



KINETIC SOLUTIONS LIMITED

SOFTWARE LICENCE, SERVICE AND SUPPORT AGREEMENT



SOFTWARE LICENCE, SERVICE AND SUPPORT AGREEMENT

PART A: CONTRACT DETAILS

1. This Agreement comprises this PART A along with the following documents and Schedules are collectively referred to as this or the “Agreement”):

PART B: General Terms and Conditions which includes the Limitation of Liability:	<input checked="" type="checkbox"/>
Schedule 1 – Additional Charges and Supplementary Fees:	<input checked="" type="checkbox"/>
Schedule 2 – Hosting Services:	<input checked="" type="checkbox"/>
Schedule 3 – Professional Service Terms and Conditions:	<input checked="" type="checkbox"/>
Schedule 4 – Support Terms and Conditions and standard Support Service Levels:	<input checked="" type="checkbox"/>
Schedule 5 – Personal Data Processing:	<input checked="" type="checkbox"/>
Optional – KxPayments:	<input checked="" type="checkbox"/>
Optional – Pulse:	<input checked="" type="checkbox"/>

2. The terms of this Agreement constitute and govern the contractual relationship between You and Us relating to the Systems, the Support and the Services to the exclusion of any terms and conditions contained in any of Your own documents (including any terms or conditions which You purport to apply under any purchase order, confirmation of order, specification or other document) even if the same purport to provide that Your own or some other terms prevail.
3. Your use of the Systems and/or Your acceptance of the Support and/or the Services constitutes Your acceptance of the terms of this Agreement whether or not You have signed a copy of this Agreement.
4. This Agreement 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. Any conflict among or between the terms and conditions of the documents making up this Agreement will be resolved in accordance with the following order of precedence: (i) the applicable Schedule (ii) Part B (iii) this Part A.
5. This Agreement cannot be released, discharged, supplemented, amended, varied or modified except in writing signed by a duly authorised representative of each of the Parties hereto.

6. DESCRIPTION OF LICENSED APPLICATIONS & HOSTING SERVICES AND CHARGES:

To be described in the call-off contract

DESCRIPTION OF LICENSED APPLICATIONS & HOSTING SERVICES AND CHARGES (CONTINUED)

To be described in the call-off contract



PROFESSIONAL SERVICES CHARGES:

The charges detailed in the call-off contract are estimates and will be confirmed and billed as per the Part B – the General Terms and Conditions.

7. ADDITIONAL CHARGES AND SUPPLEMENTARY FEES:

Additional Charges and Supplementary Fees are detailed in Schedule 1 that if not attached is available on request; such fees and charges are subject to change.

8. EXPENSES

Travelling & Subsistence expenses will be charged for all onsite project management, development and training. Mileage will be charged at 45p per mile (as at 1 January 2016) and all other travel related expenses. You shall reimburse Us for airfare, meals, ground transportation, and other reasonable travel and living expenses, or related out of pocket expenses incurred by Us. We will use reasonable efforts to adhere to Your Travel Policies to the extent possible and where such policies are provided in advance of such travel requirements

All above charges are exclusive of VAT.

Each party attests the person signing this Agreement is authorised to bind its organisation and enter into this Agreement.



GENERAL TERMS AND CONDITIONS – PART B

In consideration of the payment for the Charges detailed in Part A clause 6 and subject to the terms and conditions of the Agreement, We will provide the License, Hosting, Professional Services, Support and other optional Services pursuant to Part A, this Part B and in accordance with the applicable Schedule terms and conditions. Capitalized terms and phrases used in this Agreement will have the meanings set forth in clause 21 or as otherwise defined within the context in which the word is used or in the applicable Schedule.

1. GRANT AND SCOPE OF LICENCE

In consideration of the payment of the Charges detailed in Part A clause 6 and subject to the terms and conditions of the Agreement , (a) We hereby grant to You a nonexclusive, non-transferable, non-sub-licensable licence to use the Licensed Applications and the Documentation, including all patches and updates, for the term of this Agreement; (b) If applicable, You may install and use the Licensed Applications on the Equipment at the Site for Your normal internal business purposes only for the term of this Agreement; (c) You may make a backup copy of the Licensed Applications as necessary for Your lawful use A record must be kept of all copies and be made available to Us on request; (d) You may use the Documentation in support of Your permitted use of the Licensed Applications and You may make such copies of the Documentation as are reasonably necessary for Your lawful use. You will be responsible for the update of copied Documentation if a revision is released.

2. SOFTWARE

2.1. Except as expressly set out in this Agreement, You shall:

2.1.1. not copy the Licensed Applications except where such copying is incidental to Your normal use of the same or where it is necessary for the purpose of backup or operational security; not transfer, sell, rent, lease, sub-license, loan, charge, encumber, translate, merge, adapt, vary or modify the Licensed Applications nor use it on behalf of, or make it available to any other person (including, but not limited to, program listings, object and source program listings, object code and source code); not make any alterations to, or modifications of, the whole or any part of the Licensed Applications, nor permit the same or any part of it to be combined with, or become incorporated in, any other software unless agreed in writing by Us; not install or use the Licensed Applications on any equipment other than the Equipment;

2.1.2. not disassemble, decompile, reverse engineer, attempt to make error corrections, reduce to human perceivable form, or create derivative works based on the whole, or any part, of the Licensed Applications, nor attempt to do any such things except to the extent that (by virtue of section 296A of the Copyright, Designs and Patents Act 1988) such actions cannot be prohibited because they are essential for the purpose of achieving interoperability of the Licensed Application with another software application, and provided that the information obtained by You during such activities is not unnecessarily disclosed or communicated to any third party without Our prior written consent and is not used to create any software which is substantially similar to any of the Licensed Applications or any commercially available products offered by Us or any “early release” products made available to You for the duration of this Agreement.

2.1.3. You shall not export, directly or indirectly, any technical data acquired from Us under this Agreement (including the Licensed Applications or any other software incorporating any such data) in breach of any applicable laws or regulations to any country for which the UK government or any agency thereof at the time of export requires an export license or other governmental approval without first obtaining such licence or approval.

2.2. Except in the event where We provide Hosting Services for which backups are not permitted, You shall keep any backup copies of the Licensed Applications secure and maintain accurate and up-to-date records of the number and locations of all such copies of the Licensed Applications and take steps to prevent un-authorized copying; supervise and control the use of the Licensed Applications and ensure that access to the same is limited to the Authorised Users and that such Authorised Users use the Licensed Applications only in accordance with the terms



of this Agreement. You shall be responsible for the compliance of the Authorised Users with the terms of this Agreement; where reasonably possible, include Our copyright notice on all entire and partial copies You make of the Licensed Applications on any medium.

3. SECURITY

3.1. It is Your responsibility to ensure that all Authorised Users have unique assigned alphanumeric identifiers (“User ID’s”) and passwords to use in connection with the Licensed Applications.

3.2. You are responsible for all acts and omissions of Authorized Users regardless of their employment status as an employee, agents, subcontractor, contractor or representative.

3.3. You are responsible for the following matters in relation to the security of the Licensed Applications: determining the security configurations of Your systems (for example, password construction rules and expiration periods) and for ensuring that You use reasonable security practices and systems in connection with the Licensed Applications; ensuring the confidentiality of User ID’s and passwords for Authorised Users; notifying Us immediately of any actual or suspected information security breaches of which You become aware including any compromised Authorised User accounts or Our Documentation; and periodically reviewing the efficacy and appropriateness of Your security configurations and access rights.

3.4. We shall not be liable for any loss, destruction, alteration or disclosure of Customer Data as a result of authorized or unauthorised access by any person or third party to the Licensed Application unless We have failed to comply with Our obligations under this Agreement.

4. CUSTOMER DATA

We will not obtain any rights in the Customer Data which shall remain Your property at all times. You shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data. In the event of any loss or damage to Customer Data, Your sole and exclusive remedy shall be for Us to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest available backup of such Customer Data. We shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (including any third-party remote hosting service provider). If we process any ‘personal data’ (as defined in Schedule 5) on Your behalf when performing Our obligations under this Agreement, You shall be the Data Controller and We shall be the Data Processor and the provisions of Schedule 5 shall apply.

5. CHARGES

5.1. Unless otherwise agreed in writing, all Charges and Additional Charges are payable by You in accordance with clause 5.2 below within thirty (30) days of receipt of Our invoice and shall be paid in full without any deduction or withholding other than as required by law and You shall not be entitled to assert any credit, set-off, claim or counterclaim against Us in order to justify withholding payment of any such amount in whole or in part.

5.2. All Charges for the Systems are payable annually in advance on the Billing Date stated in Part A clause 6 (Charges) and then upon each anniversary of such date. In the event that the System Install Date falls before the Billing Date the System Install Date will replace the Billing Date in this clause 5.2, clause 9.1, and clause 5.2 under the Professional Services - Schedule 3.

5.3. All Charges and Additional Charges are subject to VAT and/or any other applicable sales tax (if applicable) and, unless otherwise stated, all Charges stated in this Agreement are exclusive of any sales tax or VAT.

