



## Zest CTO Group Ltd - STANDARD TERMS & CONDITIONS FOR SOFTWARE SUPPORT & IT SUPPORT SERVICES

### 1. Interpretation

1.1 The definitions and rules of interpretation in this condition apply in these conditions.

Affiliate - includes, in relation to either party; each and any subsidiary or holding company of that party and each and any subsidiary of a holding company of that party.

Charges – the charges payable for the Services under the Contract being (where the context so requires) each or any of the following

- a) the charges for the Standard Support Service set out on the front sheet to these conditions (which charges also include the Updating Service); and

- b) any charges as agreed for Optional Services in each case as the same may be amended from time to time in accordance with the provisions of condition 8.7

Commencement Date – the date set out on the front sheet to these conditions

Confidential Information – has the meaning given in condition 13

Contract – the Customer's purchase order and the supplier acceptance of it under condition 3 Contract Year – and 12-month period ending on any anniversary of the Commencement Date

Control – shall be defined in section 1124 of the Corporation Tax Act 2010, and the expression "change of control" shall be construed accordingly.

Customer – the person, firm or company who purchases the Services from the Supplier.

Deliverables – any Documentation, Software, know-how or other works created or supplied by the Supplier (whether alone or jointly) in the course of providing the services.

Documentation – the documents provided by the Supplier for the Software, in either printed text or machine-readable form including the technical documentation, program specification and operations manual.

Intellectual Property Rights – patents, utility models, rights to inventions, copyright and related rights, trademarks and service marks, trade names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to preserve the confidentiality of information (including know-how and trade secrets) and any other intellectual property rights, including all applications for (and rights to apply for and be granted), renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist, now or in the future, in any part of the world.

License - the license of the Software made between the Supplier and the Customer.

Maintenance Release - a release of the Software which corrects faults, adds functionality or otherwise amends or upgrades the Software, but which does not constitute a New Version.

Manager - the person appointed by the Customer from time to time in order to fulfil the role described in condition 10.3.

Modification - any Maintenance Release or New Version which is acquired by the Customer.

New Version - any new version of the Software which from time to time is publicly marketed and offered for purchase by the Supplier in the course of its normal business, being a version which contains such significant differences from the previous versions as to be generally accepted in the marketplace as constituting a new product.

Optional Service - any of the Services listed on the front sheet to these conditions and any other services that the Customer and the Supplier may from time to time agree shall be supplied to the Customer by the Supplier under the terms of the Contract Retail Prices Index - the Retail Prices Index (All Items, excluding mortgages) as published by the Office for National Statistics from time to time, or failing such publication, that other index as the parties may agree most closely resembles such index.

Services - includes (as appropriate) the Standard Support Service, the Updating Service, and any Optional Services which are included within an order for Optional Services under condition 6.

Software – has the same meaning as in the License.

Standard Support Service - the support service more particularly described on the front sheet to these conditions, which is to be provided by the Supplier to the Customer under condition 5.1 and condition 5.2

Standard Support Hours - 8.30 am to 5.00 pm Monday to Friday, except on days which are bank holidays in England.

Supplier – Zest CTO Group Ltd registered number 11824986 whose registered office is Falcon Lodge Upper Hexgreave, Farnsfield, Newark, NG22 8LS.

Support Manager – the person appointed by the Supplier from time to time in order to fulfil the role described in condition 7. Support Staff – those individuals who perform the Supplier's obligations under this agreement including (where the context permits) the Support Manager.



Term – the term of the Contract as set out on the front sheet to these conditions.

Updating Service – the service to be supplied by the Supplier to the Customer under condition 5.1 and condition 5.3

1.2 The headings in these conditions do not affect their interpretation. Unless the context otherwise requires:

1.2.1 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders. 1.2.2 A reference to any party shall include that party's personal representatives, successors and permitted assigns.

1.2.3 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of the Contract.

1.2.4 A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of the Contract under that statute or statutory provision

1.2.5 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.3 If any conflict arises between the Contract and the License, the terms of the License shall prevail.

1.4 Words in the singular include the plural and those in the plural include the singular.

1.5 A reference to a holding company or a subsidiary means a holding company or a subsidiary (as the case may be) as defined in section 1159 of the Companies Act 2006.

1.6 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns.

