BPD ZENITH

Contract
&
Service Level Agreement

Between

<Customer Name>

And

BPD Zenith Ltd

For

MAXI CLOUD

<Date>

Note: For G-cloud customers, where terms and conditions differ between this document and g-cloud terms, g-cloud terms take precedent. Standard g-cloud call off contracts will be used for G-cloud contracting purposes.

Date of publication: 13/5/22

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Introduction

This Contract is an agreement between the following parties:

> **<Customer Name>**
> Of: <Customer Address>
> (**Client**)
>
>
> **BPD Zenith (UK) Ltd**
> Of: 3c Clifford Court, Cooper Way, Carlisle, Cumbria, CA3 0JG, UK
> (**Supplier**)

Overview of Service Components

The services being proposed consist of:

- **Project delivery service** – to build a Maximo-based Asset Register system
- **MaxiCloud Service** – a subscription based Asset Management service, which includes use of BPD's Maximo licenses, access to the physical and software infrastructure required to support Maximo, together with associated Maximo Support services

Contract Structure

The structure of this contract is as follows:

- The **General Terms and Conditions** which apply to all BPD Zenith services agreements and form the basis of the contract between the two parties. The Contract Signature page is at the end of this section (Paragraph 23).
- **Schedule A** provides a description of the services being delivered
- **Schedule B** is the Service Level Agreement for the cloud-based Maximo Asset Management service (BPD Zenith's MaxiCloud service).
- **Schedule C** contains the license agreements for the MaxiCloud service and the IBM Maximo licenses contained within it
- **Schedule D** defines the Fees and Expenses payable for the development and ongoing support of the service.
- **Schedule E** shows the contact points and format for formal contractual notices.
- **Schedule F** documents the process for agreeing changes to this agreement

General Terms and Conditions

1. Background

(1) BPD Zenith (UK) Limited ("the Supplier") operates a business specialising in providing consultancy, programming and cloud-based (hosted) Asset Management services.

(2) The Supplier will only provide such services on the basis of a Service Level Agreement (SLA), Purchase Order or Quotation/Proposal (as defined below) which incorporates and is subject to these terms and conditions.

2. Definitions

(1) In these terms and conditions and any SLA, Purchase Order or Quotation, unless the context otherwise requires, the following expressions have the following meanings:

'Client'	means the other person who is party to a SLA, Purchase Order or Quotation.
'intellectual property rights'	means patents, copyright and any other similar protected rights in any country.
'Project'	means the work undertaken by the Supplier for the Client pursuant to any SLA, Purchase Order or Quotation.
'Project Materials'	means any and all works of authorship, products and materials developed, written or prepared by the Supplier for the Client in relation to the Project (whether alone or jointly with the Client or any other independent contractor of the Client and on whatever media) including, without limitation, any and all computer programs, data, diagrams, charts, reports, specifications, studies and inventions.
'Service Level Agreement (SLA)	means any SLA entered into by the Supplier and a client.
'Purchase Order'	means any Purchase Order raised by the Client that specifies services to be undertaken by the Supplier.

'Quotation'   means any Quotation supplied to the Client by the Supplier.

'the Services'   means the computer consultancy, programming, cloud-based hosting and related services to be provided by the Supplier pursuant to any SLA.

3.   Engagement

(1)   The Client hereby agrees to engage the Supplier and the Supplier hereby agrees to provide the Services as an independent contractor on the terms and conditions set out in this Agreement.

(2)   The Client represents and warrants to the Supplier that to the best of its knowledge by virtue of entering into any agreement and/or SLA the Client is not and will not be in breach of any express or implied obligation to any third party binding upon it/him.

(3)   This Agreement shall commence on the date specified on the Contract Signature page (paragraph 23) and continue for the period defined therein (the initial term), unless terminated otherwise in accordance with this Agreement, corresponding proposal and SLA.

(4)   The Agreement shall terminate on the expiry of the Initial Term (such date being hereinafter referred to as "the Expiry Date") only if either party to this Agreement has served up to the other a written notice intimating the termination of the Agreement upon the Expiry Date, not less than three months prior to the Expiry Date.

(5)   In the event that the Agreement is not terminated on the Expiry Date in accordance with Clause 3.4 , then the Agreement shall automatically renew for a period of one year until the anniversary of the Expiry Date and shall continue for successive periods of one year unless and until either party serves upon the other party written notice of the termination of the Agreement effective from an anniversary of the Expiry Date, not less than three months prior to the applicable anniversary of the Expiry Date.

MAXI CLOUD

4.   Services

(1)   Whilst the Supplier will use all reasonable endeavours to perform the Services in accordance with any timescale detailed in the Proposal time is not of the essence in this regard.

(2)   Notwithstanding (1) above if the Supplier shall undertake any work at the Client's request which is not the subject of a Project Agreement then, unless the parties otherwise agree in writing, the provisions of these terms and conditions shall apply thereto (so far as the same are capable of applying) and if no fee is agreed for such work the Supplier shall be paid on a quantum merit basis based upon its normal and prevailing rates.

(3)   Either party shall promptly notify the other in writing of any claim which it may have under sub-clause (2) above giving such particulars thereof as it is then able to provide.

5.   Alterations/Variations

(1)   If at any time before the completion of a Project the Client wishes to alter or vary all or any part of the Services then the Client shall provide the Supplier with full written particulars of such alterations/variations and with such further information as the Supplier may reasonably require.

(2)   The Supplier shall at its absolute discretion consider whether it can agree to such alteration/variation but will not unreasonably withhold agreement. If it does agree to such alteration/variation then it shall submit to the Client as soon as reasonably practicable a full written quotation for such alterations specifying what changes (if any) will be required to the price, implementation plan and what adjustments will be required to any part of the Services.

6.   Termination

Notwithstanding anything else contained herein, an agreement and SLA may be terminated:

(1)   by the Supplier on giving 45 days' notice in writing to the Client if the Client shall fail to pay any correct, undisputed sum due under the terms of any agreement /SLA (otherwise than as a consequence of any default on the part of the Supplier) and such sum remains unpaid for 15 days

after written notice from the Supplier that such sum has not been paid (such notice to contain a warning of the Supplier's intention to terminate); or

(2)   by either party on giving 90 days' notice in writing to the other if the other commits any material breach of any term of these terms and conditions or any agreement /SLA (other than any failure by the Client to make any payment hereunder in which event the provisions of sub-clause (1) above shall apply) and (in the case of a breach capable of being remedied) shall have failed, within 30 days after the receipt of a request in writing from the other party so to do, to remedy the breach (such request to contain a warning of such party's intention to terminate); and

(3)   by either party on giving 90 days' notice in writing to the other if the other party shall have a receiver or administrative receiver appointed of it or over any part of its undertaking or assets or shall pass a resolution for winding-up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction shall make an order to that effect or if the other party shall become subject to an administration order or shall enter into any voluntary arrangement with its creditors or shall cease or threaten to cease to carry on business.

(4)   Effects of termination:

(a)   any termination of an agreement/SLA (howsoever occasioned) shall not affect any accrued rights or liabilities of either party nor shall it affect the coming into force or the continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.

(b)   Upon any termination of an agreement/SLA by the Client pursuant to condition 6(2) or 6(3) and at the end of any termination period, the Supplier shall forthwith deliver to the Client all specifications, programs (including source codes) and other documentation relating to the Services intended to be the property of the Client hereunder which exist at the date of such termination whether or not the same shall be complete. In the event of such termination the copyright and other intellectual property rights in and ownership of all such material shall forthwith automatically pass to the Client.

(c) Upon any termination of an agreement/SLA (howsoever occasioned) and at the end of any termination period, the Supplier shall forthwith deliver up to the Client all copies of any information and data supplied to the Supplier by the Client for the purposes of a SLA and shall certify to the Client that no copies of such information or data have been retained.

(d) The timescales given for termination and rectifying any breach of any agreement and/or SLA do not affect the rights of the parties to negotiate a mutually agreeable alternative. Any such negotiation must be agreed in writing and where agreement cannot be met within 14 days, original terms will apply. Any such negotiations would not affect any other rights of either party as laid out in this agreement and/or SLA.

7. Service Level Agreement

(1) The Supplier is not authorised to undertake any work for the Client which is not the subject of a duly executed SLA.

(2) Notwithstanding (1) above if the Supplier shall undertake any work at the Client's request which is not the subject of an SLA then, unless the parties otherwise agree in writing, the provisions of these terms and conditions shall apply thereto (so far as the same are capable of applying).

(3) This Agreement is personal to the Client and it shall not be entitled to assign or sub-contract any of its rights or obligations under this Agreement.