5.4. If You fail to pay any amount payable under this Agreement on the due date for payment then We may claim interest on any such sums due to Us (both before and after judgement) at the statutory interest rate defined



on the gov.uk website or, if lower, at the maximum rate permitted under the Late Payment of Commercial Debts (Interest) Act 1998 and Late Payment of Commercial Debts Regulations 2002 and 2013.

5.5. Except where there is a valid dispute where an amount is billed in error, We reserve the right to apply fees as detailed in Part A clause 6 if any part of this clause 5 should come into effect subject to the following conditions:

5.5.1. a Late Payment Fee per terms in clause 5.4 may be charged at the point an invoice becomes overdue;

5.5.2. an Administration Fee may be charged if an invoice becomes un-reasonably overdue and we have to suspend access to Your Systems; and/or

5.5.3. a Default Fee will be charged to cover the cost of removing the Systems from Your Equipment and revoke Your access to the Systems should the below clause 5.6 come into effect.

5.6. We reserve the right to seek to reclaim any outstanding balance through normal Debt recovery practises, Court action or third-party services. Any and all costs incurred as a result of Your failure to pay will be added to Your debt. Any breach under clause 5 will not constitute a dispute as defined in clause 19 and We will not be limited to the terms of dispute resolution detailed in clause 19 and We will be entitled to pursue, but not limited to, our rights under this clause 5.6.

5.7. We shall be entitled, under prior notice, to vary the Charges with effect from each anniversary of the date of this Agreement up to a maximum of five percent (5%) or the Retail Price Index (all items) published by the Office for National Statistics (or any successor body or government department or agency), whichever is higher.

5.8. Notice to alter the Charges defined in Part A clause 6 will be given by Us to You no less than sixty (60) days prior to each anniversary of the date of this Agreement whence the new Charges would come into effect. Upon the anniversary of this Agreement, should Notice have been served on You as per clause 5.7 and no notice to terminate is received, We shall assume Your acceptance and the new Charges schedule under this Agreement shall come into effect.

5.9. If either Party desires to modify a statement of work or a change in the Services required under Part A clause 6, the requesting Party will submit a written request to the other proposing change(s). Either Party may develop a Change Request that includes: (i) an analysis of the impact of the proposed modification on the Services including functionality, if applicable; (ii) an estimate of the impact on the estimated schedule for the proposed resulting from the proposed Change Request; (iii) an estimate of the additional cost, if any, of the proposed modification; and (iv) an evaluation of the technical feasibility of the proposed change. We will inform You of the effect on Charges and/or schedule that will result from changes requested by either party that affect the scope or duration of the Services. Neither party will be bound by any change requested until such change has been accepted in writing by the other Party.

6. WARRANTIES OF LICENSED APPLICATIONS

6.1. We warrant that We own the Licensed Applications free and unencumbered or We otherwise hold all rights from any third parties in order to enter into this Agreement, grant the rights and licences granted to You under this Agreement in relation to the Licensed Applications, and fully perform Our obligations under this Agreement. The Licensed Applications will, when properly used, perform substantially in accordance with the Specifications during the term of this Agreement; and the Documentation correctly describes the operation of the Licensed Applications at the time it is supplied in all material respects.

6.2. No warranty is provided that the Licensed Applications will meet Your data processing requirements or as to the accuracy, quality, reliability or completeness of any data generated by Your use of the Licensed Applications



and all liability and responsibility in relation thereto is hereby disclaimed and excluded to the fullest extent permitted by law.

6.3. The Licensed Applications warranties provided under clauses 6.1 do not apply if any defect or fault in the Licensed Applications results from You having amended the Licensed Applications or You having used the Licensed Applications in contravention of the terms of this Agreement.

6.4. You acknowledge that the Licensed Applications may not operate without interruption and may not be free of errors or bugs and You agree that the existence of any minor errors shall not constitute a breach of this Agreement.

6.5. You are responsible for ensuring adequate backup routines are in place to meet Your own business needs. Any such backups of the Licensed Applications shall in all respects be subject to the terms and conditions of this Agreement and shall be deemed to form part of the Licensed Applications. You shall reproduce Our copyright and trademark notices on any copy of the Licensed Applications.

6.6. We give no warranties regarding the Hosting Services other than those provided by the third-party hosting provider. All Hosting Services are provided "AS IS".

7. WARRANTIES OF SUPPORT AND OTHER SERVICES

7.1. We warrant that We will provide the Support and carry out the Services with reasonable skill and care and in compliance with all applicable laws. If, during the term of this Agreement, We receive notice from You of any breach of the warranties contained in clause 7.1 We shall, at Our own option and expense, remedy that breach within 30 days following receipt of such notice, or if compelled by law terminate this Agreement immediately, or terminate this Agreement with 30 days written notice to You and give You a prorated refund of the Charges for the balance of the remaining annual term. This clause 7 sets out Your sole remedy and Our entire liability for breach of clause 7.1.

7.2. If within 90 days of delivery of a Licensed Application, You notify us in writing of any defect or fault in any Licensed Applications as a result of which it fails to perform substantially in accordance with the Documentation, and We are not able to remedy that defect or fault through the provision of Our Support (provided that You make available all the information that may be necessary to assist us in resolving the defect or fault, including sufficient information to enable us to recreate the defect or fault) then We will, at our sole option and expense, replace with a new Licensed Application.

7.3. If the Services include the incorporation of Your Configuration Data into the Licensed Applications and/or into the Specifications then You warrant that Your Configuration Data is complete and accurate and fit for the purpose for which it is supplied, You grant Us all such rights and licences as may be necessary or desirable for Us to use and apply Your Configuration Data for that purpose, and You indemnify, defend and hold us harmless for such use and application of Your Configuration Data.

All other conditions, warranties or other terms which might have effect between the Parties or be implied or incorporated into the Agreement 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 or the use of reasonable skill and care.

8. INTELLECTUAL PROPERTY RIGHTS

8.1. You acknowledge that all IPR in the Licensed Applications (including any and all releases and versions) and the Documentation throughout the World belong to Us or Our licensors, that rights in the Licensed Applications are



licensed (not sold) to You, and that You have no rights in or to the Licensed Applications or the Documentation other than the right to use them in accordance with the terms of this Agreement.

8.2. We acknowledge that all IPR in Your Configuration Data belongs to You and that We have no rights in or to Your Configuration Data other than the right to use it in accordance with the terms of this Agreement.

8.3. You acknowledge that You have no right to have access to the Licensed Applications in source code form or in unlocked coding or with comments.

8.4. The integrity of the Licensed Applications may at any time be protected by technical protection measures so that our IPR, including copyright, in the Licensed Applications are not misappropriated, and You must not attempt in any way to remove or circumvent such measures.

8.5. Each party will notify the other party as soon as a party becomes aware of any unauthorised use of the Licensed Applications by any person.

8.6. Subject to the limitations in clause 10.3, We shall at Our own expense defend You or, at Our option, settle any claim or action brought against You alleging that Your possession or use of the Licensed Applications in accordance with the terms of this Agreement infringes the IPR or any other rights of a third party ("Claim") and We shall be responsible for any losses, damages, and costs awarded against You as a result of any such Claim provided that We are given prompt notice of any such Claim; You provide reasonable co-operation to Us in the defence and settlement of such Claim, at Our expense; and We are given sole authority to defend or settle the Claim.

8.7. Clause 8.6 shall not apply where the Claim in question is attributable to (a) Your possession or use of the Licensed Applications other than in accordance with the terms of this Agreement; (b) use of the Licensed Applications in combination with any hardware or software not supplied or specified by Us if the infringement would have been avoided by the use of the Licensed Applications not so combined; and (c) use of a non-current version of the Licensed Applications or a version to which all supplied releases have not been added.

8.8. Should the Licensed Application, or if in Our opinion the Licensed Application is likely to become, the subject of a Claim, then at Our option and expense, We may either to (a) procure for You a non-infringing license to use the Licensed Application; (b) modify the Licensed Application so that it is non-infringing; (c) provide a depreciated credit for any prepayments and terminate this Agreement.

8.9. The remedies set forth under this clause 8 are the sole and exclusive remedies for a Claim and no other liabilities whatsoever shall apply.

9. TERM AND TERMINATION

9.1. This Agreement shall be deemed to commence on the effective date of the Agreement as specified in Part A clause 6. With respect to the term of Service, in the event that the System Install Date falls before the Billing Date as specified in Part A clause 6, the System Install Date will replace the Billing Date and, subject to earlier termination as set out in this Agreement, shall be for an initial period of one (1) year and shall continue thereafter for further one-year periods unless and until terminated in accordance with the following provisions of this clause 9.

9.2. Either party may terminate this Agreement by giving not less than (90) ninety days' prior written notice to the other party with such termination to be effective on and from the next anniversary date of this Agreement following the expiry of the period of ninety days from the date of receipt of such termination notice.



9.3. You may terminate the Agreement by giving a shorter period of notice than the notice required under clause 9.2 should You wish to do so, as a matter of Your own convenience, but if You wish to exercise this right then a termination penalty is payable of twenty five percent (25%) of the annual Charges.