## 2. Application of conditions

2.1 These conditions shall;

2.2 apply to and be incorporated in the Contract; and

2.3 prevail over any inconsistent terms or conditions contained in, or referred to in, the Customer's purchase order, confirmation of order, or specification, or implied by law, trade custom, practice or course of dealing.

2.4 No addition to, variation of, exclusion or attempted exclusion of any term of the Contract shall be binding on the Supplier unless in writing and signed by a duly authorised representative of the Supplier.

## 3. Effect of Purchase Order

3.1 The customer's purchase order (or name if so given as such) constitutes an offer by the Customer to purchase the Services specified in it on these conditions; accordingly, the execution and return of the acknowledgement copy of the purchase order form by the Supplier, or the Supplier's commencement or execution of work pursuant to the purchase order, shall establish a contract for the supply and purchase of those Services on these conditions. The Customer's standard terms and conditions (if any) attached to, enclosed with, or referred to in the purchase order shall not govern the Contract

## 4. Supported Software

4.1 The supported software is:

4.1.2 the software; any Modification which is acquired by the Customer (whether under the License, the Contract or any other agreement between the Supplier and the Customer) during the course of the License and which accordingly becomes part of the software defined as the Software under the License; and

4.1.3 any other software which the Supplier and Customer agree should be Supported Software for the purposes of the Contract.

4.2 In relation to Maintenance Releases:

4.2.1 as part of the Updating Service, the Supplier shall from time to time make Maintenance Releases available to the Customer without charge; and 4.2.2 if the Customer fails to acquire and install a Maintenance Release within one month of the Supplier's notifying the Customer that such Maintenance Release is available for installation, the Supplier may terminate the Contract by giving one month's written notice to the Customer.

4.3 In relation to New Versions, if the Supplier releases a New Version and the Customer decides not to acquire and install such New Version, that decision shall not give rise to any right to terminate the Contract, nor shall it result in any adverse effect on the Services or the performance



of the Supplier's obligations under the Contract. However, if the Supplier has released a New Version since the version which forms part of the Supported Software, and the Customer has not, within 12 months of the Supplier's having notified the Customer that a New Version is available, acquired and installed that New Version, the Supplier may terminate the Contract by giving one month's written notice to the Customer given at any time after the expiry of such period.

## 5. The Services

5.1 The Supplier shall supply, and the Customer shall take and pay for, the following Services:

5.1.1 the Standard Support Service

5.1.2 the Updating Service; and

5.1.3 such of the Optional Services as are included from time to time within an order for Optional Services agreed between the Supplier and the Customer under condition 6.

5.2 In relation to the Standard Support Service:

5.2.1 the Standard Support Service shall be provided during the Standard Support Hours and shall comprise:

5.2.1.1 a telephone help desk to provide operational support to users of the Supported Software as to the effective use of the Supported Software which includes assisting with the configuration of the Supported Software

5.2.1.2 a telephone helpdesk to provide first-line technical support to users of the Supported Software; and 5.2.1.3 remote diagnosis and, where possible correction of faults using the software management software.

5.2.2 if additional on-site support is required in any month it may be provided by the Supplier at its option at the rates agreed at the time.

5.3 In relation to the Updating Service:

5.3.1 the Supplier shall issue Modifications of the Software as and when required and in whatever form (including by way of a local fix or patch of the Software or a temporary by-pass solution) in the absolute discretion of the Supplier;

5.3.2 the Updating Service shall include the supply to the Customer of all revisions to the Documentation which are necessary in order to reflect and Modification acquired by the Customer once the Supplier receives these from the ultimate supplier of the Software.

5.3.3 for the avoidance of doubt, the cost of the Updating Service is included in the Charges payable for the Standard Support Service, but excludes any sum payable by the Customer in respect of the License of a New Version; and

5.3.4 whilst the Supplier does not give any warranty express or implied that the Software will be compatible with new releases of software or operating systems from third party suppliers to the Customer the Supplier shall use reasonable endeavours to ensure that updated versions of the Software which are compatible with major operating system releases are made available to customers within a reasonable timeframe. The Supplier reserves the right not to update the Software to make it compatible with a given operating system release if in the Supplier's absolute discretion it is not commercially viable to do so.

5.4 The Supplier may, on prior notice to the Customer, make changes to the Services, provided such changes do not have a material adverse effect on the Customer's business operations.

