this Agreement, and supersedes all previous agreements, arrangements and understandings between the parties in respect of that subject matter;

19.10 This Agreement will be governed by and construed in accordance with the laws of England and Wales; and the courts of England will have exclusive jurisdiction to adjudicate any dispute arising under or in connection with this Agreement.

**The parties have indicated their acceptance of this Agreement by executing it below.**

**EXECUTION:**

**SIGNED** by  
duly authorised for and on behalf  
of the Provider

  
.....  
DAN ROSE  
DIRECTOR.

Date: 29th December 2014

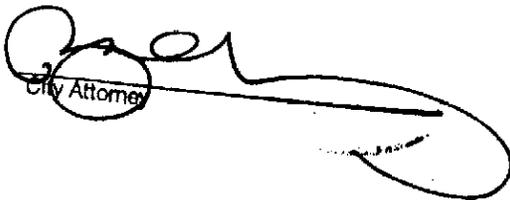
**SIGNED** by  
duly authorised for and on behalf  
of the Customer

  
.....  
CITY MANAGER

Date: 12/9/14

ATTEST:  
  
.....  
City Clerk

Approved as to form

  
.....  
City Attorney

## **Schedule 1 Miscellaneous**

### **Minimum Term**

The Minimum Term shall be the period of 90 days following the end of the trial period referred to in Clause 8.

### **Platform specification**

Cogmotive Reports is a web-based application that allows the Customer to generate reporting and analytical information around their Microsoft Office 365 environment.

The Platform will be designed to interface with the following systems, applications, programs and software:

- Modern web browsers support a combination of standards-based and de facto HTML, CSS, Javascript and XHTML.

The Platform will be hosted on Amazon Web Services, either physically located in the United States or European Union.

The Platform will be protected using the security systems outlined in the Cogmotive Security and Architecture policy document, which can be made available to the Customer upon request.

### **Licensing**

The Customer may add or delete named user licences by adding or deleting user accounts on the Platform.

### **Representatives**

Customer Representatives:

*[Names, job titles and contact details]*

Provider Representatives:

*[Names, job titles and contact details]*

**Schedule 2  
Service Level Agreement**

**1. Introduction**

1.1 In this Schedule:

"**New Functionality**" means new functionality that is introduced to the Platform by an Upgrade; and

1.2 References in this Schedule to Paragraphs are to the paragraphs of this Schedule, unless otherwise stated.

**2. Helpdesk**

2.1 The Provider will make available, during Business Hours, an email based helpdesk facility for the purposes of:

- (a) assisting the Customer with the configuration of the Platform and the integration of the Platform with the Customer's other systems;
- (b) assisting the Customer with the proper use of the Platform; and/or
- (c) determining the causes of errors and fixing errors in the Platform.

2.2 Subject to Paragraph 2.3, the Customer must make all requests for Support Services through the helpdesk, and all such requests must include at least the following information: Detailed description of the problem and contact information.

2.3 The Provider will use reasonable endeavours to ensure that a member of its support staff can be reached outside Business Hours in the case of an emergency.

**3. Response and resolution times**

3.1 The Provider will:

- (a) respond to requests for Support Services made through the helpdesk; and
- (b) use reasonable endeavours to resolve issues raised by the Customer, in accordance with the following response time matrix.

<b>Severity</b>	<b>Examples</b>	<b>Response time</b>	<b>Resolution time</b>
Critical	Platform inaccessibility	8hrs	24hrs
Moderate	Feature not working as expected, Incorrect information being displayed	24hrs	48hrs
Minor	Questions	48hrs	As soon as reasonably possible

3.2 The Provider will determine, acting reasonably, in to which severity category an

issue raised through the Support Services falls.

- 3.3 All Support Services will be provided remotely unless expressly agreed otherwise by the Provider.

#### **4. Limits on Support Services**

- 4.1 The Provider shall have no obligation under this Agreement to provide Support Services in respect of any fault or error caused by:

- (a) the improper use of the Platform; or
- (b) the use of the Platform otherwise than in accordance with the Documentation.