8. Supplier's Undertakings

The Supplier warrants and undertakes to the Client that:

(1) he will have the necessary skill and expertise to provide the Services on the terms set out in any Project Agreement and will provide them with reasonable care and skill;

(2) the Project Materials will, so far as they do not comprise material originating from the Supplier, its employees, agents or contractors, be original works of authorship and in so far as the Supplier is aware the use or possession thereof by the Client or the Supplier will not subject

the Client or the Supplier to any claim for infringement of any intellectual property rights of any third party;

(3)   the Services will be provided in a timely and professional manner and in accordance with the time schedules stipulated in each Project Agreement, will conform to the standards generally observed in the industry for similar services and will be provided with reasonable skill and care;

(4)   no announcement or publicity concerning any Project Agreement or any matter ancillary thereto shall be made by the Supplier without the prior written consent of the Client;

(5)   the Supplier's staff will use reasonable endeavours to conform to the Client's normal codes of staff and security practice which have been notified to the Supplier in writing prior to Project commencement while they are on the Client's premises;

(6)   the Supplier has in effect and will maintain in effect during the continuance of any Project Agreement adequate professional indemnity insurance.

9.   Client Obligations

The Client shall:

(1)   make available to the Supplier such office and telecommunications facilities as may be necessary for the provision of the Services; Provided that the Supplier shall not be obliged to make use of such facilities and services if, in its view, to do so would not be the most effective method of carrying out its obligations;

(2)   ensure that its employees and other independent contractors co-operate fully with the Supplier in relation to the provision of the Services; and

(3)   promptly furnish the Supplier with such information and documents as it may reasonably request for the proper performance of its obligations under this Agreement;

(4)   indemnify the Supplier and keep the Supplier fully and effectively indemnified against all costs, claims, demands, expenses and liabilities of whatsoever nature arising out of or in connection with any claim that

the use by the Supplier of any information or material supplied by the Client for the purpose of enabling the Supplier to provide the Services infringes the intellectual property rights (of whatever nature) of any third party.

(5)   The Client shall not use the Services nor shall it permit or tolerate the Services being used for any criminally or civilly actionable activities, including, but not limited to, vulgar, obscene, fraudulent, hateful, or racially, ethically, or otherwise objectionable activities, or any activity which is regarded as direct or indirect encouragement or other inducement to the commission, preparation or instigation of acts of terrorism ("**Prohibited Use**") and shall indemnify and keep the Supplier indemnified in respect of any claims, losses, costs charges and/ or expenses brought by any third party as a consequence of any Prohibited Use occurring or being alleged to have occurred. Such Prohibited Use of the service will give rise to Termination as per Section 6.

10.   Supervision

(1)   The Client shall appoint a representative who shall have full authority to take all necessary decisions regarding any Project and the provision of the Services including the variation of this Agreement;

(2)   The Supplier and the Client's representative shall meet at regular and appropriate intervals during the continuance of each Project to discuss and minute the progress of such Project.

11.   Ownership of Project Materials

(1)   The Client shall be entitled to all intellectual property rights in the Project Materials which property, the Supplier hereby, with full title guarantee, agrees to assign to the Client upon payment of all outstanding monies due to the Supplier in relation to any Project having been paid in full provided that for the avoidance of any doubt at all the know-how associated with the delivery of the Services and production of the Project Materials shall remain the unfettered property of the Supplier and the Supplier shall be free to apply such know-how as it sees fit in the course of its other business.

(2)   At the request and expense of the Client, the Supplier shall do all such things and sign all documents or instruments reasonably necessary in the opinion of the Supplier or its legal advisors to enable the Client to obtain, defend and enforce its rights in the Project Materials.

(3)   Upon request by the Client, the Supplier shall promptly deliver to the Client all copies of the Project Materials then in the Contractor's custody, control or possession subject to payment of all outstanding monies due to the Supplier in relation to any Project having been made in full.

(4)   where any custom developments are carried out in conjunction with the Client, both parties shall agree in writing at the time of development which party shall retain the Intellectual Property. Where no agreement is reached the Intellectual Property is the exclusive property of the Supplier.

(5)   The provisions of this Clause shall survive the expiration or termination of any SLA.

12.   Fees and Expenses

In relation to any additional services and/or charges, unless otherwise agreed in any quotation, agreement or SLA (including elsewhere in this agreement);

(1)   The Client shall pay the Supplier for duly authorised time properly spent (which for the purposes of this Agreement shall include any travelling time spent necessarily by the Supplier's staff in the course of providing the Services) and the materials and computer time properly used by the Supplier's staff in providing the Services in the amounts and at the rates set out in any Quotation, agreement or SLA (plus Value Added Tax, if applicable).

(2)   such fees shall accrue monthly and the Supplier shall render monthly invoices to the Client in respect of such fees and, where he is registered for Value Added Tax, shall show any Value Added Tax separately on such invoices.

(3)   The Client agrees to notify the Supplier if it disputes an invoice within 7 days of receipt, both parties agree to resolve the dispute within 14 days. If the reason for dispute is accepted, payment terms start from the date of resolution. If the reason for dispute is rejected, original payment terms apply.

(4)   All fees shall be payable to the Supplier without deductions of any kind.

(5)   All charges payable by the Client shall, subject as aforesaid, be paid within 30 days of the date of the invoice.

(6)   If any sum payable under this Agreement is not paid within 7 days after the due date then (without prejudice to the Contractor's other rights and remedies) the Supplier reserves the right to charge interest on such sum on a day to day basis (as well after as before any judgment) from the date or last date for payment thereof to the date of actual payment (both dates inclusive) at the rate of 8 per cent above the base rate of Barclays Bank plc (or such other London Clearing Bank as the Supplier may nominate) from time to time in force compounded quarterly. Such interest shall be paid on demand by the Client.

13.   Confidential Information

(1)   The Supplier shall not use or divulge or communicate to any person (other than to those whose province it is to know the same or with the authority of the Supplier):

(a)   any of the confidential information concerning the products, Clients, business, accounts, finance or contractual arrangements or other dealings, transactions or affairs of the Client and its subsidiaries which may come to the Supplier's knowledge in the course of providing the Services;

(b)   any information concerning any Project;

(c)   the Project Materials or the substance of any report, recommendation, advice or test made, given or undertaken by the Supplier in connection with his duties hereunder;

and the Supplier shall use all reasonable endeavours to prevent the unauthorised publication or disclosure of any such information, materials or documents;

(2)   The provisions of this Clause shall survive the termination of any SLA but the restrictions contained in sub-clause (1) shall cease to apply to any information which may come into the public domain otherwise than through unauthorised disclosure by the Supplier or anyone acting on its instructions.

(3)   In the event that the Supplier has contracted with a Client who is a Public Authority for the purposes of the Freedom of Information Act 2000 or the Freedom of Information (Scotland) Act 2002 ("FOI"), and where the Client

receives an information request under FOI relating to this Agreement or in any way relating to the Supplier ("FOI Request"), the Client acknowledges that all or part of the requested information may, at any time when the FOI Request is received, constitute a trade secret and/or Confidential Information belonging to the Supplier and/or may be detrimental to the commercial interests of the Supplier if disclosed. In the event that the Client receives a FOI Request it shall be obliged to:-

(a)   consult with the Supplier in advance of making a disclosure pursuant to the FOI Request;

(b)   consider, when deciding upon its response to any FOI Request, any representations that are made by the Supplier to the Client; and

(c)   where possible and appropriate, apply exemptions under FOI to prevent disclosure of the information referred to in the FOI Request.

(4)   On receipt of notice from the Client of an FOI Request to the Client, the Supplier shall provide the Client with its full cooperation to ensure that the Client can meet its obligations under the provisions of the FOI. In particular the Supplier shall ensure that the Client is able to respond to the FOI request in a timely manner and provide the Client with its input, views and comments within seven days of notification of the FOI Request.

(5)   In the event that the Client and the Supplier are unable to agree on the disclosure arising from an FOI Request to the Client, or any aspect thereof, the Client (acting reasonably) shall have the final decision on how to deal with the FOI Request, such being without prejudice to any right or remedy the Supplier may have against the Client, including, without prejudice to the foregoing generality for breach of confidentiality.

14.   Data Protection

(1)   the Supplier undertakes that it will use reasonable efforts at all times to comply with the provisions of the Data Protection Act 1998 ("DPA") and any applicable subordinate legislation enacted pursuant to, in connection with the performance of the Services under this Agreement which shall include, without limitation, maintaining such valid and up to date registration or (where applicable) notification under such legislation as such shall be required for the purposes of carrying out the Services. the Supplier shall only undertake such processing of Personal Data (as defined in the DPA) to the extent reasonably required in connection with the performance of the Services and in accordance with the written instructions of the Client.

