

BY LOGGING IN TO THE SERVICE, YOU AGREE TO THE FOLLOWING TERMS AND CONDITIONS (THE "AGREEMENT") GOVERNING YOUR USE OF JSS'S ONLINE SERVICE, INCLUDING OFFLINE COMPONENTS. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THESE TERMS AND CONDITIONS, IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT LOG IN TO THE SERVICE AND MAY NOT USE THE SERVICE.

## 1. INTERPRETATION

“**ADC**” means an application delete certificate. “**Agreement**” means these terms and conditions and any other document incorporated into this Agreement by reference, as varied from time to time by JSS. “**Affiliate**” of any company means any company directly or indirectly controlling, controlled by or under common control with such company. “**ALC**” means an application load certificate. “**Application**” means a MULTOS application written to run on any Card. “**Application Provider**” means any party who supplies Applications to the Issuer. “**Cards**” means integrated circuit cards incorporating an implementation of MULTOS. “**Export Control Approval**” means approval under all relevant laws or regulations that affect the ability of JSS, any of JSS’s Affiliates, or their respective officers’ to supply, or permit JSS to supply KMA Services. “**Export Control Restrictions**” means all relevant laws and regulations regarding export or import. “**End User**” means the entity requesting KMA Services from JSS. “**KMA Services**” means the goods or services delivered to the End User pursuant to this Agreement including without limitation the supply of ADCs, ALCs, Applications, Application developer cards, Application developer tools, Cards and MSMs. “**METI**” means the Ministry of Economy, Trade and Industry and / or any other relevant body that may from time to time be involved in the grant, refusal or administration of Japanese Export Control Approvals. “**MSM**” means the MULTOS security manager being data which links card identity to End User identity. “**JSS**” means Japan Smartcard Solutions Co., Ltd. of 2-4 Kanda nishiki-cho, Chiyoda-ku, Tokyo, 101-0054 Japan. “**MULTOS**” means the secure multi-application operating system owned by StepNexus. “**JSS MULTOS KMA**” means the facility which provides KMA Services on behalf of JSS. “**Price List**” means the list of prices for each of the KMA Services, as amended by JSS from time to time. “**Service Level Policy**” means the document describing the service levels and associated processing requirements in respect of each of the KMA Services as updated from time to time by way of Product Bulletins. “**StepNexus**” means collectively StepNexus Ltd, a limited liability company, having its registered office at St Andrews House, The Links, Kelvin Close, Warrington, UK, WA3 7PB. “**StepServer**” means the online service provision to the End User by JSS through the designated web site, processed for registration, ordering, data generation and reporting,

## 2. KMA SERVICES

- 2.1 This Agreement alone shall govern and be incorporated in every request made by the End User to JSS for the provision of KMA Services whether by StepServer or otherwise and shall prevail over any terms or conditions contained or referred to in any documentation submitted by the End User or in correspondence or elsewhere or implied by trade custom, practice or course of dealing unless specifically agreed in writing by an authorized representative of JSS.
- 2.2 No request or order for KMA Services is accepted by JSS until such acceptance has been communicated to the End User by JSS in writing, or on delivery of the KMA Services, whichever is the earlier.
- 2.3 These terms and conditions shall be deemed to incorporate the Price List and the Service Level Policy as amended by JSS from time to time.

## 3. PAYMENT

- 3.1 In consideration of the provision by JSS of the KMA Services requested by the End User, the End User shall pay in US dollars the relevant fees set out in the Price List.
- 3.2 JSS shall issue invoices in respect of KMA Services. The End User shall pay all sums due under this Agreement within 30 days after the date of the relevant invoice. In the event that a Bureau performs work for the End User pursuant to clause 12, JSS may, at the End User’s direction, invoice the Bureau for the relevant fees, although the End User will remain liable for payment in the event of default by the Bureau.
- 3.3 JSS shall be entitled to vary the Price List from time to time by way of a Product Bulletin upon giving 30 days prior notice to the Issuer.
- 3.4 All sums due to JSS by the End User under this Agreement shall be made without any withholding or deduction of taxes, charges or other duties and should the Issuer be required to make any deductions or withholding, the End User shall pay any amounts as shall be necessary in order that the net amount received by JSS after deduction or withholding is equal to the amount payable for the KMA Services.
- 3.5 JSS shall be entitled to charge, and the End User shall pay, interest accruing daily from the due date to the actual date of payment (both dates inclusive), on any overdue amounts under this Agreement at the rate per annum of fourteen percent.