#### **5. Upgrades**

- 5.1 The Customer acknowledges that from time to time during the Term the Provider may apply Upgrades to the Platform, and that such Upgrades may result in changes to the appearance and/or functionality of the Platform.
- 5.2 The Customer shall not be subject to any additional Charges arising out of the application of the Upgrade unless explicitly stated in writing by the Provider.

#### **6. Uptime commitment**

- 6.1 The Provider shall use reasonable endeavours to ensure that the Platform is available the majority of the time during each calendar month, subject to Paragraph 8.

#### **7. Back-up and restoration**

- 7.1 Subject to Paragraph 7.2, the Provider will:
- (a) make back-ups of the Customer Materials stored on the Platform on a daily basis, and will retain such back-ups for at least 30 days; and
  - (b) at least once every day, the Provider will arrange for a current back-up of the Customer Materials stored on the Platform.
- 7.2 The Provider may not make back-ups of any and all information that can be recreated or acquired through other means, including but not limited to information that can be re-collected from Microsoft Office 365.
- 7.3 In the event of the loss of, or corruption of, Customer Materials stored on the Platform being notified by the Customer to the Provider under Paragraph 2, the Provider shall if so directed by the Customer use reasonable endeavours promptly to restore the Customer Materials from the most recent available back-up copy.

#### **8. Scheduled maintenance**

- 8.1 The Provider may suspend access to the Platform in order to carry out scheduled maintenance, such maintenance to be carried out outside Business Hours and such suspension to be for not more than 8 hours in each calendar month.
- 8.2 Platform downtime during scheduled maintenance carried out by the Provider in accordance with this Paragraph 8 shall not be counted as downtime for the

purposes of Paragraph 6.

**9. Accuracy of Data**

9.1 Subject to Paragraph 9.2, the Provider will:

- (a) endeavour to collect Data from Microsoft on behalf of the Customer at least once every 24 hours, where the time of collection is decided by the Provider.
- (b) ensure that the Data presented to the Customer is accurate and true
- (c) not in any way manipulate or change the Data presented to the Customer

9.2 The Customer acknowledges:

- (a) that the Data provided by the Provider has been sourced from Microsoft and that it does not hold the Provider responsible for any inaccuracies or defects of any Data presented to the Customer
- (b) that from time to time the Provider may not be able to collect Data from Microsoft due to a Force Majeure Event or Service affecting issues outside of the Providers control.

### **Schedule 3 Charges**

#### **1. Introduction**

- 1.1 References in this Schedule to Paragraphs are to the paragraphs of this Schedule, unless otherwise stated.
- 1.2 The Charges under the Agreement will consist of the following elements:
  - (a) access Charges, in respect of access to and use of the Platform;

#### **2. Access Charges**

- 2.1 The Charges in respect of access to and use of the Platform shall be made up of a fixed Charge.
- 2.2 The fixed Charge will be the amount specified in the Customer invoice plus Tax, which shall be invoiced by the Provider at any time following the commencement of the Agreement period in respect of which the licence Charges are incurred.
- 2.3 This fixed charge may be amended by the Provider at any time during the Agreement should the Customer increase or decrease their Microsoft Office 365 Mailbox numbers by more than 500 or 5% (Whichever is greater). This price amendment may either increase or decrease the price.

#### **3. Other Charges**

- 3.1 *In addition to the Charges detailed in Paragraphs 2 above, the Provider will invoice in respect of, and the Customer shall pay to the Provider:*
  - (a) any Charges for Customisations that are agreed by both parties.
  - (b) all other Charges that are agreed between the parties in writing from time to time.

## **Schedule 4 Acceptable Use Policy**

### **(1) This Policy**

This Acceptable Use Policy (the "**Policy**") sets out the rules governing the use of our web services (the "**Service**") and any content that you may submit to the Service ("**Content**").

By using the Service, you agree to the rules set out in this Policy.