9.4. Either party may terminate this Agreement immediately by written notice to the other as follows:

9.4.1. if the other party commits a material or persistent breach of this Agreement which it fails to remedy (if remediable) within thirty (30) days after the service on it of a written notice requiring it to do so. Failure to make any payment when due shall be considered a material breach of this Agreement;

9.4.2. an order is made or a resolution is passed for the dissolution or winding-up of the other party or an order is made for the appointment of an administrator to manage the affairs, business and property of the other party or such an administrator is appointed or documents are filed with the court for the appointment of an administrator or notice of intention to appoint an administrator is given by the other party or its trustees, officers, directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a receiver and/or manager or administrative receiver is appointed in respect of all or any of the other party's assets or undertaking or circumstances arise which entitle the court or a creditor to appoint a receiver and/or manager or administrative receiver or which entitle the court to make a winding-up or bankruptcy order or the other party takes or suffers any similar or analogous action in consequence of debt in any jurisdiction; or

9.4.3. the other party suspends or threatens to suspend or ceases to carry on all or a substantial part of its business.

9.5. We may terminate this Agreement immediately by written notice to You as follows: (a) if You dispute the ownership or validity of Our Intellectual Property Rights; (b) if We discover that the information provided to Us in connection with the provision of the Systems, the Services and/or the Support is materially inaccurate or incomplete; (c) if You breach Export restrictions (clause 2.1.3). If We are notified by the third-party service provider referred to in clause 15.1 that You have breached the third-party service provider's Acceptable Use Policy or if We become aware that You have breached the third-party service provider's Acceptable Use Policy under Our Hosting Services – Schedule 2.

9.6. The termination of this Agreement for cause is without prejudice to any rights We may have against You or You may have against Us in respect of any breach of this Agreement by You or by Us respectively.

9.7. Upon termination for any reason:

9.7.1. all rights granted to You under this Agreement shall cease and You must cease all activities authorised by this Agreement;

9.7.2. Except where there is a valid billing dispute for an amount billed in error, You shall immediately pay any outstanding unpaid invoices and interest due to Us (and We shall submit invoices for any Support or Services supplied for which no invoice has previously been submitted, and on receipt You shall pay these invoices in line with the agreed payment terms);

9.7.3. You must immediately delete or remove the Licensed Applications from all computer equipment in Your possession and immediately destroy or return to Us (at Our option) all copies of the Licensed Applications and Documentation then in Your possession, custody or control and, in the case of destruction, certify to Us that You have done so; and

9.7.4. any provision of this Agreement which expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.



10. LIMITATION OF LIABILITY

10.1. Nothing in this Agreement shall limit or exclude either party's liability for: death or personal injury resulting from negligence; fraud or fraudulent misrepresentation; breach of the obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of the Goods and Services Act 1982; or any liabilities that cannot be excluded or limited by English law.

10.2. Except in the event of Your infringement of Our intellectual property rights in the proprietary software provided hereunder for which there is no limit to Your liability, neither party shall under any circumstances whatsoever be liable to the other party, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this Agreement for: loss of profits, sales, business, or revenue; business interruption; loss of anticipated savings; loss of business opportunity, goodwill or reputation; or for any indirect, consequential or special loss or damage of whatsoever nature and howsoever arising even if such loss was reasonably foreseeable or if a party were advised of the possibility of incurring the same.

10.3. EXCEPT AS PROVIDED UNDER CLAUSE 10.1, 10.2, AND EXCEPT FOR YOUR PAYMENT OBLIGATIONS FOR AMOUNTS DUE HEREUNDER AND UNLESS AN EXPRESSED REMEDY OR LIMIT IN LIABILITY IS OTHERWISE PROVIDED UNDER AN APPLICABLE SCHEDULE, REGARDLESS OF THE BASIS OF LIABILITY (WHETHER ARISING OUT OF LIABILITY UNDER BREACH OF CONTRACT, TORT, INCLUDING BUT NOT LIMITED TO NEGLIGENCE, LOSS OR CORRUPTION OF DATA OR INFORMATION, MISREPRESENTATION, BREACH OF STATUTORY DUTY, OR BREACH OF WARRANTY) THE MAXIMUM AGGREGATE LIABILITY FROM EITHER PARTY ARISING OUT OF THIS AGREEMENT TO THE OTHER PARTY OR ANY OTHER PERSON OR ENTITY FOR ALL EVENTS (OR SERIES OF CONNECTED EVENTS) WILL NOT EXCEED THE CHARGES PAID FOR THE APPLICABLE SERVICE DIRECTLY CAUSING THE DAMAGE OR GIVING RISE TO SUCH CLAIM IN THE TWELVE (12) MONTH PERIOD PRIOR TO THE OCCURRENCE OF THE EVENT IN RESPECT OF WHICH THE RELEVANT LOSS AROSE. THE "TWELVE MONTH PERIOD" COMMENCES ON THE TERM START DATE OR ANY OF ITS YEARLY ANNIVERSARIES. NEITHER PARTY SHALL HAVE SUCH LIABILITY TO THE OTHER PARTY UNLESS THE PARTY SEEKING A CLAIM SHALL HAVE SERVED NOTICE TO THE PARTY WITHIN ONE (1) YEAR OF THE DATE THE PARTY BECAME AWARE OF THE CIRCUMSTANCES GIVING RISE TO A CLAIM OR THE DATE WHEN A PARTY OUGHT REASONABLY TO HAVE BECOME SO AWARE (WHICHEVER IS THE SOONER).

11. CONFIDENTIALITY

11.1. Each party shall, during the term of this Agreement and thereafter for a period of five years, keep confidential, and shall not use for any purpose (other than the proper exercise of its rights under this Agreement) nor disclose to any third party (except as may be required by any law or any legal or regulatory authority) any information of a confidential nature (including, without limitation, trade secrets, technical information, know-how, and information of commercial value) which may become known to it and which relates to the other party or to the other party's business (and Our confidential information for this purpose shall include the Licensed Applications, the Documentation and all related materials, information and know-how) unless (i) that information is public knowledge or already known to that party at the time of disclosure or subsequently becomes public knowledge in each case other than by a breach of this Agreement, or (ii) subsequently comes lawfully into its possession from a third party.

11.2. Each party shall use all reasonable endeavours to prevent the unauthorised disclosure of the other party's confidential information and You shall restrict disclosure of Our confidential information to such of Your employees as need to know the same for the purpose of using the Licensed Applications and You shall be responsible for ensuring that any such persons accept and adhere to equivalent obligations of confidentiality to those contained in this clause 11.

11.3. Nothing in this clause 11 shall prevent either party from disclosing any information which it is compelled by law to disclose to a court of competent jurisdiction or other body having similar authority or pursuant to any government, stock exchange or other regulations including the Freedom of Information Act 2000.

12. NON-SOLICITATION



12.1. Unless otherwise agreed in writing by both parties, neither party shall for the duration of this Agreement and for a period of six (6) months following termination directly or indirectly induce or attempt to induce any of each other's employees or other personnel who have been engaged in the provision, receipt, review or management of the Support or Services or otherwise in connection with this Agreement to leave their employment or engagement.

13. FORCE MAJEURE

13.1. Neither party shall in any circumstances be in breach of this Agreement nor liable for any delay in performing, or any failure to perform, any of its obligations under this Agreement (excluding Your payment obligations) if such delay or failure results an event, or a series of related events, that is outside the reasonable control of the party affected (including failures of or problems with the internet or a part of the internet, hacker attacks, virus or other malicious software attacks or infections, power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars).

14. NOTICES

14.1. If either party gives notice in writing under this Agreement, it will do so by email or by a recorded delivery postal service to the address of the other party set out in the Contract Details. Any notice given by You to Us, or by Us to You, will be deemed received and properly served immediately twenty-four hours after an e-mail is sent, or upon signed receipt in the case of recorded delivery service. In proving the service of any notice sent by email, it will be sufficient to prove that such email was sent to the specified email address of the addressee. The provisions of this clause 14 shall not apply to the service of any proceedings or other documents in any legal action.

15. THIRD PARTIES AND ASSIGNMENT

15.1. If You use a third-party hosting service or if You outsourced some or all of Your I.T. systems, You shall be fully responsible for the acts and omissions of those third parties to the same extent as You are responsible for Your own acts and omissions under this Agreement and You shall at all times indemnify Us and hold Us indemnified from and against any and all actions, proceedings, costs, losses, damages, claims and demands suffered or incurred by Us arising out of or in connection with any act or omission of any such third party which act or omission would have been a breach of this Agreement if it had been committed by You.

15.2. Neither the Agreement nor any duties or obligations hereunder shall be assigned or transferred by You without Our prior written approval, which approval may be withheld in Our reasonable judgment. We may utilize third parties to perform certain obligations but We shall remain responsible for performance under the Agreement.

15.3. A person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of it, but this does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

16. NO WAIVER

16.1. A delay or omission by either party hereto to exercise any right or power under this Agreement will not be construed to be a waiver thereof. A waiver by either of the Parties of any of the covenants to be performed by the other or any breach thereof will not be construed to be a waiver of any succeeding breach thereof or of any other covenant. No waiver or discharge hereof will be valid unless in writing and signed by an authorized representative of the Party against which such amendment, waiver, or discharge is sought to be enforced.

17. SEVERABILITY



17.1. Each of the terms of this Agreement operates separately. If any court or competent authority decides that any of them are unlawful or unenforceable, the remaining terms will remain in full force and effect.