#### 4. END USER'S WARRANTIES

4.1 The End User represents and warrants that :

- (a) it has verified the suitability and compatibility of all Cards in connection with which it wishes to obtain KMA Services;
- (b) it has verified the compatibility, functionality and suitability for its requirements of any Application in connection with which it wishes to obtain KMA Services;
- (c) all data and information supplied in connection with the provision of KMA Services is correct and in particular, any data which JSS has used in assisting the End User in obtaining KMA Services is correct;
- (d) all requests for KMA Services have been duly authorized and JSS shall be entitled to assume that all requests from the End User made using Step Server have been duly authorized.

4.2 Without limitation, the End User shall be liable for the relevant KMA Services costs, as described in the Price List, incurred by JSS in providing or attempting to provide KMA Services in respect of which

- (a) the End User has submitted incorrect or corrupt data and such corruption was caused other than by an error in Step Server; or
- (b) the request for KMA Services was authorized or ostensibly authorized but was subsequently found not to have been authorized by the End User.

4.3 The End User warrants that it shall comply with all applicable laws regarding the use of KMA Services and the use of and supply of cryptographic materials in general.

4.4 End User agrees to indemnify and hold harmless JSS its Affiliates and their respective officers, directors, employees, agents from and against any and all costs, claims, demands, liabilities, expenses, damages or losses and all interest, penalties and legal and other professional costs and expenses arising out of any use of KMA Services by any third party whether or not such use is in accordance with or in breach of the terms of this agreement.

#### 5. JSS'S WARRANTIES

5.1 JSS represents and warrants to the End User that: JSS shall use reasonable skill and care in supplying the KMA Services under this Agreement and shall use its reasonable endeavors to comply with the Service Level Policy.

5.2 SUBJECT TO ANY EXPRESS PROVISION TO THE CONTRARY NO REPRESENTATION, WARRANTY OR CONDITION, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, AS TO CONDITION, QUALITY, PERFORMANCE OR FITNESS FOR A PURPOSE IS GIVEN OR ASSUMED BY JSS IN RESPECT OF THE KMA SERVICES AND ALL SUCH REPRESENTATIONS, WARRANTIES AND CONDITIONS ARE EXCLUDED SAVE TO THE EXTENT THAT SUCH EXCLUSION IS PROHIBITED BY LAW.

5.3 The End User acknowledges that the provision by JSS of an ALC in respect of such an Application is no guarantee of the authenticity, functionality or performance of that Application and the use of that Application at the user's risk.

#### 6. EXPORT CONTROL

6.1 JSS shall not be required to provide KMA Services if an Export Control Approval for the supply of such KMA Services is denied or not granted.

6.2 JSS may refuse in its absolute discretion to supply KMA Services if to do so would breach any policy of JSS or of its Affiliates.

6.3 In relation to Japanese Export Control Approval, JSS shall determine, on the basis of the End User's request for KMA Services, whether a Japanese Export Control Approval is required but reserves the right to refer to METI to make this determination on its behalf.

6.4 The End User acknowledges and agrees that:

- (a) JSS has no control over METI's decision whether or not to grant a Japanese Export Control Approval, the time taken by METI to grant a Japanese Export Control Approval, or in providing any determination or rating in accordance with clause 6.3; (b) JSS will give the End User information about the process of acquiring a Japanese Export Control Approval but the End User is responsible for supplying directly to METI any information (including the supply of copies of any Application source or executable code to METI) which may be required by METI in connection with either any application for a Japanese Export Control Approval or any determination as to whether a Japanese Export Control Approval is required;
- (c) the End User is responsible for ensuring compliance with any non- Japanese Export Control Restrictions.