(2)   the Supplier hereby undertakes to the Client that, if and to the extent that it comes into possession of Personal Data in the course of providing the Services:-

(a)   it shall only process such Personal Data to the extent necessary to perform the Services and otherwise on the instructions of the Client;

(b)   it shall acquire no rights or interest in any Personal Data;

(c)   it shall implement appropriate technical and organisational measures against unauthorised or unlawful processing of, and against accidental loss or destruction of or damage to, such Personal Data; and

(d)   it shall not other than in accordance with the DPA, transfer any Personal Data to any country or territory outside the European Economic Area.

(3)   the Supplier shall not disclose any Personal Data to any third parties other than:-

(a)   to employees and sub-contractors to whom such a disclosure is reasonably necessary in order for the Supplier to carry out the Services; or

(b)   to the extent required under a court order.

15.   Poaching Staff

(1)   The Client (as defined at sub-clause (2) below) or the Supplier shall not without the prior written consent of the each other (and so that each of sub-clauses (a) and (b) below shall be deemed to constitute a separate agreement and shall be construed independently of the other):

(a)   at any time during the period from the date of any SLA to the expiry of six months after relevant Project completion or the date of termination of the relevant SLA (as the case may be) ("Restraint Period") solicit or endeavour to entice away from or discourage from being employed by the Supplier any person who is, or shall at any time during the Restraint Period be, one of the other Party's employees or contractors engaged in providing the Services provided however that this provision shall not apply to any person employed by the Supplier whose

rate of gross basic contractual remuneration payable by the Supplier as at the date of the relevant SLA (or as at the date of commencement of such person's employment if such employment shall commence after the date of the relevant SLA) is less than £20,000 per annum;

(b) at any time during the Restraint Period employ or attempt to employ any person who is, or shall at any during the Restraint Period be, one of the Supplier's employees or contractors engaged in providing the Services provided however that this provision shall not apply to any person employed by the Supplier whose rate of gross basic contractual remuneration payable by the Supplier as at the date of the relevant SLA (or as at the date of commencement of such person's employment if such employment shall commence after the date of the relevant SLA) is less than £20,000 per annum.

(2) For the purposes of this clause 14 the term "Supplier" shall include any company in the same group of companies as the Supplier and Likewise the term "Client" shall include any company in the same group of companies as the Client.

(3) Without prejudice to the Supplier's rights in the event of a breach of clause 14(1) the Supplier agrees to give its consent to a request pursuant to clause 14(1) if the Client pays to the Supplier with its request a sum equating to the employee in question's then basic annual salary. Such sum being agreed by the Client and the Supplier as a reasonable and genuine estimate of the loss suffered by the Supplier in such situation primarily in relation to training costs in relation to the employee in question plus training costs and recruitment fees of and relating to the Supplier's replacement employee.

16. Limitations on Liability

(1) (a)

If the Client is of the opinion that the Services have not been effected in accordance with the warranty contained in clause 8(1) then it shall give written notice thereof to the Supplier which shall be permitted by the Client (but at the Supplier's expense and within a reasonable time after receiving such notice) to remedy the defect or error in question.

(b)   During the term of the agreement all liabilities and obligations will be exercised as stipulated in any agreement/SLA. However upon termination or discontinuance of any service, the Supplier shall have no liability or obligations under the said warranty unless it shall have received written notice of the defect or error in question no later than the earlier of 30 days after the date upon which the defect or error in question first became apparent to the Client or 30 days after the date upon which the defect or error in question should have been apparent to the Client. In the event of any issues arising in these circumstances the Supplier agrees to act as per clause 5.2 by not unreasonably withholding services and providing quotations for any work required.

(c)   The Supplier shall have no liability or obligations under the said warranty other than to remedy breaches thereof by the provision of materials and services within a reasonable time and without charge to the Client. If the Supplier shall fail to comply with such obligations its liability for such failure shall be limited to a sum equal to the total price payable under the relevant SLA for the element of the Services which is defective. The foregoing states the entire liability of the Supplier, whether in contract, tort or howsoever for defects and errors in the provision of the Services.

(2)   The express terms of this Agreement are in lieu of all warranties, conditions, terms, undertakings and obligations implied by statute, common law, custom, trade usage, course of dealing or otherwise, all of which are hereby excluded to the fullest extent permitted by law.

17.   Right to Audit

The Supplier shall permit the Client, its employees, nominated representatives (including representatives of the Client's Clients) and independent auditor (provided the Client has confidentiality agreements in place with such representatives and auditors) at their own cost to examine on request at a mutually convenient time such accounts, records and receipts as are to be kept by the Supplier. Such examination shall be permitted at the offices of the Supplier or at such other places where they may be kept and the Client agrees to minimise any disruption during any such examination. The Supplier shall permit Client, its employees, nominated representatives and independent auditors to take copies of such accounts, records and receipts and shall

promptly provide proper explanations to any questions raised relating to the contents of these.

18. Notices

All notices which are required to be given hereunder shall be in writing and shall be sent to the address of the recipient set out in this Agreement or such other address in England as the recipient may designate by notice given in accordance with the provisions of this Clause. Any such notice may be delivered personally or by first class pre-paid letter or facsimile transmission and shall be deemed to have been served if by hand when delivered, if by first class post 48 hours after posting and if by facsimile transmission when dispatched.

19. Inconsistency

Unless otherwise expressly provided in an SLA by specific reference to this Clause, if there shall be any inconsistency between the provisions of this Master Agreement and any SLA the provisions of this Master Agreement shall prevail.

20. General

(1)   These terms and conditions and any SLA shall be governed by and construed in accordance with the laws of England.

(2)   No waiver or amendment of any provision of these terms and conditions or any SLA shall be effective unless made by a written instrument signed by both Supplier and Client.

(3)   Each provision of this Agreement shall be construed separately and notwithstanding that the whole or any part of any such provision may prove to be illegal or unenforceable the other provisions of this Agreement and the remainder of the provision in question shall continue in full force and effect.

21. Force Majeure

(1)   Notwithstanding anything else contained in these terms and conditions or any SLA, neither party shall be liable for any delay in performing its

obligations hereunder if such delay is caused by circumstances beyond its reasonable control (including without limitation any delay caused by any act or omission of the other party) provided however that any delay by a sub-contractor or supplier of the party so delaying shall not relieve that party from liability for delay except where such delay is beyond the reasonable control of the sub-contractor or supplier concerned. Subject to the party so delaying promptly notifying the other party in writing of the reasons for the delay (and the likely duration of the delay), the performance of such party's obligations shall be suspended during the period that the said circumstances persist and such party shall be granted an extension of time for performance equal to the period of the delay. Save where such delay is caused by the act or omission of the other party (in which event the rights, remedies and liabilities of the parties shall be those conferred and imposed by the other terms of these terms and conditions or any SLA and by law):

(a)   any costs arising from such delay shall be borne by the party incurring the same;

(b)   either party may, if such delay continues for more than *5* weeks, terminate this Agreement forthwith on giving notice in writing to the other in which event neither party shall be liable to the other by reason of such termination save that the Client shall pay the Supplier a reasonable sum in respect of any work carried out by it prior to such termination and for that purpose the Supplier may deduct such sum from any amounts previously paid by the Client under this Agreement (the balance (if any) of which shall be refunded to the Client whether paid by way of a deposit or otherwise).

(2)   In the event of any extension of time being granted pursuant to sub-clause (1) any implementation plan detailed in any proposal or SLA shall be amended accordingly.

22. Interpretation

In these terms and conditions:

(1)   reference to any statute or statutory provision includes a reference to that statute or statutory provision as from time to time amended, extended or re-enacted;

(2)   words importing the singular include the plural, words importing any gender include every gender and words importing persons include bodies corporate and unincorporate; and (in each case) vice versa;

(3)   any reference to a party to this Agreement includes a reference to his successors in title and permitted assigns;

(4)   the headings to the Clauses are for ease of reference only and shall not affect the interpretation or construction of this Agreement.

23.   Contract Signatures

The following authorised representatives of each party execute this Agreement:

Contract Start Date: <Date>

Contract Term :   <Term Length>

For the Supplier

Signature   :   ………………………………………………………………

Name   :   ………………………………………………………………

Position   :   ………………………………………………………………

Date of Execution   …………………………..

For the Client

Signature   :   ………………………………………………………………

Name   :   ………………………………………………………………

Position   :   ………………………………………………………………

Date of Execution   …………………………..

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SCHEDULE A – SERVICES

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Schedule A documents the services provided under the terms of this contract.

As described in the Introduction, BPD Zenith is providing two services:

- **Project delivery service** – to build a Maximo-based Asset Register system. *The scope of work for this service is described below.*
- **MaxiCloud Service** – A subscription based Asset Management service, which includes use of BPD's Maximo licenses, access to the physical and software infrastructure required. This service is described in detail in *'Schedule B - MaxiCloud Service Level Agreement (SLA)'.*

1. Project Delivery Service - Implementation Deliverables

<Scope to be agreed>

2. Implementation

<Implementation details to be agreed>

3. Functionality Excluded from the Initial Implementation

<Functionality to be agreed>

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SCHEDULE B – MAXICLOUD SLA

Schedule B provides the Service Level Agreement (SLA) for the MaxiCloud service

SCHEDULE C – MAXICLOUD LICENSE AGREEMENTS

BPD's MaxiCloud service incorporates the functional capabilities of the IBM Maximo product. Schedule C provides the license terms which apply to MaxiCloud and, therefore, IBM Maximo.