### **(2) General restrictions**

You must not use the Service in any way that causes, or may cause, damage to the Service or impairment of the availability or accessibility of the Service, or any of the areas of, or services on, the Service.

You must not use the Service:

- (a) in any way that is unlawful, illegal, fraudulent or harmful; or
- (b) in connection with any unlawful, illegal, fraudulent or harmful purpose or activity.

### **(3) Unlawful and illegal material**

You must not use the Service to store, host, copy, distribute, display, publish, transmit or send Content that is illegal or unlawful, or that will or may infringe a third party's legal rights, or that could give rise to legal action whether against you or us or a third party (in each case in any jurisdiction and under any applicable law).

Content (and its publication on the Service) must not:

- (a) be libellous or maliciously false;
- (b) be obscene or indecent;
- (c) infringe any copyright, moral rights, database rights, trade mark rights, design rights, rights in passing off, or other intellectual property rights;
- (d) infringe any rights of confidence, rights of privacy, or rights under data protection legislation;
- (e) constitute negligent advice or contain any negligent statement;
- (f) constitute an incitement to commit a crime;
- (g) be in contempt of any court, or in breach of any court order;
- (h) be in breach of racial or religious hatred or discrimination legislation;
- (i) be blasphemous;
- (j) be in breach of official secrets legislation; or
- (k) be in breach of any contractual obligation owed to any person.

You must not submit any Content that is or has ever been the subject of any threatened

or actual legal proceedings or other similar complaint.

**(5) Data mining**

You must not conduct any systematic or automated data collection activities (including without limitation scraping, data mining, data extraction and data harvesting) on or in relation to the Service without our express written consent.

**(6) Graphic material**

Content must not depict violence in an explicit, graphic or gratuitous manner.

Content must not be pornographic or sexually explicit, or consist of or include explicit, graphic or gratuitous material of a sexual nature.

**(7) Harmful software**

You must not use the Service to promote or distribute any viruses, Trojans, worms, root kits, spyware, [adware] or any other harmful software, programs, routines, applications or technologies.

You must not use the Service to promote or distribute any software, programs, routines, applications or technologies that will or may negatively affect the performance of a computer or introduce significant security risks to a computer.

**(8) Factual accuracy**

Content must not be untrue, false, inaccurate or misleading.

Statements of fact contained in the Content must be true; and statements of opinion contained on the Content must be truly held and where possible based upon facts that are true.

**(9) Negligent advice**

Content must not consist of or contain any instructions, advice or other information that may be acted upon and could, if acted upon, cause:

- (a) illness, injury or death; or
- (b) any other loss or damage.

**(10) Marketing and spam**

You must not use the Service for any purposes related to marketing, advertising, promotion, or the supply and/or sale of goods and/or services.

Content must not constitute spam.

*You must not use the Service to transmit or send unsolicited commercial communications.*

You must not use the Service to market, distribute or post chain letters, ponzi schemes, pyramid schemes, matrix programs, "get rich quick" schemes or similar schemes, programs or materials.

**(11) Gambling**

You must not use the Service for any purpose related to gambling, gaming, betting, lotteries, sweepstakes, prize competitions or any gambling-related activity.

**(12) Professional advice**

You must not use the Service to provide any legal, financial, investment, taxation, accountancy, medical or other professional advice or advisory services.

**(13) Netiquette**

Content must be appropriate, civil, tasteful and accord with generally accepted standards of etiquette and behaviour on the internet.

Content must not be [grossly] offensive, deceptive, threatening, abusive, harassing, or menacing, hateful, discriminatory or inflammatory.

Content should not cause annoyance, inconvenience or needless anxiety.

Do not flame or conduct flame wars on the Service ("flaming" is the sending hostile messages intended to insult, in particular where the message is directed at a particular person or group of people).

Do not troll on the Service ("trolling" is the practice of deliberately upsetting or offending other users).

You must not flood the Service with Content focusing upon one particular subject or subject area, whether alone or in coordination with other users.

Content must not duplicate existing Content on the Service.

You must submit Content to the appropriate part of the Service.