6.5 JSS shall not be liable for:

- (a) any denial of Export Control Approval;
- (b) any changes in the procedure or criteria governing the grant of Export Control Approval;
- (c) any failure by the End User to supply information in accordance with sub clause 6.4(b) or to comply with non- Japanese Export Control Restrictions in accordance with sub clause 6.4(c); and
- (d) the elapsed time involved to obtain relevant Export Control Approval.

- 6.6** The End User agrees not to re-export or permit re-exportation of any KMA Services without first obtaining any required authorization in accordance with Export Control Restrictions.
- 6.7** The End User further agrees that it will not use or knowingly permit the use of KMA Services in any way that would put JSS or any of its Affiliates in breach of any applicable laws or regulations.

## **7. CONFIDENTIALITY**

In this Clause 7 when either of JSS or the End User discloses Confidential Information to the other whether before or during the Term, it is a “Disclosing Party” and when either of JSS or the End User receives Confidential Information from the other whether before or during the Term, it is a “Receiving Party”. During the Term and for a period of five years thereafter, each party will

- (a) use the Confidential Information of the other only in performing its obligations under this Agreement;
- (b) not copy any Confidential Information of the other except in performing this Agreement;
- (c) not disclose the Confidential Information of the other to any third party except as expressly permitted in writing by the Disclosing Party and then only if such third party has executed a nondisclosure agreement;
- (d) limit dissemination of Confidential Information to personnel with a “need to know” to perform obligations under this Agreement; and
- (e) advise the Disclosing Party promptly in writing of any unauthorized disclosure or use of Confidential Information.

The Receiving Party shall return all Confidential Information to the Disclosing Party upon the end of the Term or upon the Disclosing Party’s demand therefore. The Receiving Party acknowledges and agrees that any breach of this Clause 7 will cause the Disclosing Party immediate irreparable harm entitling the other party to immediate injunctive relief in addition to any other right or remedy that the Disclosing Party may have at law or in equity. The Receiving Party shall not be deemed to have violated this 7 if it discloses the Disclosing Party’s Confidential Information in response to a court order or other lawful process issued by a court or agency of competent jurisdiction, provided the Receiving Party shall have given the Disclosing Party at least ten (10) days’ written notice of its intention to make such disclosure (unless the court order or other process prohibits disclosure). “Confidential Information” means all information, data, know-how, trade secrets, technical processes, information relating to either JSS’s or the End User’s, products, prices, finances, contractual arrangements with users or suppliers and other information written or in any other tangible form, which is identified as confidential at the time of its disclosure. Confidential Information does not include information that:

- (i) becomes part of the public domain without a breach of this Agreement;
- (ii) was obtained lawfully from another entity without an obligation to keep it confidential or
- (iii) was developed independently without reference to the Confidential Information of the other party

## **8. DELIVERY AND RISK**

Risk in the KMA Services shall vest in the End User immediately and unconditionally on delivery. Delivery means, in relation to each occasion on which KMA Services are provided, the moment at which the media used to transport the KMA Services leave the premises of the JSS MULTOS KMA.

## **9. LIABILITIES**

- 9.1** JSS shall not be liable to the End User: (a) for any failure to provide KMA Services in respect of which the End User has submitted an invalid, incomplete or illegible request; (b) for any misrepresentations made by the Application Provider with respect to any aspect of an Application and in particular any statement made in connection with an application for an Export Control Approval; (c) for any defects in the Cards, Applications, Application developer cards or Application developer tools or for any failure of such items to comply with their specifications; (d) for any act or omission of any entity to which the End User has sub-contracted some of its duties or obligations under clause 12; or (e) for any defects in the KMA Services unless notified to JSS in writing within 1 month of receipt of the KMA Services (except for defects in the KMA Services arising from JSS’s willful breach of this agreement)
- 9.2** Where liability is accepted by JSS under clause 9.1, JSS’s aggregate liability to the End User whether for negligence, breach of contract, misrepresentation or otherwise shall be, at its option, to repeat any KMA Services found to be defective or to refund the cost of such KMA Services, as described in the Price List, to the End User.
- 9.3** JSS does not limit its liability for death or personal injury arising from its negligence or that of its employees, agents or subcontractors.
- 9.4** JSS shall not be liable to the End User for any loss of business or profits or any indirect or consequential loss or damage, in each case whether arising from negligence, breach of contract, indemnity or otherwise.
- 9.5** The parties acknowledge that the KMA Services are not intended to be used in connection with any safety critical purposes, including without limitation, on-line control of aircraft, air traffic control, any purposes connected with a nuclear facility or life support systems, and JSS hereby disclaims all liability resulting from the use of KMA Services for safety critical purposes.