The licensing structure for MaxiCloud consists of the following three elements:

- **BPD Zenith Ltd - General License Agreement UK 2015 V1.02** – This defines the common terms of all BPD Zenith software licenses.
- **BPD Zenith Ltd - Definition of License (SaaS Solutions) UK 2015 V1.02** – This defines license terms specific to an individual or group of BPD Zenith services or products. MaxiCloud is a Software as a Service (SaaS) offering from BPD Zenith. This defines the specific terms associated with SaaS, including the automatic renewal of the service.
- **BPD Zenith Ltd - Entitlement Certificate** for Client – This details the MaxiCloud subscriptions purchased by the Client, together with the costs and payment terms. The Entitlement Certificate is shown in 'Schedule D – Fees and Expenses'

SCHEDULE D – FEES AND EXPENSES

Schedule D provides information on the fee structure for (a) Project Delivery Services and (b) the subscription costs for the MaxiCloud service.

The table below provides a summary of the estimated project costs to deliver the Maximo system specified in Schedule A.

Item	Estimated Cost
Maximo System Build	TBC
MaxiCloud infrastructure setup	TBC
Total Project Delivery Fees (estimated)	TBC

SCHEDULE E - NOTICES

Schedule E provides address information and contact details for the serving of formal notices in writing to either the Supplier or the Client under the terms of this Agreement.

The Client contact will be:

Name	Role	Phone	Email
<Client Contact>	<Role>	<Phone no>	<Email address>

The Supplier Contact will be:

Name	Role	Phone	Email
<Business Development Manager Name>	Business Development Manager (for contracts and the initial scheduling of project resources)	<Phone no>	<Email address>
<Administration Manager Name>	Administration Manager	<Phone no>	<Email address>
<Service Desk Manager Name>	Service Desk Manager (for MaxiCloud service)	<Phone no>	<Email address>

SCHEDULE F – CHANGES TO AGREEMENT

Schedule F provides information on the change control procedures to be followed when it is necessary to consider changes to Standard Services under this Agreement.

Either party may propose changes to the scope, nature or time schedule of the Services being performed under this Agreement.

The parties will mutually agree to any proposed changes, including adjustments to fees and expenses as a result of the changes to the Services.

Changes to this Agreement must be approved in writing by both parties.

The following are the intended steps for Client-requested changes to this Agreement:

- *The Client is to submit a Change Request on behalf of the user department to the Supplier for consideration, review and costing.*
- *The Supplier is to review the feasibility of the Change Request and provide an estimate of the time, work effort and cost.*
- *The Client is to approve or reject the Change Request at its absolute discretion.*
- *The Change Request, if approved, is then to be incorporated into this Agreement.*

The following are the intended steps for Supplier-requested changes to this Agreement:

- *The Supplier is to submit a Change Request to the Client for consideration. This will include costing and timings for any requested changes.*
- *The Client is to review the feasibility of the Change Request, for technical consideration and compliance with its own SLA responsibilities.*
- *The Client can approve or reject the Change Request at its absolute discretion.*
- *The Change Request, if approved, is then to be incorporated into this Agreement.*

Service Level Agreement

Date: <Insert Date>

CLASSIFICATION

Authors	<Insert Name> <Insert Title>
Authorised Recipients	<Insert Name/Title>
Version	<Insert Version No>

CONTENTS PAGE

1. AGREEMENT OVERVIEW

This document is a Service Level Agreement ("SLA" or "Agreement") between BPD Zenith Ltd. and the Client for BPD Zenith's MaxiCloud service i.e. the provision of the IT infrastructure, Maximo application and support services that are necessary for the creation and operation of a production Maximo system.

This Agreement remains valid until superseded by a revised agreement, mutually endorsed by both parties. This Agreement outlines the parameters of all IT services covered as they are mutually understood by the parties. This Agreement does not supersede current processes and procedures unless explicitly stated herein.

2. GOALS & OBJECTIVES

The **purpose** of this Agreement is to ensure that the proper elements and commitments are in place to provide consistent IT service support and delivery to the Client(s) by the Supplier(s). The **goal** of this Agreement is to obtain mutual agreement for IT service provision between the Supplier(s) and Client(s).

The **objectives** of this Agreement are to:

- Provide clear reference to service ownership, accountability, roles and/or responsibilities.
- Present a clear, concise and measurable description of service provision to the Client.
- Match perceptions of expected service provision with actual service support & delivery.

3. STAKEHOLDERS

The following Supplier(s) and Client(s) will be used as the basis of the Agreement and represent the **primary stakeholders** associated with this SLA:

>   **Supplier:** BPD Zenith Ltd. ("Supplier")
>   **Client:** <Insert Client Name>. ("Client")

The Supplier and the Client are the only parties to this Agreement. However, BPD Zenith may use a cloud infrastructure service provider to manage the physical infrastructure that supports the MaxiCloud service. In this SLA, such an organisation (whether BPD or a 3rd party) is referred to as the "Hosting Service Provider"[1]. At all times, BPD Zenith Ltd is the entity that contracts with the Client and provides a single point of contact for all MaxiCloud issues. BPD only uses Hosting Providers that meet the full criteria defined herein.

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[1] BPD is happy to advise who the Hosting Provider is for any MaxiCloud contract

4. LIMITATIONS

USERS: MaxiCloud is a subscription service based on an agreed number of named users. The number of named user subscriptions is documented in the associated Entitlement Certificate(s).

SUPPORT DAYS: In some circumstances there may be a maximum number of support days included in the MaxiCloud contract. Where this is the case, they will be monitored on a Time and Materials basis. If the maximum number of support days (where applicable) is reached without additional Purchase Order cover in place, the MaxiCloud service will still operate but without support. Please refer to the Entitlement Certificate(s) for any limitations.

MAXIMO UPDATES: Where Client has its own Maximo system within a MaxiCloud environment, Supplier will introduce Changes or Updates no more than 4 times per annum, within the agreed costs. 'Changes' include, but are not limited to, the installation of software patches, new configurations or customisations to the Maximo system. Additional changes can be undertaken, subject to Time & Materials charges.

5. SERVICE AGREEMENT

The following detailed service parameters are the responsibility of the Supplier in the ongoing support of this Agreement.

The Service agreement and infrastructure is designed to support IBM Maximo V7.6, using IBM 'best practice' guidelines for system performance. The infrastructure has been sized and configured to support the number of subscribed users specified in the Entitlement Certificate(s). If the Client increases the number of subscribed users, the Supplier will ensure that 'best practice' performance guidelines are maintained. At the Supplier's sole discretion it will procure additional IT infrastructure capacity to support the increase in subscriptions. This will be at the Supplier's own expense and transparent to the Client[2].

This agreement falls into two distinct entities, namely:

- Maximo Application Support
- IT Systems Management and Operations

5.1 SERVICE SCOPE – MAXIMO APPLICATION SUPPORT

The following Services are covered by this Agreement;

- **Provision of IT Infrastructure, managed by BPD Zenith Ltd:** BPD Zenith will provision and manage the necessary servers, storage and other IT infrastructure required to support the Client's Maximo system.

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[2] Note that, in some circumstances, it may be necessary to re-configure the system to support additional users, which may incur some system downtime.

- **Manned telephone support:** BPD Zenith Ltd will provide a telephone help-line Service in line with Service Levels set out in the Service Management section of this document.
- **Monitored email support:** BPD Zenith Ltd will provide an email support Service in line with Service Levels set out in the Service Management section of this document.
- **Managing network access to Maximo:** BPD Zenith Ltd will administer the Maximo domain (web address) for Client and will enable Client access to the Maximo application.
- **Download and Installation of Maximo Patches (V7.6 Onwards):** BPD Zenith Ltd, at its sole discretion, will carry out installation and testing of Maximo software patches.
- **Installation of Middleware[3] Patches (Websphere, Windows and DB2):** When required and at its sole discretion, BPD Zenith Ltd will carry out updates to any middleware within the hosted environment. Updates and Patches to the middleware products will be reviewed on release and a decision taken at that time as to their necessity.
- **DB2 Database Administration (Maximo Support Only):** BPD Zenith Ltd will provide database administration duties in relation to Maximo DB2 only. BPD Zenith Ltd will not provide support for any 3_{rd} party software products accessing the Maximo Database unless covered under a separate agreement. BPD Zenith Ltd domain account will be the only account with full administrative access to the database server. Read only (RO) access may be granted to other domain accounts when agreed by both stakeholders.
- **Maximo Continuous Performance Monitoring:** BPD Zenith Ltd will monitor Maximo performance on an on-going basis. BPD will respond to Client requests when it is shown Maximo is not performing optimally and will offer advice and assistance under the cover of this agreement.