5.5 The Supplier shall have no obligation to provide the Services where faults arise from;

5.5.1 misuse, incorrect use of or damage to the Software from whatever cause (other than any act or omission by the Supplier), including failure or fluctuation of electrical power;

5.5.2 failure to maintain the necessary environmental conditions for use of the Software;

5.5.3 use of the Software in combination with any equipment or software not provided by the Supplier or not designated by the Supplier for use with any Modification forming part of the Supported Software, or any fault in any such equipment or software including, for the avoidance of doubt:-

5.5.3.1 any failure by the Customer to keep up-to-date an operating system on which the Software is installed and any failure by the Customer to ensure that there is sufficient storage space on the relevant operating system; and

5.5.3.2 any third party update or upgrade to any third party software or operating system used by the Customer in connection with the Software issued by a third party software or operating system provider and implemented by the Customer;



- 5.5.4 relocation or installation of the Software by any person other than the Supplier or a person acting under the Suppliers instructions. For the avoidance of doubt if the Supplier agrees to provide support to the Customer in connection with the installation or relocation of the Software or any database this shall constitute Optional Services and shall be subject to the Customer paying the Supplier's additional charges in relation thereto;
- 5.5.5 any breach of the Customer's obligations under the Contract howsoever arising or having the Software maintained by a third party;
- 5.5.6 any Modification not authorised by the Supplier resulting in a departure from the Specification (as defined in the License) or 5.5.7 operator error

## 6. Order for Optional Services

- 6.1 The Customer may from time to time request the Supplier to supply Optional Services of the type set out in on the front sheet to these conditions at the rates referred to in condition 0. The Supplier shall use its reasonable endeavors to comply with the Customer's request, but the Customer acknowledges that the Supplier's ability to supply the Optional Services shall depend on the availability of appropriate resources at the time in question.
- 6.2 Where the Supplier agrees to provide Optional Services, such agreement shall be embodied in an order for Optional Services. Each order for Optional Services shall be made under, and shall incorporate, the terms of the Contract.

## 7. Support Staff

- 7.1 The Supplier shall appoint a Support Manager, who shall be responsible for the co-ordination of all matters relating to the Services. All communications, documentation and materials relating to the Contract shall be sent as appropriate by the Support Manager to the Manager. Each party shall notify the other in writing promptly if there is any proposed change to those appointments.
- 7.2 In addition to its Support Manager, the Supplier shall provide sufficient Support Staff to fulfil its obligations under the terms of the Contract. The Support Staff shall be suitably trained and experienced in the support and maintenance of the Supported Software.
- 7.3 In the absence of the Support Manager or of any other member of the Support Staff for any reason, the Supplier shall supply a replacement person who:
  - 7.3.1 is appropriately trained and competent to fulfil the role required of him; and
  - 7.3.2 has undergone a suitable period of familiarisation with the Services to enable him to perform the functions of the person he is replacing.

## 8. Charges

- 8.1 In consideration of the Services (excluding for this purpose any Optional Services), the Customer shall pay the Charges set out on the front sheet to these conditions. These Charges shall be paid annually or monthly in advance by the Customer to the Supplier within 30 days of the date of the Supplier's invoice.
- 8.2 Charges for any New Version or Optional Services to the Customer shall be determined in accordance with the front sheet of these conditions and agreed in writing before performance or supply by the Supplier, and shall be charged and invoiced to the Customer by the Supplier (and paid by the Customer) following acceptance by the Supplier of the Customer's written order for such New Version or such Optional Service (as the case may be).
- 8.3 The Customer shall pay all costs (at the Supplier's then prevailing rates) and expenses incurred by the Supplier for work carried out by the Supplier in connection with any fault which is not covered by the Contract.
- 8.4 The Customer shall reimburse any travel or subsistence expenses incurred by the Supplier where such expenses are incurred wholly and exclusively for the purpose of providing on-site support as part of the Services, provided that any request for reimbursement is in the form of a proper invoice accompanied by appropriate receipts.
- 8.5 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then, without limiting the Supplier's remedies under condition 19, the Customer shall pay interest on the overdue amount at the rate of 4% per annum above Bank of Scotland's base rate from time to time. Such interest shall accrue on a daily basis from the due date until



actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

- 8.6 All amounts payable under the Contract shall be exclusive of VAT or relevant local sales tax (if any) or any relevant local sales taxes which shall be paid at the rate and in the manner for the time being prescribed by law.
- 8.7 With effect from the first anniversary of the Commencement Date and each anniversary of the Commencement Date, the Supplier reserves the right to increase the Charges by providing 50 days prior written notice of its intention to do so. Additionally, should changes to support be made during the year, such as additional Software being added, the Supplier may increase charges in the month following the change on the provision of 7 days written notice.
- 8.8 All amounts due under the Contract shall be paid by the Customer to the Supplier in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 8.9 The total monthly Service Charge payable for Support Services will not at any time without the prior written agreement of the supplier be less than eighty-five percent (85%) of the amount specified within the initial term.

## 9. Intellectual Property Rights

- 9.1 All Intellectual Property Rights in the Deliverable shall belong to the Supplier or the third party owner of the Intellectual Property Rights in the Deliverables, and the Customer shall have no rights in respect of any of the Deliverables except as expressly granted under the Contract. The Customer shall do or procure to be done all such further acts and things and sign or procure the signature of all such other documents as the Supplier may from time to time require for the purpose of giving the Supplier or as relevant the third party owner of the Intellectual Property Rights in the Deliverables the full benefit of the provisions of this condition 9.1

## 10. The Customer's Responsibilities

- 10.1 The Customer shall provide the Supplier, the Support Manager, the Support Staff and all other persons duly authorised by the Supplier with full, safe and uninterrupted access including remote access to the Customer's premises, systems, facilities and the Software as may reasonably be required for the purpose of performing the Services, such access, to be within the Standard Support Hours. Where the Services are to be performed at any of the Customer's premises, the Customer shall provide adequate working space and office facilities (including telephone) for use by the Support Staff and take reasonable care to ensure their health and safety.
- 10.2 The Customer shall ensure that appropriate environmental conditions are maintained for the Supported Software and shall take all reasonable steps to ensure that the Supported Software is operated in a proper manner by the Customer's employees.
- 10.3 The Customer shall nominate a manager to be available to liaise with, and respond to queries from, the Support Manager.
- 10.4 The Customer shall:
  - 10.4.1 co-operate with the Supplier in performing the Services and provide any assistance or information as may reasonably be required by the Supplier, including in relation to the diagnosis of any fault;
  - 10.4.2 report faults promptly to the Supplier; and
  - 10.4.3 keep full backup copies of all of its data.
- 10.5 The Customer shall indemnify the Supplier against any losses, damages, costs (including legal fees) and expenses incurred by or awarded against the Supplier as a result of the Customer's breach of the Contract howsoever arising or any negligent or wrongful act of the Customer, its officers, employees, contractors or agents.

## 11. Non-solicitation

The Customer shall not, for the duration of the Contract, and for a period of six months following termination, directly or indirectly induce or attempt to induce any employee of the Supplier who has been engaged in the provision, receipt, review or management of the Services or otherwise in connection with the Contract to leave employment of the Supplier.

## 12. Risk and Title



Risk in, and title to, any media bearing any Software or Documentation or other information that may from time to time be supplied by the Supplier to the Customer shall pass to the Customer on acceptance by the Customer.

### 13. Confidentiality and publicity

- 13.1 Each party shall, during the Term of the Contract and thereafter, keep confidential all, and shall not use for its own purposes (other than implementation of the Contract) nor without the prior written consent of the other disclose to any third party (except its professional advisors or as may be required by any law or any legal or regulatory authority) any, information of a confidential nature (including trade secrets and information of commercial value) which may become known to such party from the other party and which relates to the other party or any of its Affiliates (Confidential Information), unless such information is public knowledge or already known to such party at the time of disclosure, or subsequently becomes public knowledge other than by breach of the Contract, or subsequently comes lawfully into the possession of such party from a third party. Each party shall use its reasonable endeavours to prevent the unauthorised disclosure of any such information.
- 13.2 Each party shall notify the other party if any of its staff connected with the provision or receipt of the Services becomes aware of any unauthorised disclosure of any Confidential Information and shall afford reasonable assistance to the other party, at that other party's reasonable cost, in connection with any enforcement proceedings which that other party may elect to bring against any person.
- 13.3 The terms of the Contract may not be disclosed by the Customer (other than to its legal advisors) without the prior written consent of the Supplier.
- 13.4 The Supplier may refer to the Customer as being a client of the Supplier in customer reference lists and sales presentations, but shall not refer to the Customer in any advertising or press release without the prior written consent of the Customer.
- 13.5 The provisions of this condition 13 shall remain in full force and effect notwithstanding any termination of the Contract.