18. JURISDICTION

18.1. This Agreement, its subject matter and its formation (and any non-contractual disputes or claims) are governed by and shall be construed in accordance with English law.

19. DISPUTE RESOLUTION

19.1. The Parties will attempt to resolve any dispute arising under or relating to the Agreement through informal means. At the written request of either party, the Parties will submit the dispute to senior management representative for each Party for review and resolution. Should the dispute not resolved in thirty (30) days of the written request and the Parties do not both agree to an extension, the Parties agree that the dispute between them shall be referred to a mediator, who will be selected by mutual agreement for resolution by mediation. The costs of mediation shall be equally shared between the Parties. If a dispute is not settled within 7 days of the mediation being instituted, or within such other period as the Parties shall agree in writing, the dispute(s) shall then be referred to and finally resolved by binding arbitration under the Arbitration Act 1996. All costs will be added to the arbitration claim for the Arbitrator to award as the Arbitrator deems appropriate.

20. This Part B and any applicable Schedules are the terms and conditions which govern the Agreement between the Parties and 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.

21. DEFINITIONS

Additional Charges	charges as detailed in Schedule 1 based on Our then-current rates for time and materials plus all related costs and expenses including travel and subsistence;
Authorised Users	individual users of the Licensed Applications approved to use the Systems by You;
Billing Date	the date that billing commences for charges as detailed in Part A clause 6;
Change Requests	Work that deviates from the agreed statement of works or falls outside the Scope detailed in the Project Brief; or Work following the delivery of the Services and the Systems that would add functionality or make material changes to the existing Systems;
Charges	the Charges detailed in Part A clause 6;
Configuration Data	any data in relation to Your computer systems necessary to be provided to Us for the installation of the Licensed Applications on the Equipment;
Control	is as defined in section 1124 of the Corporation Tax Act 2010, and the expression 'change of Control' shall be construed accordingly;
Current Version	The latest available version of the Licenced Applications as released by Us;
Customer Data	data that is produced by You, given to You by a third party, recorded by You and/or used by the System but not a product of Ours or the "Intellectual Property" of Ours most commonly relating to, but not limited to, Your clients, users, guests and/or students (if applicable);



Documentation	any operating manuals, user guides and other instructional materials or aids (whether hard copy or electronic) provided by Us to You relating to the installation and use of the Licensed Applications;
Equipment	exclusively, the computers, mobile devices and similar equipment proposed by You and agreed by Us as the computers and devices onto which the Licensed Applications are to be installed and used;
Fault	see Incident;
Hosting Services	the particular System defined in Part A clause 6;
Incident	an unplanned interruption to a System's operation, a reduction in the quality of the operation of the System or an event that suggests a risk of detrimental operational impact on a System;
Issue	see Incident;
IPR	all and/or any intellectual property rights of whatever nature and howsoever arising including without limitation all and/or any inventions, patents, trademarks, service marks, registered designs, topography rights and utility models, pending applications for any of those rights, trade and business names, unregistered trade marks and service marks, rights in designs, copyrights and rights in the nature of copyright, moral rights, know-how, all rights in computer software (including without limitation database rights) and all other similar or equivalent industrial, intellectual or commercial rights or property subsisting under the laws of each and every jurisdiction throughout the world whether registered or not, and whether vested, contingent or future and all reversions, renewals and extensions of any of the foregoing;
Licensed Applications	the Applications detailed in Part A clause 6;
Parties	the Licensee & Licensor nominated in Part A and any group or umbrella organisation with controlling interest or ownership of the Licensee or Licensor;
Project Products	works, documentation, communications and all related collateral in the delivery of the Services;
Reasonable Efforts	endeavours to complete the Services and/or the Support within the parameters of this Agreement, the Scope or Schedule of Works using Our available resources and those made available by You that may have limits that prevent/hinder such endeavours;
Service Desk	the Support team, its resources and/or the facility by which Faults/Incidents are raised;
Service Levels	the Service Levels detailed in Schedule 4;
Services	the Services detailed in Schedule 3;
Services Completion Date	the date the Project Closedown Report is accepted or its acceptance times out;
Site	the physical location of the Equipment as agreed by You and Us;



SLA	abbr. Service Level Agreement, a general term to describe activities and their measures by the Service Desk;
Specifications	the specifications for the Licensed Applications in Our quotation or in a separate written document agreed between You and Us (which may be in hard copy or electronic format) and recorded as such by express reference to this Agreement or, if there is no such document, then the functions described in the Documentation - in a case of conflict the most recent document will take precedence;
Support	the Support services detailed in Schedule 4;
System Install Date	the date on which a Licensed Application listed under Part A clause 6 is first installed on the Equipment and access is granted by Us for You to use the Licensed Application; and
Systems	the Systems detailed in Part A clause 6.

A reference to one gender shall denote all genders and a reference to the singular shall include the plural and vice versa. References to statutory provisions shall be construed as references to those provisions as amended, consolidated, extended or re-enacted from time to time. References to a "company" shall be construed so as to include any company, corporation or other body corporate, wherever and however incorporated or established; references to a "person" shall be construed so as to include any individual, firm, company, government, state or agency of the state or any joint venture, association or partnership (whether or not being separate legal personality). Where the words include(s), including or in particular are used in this Agreement, they are deemed to have the words "without limitation" following them. Where the context permits, "other" and "otherwise" are illustrative and shall not limit the sense of the words preceding them.



SCHEDULE 1 - ADDITIONAL CHARGES AND SUPPLEMENTARY FEES SCHEDULE

Additional Charges (Accrued as Consumed)

RESOURCE GROUP	CHARGE (ex VAT)	HOURLY / ONE-OFF
PROJECT MANAGER	£166.00	Ad-hoc - Hourly
BUSINESS ANALYST	£166.00	Ad-hoc - Hourly
WEB DEVELOPMENT	£166.00	Ad-hoc - Hourly
GENERAL DEVELOPMENT	£188.00	Ad-hoc - Hourly
QUALITY ASSURANCE ANALYST	£166.00	Ad-hoc - Hourly
TECHNICAL SERVICES	£210.00	Ad-hoc - Hourly
CONSULTANCY	£188.00	Ad-hoc - Hourly
GENERAL TRAINING (ON-SITE)	£149.00	Ad-hoc - Hourly
GENERAL TRAINING (OFFICE)	£132.00	Ad-hoc - Hourly

Additional hours are billed in advance based on an estimate for a given work package. Every effort is made to ensure accuracy of estimates, but overruns will be billed under notice by time & materials.

Charges are subject to change without notice.

Fees

DESCRIPTION	CHARGE (ex VAT)	FREQUENCY	PAYMENT TERMS
Late Payment Fee	£120.00	Per Contract Terms	3 Days
Administration Fee	£425.00	Per Contract Terms	3 Days
Default Fee	£850.00	Per System	3 Days

Fees are subject to change without notice.

Expenses

Travelling & Subsistence expenses will be charged for all onsite project management, development and training. Mileage will be charged at 45p per mile (as at 1 January 2016) and all other travel related expenses. You shall reimburse Us for airfare, meals, ground transportation, and other reasonable travel and living expenses, or related out of pocket expenses incurred by Us. We will use reasonable efforts to adhere to Your Travel Policies to the extent possible and where such policies are provided in advance of such travel requirements.

All the above charges are exclusive of VAT.



SCHEDULE 2 – HOSTING SERVICES

1. DESCRIPTION HOSTED SERVICES

We provide the following Hosted Services which includes infrastructure on which to operate Our Software and the Services to manage that infrastructure on Your behalf.

References to a third party service provider shall mean Microsoft and/or Microsoft Azure based on the context in which third party service provider is used.

When using Microsoft Azure, You acknowledge You are entering into a direct agreement with Microsoft for the use of Azure. Their terms and conditions of use, service levels and guarantees regarding the availability of the service provided by Microsoft are set out here <https://azure.microsoft.com/en-us/support/legal>

When using Microsoft software on Azure such as Windows server, SQL Server, Office and other Applications, You are subject to Microsoft's terms and conditions set out here <https://docs.microsoft.com/en-us/partner-center/agreements>.

2. TERMS OF HOSTING SERVICES

2.1. In consideration of You entering into the applicable Microsoft Agreement as required by Microsoft and the payment of the Charges detailed in Part A Clause 6, We hereby undertake to provide the Hosting Services set out in this Schedule 2 for the Term of the Agreement.

2.2. You acknowledge and agree that the platform which We make available to You in connection with the provision of the Systems is hosted for Us by a third party service provider and that We are not responsible for the act or omissions of that third party service provider and, without prejudice to the generality of the foregoing, We make no representations and provide no warranties as to the availability, functionality or performance of that platform.

2.3. We are not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities (including the internet) and You acknowledge that the Systems may be subject to limitations, delays and other problems inherent in the use of such communications facilities (for example, that the Systems may not be completely secure).

2.4. You shall ensure that Your network and systems comply with any relevant specifications provided by Us in Our release documentation from time to time and You shall be solely responsible for procuring and maintaining Your network connections and telecommunications links from Your systems to Our systems, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to Your network connections or telecommunications links or caused by the internet.