5.2. *OUT OF SCOPE – MAXIMO APPLICATION SUPPORT*

- **Maximo Application Support (Bespoke):** Ad-hoc Maximo Bespoke application support is outside the scope of this agreement. However BPD Zenith Ltd will be pleased to quote for bespoke work on a Time and Materials basis.
- **Maximo Release and Version changes:** Although the implementation of patches and fixes are within scope (subject to any other Limitations), upgrades to new Versions or Releases of Maximo are not within scope[4]. These would be separately quoted as project work.

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[3] 'Middleware' is a term used to describe additional software that is required in order to support application software such as Maximo.
[4] Where Client is a 'tenant' in a single non-customised BPD designed and owned Maximo system, shared with other 'tenants', BPD may include Release and Version changes within scope.

5.3. SERVICE SCOPE – IT SYSTEMS MANAGEMENT AND OPERATIONS

BPD Zenith Ltd will provide a fully managed hosted service for Client's Maximo system. This section describes the Systems Management and IT responsibilities of BPD Zenith.

- **Service Availability:** The overall availability of the Infrastructure will be no less than 99.9%[5] measured by the Hosting Service Provider on a monthly basis. In the event of any loss of the Service, the client will be informed and details will be provided in the service report of the failure, its reason, and plans for any remedial action taken or details of actual steps taken to resolve the issue. In the unlikely event that a planned outage overruns, the additional overrun time would count as an availability outage.

The measurement of availability shall not include any failure or fault response related to the following:

- Where the Client undertakes or requests planned or unplanned work, which requires or causes disruption to the hosted infrastructure.

- Where the service is interrupted to accommodate changes requested by the Supplier and that have been highlighted in advance to the Client.

- Where the Hosting Service Provider has to take immediate action to control an external threat: This may be necessary for example if a mail server has an Open Relay or if a server is being subjected to a denial of service attack which is having an adverse effect on the network by affecting other Clients.

- Where connectivity to the Internet from within the UK is disrupted because of an issue out with the Hosting Service Provider network, and is out with their control such as a telecommunications failure.

- Any matter for which the Hosting Service Provider is not liable or responsible as defined in the Agreement.

- **Downtime Requests from BPD Zenith or Hosting Service Provider**

  This procedure will be implemented should it be found necessary for BPD Zenith or the Hosting Service Provider to temporarily remove any service provided for the Client. All requests for a major change have to be approved by the BPD and Hosting Service Providers Change Advisory Board prior to implementation. Normal outage requests will require a five-day notice. If, however, there is an emergency requiring

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[5] Service Availability is deemed to be the availability of the Infrastructure, not the availability of the Maximo application

immediate action, BPD Zenith Ltd may not be able to notify the Client. BPD Zenith will advise Client, either verbally or via email, when the outage is complete and confirm that service has been restored.

- **Downtime Requests from the Client**

  This procedure will be implemented should it be found necessary by the Client to take any action that will prevent the normal operation of the services provided by Hosting Service Provider to the Client. Client should formally notify service.desk@bpdzenith.com at least six working days before the requested outage date. BPD Zenith Ltd will advise Client when the outage is completed and service shall be fully restored.

- **Infrastructure Continuous Monitoring**

  Hosting Service Provider is responsible for all day-to-day system monitoring and administration of the infrastructure used to deliver the Service. They will report directly to BPD Zenith Ltd on all issues relating to infrastructure performance. Changes to the infrastructure will be governed by BPD's and the Hosting Service Providers Change Control management processes. Upon request, BPD Zenith Ltd will hold a quarterly conference call with Client to review the MaxiCloud service performance.

- **Backup**

  Data will be backed up daily. Backup schedule is Fri - full, incremental Sat-Thu Backups of specified data from the servers will be backed up on a daily basis (incrementally) with a weekly full being conducted on a Friday. This data is initially saved to disk and then streamed to tape (LTO5).

  Tapes will be kept for 4 weeks for weekly tapes and 12 months for monthly tapes. Monthly backups are conducted on the last day of the month. The Hosting Service Provider shall maintain a remote storage facility, to support its backup and restoration activities

- **Restoration Requests**

  The Client may request one test restoration per quarter. Additional Client-requested restorations will be treated as requests for Additional Services chargeable at the normal rate. All data which is restored at the request of the Client from the remote storage facility will be subject to additional charges for the delivery of the tapes. All charges will be advised, where possible, prior to the commencement of restoration. Any request for a restore should be made via BPD Zenith Ltd who will arrange this with the Hosting Service Provider.

- **Disaster Recover**

  In the unlikely event that BPD's Hosting Provider's main data centre is destroyed or damaged, then the system will be rebuilt at an alternative data centre using the

offsite backups. The basic system will be restored within 24 hours, although it should be noted that additional Maximo work may be required to ensure that the system is stable before the full Maximo service is resumed.

- **Security**

  The Hosting Service Provider(s) used by BPD Zenith are ISO 27001 accredited and will use best efforts to ensure the physical security of the infrastructure used to provide the Service is maintained.

  The Hosting Service Provider will use current best practice approaches to security when building and operating the server(s) used to provide the Client with the Service.

  The Hosting Service Provider's data-centre will be a restricted access site. Only authorised company personnel are allowed into the centre. Requests for access are considered should there be a need for work to be undertaken which cannot be carried out remotely or by the Hosting Service Provider staff. Visitors are escorted at all times.

  Requests to visit the data centre should be made in advance, ideally 5 days in advance but the hosting partner shall endeavour to support any Client requests to visit. The hosting partner may make checks on the personnel/ company visiting the data centre.

  The hosting partner reserves the right to refuse entry to its data centre where it considers entry would be undesirable for security or any other reasons. Anyone visiting or working in the data centre may be monitored and recorded on CCTV such recordings are retained for an appropriate but limited period of time.

  Where requested and authorised by the Client, the Supplier must utilise Secure Socket Layer (SSL) encryption technology in the electronic transmission of data to protect private Client information from access by unauthorized users

- **Penetration Testing**

  Hosting Service Provider undertakes regular vulnerability scans of its Client's infrastructure and all high risk threats are reported on. Costs associated with this are included within the service costs.

5.4. CLIENT REQUIREMENTS

Client responsibilities and/or requirements in support of this Agreement include:

- Payment for all support costs at the agreed interval.
- Reasonable availability of Client representative(s) when resolving a service related incident or request.

5.5. SUPPLIER REQUIREMENTS

Supplier responsibilities and/or requirements in support of this Agreement include:

- Meeting response times associated with service related incidents.
- Appropriate notification to Client for all scheduled maintenance.

5.6. SERVICE ASSUMPTIONS

Assumptions related to in-scope services and/or components include:

- Changes to services will be communicated and documented to all stakeholders.

6. SERVICE MANAGEMENT

Effective support of in-scope services is a result of maintaining consistent service levels. The following sections provide relevant details on service availability, monitoring of in-scope services and related components.

6.1. HOSTED MAXIMO APPLICATION AND INFRASTRUCTURE SUPPORT – OFFICE HOURS

All Help Desk calls during office hours should come directly to BPD Zenith Ltd, via telephone or email, as detailed below:

Coverage parameters specific to the service(s) covered in this Agreement are as follows:

- Telephone support: 8:30 A.M. to 5:00 P.M. Monday – Friday (Excluding Bank Holidays)

  - Calls received out of office hours will be covered by an answer phone service. We will respond within office hours under the terms set out in the Service Requests and Call Escalation section of this document. Priority 1 calls out of hours must be placed to the out of hours service number to ensure immediate response (see out of hours section below).

- Email support: monitored 8:30 A.M. to 5:00 P.M. Monday – Friday (Excluding Bank Holidays)

  - Emails received outside of office hours will be collected, however no action can be guaranteed until the next working day

BPD Help Desk Tel: **01228 516019**
BPD Email: **service.desk@bpdzenith.com**

6.2. CHARGEABLE OPTION – OUT OF HOURS SUPPORT

Is Out of Hours support included in this contract	Yes/No

Outside of the office hours described above, BPD can provide 24 x 7 Out of Hours support for Priority 1 calls only, where Priority 1 is defined as 'System down'. This is only available to clients who have paid for this service.

To invoke the out of hours support, Client must call the BPD Out of Hours number which is shown below. Please note that there is an hourly charge for the BPD out of hours support as defined elsewhere in this contract.