### 14. Data Protection

- 14.1 The following definitions apply:
- 14.1.1 the terms "data controller", "data processor", "data subject" and "processing" bear the respective meanings given them in the Data Protection Act 1998, and "data protection principles" means the eight data protection principles set out in Schedule 1 to that Act.
- 14.1.2 data includes Personal Data
- 14.1.3 Customer Personal Data and Supplier Personal Data mean any Personal Data provided by or on behalf of the Customer or the Supplier, respectively.
- 14.2 The Supplier shall:
- 14.2.1 only carry out processing of any Customer Personal Data on the Customer's instructions;
- 14.2.2 implement appropriate technical and organisational measures to protect any Customer Personal Data against unauthorised or unlawful processing and accidental loss or damage; and
- 14.2.3 only transfer Customer Personal Data to countries outside the European Economic Area that ensure an adequate level of protection for the rights of the data subject.
- 14.3 The Supplier shall promptly and fully notify the Customer in writing of any notices in connection with the processing of any Customer Personal Data, including subject access requests, and provide such information and assistance as the Customer may reasonably require.
- 14.4 The Customer acknowledges that the Supplier will be acting as a data processor, rather than as a data controller, in respect of all such data processing activities which the Supplier carries out under the Contract.
- 14.5 Except as expressly provided otherwise, the Contract does not transfer ownership of, or create any Licenses (implied or otherwise), in any Intellectual Property Rights in any (non-personal) data.

### 15. The Supplier's warranties

- 15.1 The Supplier represents and warrants to the Customer that:



- 15.1.1 the Services will be performed:
  - 15.1.1.1 in accordance with all applicable laws and regulations; and
  - 15.1.1.2 with all reasonable skill and care;
- 15.1.2 at the date of the Contract, the Supplier has obtained and will maintain for the duration of the Contract all permissions, Licenses and consents necessary for the Supplier to perform the Services;
- 15.2 If, during the Term of the Contract, the Supplier receives written notice from the Customer of any breach by the Supplier of the representations and warranties contained in condition 15.1.1, the Supplier shall, at its own option and expense, remedy that breach within a reasonable period following receipt of such notice, or terminate the Contract immediately on written notice to the Customer and repay to the Customer all sums which the Customer has paid to the Supplier under the Contract during the year in which the termination occurs, less a charge for the Services performed up to the date of termination. The Customer shall provide all information reasonably necessary to enable the Supplier to comply with its obligations under this condition 15.2. This condition sets out the Customer's sole remedy and the Supplier's entire liability for breach of condition 15.1.1
- 15.3 No representation or warranty is given by the Supplier that all faults will be fixed, or will be fixed within a specified period of time.
- 15.4 All other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into the Contract or any collateral contract, whether by statute, common law or otherwise, are hereby excluded, including the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose and the use of reasonable skill and care.