2.5. You are deemed to enter into this Agreement with full knowledge of Our agreement with the third-party service provider referred to in this Schedule 2. We will make Our agreement with the third-party service provider (subject to the redaction of any commercially confidential provisions) available to You on request or We will direct You to the location of the third-party service provider's contract terms. In the event of any default or failure by the third party service provider which constitutes a breach of Our agreement with the third party service provider or if the third party service provider suspends the provision of the Hosting Services, We will, at Your request and cost, use Our reasonable endeavours to seek to enforce the terms of Our agreement with the third party service provider and procure the recommencement of the Hosting Services to the extent We are reasonably able to do so under such hosting agreement. We shall not be liable to You for any loss or damage resulting from such default, failure or suspension of the Hosting Services unless caused as a result of Our breach of the hosting agreement. This clause 2.5 sets out Your sole remedy and Our entire liability arising out of or in connection with the availability, functionality or performance of the platform.

2.6. You acknowledge and agree to comply at all times with the "Terms of Use" of the third-party service provider referred to in this Schedule 2 which is in force from the date of this Agreement or the date of the agreement with the third-party service provider, whichever is most recent, and updated from time to time.



SCHEDULE 3 – PROFESSIONAL SERVICES

SERVICES OVERVIEW

We will provide the Services as described in This Schedule 3 including the installation and configuration of the Licensed Applications on the Equipment. The Support and Standard Support Levels as detailed in Schedule 4 shall apply with effect from the Services Completion Date following the completion of the Services.

1. PROJECT MANAGEMENT

1.1. The process of specifying/developing/implementing the Systems detailed in Part A clause 6 that will be managed by the Project Manager ("the Project").

1.2. Prior to any Services or Systems being provided, a project manager or an employee/contractor of Our choosing will be assigned to manage the Project ("the Project Manager").

1.3. Prior to the commencement of any Services You must ensure that all Equipment (including the required servers if hosting is not part of the Systems) is to the required Specification required to run the Licensed Applications in Part A clause 6.

1.4. During the course of the Project the Project Manager will be Your primary point of contact.

1.5. A number of Project Management Days will be assigned to the Project. These "days" are made up of 6 hours. The term "day" makes no reference to total duration.

1.6. The Project Manager will create a document following requirements gathering activities that will define the scope of the project and detail the statement of works ("Scope"), expected benefits and requirements ("the Project Brief").

1.7. The Project Manager will create a document that will need to be approved by You before the commencement of any further Services that will compile the required documents for the Project, detail key dates, stages and relevant project information ("the Project Plan").

1.7.1. If no agreement is received and all Reasonable Efforts have been taken by the Project Manager to tailor the Project Plan to You, We reserve the right, without prior notice, to reject the Project or apply Additional Charges for the extra time required to complete further changes.

1.7.2. We reserve the right, with prior notice, to apply Additional Charges for the time required to include the additional work(s) or reject Change Requests at our sole discretion.

1.7.3. The Project Plan will include Charges schedule that will be derived from the Estimated Implementation Fee defined in Part A clause 6 and updated to reflect the Scope. Charges may be billed on milestones detailed in the Project Plan. Some or all of the milestones may require a payment to be released by You to Us before the Project can continue. Withholding of any such payment without our written agreement will be treated as You placing the project on hold and the below clause 1.8 allows Additional Charges to be raised. All Charges and Additional Charges to be agreed by both parties in advance.

1.8. The Project Manager will require You to provide information and resources in a timely manner to keep the Project to plan and schedule.

1.9. Our project approach treats You as a team member and We will include You in project activities, communications and reviews.

1.10. Project Products that are part of the agreed Project and project scope will be freely available to You unless deemed and specifically notified in advance as being commercially sensitive, and therefore only for Our internal use.



1.11. The number of Project Management Days has been set to cover all normal eventualities. Additional Charges may be raised for Project Management per day as detailed in Part A clause 6 when the Project is delayed, extended, re-scoped, subject to a Change Request and/or placed on hold by You as a result of deviation from the agreed Project Plan at any point during the Project. You will be notified in writing by the Project Manager prior to the charges being raised for your approval.

1.12. Should You feel that the Services are not being provided as laid out in the above clauses You should raise a concern in the first instance to the Project Manager. If You feel the response or action is inadequate a further concern should be raised with the department Manager.

2. SPECIFICATION / DEVELOPMENT / IMPLEMENTATION

2.1. The Development Days (defined in 2.4) included are intended to deliver the Systems detailed in Part A clause 6 with no amendments/alterations/extraordinary requirements. Whilst We make every effort to offer the Services within the agreed rate, if during the course of the planning of the Project or the Project itself the Project Manager encounters an undisclosed requirement or restriction, additional Development Days may be charged. You would be offered the opportunity to avoid such charges if You agree to release the requirement/restriction. These Additional Charges are detailed in Schedule 1.

2.2. A Specification document will be produced prior to any development activity commencing for Your agreement. This document will be to define the functionality of a given product and measure the development activity success through quality assurance and testing.

2.3. We will undertake reasonable works to amend the Specification document where a hitherto unrealised and unforeseeable requirement appears. We will not amend the document where such an amendment would constitute a Change Request.

2.4. A number of Development Days will be assigned to the Project. These "Days" are made up of 6 hours. The term "day" makes no reference to total duration.

2.5. The number of Developer Days has been set to cover the implementation and normal development tasks of installation. Additional Charges may be raised for Development when the Project is delayed, extended, re-scoped, subject to a Change Request and/or placed on hold by You as a result of deviation from the agreed Project Plan. You will be notified in writing by the Project Manager prior to the charges being raised for Your approval.

3. INSTALLATION

3.1. We will install the Licensed Applications on the Equipment in accordance with the timescale(s) agreed by You and Us in writing. Your personnel shall provide Us with all assistance reasonably requested by Us to enable Us to do this.

3.2. If agreed by You and Us in writing, We will be responsible for creating Your Configuration Data so that it is stored in the correct form at and capable of being used in conjunction with the Licensed Applications and, in that event then (unless otherwise agreed) We will warrant that We will use reasonable care and skill to ensure that the posting of Your Configuration Data by Us will be accurate.

3.3. If the Configuration Services include the incorporation of Your Configuration Data into the Software then You warrant that Your Configuration Data is complete and accurate and fit for the purpose for which it is supplied and You grant Us a royalty free, non-exclusive, non-transferable, non-sublicensable licence to the extent necessary for Us to use, apply and incorporate Your Configuration Data into the Software.

4. TRAINING

4.1. A number of Training Days will be assigned to the Project. "Training Days" are made up of 6 hours. The term "day" makes no reference to total duration.



- 4.2. The number of Trainer Days has been set to cover the implementation and normal training tasks. Additional Charges may be raised for training when the Project is delayed, extended, re-scoped, subject to a Change Request and/or placed on hold by You as a result of deviation from the agreed Project Plan. You will be notified in writing by the Project Manager prior to the charges being raised for Your approval.
- 4.3. Training is a required part of the Services and is essential for Your operation of the Systems.
- 4.4. A training plan will be produced by the Trainer and reviewed by the Project Manager. The training plan will be included in the Project Plan.
- 4.5. We shall provide such training as shall be deemed to be required by Us to enable Your satisfactory operation of the Licensed Applications. We shall also supply You (without additional charge) with such number of copies of the Documentation as You shall reasonably require.
- 4.6. Training shall be provided to such members of Your staff at a group training session as We shall judge to be a feasible number which shall not be more than 6. We may agree to train more than 6 delegates in exceptional circumstances which would be reviewed on a case by case basis and would be subject to Additional Charges. Subject to the following clauses 4.7 and 4.8, We shall bring one or more members of Your staff (at our discretion) to such a level of competence in using the Licensed Applications as shall in Our reasonable opinion allow them to train other members of Your staff in the use of the Licensed Applications.
- 4.7. It is Your obligation to ensure that the staff You provide to be trained are conversant in the operation of the Equipment and are reasonably capable of assimilating a training programme designed by Us to operate the Licensed Applications.
- 4.8. If at the end of the allotted Trainer Days You require additional training that was not included in the Statement of Works You shall be charged a daily fee as per the Additional Charges in Schedule 1.
- 4.9. Certain equipment and facilities will be required in order to complete the training and will be detailed in the Training Plan. You should provide such equipment and facilities to Us. Failing to do so may result in training being delayed/postponed and notwithstanding the below clause 4.10 may incur Additional Charges.
- 4.10. Scheduled Training that has been confirmed by You that is cancelled, postponed or is not attended may result in Additional Charges being raised to complete the Training on another date. For cancellations and postponements, We will accept Your notice in writing no less than thirty days prior to the scheduled date and in such case We will waive the right to apply Additional Charges.

5. ACCEPTANCE

- 5.1. Over the course of the Project We will require Your acceptance of work packages in order to continue. This will be in the form of an "Acceptance Certificate" that will be sent to You on completion of the related work package.
- 5.2. We shall use Our Reasonable Efforts to complete any and all work which may be required for the Licensed Applications to meet the Specifications; however, You acknowledge that between the Billing Date and the Services Completion Date the Licensed Applications may not be fully operational.
- 5.3. The Project Manager will produce a Project Closedown Report at the end of the Project to enable Our support team to become Your primary point of contact. The Project Closedown Report will be open for Your comment and agreement for thirty days following its submission. After this time if no response is received, providing notification has been given by Us to You via the Project Manager or Account Manager, we shall assume Your acceptance.