6.3. MAXIMO APPLICATION & INFRASTRUCTURE SUPPORT PRIORITY – BPD ZENITH LTD

In support of services outlined in this Agreement, the Supplier will respond to service related incidents and/or requests submitted by the Client within the BPD Zenith Ltd Standard Service Level Agreement.

Priority ONE		
Description:	**Example:**	**Service:**
System Down	Data corruption or major system failure that prohibits users from logging in.	Automated acknowledgement of receipt emailed within 30 minutes. Support call within 1 working hour. Email or telephone updates at agreed times Resolution target – less than 4 hours Monitored by Service Desk Manager Escalated to a director of the company after 4 working hours.

Priority TWO		
Description:	**Example:**	**Service:**
Critical Business Failure	Problem affecting data causing data corruption but system is still usable.	Automated acknowledgement within 30 minutes. Support call within 2 working hours. Updates every 4 hours or at agreed time. Resolution target – less than 8 hours Monitored by Service Desk Manager Escalated to a director of the company after 8 working hours.

Priority THREE		
Description:	**Example:**	**Service:**
Program Failure	Problem affecting one user or a reporting function.	Automated acknowledgement within 30 minutes. Support call within 8 working hours. Updates every 2 working days or at agreed time. Resolution target – less than 3 working days Monitored by Service Desk Manager daily. Escalated to a director of the company after 5 working days.

MAXI CLOUD

Priority FOUR		
Description:	**Example:**	**Service:**
Request for Information	General query	Automated acknowledgement within 30 minutes. Support call within 8 working hours. Email or telephone updates as agreed. Resolution target – less than 7 working days Monitored by Service Desk Manager daily. Escalated to a director if resolution target missed.

6.4. FAILURE TO MEET SERVICE LEVELS

In any case where any of the Service Levels are not achieved by BPD Zenith Ltd in circumstances where BPD Zenith Ltd is responsible for the failure under this SLA:

- The Client may invoke the escalation process set out in section 6.6.

- BPD Zenith Ltd shall promptly investigate the underlying cause(s) of the problem and, in the case of Level 1 and Level 2 faults which are unresolved shall provide the Client with a report setting out its assessment of the action required to be taken by BPD Zenith Ltd.

- BPD Zenith Ltd shall take whatever action is reasonably necessary to minimise the impact of the problem and take such steps as are reasonably necessary to prevent it from recurring.

- BPD Zenith Ltd shall correct the service problem or Incident as soon as practically possible and resume service provision in accordance with the required target service levels.

6.5. ESCALATION PROCEDURES

If BPD Zenith Ltd response to a fault in service is unsatisfactory, the Client may contact the BPD Zenith Ltd Head Office and request that the fault is escalated.

Name	Description	Telephone	Email
<Insert Name>	Service Delivery Manager	<Insert telephone no>	<Insert Email address>
<Insert Name>	Account Manager	<Insert telephone no>	<Insert Email address>
<Insert Name>	Managing Director	<Insert telephone no>	<Insert Email address>

6.6. FORMAL COMPLAINTS PROCEDURE

BPD Zenith Ltd confirms that all complaints by the Client in respect of the Services will be escalated to the Administration Manager and the UK Operations Director. The following information will be requested and recorded:

- Detail and source of complaint

- Date and time

- Contact telephone number

- Nature of complaint

- Location(s) affected by complaint

Complaints can be made in writing, via email to service.desk@BPDZenith.com, copying our Administration Manager, xxxx.xxxx@bpdzenith.com or by post to:

Head of Administration
BPD Zenith Ltd 3c Clifford Court, Cooper Way, Carlisle CA3 0JG

Any written complaint by the Client will be passed to the Head of Administration and an acknowledgement of the complaint will be issued promptly. Appropriate action will be taken to fully understand and resolve the complaint. All complaints will be targeted for a response within five working days.

BPD Zenith Limited
3c Clifford Court, Cooper Way, Carlisle, CA3 0JG
E: info@bpdzenith.com
T: 0808 1800 360
www.bpdzenith.com

BPD Zenith Ltd – General License Agreement UK 2015 V1.02

This is a legal Agreement between you, the end user (LICENSEE) and BPD Zenith Limited (BPD).

BY DOWNLOADING, INSTALLING, COPYING, ACCESSING, CLICKING ON AN "ACCEPT" BUTTON, OR OTHERWISE USING THE PROGRAM OR SERVICE, THE LICENSEE AGREES TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ACCEPTING THESE TERMS ON BEHALF OF LICENSEE, YOU REPRESENT AND WARRANT THAT YOU HAVE FULL AUTHORITY TO BIND LICENSEE TO THESE TERMS.

If you do not agree to these terms:
- DO NOT DOWNLOAD, INSTALL, COPY, ACCESS, CLICK ON AN "ACCEPT" BUTTON, OR USE THE PROGRAM OR SERVICE; AND
- PROMPTLY RETURN THE UNUSED MEDIA, DOCUMENTATION, AND ENTITLEMENT CERTIFICATE TO BPD FOR A REFUND OF THE AMOUNT PAID. IF THE PROGRAM WAS DOWNLOADED, YOU MUST DESTROY ALL COPIES OF THE PROGRAM. IF ACCESSING IT UNDER A 'SOFTWARE AS A SERVICE MODEL' THEN YOU MUST TERMINATE YOUR USE OF THE SERVICE

1. Definitions

"Authorised Use" - the specified level at which the LICENSEE is Authorised to execute or run the Program. That level may be measured by number of users, servers, installations, or other level of use specified by BPD.

"Program" - the following, including the original and all whole or partial copies: 1) machine-readable instructions and data, 2) components, files, and modules, 3) audio-visual content (such as images, text, recordings, or pictures), and 4) related licensed materials (such as keys and documentation).

"Software as a Service (SaaS)" – use of the Program on a subscription model basis, where license entitlement is only granted for the duration of the subscription.

"Entitlement Certificate" ("ECert") - evidence of LICENSEE's authority to use the Program, this document is also evidence for warranty eligibility.

"Definition of License" ("DoL") – terms that are additional to this agreement based on the specific Program licenses purchased. The terms of the DoL prevail.

"Warranty Period" - one year, starting on the date the original LICENSEE is granted the license as stipulated on the ECert. Any Warranty Period defined in the relevant DoL document prevail over the terms herein.

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www.bpdzenith.com

2. Ownership of Software

The Program is owned by BPD or a BPD supplier, and is copyrighted and licensed to the LICENSEE, (not sold) for use within the United Kingdom and Ireland.

BPD grants LICENSEE a nonexclusive license to 1) use the Program up to the Authorised Use specified in the ECert, 2) make and install copies to support such Authorised Use, and 3) make a backup copy, subject to the following:

a) LICENSEE has lawfully obtained the Program and complies with the terms of this Agreement and additional terms that may be required within the DoL;

b) The backup copy does not execute unless the backed-up Program cannot execute;

c) LICENSEE reproduces all copyright notices and other legends of ownership on each copy, or partial copy, of the Program;

d) LICENSEE ensures that anyone who uses the Program (accessed either locally or remotely) 1) does so only on LICENSEE's behalf and 2) complies with the terms of this Agreement and the DoL respectively;

e) The program is intended for use as a complete package and as such the LICENSEE may not break the program down and use/upgrade any component separately.

f) LICENSEE does not 1) use, copy, modify, or distribute the Program except as expressly permitted in this Agreement; 2) reverse assemble, reverse compile, otherwise translate, or reverse engineer the Program, except as expressly permitted by law without the possibility of contractual waiver; 3) use any of the Program's components, files, modules, audio-visual content, or related licensed materials separately from that Program; or 4) sublicense, rent, or lease the Program

These license requirements apply to each copy of the Program that LICENSEE makes.

2.1 Trade-ups, Updates, Fixes, and Patches

When LICENSEE receives an update, fix, or patch to a Program, LICENSEE accepts any additional or different terms that are applicable to such update, fix, or patch that are specified in its DoL. If no additional or different terms are provided, then the update, fix, or patch is subject solely to this Agreement. If the Program is replaced by an update, LICENSEE agrees to promptly discontinue use of the replaced Program.

2.2 Fixed Term Licenses

If BPD licenses the Program for a fixed term, LICENSEE's license is terminated at the end of the fixed term, unless LICENSEE and BPD agree to renew it. All Software as a Service licenses are for a fixed term, but can be renewed by extending the subscription to the service.

2.3 Term and Termination

This Agreement is effective until terminated.

BPD may terminate LICENSEE's license if LICENSEE fails to comply with the terms of this Agreement and the DoL. If the license is terminated for any reason by either party, LICENSEE agrees to promptly discontinue use of and destroy all of LICENSEE's copies of the Program. Any terms of this Agreement that by their nature extend beyond termination of this Agreement remain in effect until fulfilled, and apply to both parties' respective successors and assignees.