Do not unnecessarily submit textual content in CAPITAL LETTERS.

You should use appropriate and informative titles for all Content.

You must at all times be courteous and polite to other Service users.

**(14) Hyperlinks**

You must not link to any website or web page containing material that would, were it posted on the Service, breach the preceding terms of this Policy.

**(15) Breaches of this Policy**

We reserve the right to edit or remove any Content in our sole discretion for any reason, without notice or explanation.

Without prejudice to this general right and our other legal rights, if you breach this Policy in any way, or if we reasonably suspect that you have breached this Policy in any way, we may:

- (a) delete or edit any of your Content;
- (b) send you one or more formal warnings;

- (c) temporarily suspend your access to a part or all of the Service; and/or
- (d) permanently prohibit you from using a part or all of the Service.

**(16) Banned users**

Where we suspend or prohibit your access to the Service or a part of the Service, you must not take any action to circumvent such suspension or prohibition (including without limitation using a different account).

**(17) Monitoring**

Notwithstanding the provisions of this Policy, we do not actively monitor Content.

**(18) Report abuse**

If you become aware of any material on the Service that contravenes this Policy, please notify us by email.

## ADDENDUM

The City of Glendale, Arizona ("City") and Cognotive, Ltd. ("Contractor") further agree as follows:

**I. Conflicts.** The **Cognotive Reports Service Agreement** (the "Agreement") between the parties is subject to cancellation for conflicts of interest under the provisions of Arizona Revised Statutes ("A.R.S.") § 38-511.

### **II. Immigration Law Compliance.**

- A. Contractor, and on behalf of any subcontractor, warrants, to the extent applicable under A.R.S. § 41-4401, compliance with all federal immigration laws and regulations that relate to their employees as well as compliance with A.R.S. § 23-214(A) which requires registration and participation with the E-Verify Program.
- B. Any breach of warranty under subsection (A) above is considered a material breach of the Agreement and is subject to penalties up to and including termination of the Agreement.
- C. City retains the legal right to inspect the papers of Contractor or subcontractor employee who performs work under the Agreement to ensure that Contractor or any subcontractor is compliant with the warranty under subsection (A) above.
- D. City may conduct random inspections, and upon request of the City, Contractor shall provide copies of papers and records demonstrating continued compliance with the warranty under subsection (A) above. Contractor agrees to keep papers and records available for inspection by the City during normal business hours and will cooperate with City in exercise of its statutory duties and not deny access to its business premises or applicable papers or records for the purposes of enforcement of this **Paragraph II**.
- E. Contractor agrees to incorporate into any subcontracts under the Agreement the same obligations imposed upon itself and expressly accrue those obligations directly to the benefit of the City. Contractor also agrees to require any subcontractor to incorporate into each of its own subcontracts under the Agreement the same obligations above and expressly accrue those obligations to the benefit of the City.
- F. Contractor's warranty and obligations under this **Paragraph II** to the City are continuing throughout the term of the Agreement or until such time as the City determines, in its sole discretion, that Arizona law has been modified in that compliance with this section is no longer a requirement.
- G. The "E-Verify Program" above means the employment verification program administered by the United States Department of Homeland Security, the Social Security Administration, or any successor program.

**III. Intentionally Omitted.**

**IV. Entire Agreement.** The Agreement and this Addendum constitute the entire understanding between the parties with respect to the subject matter of the Agreement and Addendum. This **Paragraph IV** explicitly supersedes and replaces the conflicting language in **Paragraph 19.9(a)** of the Agreement.

**V. Addendum and Agreement Conflict.** In the result of any conflict between the Agreement and this Addendum, the terms of this Addendum prevail.

[SIGNATURES ON NEXT PAGE]

Am  
Contractor

5th Dec 2014  
Date

B. Fischer  
Brenda S. Fischer  
City Manager

12-12-14  
Date

ATTEST:  
P. Hanna  
Pamela Hanna  
City Clerk

Approve As To Form:  
M. D. Bailey  
Michael D. Bailey  
City Attorney