6. BANKED HOURS / SERVICE WORK CHARGES

- 6.1. At Customer's option, Customer may procure a bank of hours ("Banked Hours") which are priced at a fixed



fee with an assumption of hours. The fee is billed up front upon and payable in advance upon execution of the Agreement.

6.2. Banked Hours must be consumed within 1 (one) year of the Agreement Date and cannot be applied to services outside of this Schedule.

6.3. We shall provide You with an invoice for the total Agreed price upon execution of the Agreement.

6.4. Payment will be due either, prior to commencement of any work or by the due date on the invoice, whichever is sooner. If the Bank of Hours has not be paid or considered past due, then any work performed will be invoiced at the current per hour rates and minimums for time and material.

7. PAYMENTS

7.1. Withholding or deducting payments as a result of any issue You may have with the standards of our Professional Services will constitute a breach of contract under Part B clause 5.1 of the Agreement. Any such dispute should be handled under the terms of Part B clause 19 of the Agreement.



SCHEDULE 4 – SUPPORT, MAINTENANCE AND SERVICE LEVEL AGREEMENT

1. INTRODUCTION

1.1. In consideration of the payment of the Charges detailed in Part A clause 6, We hereby undertake to You to provide the Support and Maintenance Services to You in accordance with the terms of this Schedule 4.

1.2. You shall provide Us with full, safe and uninterrupted access, including remote access, to such of the Licensed Applications, Equipment and Site as may reasonably be required by Us for the purpose of performing the Support Services, and, where the Support Services are to be performed at the Site You shall provide adequate working space and office facilities for Our use and take reasonable care to ensure the health and safety of Our personnel.

1.3. You shall co-operate with Us in Our performance of the Support and Maintenance Services and provide such assistance and information as may be reasonably required by Us in this respect including in relation to the diagnosis of any faults. If such co-operation is not forthcoming, We reserve the right to charge for the resource affected in full or part of the sum detailed in Part A clause 6 for the relevant resource for the full period.

1.4. Notwithstanding clause 15.1 of Part B and except to the extent You use the SaaS in Optional Schedule – Pulse or Hosting Services in Schedule 2, You shall ensure that the Equipment is of a satisfactory specification and standard so as to allow the Licensed Applications to run on it in accordance with the Specifications.

1.5. We may make changes to Our standard processes and practices for Support and Maintenance Services with notice to You and other customers.

2. MAINTENANCE

2.1. The following set out the Maintenance services for the Licenced Software:

2.1.1. We will use reasonable endeavours to diagnose errors and provide assistance to overcome specific Software problems;

2.1.2. At Our sole discretion, we will correct errors by issuing patches to the Current Version or issue new versions of the Software;

2.1.3. We are under no obligation to provide error corrections for old versions of the Software;

2.1.4. We will provide You with information regarding the availability of new patches and new versions of the Software.

2.1.5. You will report any Faults in the Software to Our Service desk (Details on how to contact the Service desk can be found on Our website).

2.2. New versions and patches:

2.2.1. We will make patches and new versions available to You to use. If we provide SaaS or Hosted Services, then we install patches and new versions. Otherwise You are responsible for installing patches and new versions. If You ask Us to install patches and new versions, then we may charge for this service.

2.2.2. Any new version of the Software shall become the Current Version;

2.2.3. Where we provide Software as a Service, we only support the Current Version.

2.2.4. For other Software that is installed by You or on Hosted Services We provide full support for the Current Version and its previous version.



2.2.5. We may agree with You to provide Extended Support for earlier versions. Extended Support excludes fault diagnosis and fix.

2.2.6. We will provide at least six months' notice of our intention to place a version on Extended Support.

2.2.7. We will provide you with at least six months' notice of our intention to cease support for an old version.

2.2.8. You agree to upgrade from an old version to the Current Version within 12 months of our request, if we ask you to do so, as long as there is no material loss of functionality in the Current Version.

3. SUPPORT

3.1. Support means support services in relation to the Licensed Applications and Hosted Service and comprises the following activities:

3.1.1. upon request by You, reasonable advice by telephone or electronic communication on the use of the Licensed Applications and Hosted Services;

3.1.2. upon request by You, the diagnosis of Faults in the Licensed Applications

3.2. Support does not include, and the Charges for Support do not cover, the diagnosis or rectification of any Fault resulting from:

3.2.1. the improper use, operation or neglect of the Licensed Applications or the Equipment or the modification of the Licensed Applications or their merger (in whole or in part) with any other software by any person other than Us without Our prior written consent or any other use or application of the Licensed Applications in breach of the restrictions under clause 2 of the General Terms & Conditions (Part B);

3.2.2. the use of the Licensed Applications on equipment other than the Designated Equipment or a failure to maintain the necessary environmental conditions for use of the Licensed Applications;

3.2.3. technical faults with the Equipment;

3.2.4. the failure by You to implement recommendations in respect of or solutions to Faults previously advised by Us;

3.2.5. any repair, adjustment, alteration or modification of the Licensed Applications by any person other than Us with- out Our prior consent;

3.2.6. any material breach by You of any of Your obligations under any maintenance agreement in respect of the Equipment;

3.2.7. the use of the Licensed Applications by You for a purpose other than that for which they were designed and supplied; or

3.2.8. We may ask you to install the Current Version, or a fully supported version, to remedy any bug or problem or compatibility or similar issue in an older version. We may ask you to install a patch for a Current or fully supported version, to remedy any bug or problem or compatibility or similar issue in those versions.

4. TERMS FOR SUPPORT SERVICES

4.1. Except where there is a valid dispute of an amount billed in error, withholding or deducting payments as a result of any issue You may have with the standards of our Support will constitute a breach of contract under clause 5.1 of the General Terms & Conditions (Part B). Any such dispute should be handled under the terms of clause 19.



4.2. You shall provide Us (in writing if We so request) with a detailed description of any Fault requiring Support within Clause 2.1 above and the circumstances in which it arose as soon as You become aware of such a Fault.

4.3. Support does not include, and the Charges for Support do not cover, the re-installation of any of the Licensed Applications for You or the provision of any Support which falls outside the activities described in Clause 2.2 above.

4.4. In the event that We do provide Support in connection with a Fault which results from any of those matters described in Clause 2.1 above or which otherwise falls outside the activities described in Clause 2.2 above then We do so without any guarantee as to the outcome of the provision of that Support, the Service Levels in this Schedule 4 shall not apply, and we shall be entitled to charge Additional Charges for that Support.

4.5. If You request Support under Clause 2.1 above and We deem that a reasonably skilled and competent data processing operator would not have needed for Our Support for the same, then We shall be under no obligation to provide that Support. In the event that You decide to move forward with Our support then we shall be entitled to charge Additional Charges for that Support. Such Charges to be agreed in advance by both parties.

5. EMERGENCY PROVISIONS

5.1. In the unlikely event of a total system failure or critical Incident that affects more than one client all resources available to Us may be used to rectify the incident and ongoing project work, meetings or other activities may be postponed. We may request information, resource support or onsite technical knowledge from You in order to resolve the incident. Any existing support tickets will not be subject to the SLAs in this Schedule 4 and will be placed on hold until the incident has been resolved; and regular updates will be available by way of individual contact, conference calls or announcements.

6. PERFORMANCE MANAGEMENT REVIEWS

On the request of either party, the parties agree to conduct quarterly account reviews (or more frequently as mutually agreed) to evaluate the performance and any issues as it relates to the Service Levels identified in Schedule 4. The purpose of the review is to allow knowledgeable and accountable managers to address performance issues quickly, work out a plan to assist both parties in improving the response and/or requirements to achieve the objective of the Service Levels, and to ensure that each party is meeting its obligations under the contract. Quarterly reviews will provide each party with feedback and reinforce best practices.

The Customer may only request an account review where they are on a supported Version as defined in 2.2.3 and 2.2.4 of this Schedule.

An account review and associated reporting may include one or more of the following items:

- Calls by caller, category and product
- Fault trends and resolutions
- SLA performance – time to fix, time to respond

If during the review, it is determined that a remediation plan is required for either party, the parties will work in good faith to define and produce an improvement plan with thirty (30) days.

With respect to the SLA defined in Schedule 4, the initial point of escalation for all Application and Service issues will be the Kinetic Account Manager and Customer Representative. Escalation beyond this will be as per the defined dispute resolution process, the triggers for escalation being either Kinetic or Customer driven with the objective of maintaining service, agreed SLA's and contract performance.

If after an escalation event and in the unlikely event that Kinetics fails to meet its SLA's as detailed in Schedule 4 in three (3) consecutive months, then the parties will immediately schedule an Executive Service Review between the



Kinetics Service Director and or CEO and relevant Customer Representative.

In the event of three (3) Executive Reviews being initiated within a contract year, Customer either party may terminate the Agreement within such Contract year without any further liability.

For avoidance of doubt, delays caused by the Customer or any of its third-party suppliers to provide necessary information or assistance to Kinetic to resolve an issue will be an excused delay in the measure time towards Kinetic's response.

7. SUPPORT SERVICE LEVEL AGREEMENT

The following tables set Our target times and intended service levels, but no representation or warranty is given that any Faults will be fixed within a specified period of time.