## **10. FORCE MAJEURE**

Neither party shall be liable to the other for any delay or non-performance of its obligations under this Agreement arising from any cause beyond its reasonable control and including, without limitation, any of the following: act of God, governmental act, terrorism, war, fire, flood, explosion, accident, civil commotion, industrial dispute, breakdown of plant or machinery or impossibility of obtaining material.

## **11. TERMINATION**

### **11.1** If the party:

- (a) becomes insolvent or an order is made or resolution passed for its liquidation, administration, winding-up or dissolution (otherwise than for the purposes of a solvent amalgamation or reconstruction or an administrative or other receiver, manager, liquidator, administrator, trustee or similar officer is appointed over all or any substantial part of its assets or it enters into or proposes any composition or arrangement with its creditors or anything analogous to the foregoing happens in any applicable jurisdiction; or
- (b) commits a material breach of any of its obligations under this Agreement and either that breach is incapable of remedy or has failed to remedy that breach within 30 days after receiving written notice from the other party requiring it to do so the other party may, without prejudice to any of its other rights terminate this Agreement with immediate effect.

**11.2** Without prejudice to its other rights either party may terminate this Agreement by written notice to the other party.

**11.3** Upon termination of any requests for KMA Services pursuant to sub clause 11.1 any indebtedness of the End User to JSS under this Agreement shall become immediately due and payable and JSS shall be relieved of any further obligation to supply any KMA Services to the Issuer pursuant to any existing requests for KMA Services.

**11.4** Notwithstanding clause 11.1, JSS may also terminate this Agreement by immediate written notice if the End User breaches the terms of clause 6.

## **12. ASSIGNMENT**

The End User shall not assign, sublicense, transfer, mortgage, charge or part with any of its rights or obligations under this Agreement, save to a delegated bureau ("Bureau") that has been registered with JSS and solely to the extent necessary to enable to bureau to process KMA Services on behalf of the End User.

## **13. SEVERABILITY**

The invalidity, illegality or unenforceability of any of the provisions of this Agreement shall not affect the validity, legality and enforceability of the remaining provisions of this Agreement.

## **14. WAIVER**

A waiver (whether express or implied) by the End User or JSS of any of the provisions of this Agreement or of any breach or default by the other party in performing any of those provisions shall not constitute continuing waiver and that waiver shall not prevent the waiving party from subsequently enforcing any of the provisions of this Agreement not waived or from acting on any subsequent breach of or default by the other party under any of the provisions of this Agreement.

## **15. NOTICES**

Any notice under or in connection with this Agreement shall be in writing and may be delivered personally or sent by first class post pre-paid recorded delivery (and airmail if overseas) or by fax to the party concerned at its last known address.

## **16. COMPLETE AGREEMENT**

This Agreement supersedes and cancels all previous agreements and wording arrangements whether oral or written, express or implied between the parties in relation to the subject matter of this Agreement.

## **17. THIRD PARTY CONTRACT RIGHTS**

A person who is not a party to this Agreement has no rights to rely upon or enforce any term of this Agreement but this does not affect any right or remedy of a third party which exists or is available. Neither party may declare itself a trustee of the rights under this Agreement for the benefit of any third party.

## **18. GOVERNING LAW**

This Agreement shall be governed by, and construed in accordance with the laws of Japan. The parties submit to the non-exclusive jurisdiction of the courts of Japan for all purposes relating to this Agreement.