## 16. Limits of Liability

- 16.1 Except as expressly stated on condition 16.2:
  - 16.1.1 the Supplier shall not in any circumstances have any liability for any losses or damages which may be suffered by the Customer (or any person claiming under or through the Customer), whether the same are suffered directly or indirectly or are immediate or consequential, and whether the same arise in contract, tort (including negligence) or otherwise howsoever, which fall within any of the following categories:
    - 16.1.1.1 special damage, even though the Supplier was aware of the circumstances in which such special damage could arise;
    - 16.1.1.2 loss of profits
    - 16.1.1.3 loss of anticipated savings
    - 16.1.1.4 loss of business opportunity
    - 16.1.1.5 loss of or goodwill
    - 16.1.1.6 loss of, or damage to (including corruption of), data;
  - 16.1.2 the Customer agrees that, in entering into the Contract, either it did not rely on any representations (whether written or oral) of any kind or of any person other than those expressly set out in the Contract or (if it did rely on any representations, whether written or oral, not expressly set out in the Contract) that it shall have no remedy in respect of such representations and (in either case) the Supplier shall not in any circumstances have any liability otherwise than in accordance with the express terms of the Contract; and
  - 16.1.3 the total liability of the Supplier, whether in contract, tort (including negligence) or otherwise and whether in connection with the Contract or any collateral contract, shall in no circumstances exceed a sum equal to one hundred percent (100%) of the Charges payable by the Customer in the Contract Year in which the liability arises.
- 16.2 The exclusions in condition 15.4 and condition 16.1 shall apply to the fullest extent permissible at law but the Supplier does not exclude liability for:
  - 16.2.1 death or personal injury caused by the negligence of the Supplier, its officers, employees, contractors or agents;
  - 16.2.2 fraud or fraudulent misrepresentation;
  - 16.2.3 breach of the obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 Supply of the Goods and Services Act 1982; or
  - 16.2.4 any other liability which cannot be excluded by law.
- 16.3 The Customer acknowledges that:
  - 16.3.1 it is exclusively responsible for:



- 16.3.1.1 reviewing any new Modifications in accordance with condition 4;
- 16.3.1.2 ensuring that the staff of the Customer and its Affiliates are trained in the proper use and operation of the Software;
- 16.3.1.3 ensuring the security, completeness and accuracy of all inputs and outputs;
- 16.3.1.4 making regular backup copies of its data to ensure recovery of its data if the Software malfunctions; and
- 16.3.1.5 the selection, use of and results obtained from any other programs, equipment, materials or services used in conjunction with the Software;
- 16.3.2 the level of the Charges reflects the allocation of risk between the parties set out in condition 15 and condition 16; and
- 16.3.3 it is in a better position than the Supplier to assess and manage its risk in relation to use of the Software.
- 16.4 All dates supplied by the Supplier for the delivery of the Modifications or the provision of Services shall be treated as approximate only. The Supplier shall not in any circumstances be liable for any loss or damage arising from any delay in delivery beyond such approximate dates.
- 16.5 All references to the Supplier in this condition 16 shall, for the purposes of this condition only, be treated as including all employees, subcontractors and suppliers of the Supplier and its Associates, all of whom shall have the benefit of the exclusions and limitations of liability set out in this condition, in accordance with condition 27.

## 17. Assignment and subcontracting

- 17.1 The Customer shall not assign, novate, charge, subcontract or deal in any other manner with any or all of its rights and obligations under the Contract without the prior written consent of the Supplier (such consent not to be unreasonably withheld or delayed).
- 17.2 The Supplier may at any time assign, novate, charge, subcontract or deal in any other manner with any or all of its rights and obligations under the Contract, provided it gives written notice to the Customer.
- 17.3 Each party confirms it is acting on its own behalf and not for the benefit of any other person.
- 17.4 Notwithstanding condition 13, a party assigning any or all of its rights under the Contract may disclose to a proposed assignee any information in its possession that relates to the Contract or its subject matter, the negotiations relating to it and the other party which is reasonably necessary to disclose for the purposes of the proposed assignment, provided that no disclosure pursuant to this condition 17.4 shall be made until notice of the identity of the proposed assignee has been given to the other party.

## 18. Duration

Supply of the Services by the Supplier to the Customer shall commence on the date of the Contract and, subject to termination in accordance with the provisions of the Contract, shall continue for the Term. After expiry of the Term, the supply of the Services shall (subject to any such termination) continue under the Contract from year to year until terminated by either the Supplier or the Customer on 90 days' prior written notice to the other to expire at the end of the current Contract Year of the Term.

## 19. Termination

- 19.1 Without prejudice to any rights that have accrued under the Contract or any of its rights or remedies, either party may at any time terminate the Contract and/or the Support Services with immediate effect by giving written notice to the other party if:
  - 19.1.1 the other party fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;
  - 19.1.2 the other party commits a material breach of any term of the Contract (other than failure to pay any amounts due under the Contract) and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
  - 19.1.3 the other party repeatedly breaches any of the terms of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract;
  - 19.1.4 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its



debts within the meaning of section 123 of the Insolvency Act 1986; 19.1.5 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;