KEY AREA	DESCRIPTION	MEASUREMENT/VALIDATOR
Online Portal	An online portal available 24 hours a day. Accessible from the Kinetic website. https://kineticsoftware.com/	Issues/Incidents/Faults and Service Requests can be logged at any time and queued for resolution by the Service Desk.
Service Desk	Manned Service Desk for the logging and resolution of Issues/Incidents/Faults and Service Requests. https://kineticsoftware.com/	Issues/Incidents/Faults are accepted via the online portal. Issues/Incidents/Faults can also be raised by telephone or email.
Escalation	Details of escalation routes in relation to the Service Desk can be found on the Kinetic website. https://kineticsoftware.com/wp-content/uploads/2020/10/Escalation-Policy-2.pdf	Not applicable
Service Desk Availability	08.00 – 18.00 each working day (Monday to Friday excluding public holidays in England) except during the annual Christmas closedown which will be notified to You in advance, annually	Not applicable
Service Desk Response – Telephone	All Service desk phone calls shall be answered or voicemail messages responded to. Our telephone service is intended for the reporting of high priority Incidents/Faults.	Calls and/or voicemail messages will be answered or acknowledged within 2 hours during Service Desk Availability.
Service Desk Response – Online Portal	All service requests raised by online portal shall be acknowledged and responded to according to their assigned Priority as detailed in the Incident Management Table.	You will be provided with a confirmation of any Issue/Incident/Fault raised and updates will be sent periodically during Service Desk Availability.



Estimated Resolution Time	<p>The time estimated for a particular Priority under the Incident Management Table that comes into effect and burns down from the point at which the Issue/Incident/Fault is accepted into the queue by the Service Desk. When We are awaiting feedback, testing, resource from the Customer, this time will be paused and is not representative of a total resolution period.</p> <p>An estimate does not constitute a contractual commitment.</p>	<p>Issues/Incidents/Faults raised via the Online Portal are fully audited and a detailed report can be provided upon request and the Online Portal provides real-time updates.</p> <p>Issues/Incidents/Faults raised by other means will be logged by the Service Desk on the Online Portal and can be monitored in the same way.</p>
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Incident Management Table

Incident Management and Incident Priority Levels	SLA Description	Estimated Resolution Time
P1	Incidents with business critical impact on the System where there are no identified workarounds which will allow continued operation of the System. P1 incidents take total precedence over all other support activity.	1 working day.
P2	Incident with moderate Customer impact – major effect on the operation of the business, but does not affect the core functions of the business.	3 working days.
P3	Incident with moderate business risk/affecting a few users.	7 working days.
P4	Issues which have no effect on business operations or continuity but are required in order to bring the Licensed Application within specification.	14 working days.
P5	All scheduled work including system updates, configuration changes and template work that falls inside of included Support as defined in Schedule 4.	28 working days.
Onsite Support	If required, we will use Our reasonable endeavours to provide onsite assistance within 72 hours of a request being made. Such work may incur Additional Charges depending on Priority Level and the nature of the Fault as defined in Schedule 4.	Whether onsite support is provided within 72 hours of request being made.
Standard Change	A change that is recurrent, well known, has a predefined, relatively risk-free path, and is the accepted response to a specific requirement or set of circumstances provided by the Customer, authority is effectively given in advance of implementation for any pre-agreed Standard Changes.	



Request for Change	If You request additional works that fall outside of the Support defined in Schedule 4 and is not a Standard Change. These will be assigned a Priority as above but the Resolution Time will not apply although every endeavour will be made to complete the work to schedule.	Case by case basis.
KEY AREA	TARGET SERVICE LEVEL AGREEMENT (SLA)	MEASUREMENT / KEY PERFORMANCE INDICATOR (KPI)
Account Management Facility Post Implementation	An Account Management Facility post implementation will be available, other than when on annual leave or away from work due to sickness, 9:00 - 17:00UTC - Monday to Friday. When an Account Manager is off-site he/she should respond within 2 working days to any message; however, there will always be an Account Manager available within these time frames.	Client Account feedback.
Management Point of Escalation Post Implementation	A Senior Management point of escalation who is not part of the Service Desk team and who is senior to the Account Manager will maintain the relevant contact.	Client Account feedback.
Software Patches / Upgrades	We shall load any patches/upgrades to a test environment to allow a period of fourteen (14) days to complete user acceptance testing (UAT) prior to applying this to the live environment.	Upgrades will be communicated and offered to Customers who meet the criteria and any such upgrade will be tracked through the Online Portal.
Software Patches / Upgrades	All software patches are applied consistently across the test, training and live environments.	100% of all software patches are applied to the test, live and training environments.



SCHEDULE 5: PERSONAL DATA PROCESSING

Definitions In this Schedule:

Applicable Law	means as applicable and binding on the Customer, Kinetic and/or the Services: <ul style="list-style-type: none"> a) any law, statute, regulation, by-law or subordinate legislation in force from time to time to which a party is subject and/or in any jurisdiction that the Services are provided to or in respect of; b) the common law and laws of equity as applicable to the parties from time to time; c) any binding court order, judgment or decree; or d) any applicable direction, policy, rule or order that is binding on a party and that is made or given by any regulatory body having jurisdiction over a party or any of that party's assets, resources or business;
Appropriate Safeguards	means such legally enforceable mechanism(s) for transfers of Personal Data as may be permitted under Data Protection Laws from time to time;
Data Controller	has the meaning given to that term (or to the term 'controller') in Data Protection Laws;
Data Processor	has the meaning given to that term (or to the term 'processor') in Data Protection Laws;
Data Subject	has the meaning given to that term in Data Protection Laws;
Data Subject Request	means a request made by a Data Subject to exercise any rights of Data Subjects under Data Protection Laws;
Data Protection Laws	means as applicable and binding on the Customer, Kinetic and/or the Services: <ul style="list-style-type: none"> a) in the United Kingdom: <ul style="list-style-type: none"> i. the Data Protection Act 2018 ii. the GDPR, and/or any corresponding or equivalent national laws or regulations; b) in member states of the European Union: the GDPR, and all relevant member state laws or regulations giving effect to replacing or supplementing the same; and c) any Applicable Laws replacing, amending, extending, re-enacting or consolidating any of the above Data Protection Laws from time to time;
Data Protection Losses	means all liabilities arising under Data Protection Laws, including all: <ul style="list-style-type: none"> a) costs (including legal costs), claims, demands, actions, settlements, interest, charges, procedures, expenses, losses and damages (including relating to material or non-material damage); and b) to the extent permitted by Applicable Law: <ul style="list-style-type: none"> i. administrative fines, penalties, sanctions, liabilities or other remedies imposed by a Supervisory Authority; ii. compensation which is ordered by a Supervisory Authority to be paid to a Data Subject; and iii. the reasonable costs of compliance with investigations by a Supervisory Authority;
EEA	means the European Economic Area, which constitutes the member states of the European Union and Norway, Iceland and Liechtenstein, as well as, for the purposes of this Schedule, the United Kingdom.



GDPR	means the General Data Protection Regulation (EU) 2016/679;
International Recipient	has the meaning given to that term in paragraph 6.1;
Personal Data	has the meaning given to that term in Data Protection Laws;
Personal Data Breach	means any breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, any Protected Data;
Processing	has the meanings given to that term in Data Protection Laws (and related terms such as process have corresponding meanings);
Processing Instructions	has the meaning given to that term in paragraph 2.1.1;
Protected Data	means Personal Data received from or on behalf of the Customer in connection with the performance of Kinetic's obligations under the Agreement and this Schedule 5;
Sub-Processor	means another Data Processor engaged by Kinetic for carrying out processing activities in respect of the Protected Data on behalf of the Customer; and
Supervisory Authority	means any local, national or multinational agency, department, official, parliament, public or statutory person or any government or professional body, regulatory or supervisory authority, board or other body responsible for administering Data Protection Laws.

1. References to any Applicable Laws (including to the Data Protection Laws and each of them) and to terms defined in such Applicable Laws shall be replaced with or incorporate (as the case may be) references to any Applicable Laws replacing, amending, extending, re-enacting or consolidating such Applicable Law (including the GDPR and any new Data Protection Laws from time to time) and the equivalent terms defined in such Applicable Laws, once in force and applicable; and

2. A reference to a law includes all subordinate legislation made under that law.

1. Data Processor and Data Controller

1.1. The parties agree that, for the Protected Data, the Customer shall be the Data Controller and Kinetic shall be the Data Processor.

1.2. Kinetic shall process Protected Data in compliance with:

1.2.1. the obligations of Data Processors under Data Protection Laws in respect of the performance of its obligations under the Agreement and this Schedule 5.

1.3. The Customer shall comply with:

1.3.1. all Data Protection Laws in connection with the processing of Protected Data, the Services and the exercise and performance of its respective rights and obligations under this Schedule 5, including maintaining all relevant regulatory registrations and notifications as required under Data Protection Laws; and

1.3.2. the terms of this Schedule.