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3. Charges

Charges are based on Authorised Use obtained, which is specified in the ECert. BPD does not give credits or refunds for charges already due or paid, unless specified elsewhere in this Agreement.

4. Taxes

If the Program becomes subject to a duty, tax, levy, or fee imposed by any authority, excluding those based on BPD's net income, then LICENSEE agrees to pay that amount, as specified in an invoice, or supply exemption documentation. LICENSEE is responsible for any personal property taxes for the Program from the date that LICENSEE obtains it.

5. Program Transfer

LICENSEE may transfer the Program and all of LICENSEE's license rights and obligations to another party only if that party agrees to the terms of this Agreement and with the consent of BPD in writing. If the license is terminated for any reason by either party, LICENSEE is prohibited from transferring the Program to another party. LICENSEE may not transfer a portion of 1) the Program or 2) the Program's Authorised Use. When LICENSEE transfers the Program, LICENSEE must also transfer a hard copy of this Agreement, including ECert. Immediately after the transfer, LICENSEE's license terminates.

6. Warranty and Exclusions

6.1 Limited Warranty

BPD warrants that the Program, when used in its specified operating environment, will conform to its specifications. The Program's specifications, and specified operating environment information, can be found in documentation supplied only in the English language accompanying the Program (such as a read-me file) or other information published by BPD.

The warranty applies only to the BPD delivered portion of the Program. BPD does not warrant uninterrupted or error-free operation of the Program, or that BPD will correct all Program defects.

LICENSEE is responsible for the results obtained from the use of the Program.

During the Warranty Period, BPD provides LICENSEE with information on known Program defects, defect corrections, restrictions, and bypasses at no additional charge. BPD reserves the right to choose how the LICENSEE has access to this information.

If the Program does not function as warranted during the Warranty Period and the problem cannot be resolved with information available, LICENSEE may return the Program and its ECert to BPD and receive a refund of the amount LICENSEE paid. After returning the Program, LICENSEE's license terminates.

6.2 Exclusions

THESE WARRANTIES ARE LICENSEE'S EXCLUSIVE WARRANTIES AND REPLACE ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND ANY WARRANTY OR CONDITION OF NON-INFRINGEMENT.

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E: info@bpdzenith.com
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THESE WARRANTIES GIVE LICENSEE SPECIFIC LEGAL RIGHTS. THE WARRANTIES IN THIS SECTION 6 (WARRANTY AND EXCLUSIONS) ARE PROVIDED SOLELY BY BPD. THE DISCLAIMERS IN THIS SUBSECTION 6.2 (EXCLUSIONS), HOWEVER, ALSO APPLY TO BPD'S SUPPLIERS OF THIRD PARTY CODE. THOSE SUPPLIERS PROVIDE SUCH CODE WITHOUT WARRANTIES OR CONDITION OF ANY KIND. THIS PARAGRAPH DOES NOT NULLIFY BPD'S WARRANTY OBLIGATIONS UNDER THIS AGREEMENT.

7. LICENSEE Data and Databases

To assist LICENSEE in isolating the cause of a problem with the Program, BPD may request that LICENSEE 1) allow BPD to remotely access LICENSEE's system or 2) send LICENSEE information or system data to BPD. However, BPD is not obligated to provide such assistance unless BPD and LICENSEE enter a separate written agreement under which BPD agrees to provide to LICENSEE that type of technical support, which is beyond BPD's warranty obligations in this Agreement. In any event, BPD uses information about errors and problems to improve its products and services, and assist with its provision of related support offerings. For these purposes, BPD may use BPD entities and subcontractors (including in one or more countries other than the one in which LICENSEE is located), and LICENSEE authorises BPD to do so.

LICENSEE remains responsible for 1) any data and the content of any database LICENSEE makes available to BPD, 2) the selection and implementation of procedures and controls regarding access, security, encryption, use, and transmission of data (including any personally-identifiable data), and 3) backup and recovery of any database and any stored data. LICENSEE will not send or provide BPD access to any personally-identifiable information, whether in data or any other form, and will be responsible for reasonable costs and other amounts that BPD may incur relating to any such information mistakenly provided to BPD or the loss or disclosure of such information by BPD, including those arising out of any third party claims.

8. Limitation of Liability

The limitations and exclusions in this Section 10 (Limitation of Liability) apply to the full extent they are not prohibited by applicable law without the possibility of contractual waiver.

8.1 Items for Which BPD May Be Liable

Circumstances may arise where, because of a default on BPD's part or other liability, LICENSEE is entitled to recover damages from BPD. Regardless of the basis on which LICENSEE is entitled to claim damages from BPD (including fundamental breach, negligence, misrepresentation, or other contract or tort claim), BPD's entire liability for all claims in the aggregate arising from or related to each Program or otherwise arising under this Agreement will not exceed the amount of any 1) damages for bodily injury (including death) and damage to real property and tangible personal property and 2) other actual direct damages up to the charges (if the Program is subject to fixed term charges, up to twelve months' charges) LICENSEE paid for the Program that is the subject of the claim.

This limit also applies to any of BPD's Program developers and suppliers. It is the maximum for which BPD and its Program developers and suppliers are collectively responsible.

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www.bpdzenith.com

8.2 Items for Which BPD Is Not Liable

UNDER NO CIRCUMSTANCES IS BPD, ITS PROGRAM DEVELOPERS OR SUPPLIERS LIABLE FOR ANY OF THE FOLLOWING, EVEN IF INFORMED OF THEIR POSSIBILITY:

a) LOSS OF, OR DAMAGE TO, DATA;

b) SPECIAL, INCIDENTAL, EXEMPLARY, OR INDIRECT DAMAGES, OR FOR ANY ECONOMIC CONSEQUENTIAL DAMAGES; OR

c) LOST PROFITS, BUSINESS, REVENUE, GOODWILL, OR ANTICIPATED SAVINGS.

9. Compliance Verification

The rights and obligations set forth in this Section 9 remain in effect during the period the Program is licensed to LICENSEE, and for two years thereafter.

9.1 Verification Process

LICENSEE agrees to create, retain, and provide to BPD and its auditors accurate written records, system tool outputs, and other system information sufficient to provide auditable verification that LICENSEE's use of all Programs is in compliance with these terms (and the additional terms of the DoL), including, without limitation, all of BPD's and BPD Suppliers' applicable licensing and pricing qualification terms. LICENSEE is responsible for 1) ensuring that it does not exceed its Authorised Use, and 2) remaining in compliance with these terms.

Upon reasonable notice, BPD may verify LICENSEE's compliance with these terms at all sites and for all environments in which LICENSEE uses (for any purpose) Programs subject to them. Such verification will be conducted in a manner that minimizes disruption to LICENSEE's business, and may be conducted on LICENSEE's premises, during normal business hours. BPD may use an independent auditor to assist with such verification, provided BPD has a written confidentiality agreement in place with such auditor.

9.2 Resolution

BPD will notify LICENSEE in writing if any such verification indicates that LICENSEE has used any Program in excess of its Authorised Use or is otherwise not in compliance with the Terms. LICENSEE agrees to promptly pay directly to BPD the charges that BPD specifies in an invoice for 1) any such excess use, 2) support for such excess use for the lesser of the duration of such excess use or two years, and 3) any additional charges and other liabilities determined as a result of such verification.

10. Third Party Notices

The Program may include third party code that BPD, not the third party, licenses to LICENSEE under this Agreement and through the DoL. Notices and information, if any, for the third party code ("Third Party Notices") are included for LICENSEE's information only. For the avoidance of any doubt where there is any discrepancy between these terms, the DoL and those of any Third Party licenses, the terms of the Third Party License will prevail only to the applicable component of the BPD program.

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11. General

a) Nothing in this Agreement affects any statutory rights of consumers that cannot be waived or limited by contract.

b) For Programs BPD provides to LICENSEE in tangible form, BPD fulfils its shipping and delivery obligations upon the delivery of such Programs to the BPD-designated carrier, unless otherwise agreed to in writing by LICENSEE and BPD.

c) If any part of this Agreement is held to be invalid or unenforceable, the remaining provisions of this
Agreement remain in full force and effect.

d) LICENSEE agrees to comply with all applicable export and import laws and regulations, including any embargo and sanctions regulations and prohibitions on export for certain end uses or to certain users.

e) LICENSEE authorises BPD Zenith Limited and its subsidiaries (and their successors and assigns, contractors and Business Partners) to store and use LICENSEE's business contact information wherever they do business, in connection with BPD products and services, or in furtherance of BPD's business relationship with LICENSEE.

f) Each party will allow the other reasonable opportunity to comply before it claims that the other has not met its obligations under this Agreement. The parties will attempt in good faith to resolve all disputes, disagreements, or claims between the parties relating to this Agreement.

g) Unless otherwise required by applicable law without the possibility of contractual waiver or limitation: 1) neither party will bring a legal action, regardless of form, for any claim arising out of or related to this Agreement more than two years after the cause of action arose; and 2) upon the expiration of such time limit, any such claim and all respective rights related to the claim lapse.

h) Neither LICENSEE nor BPD is responsible for failure to fulfil any obligations due to causes beyond its control.

i) No right or cause of action for any third party is created by this Agreement, nor is BPD responsible for any third party claims against LICENSEE, except as permitted in Subsection 8.1 (Items for Which BPD May Be Liable) above for bodily injury (including death) or damage to real or tangible personal property for which BPD is legally liable to that third party.

j) In entering into this Agreement, neither party is relying on any representation not specified in this Agreement, including but not limited to any representation concerning: 1) the performance or function of the Program, other than as expressly warranted in Section 6 (Warranty and Exclusions) above; 2) the experiences or recommendations of other parties; or 3) any results or savings that LICENSEE may achieve.