- 19.1.6 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on connection with the winding up of that;
- 19.1.7 an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party;
- 19.1.8 the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
- 19.1.9 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- 19.1.10 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- 19.1.11 the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
- 19.1.12 any warranty given in condition 15 is found to be untrue or misleading/
- 19.2 For the purposes of condition 19.1.2, material breach means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the terminating party would otherwise derive from:
  - 19.2.1 a substantial portion of the Contract or;
  - 19.2.2 any of the obligations set out in conditions 8,9,10,11,13 and 17 over the Term of the Contract. In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.
- 19.3 Either party may terminate the Contract in accordance with condition 29.
- 19.4 The Supplier may, without prejudice to its other rights or remedies, terminate the Contract immediately by notice to the Customer if the Customer:
  - 19.4.1 undergoes a change of Control;
  - 19.4.2 sells all of its assets or is merged or re-organised in circumstances where it is not the surviving entity; or
  - 19.4.3 disputes the ownership or validity of the Supplier's Intellectual Property Rights.
- 19.5 The Contract shall automatically terminate on termination or expiry of the License, but expiry or any termination of the Contract (however caused) shall have no effect on the Licenses granted under the License.

## 20. Effect of Termination

- 20.1 Other than as set out in the Contract, neither party shall have any further obligation to the other under the Contract after its termination.
- 20.2 Any provision of the Contract which expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.
- 20.3 Termination of the Contract, for any reason, shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination.
- 20.4 Notwithstanding its obligations in this condition 20, if a party is required by any law, regulation, or government or regulatory body to retain any documents or materials containing the other party's Confidential Information, it shall notify the other party in writing of such retention, giving details of the documents and/or materials that it must retain.
- 20.5 On termination of the Contract for any reason, the Customer's right to receive the Services shall cease automatically and each party shall as soon as reasonably practicable:
  - 20.5.1 return, destroy or permanently erase (as directed in writing by the other party) any documents, handbooks, CD-ROMs or DVDs or other information or data provided to it by the other party containing, reflecting, incorporating or based on Confidential Information belonging to the other party. If required by the other party, it shall provide written evidence (in the form of a letter signed by a director) no later than 30 days after termination of the Contract that these have been destroyed and that it has not retained any copies of them (except for



one copy that it may use for audit purposes only and subject to the confidentiality obligations in condition 13), provided that the Customer may retain copies of any Supplier Confidential Information incorporated into the Software; 20.5.2 return all of the other party's equipment and materials, failing which, the other party may enter the relevant premises and take possession of them. Until these are returned or repossessed, the party in possession shall be solely responsible for their safekeeping.

20.6 On termination of the Contract for any reason, the Customer shall immediately pay any outstanding unpaid invoices and interest due to the Supplier. The Supplier shall submit invoices for any Services that it has supplied, but for which no invoice has been submitted, and the Customer shall pay these invoices immediately on receipt.

#### 21. Waiver

No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

#### 22. Remedies

Except as expressly provided in the Contract, the rights and remedies provided under the Contract are in addition to, and not exclusive of, any rights or remedies provided by law.

#### 23. Entire Agreement

23.1 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

23.2 Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract.

23.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

#### 24. Variation

No variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

#### 25. Severance

25.1 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this condition shall not affect the validity and enforceability of the rest of the Contract.

25.2 If any provision or part-provision of the Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

#### 26. Counterparts

26.1 The Contract may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

26.2 No counterpart shall be effective until each party has executed and delivered at least one counterpart.

#### 27. Third-party rights

No one other than a party to the Contract, their successors and permitted assignees, shall have any right to enforce any of its terms.



## 28. No partnership or agency

28.1 Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, nor authorise any party to make or enter into any commitments for or on behalf of any other party.

28.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

## 29. Force Majeure

29.1 Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed. If the period of delay or non-performance continues for three months, the party not affected may terminate the Contract by giving 30 days' written notice to the affected party.

## 30. Notices

30.1 Any notice or other communication given to a party under or in connection with this contract shall be in writing and shall be:

30.1.1 delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case);

30.2 Any notice or communication shall be deemed to have been received:

30.2.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;

30.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service.

30.2.3 if sent by fax, at 9.00 am on the next Business Day after transmission.

30.3 This condition does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution. For the purposes of this condition, "writing" shall not include e-mail.

## 31. Governing Law

The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including noncontractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

## 32. Jurisdiction

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).