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k) The license and intellectual property indemnification terms of LICENSEE's other agreements with BPD do not apply to Program licenses granted under this Agreement.

12. Geographic Scope and Governing Law

Both parties agree to the application of the laws of England and all rights, duties, and obligations are subject to the English courts.

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BPD Zenith Ltd – Definition of License (SaaS Solutions) UK: Accelerator Service (generic industry) 2016 V1.03

Type of License

Software as a Service - a subscription based service that incorporates the right to use the software listed herein. When the subscription terminates, all rights to use the software also terminate. Note that this is a SaaS License, with no provision of hosted infrastructure or cloud-based services, unless included as part of a BPD hosting or MaxiCloud agreement.

Terms and Conditions

This DoL should be read in conjunction with: the *BPD Zenith Ltd – General License Agreement* and; other agreements that remain in force between BPD Zenith Ltd and the LICENSEE. Where there is any conflict of agreement terms, the DoL will prevail.

Software included

The Program or Service purchased from BPD Zenith Limited on the associated Entitlement Certificate (ECert) includes the BPD and IBM products which are listed below. The IBM product elements are subject to IBM's Terms of Use in addition to the BPD Zenith terms listed above and contained herein.

BPD Licensed Products or Services:

- BPD Zenith 'Accelerator Service' for [industry], incorporating the IBM products listed below
- BPD Zenith 'Logistics for Maximo' Manifesting Solution [delete if not applicable]

IBM Licensed Products:

The IBM Terms of Use at the point of sale, for the programs that affect your product, are available at: http://www-03.ibm.com/software/sla/sladb.nsf

The information and terms listed on the IBM website will prevail in relation the IBM part of the BPD product.

- BPD Zenith SaaS subscription for IBM Maximo Asset Manager [industry?] Authorized User
- BPD Zenith SaaS subscription for IBM Maximo Asset Manager [industry?] Limited Use Authorized User
- BPD Zenith SaaS subscription for IBM Maximo Asset Manager Express User Authorized User
     … add others as required …

Note that BPD Zenith retains full title to the IBM product licenses, but hereby grants a license to the LICENSEE for the BPD Zenith SaaS subscription service for the duration of the SaaS agreement.

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License Types for BPD Programs which are based on IBM Maximo Programs

BPD Zenith SaaS Subscription for Maximo Oil & Gas - Authorized User (or 'Full' User)

An Authorised User is an individual within or outside of Licensee's enterprise who has full access to all modules of the Program. The Program may be installed on one or more computers or servers and accessed by the number of users authorised by the ECert. Licensee must have an entitlement for each Authorized User accessing the Program or any Program component in any manner directly or indirectly (for example: via a multiplexing program, device, or application server) through any means.

BPD Zenith SaaS Subscription for Maximo Oil & Gas - Limited Use User

Licensee is limited to three (3) of IBM Maximo Oil & Gas core product modules. Limited Use Users only have authorisation to run reports against the three (3) selected modules. From V7.5 of Maximo Oil & Gas, each Limited Use user may have his/her own set of 3 modules. Licensee needing access to more than 3 modules must acquire additional Maximo Asset Manager Oil & Gas Authorized user subscriptions. Modules cannot be exchanged or transferred.

BPD Zenith SaaS Subscription for Maximo Asset Manager - Express User

An Express User has read access to all of Maximo and can update the status of Work Orders or Purchase Requisitions that have been assigned to them. They cannot create Work Orders or PRs.

Contract Term

1. The contract term is defined on the associated Entitlement Certificate
2. Prices remain fixed and guaranteed during the contract period (including additional user subscriptions purchased during the contract term)
3. The minimum contract term is 12 months
4. The maximum contract term is 36 months but can be extended or re-negotiated by mutual agreement
5. All payments are monthly or quarterly in advance as defined on the ECert.
6. LICENSEE may terminate the expiring BPD Zenith SaaS Subscription Period by written request to BPD Zenith's UK Head Office, at least ninety (90) days prior to the expiration date as set forth in the ECert. If BPD Zenith does not receive such termination notice by the expiration date, the expiring Subscription Period will be automatically renewed for either one year or the same duration as the original Subscription Period as set forth in the ECert. Note that BPD Zenith will have the right to charge reasonable price increases at this time.
7. LICENSEE will continue to have access to the BPD SaaS and will be billed for the usage on a continuous basis. To discontinue use of the BPD SaaS and stop the continuous billing process, the LICENSEE will need to provide at least ninety (90) days written notice requesting that LICENSEE's SaaS be cancelled. Upon cancellation of LICENSEE's access, LICENSEE will be billed for any outstanding access charges through the month in which the cancellation took effect.

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Variations

8. Additional User Subscriptions may be purchased at any time and have to be retained for a minimum of 12 months.
9. After 12 months, user subscriptions may be reduced upon 90 days written notice to BPD Zenith Ltd.
10. This 'SaaS only' agreement can be upgraded to a full SaaS and Hosted service by mutual agreement and negotiation.

Compliance Audits

Please refer to the BPD Zenith General License Agreement for details on Compliance. Although BPD Zenith's SaaS incorporates IBM Maximo license usage, IBM would not be entitled to Audit the LICENSEE's use of these licenses, but BPD Zenith would be entitled to do so.

Warranty Period (SaaS Specific Terms)

BPD Zenith warrants that the BPD Zenith SaaS Maximo licenses will conform to the documented IBM Maximo product specifications. If the BPD Zenith SaaS does not function as warranted, and if BPD Zenith (or IBM) is unable to make it do so, upon LICENSEE request, BPD Zenith will give LICENSEE a prorated refund of amounts prepaid by LICENSEE, and LICENSEE's right to use the BPD Zenith SaaS will terminate. This limited warranty remains in effect throughout the Subscription Period for the BPD Zenith SaaS offering

Payment Terms and Effect of Late Payment

11. Payments must be made in advance (either monthly or quarterly as defined on the ECert).
12. Payment terms are strictly NET 30 days.
13. If the LICENSEE shall fail to pay any sum due under the terms of this Agreement (otherwise than as a consequence of any default on the part of BPD Zenith Ltd) and such sum remains unpaid for 14 days after written notice from BPD Zenith Ltd that such sum has not been paid (such notice to contain a warning of BPD's intention to terminate), BPD will have the right to terminate this agreement with no further notice provided. The subscription to the SaaS licenses will be withdrawn and any further use of the LICENSE will be in contravention of BPD Zenith and/or IBM terms.

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BPD Zenith Entitlement Certificate
(BPD-nnnnn-1)

For

[Client Name]

[Client Logo (optional)]

Prepared by:	
Date:	
Version:	

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Certificate of Entitlement – BPD-nnnnn-1

LICENSEE Details

LICENSEE Name	
Address	
Post Code	
LICENSEE contact name	
LICENSEE contact email	
LICENSEE contact phone	

License Subscription Details

Contract Item	
Entitlement Certificate Number	BPD-nnnnn-1
License/Contract Type	MaxiCloud/Accelerator for xxx (SaaS)
Deployment (on premise or in BPD cloud)	On Premise/BPD Cloud [delete as applicable]
Contract Term	nn months
Contract Start Date	
Contract End Date	
Payment period	Monthly/Quarterly/Annually in advance [delete as applicable]
Payment amount	

Licenses or Subscriptions to which the LICENSEE has Entitlement

License or subscriptions	Unit Cost (per month)	Quantity	Total per month
[details] Full User			
[details] Limited Use User			
[details] Express use User			
[add others as applicable]			
Totals			

Limitations Applying to this Contract [delete if none]

- [any terms for this contract e.g. maximum number of support days provided]

The client's use of the above software and/or service is bound by the *BPD Zenith Ltd – General License Agreement UK 2015 V1.02*, the *BPD Zenith – Definition of License [insert correction version]* and this *Certificate of Entitlement*.

Signed on behalf of LICENSEE by: Position:

Signature: Date:

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