1.4. The Customer warrants, represents and undertakes, that:

1.4.1. all data sourced by the Customer for use in connection with the Services, prior to such data being provided to or accessed by Kinetic for the performance of the Services under this Schedule 5, shall comply in all respects, including in terms of its collection, storage and processing (which shall include the Customer providing all of the required fair processing information to, and obtaining all necessary consents from, Data Subjects), with Data Protection Laws;

1.4.2. all instructions given by it to Kinetic in respect of Personal Data shall at all times be in accordance with Data Protection Laws;

1.4.3. it has undertaken due diligence in relation to Kinetic's processing operations, and it is satisfied that:

a) Kinetic's processing operations are suitable for the purposes for which the Customer proposes to use the Services and engage Kinetic to process the Protected Data; and

b) Kinetic has sufficient expertise, reliability and resources to implement technical and organisational measures that meet the requirements of Data Protection Laws.

1.5. The Customer shall not withhold, delay or condition its agreement to any Change requested by Kinetic in order to ensure the Services and Kinetic (and each Sub-Processor) can comply with Data Protection Laws.

2. Instructions and details of processing

2.1. Insofar as Kinetic processes Protected Data on behalf of the Customer, Kinetic:

2.1.1. unless required to do otherwise by Applicable Law, shall (and shall take steps to ensure each person acting under its authority shall) process the Protected Data in accordance with Our standard procedures unless the Customer has provided us with differing documented instructions (Processing Instructions);

2.1.2. if Applicable Law requires it to process Protected Data other than in accordance with the Processing Instructions, shall notify the Customer of any such requirement before processing the Protected Data (unless Applicable Law prohibits such information on important grounds of public interest); and

2.1.3. from the Date of the Agreement, shall inform the Customer if Kinetic becomes aware of a Processing Instruction that, in Kinetic's opinion, infringes Data Protection Laws, provided that:

a) this shall be without prejudice to paragraphs 1.3 and 1.4;

b) to the maximum extent permitted by mandatory law, Kinetic shall have no liability howsoever arising (whether in contract, tort (including negligence) or otherwise) for any losses, costs, expenses or liabilities (including any Data Protection Losses) arising from or in connection with any processing in accordance with the Customer's Processing Instructions following the Customer's receipt of that information; and

c) this paragraph 2.1.3 shall only apply from the Agreement Date.

3. Technical and organisational measures

3.1. Kinetic shall implement and maintain, at its cost and expense, the technical and organisational measures:

3.1.1. in relation to the processing of Protected Data by Kinetic; and



3.1.2. from the Agreement Date, taking into account the nature of the processing, to assist the Customer insofar as is possible in the fulfilment of the Customer's obligations to respond to Data Subject Requests relating to Protected Data.

3.2. Any additional technical and organisational measures shall be at the Customer's cost and expense.

3.3. The Customer shall, where reasonably possible ensure that any Protected Data in respect of which Kinetic is requested to provide support and maintenance services under the Agreement and this Schedule 5 are anonymised prior to Kinetic being granted access to them.

4. Using Sub-Processors and staff

4.1. From the Date of the Agreement:

4.1.1. Where Data Processors and/or Sub-Processors are identified in a Schedule or predefined in a Service (e.g. Microsoft, Azure, AWS, or Google Cloud), or where Kinetic utilizes an affiliate or subsidiary to perform Help Desk functions, or as identified [here](#) and/or disclosed on Appendix 1 to this Schedule 5, unless expressly modified in this clause, Customer consents to the use of such Sub-Processors. Otherwise, Kinetic shall not engage any Sub-Processor for carrying out any processing activities in respect of the Protected Data without the Customer's authorisation (such authorisation not to be unreasonably withheld, conditioned or delayed).

4.1.2. Kinetic shall appoint Sub-Processors under a written contract containing materially the same obligations as under paragraphs 1 to 11 (inclusive).

4.1.3. Kinetic shall ensure that all of its personnel authorised to process Protected Data are subject to a binding written contractual obligation with Kinetic to keep the Protected Data confidential (except where disclosure is required in accordance with Applicable Law, in which case Kinetic shall, where practicable and not prohibited by Applicable Law, notify the Customer of any such requirement before such disclosure).

5. Assistance with the Customer's compliance and Data Subject rights

5.1. Kinetic shall refer all Data Subject Requests it receives to the Customer within 1 Business Days of receipt of the request.

5.2. From the Agreement Date, Kinetic shall provide such reasonable assistance as the Customer reasonably requires (taking into account the nature of processing and the information available to Kinetic) to the Customer in ensuring compliance with the Customer's obligations under Data Protection Laws with respect to:

5.2.1. security of processing;

5.2.2. data protection impact assessments (as such term is defined in Data Protection Laws);

5.2.3. prior consultation with a Supervisory Authority regarding high risk processing; and

5.2.4. notifications to the Supervisory Authority and/or communications to Data Subjects by the Customer in response to any Personal Data Breach, provided the Customer shall pay Kinetic's Charges for providing the assistance in this paragraph 5.2, such Charges to be calculated on a time and materials basis at Kinetic's standard rates from time to time in force.

6. International data transfers



6.1. The Customer agrees that Kinetic may transfer Protected Data to countries outside the European Economic Area (EEA) or to any international organisation(s) (an International Recipient) as disclosed in Appendix 1 to this Schedule 5, provided all transfers by Kinetic of Protected Data to an International Recipient shall (to the extent required under Data Protection Laws) be effected by way of Appropriate Safeguards and in accordance with Data Protection Laws. The provisions of this Schedule 5 shall constitute the Customer's instructions with respect to transfers in accordance with paragraph 2.1.

7. Records, information and audit

7.1. Kinetic shall maintain, in accordance with Data Protection Laws binding on Kinetic, written records of all categories of processing activities carried out on behalf of the Customer.

7.2. Kinetic shall, in accordance with Data Protection Laws, make available to the Customer such information as is reasonably necessary to demonstrate Kinetic's compliance with the obligations of Data Processors under Data Protection Laws, and allow for and contribute to audits, including inspections, by the Customer (or another auditor mandated by the Customer) for this purpose, subject to the Customer:

7.2.1. giving Kinetic reasonable prior notice of such information request, audit and/or inspection being required by the Customer;

7.2.2. ensuring that all information obtained or generated by the Customer or its auditor(s) in connection with such information requests, inspections and audits is kept strictly confidential (save for disclosure to the Supervisory Authority or as otherwise required by Applicable Law);

7.2.3. ensuring that such audit or inspection is undertaken during normal business hours, with minimal disruption to Kinetic's business, the Sub-Processors' business and the business of other customers of Kinetic; and

7.2.4. paying Kinetic's reasonable costs for assisting with the provision of information and allowing for and contributing to inspections and audits.

8. Breach notification

8.1. In respect of any Personal Data Breach involving Protected Data, the parties shall, without undue delay:

8.1.1. notify the other party of the Personal Data Breach; and

8.1.2. provide the other party with details of the Personal Data Breach.

9. Deletion or return of Protected Data and copies

9.1. Kinetic shall, at the Customer's written request, either delete or return all the Protected Data to the Customer in such form as the Customer reasonably requests within a reasonable time after the earlier of:

9.1.1. the end of the provision of the relevant Services related to processing; or

9.1.2. once processing by Kinetic of any Protected Data is no longer required for the purpose of Kinetic's performance of its relevant obligations under this Schedule 5, and delete existing copies (unless storage of any data is required by Applicable Law and, if so, Kinetic shall inform the Customer of any such requirement).

10. Liability, indemnities and compensation claims



10.1. The Customer shall indemnify and keep indemnified Kinetic in respect of all Data Protection Losses suffered or incurred by, awarded against or agreed to be paid by, Kinetic and any Sub-Processor arising from or in connection with any:

10.1.1. non-compliance by the Customer with the Data Protection Laws;

10.1.2. processing carried out by Kinetic or any Sub-Processor pursuant to any Processing Instruction that infringes any Data Protection Law; or

10.1.3. breach by the Customer of any of its obligations under paragraphs 1 to 11 (inclusive), except to the extent Kinetic is liable under paragraph 10.2.

10.2. Subject to Part B, clause 10.3. of the Agreement, Kinetic shall be liable for Data Protection Losses (howsoever arising, whether in contract, tort (including negligence or otherwise) under or in connection with the Agreement and this Schedule 5:

10.2.1. only to the extent caused by the processing of Protected Data under this Schedule 5 and directly resulting from Kinetic's breach of paragraphs 1 to 11 (inclusive); and

10.2.2. in no circumstances to the extent that any Data Protection Losses (or the circumstances giving rise to them) are contributed to or caused by any breach of this Schedule 5 by the Customer (including in accordance with paragraph 2.1.3(b)).

10.3. If a party receives a compensation claim from a person relating to processing of Protected Data, it shall promptly provide the other party with notice and full details of such claim. The party with conduct of the action shall:

10.3.1. make no admission of liability nor agree to any settlement or compromise of the relevant claim without the prior written consent of the other party (which shall not be unreasonably withheld or delayed); and

10.3.2. consult fully with the other party in relation to any such action, but the terms of any settlement or compromise of the claim will be exclusively the decision of the party that is responsible under this Schedule 5 for paying the compensation.

10.4. The parties agree that the Customer shall not be entitled to claim back from Kinetic any part of any compensation paid by the Customer in respect of such damage to the extent that the Customer is liable to indemnify Kinetic in accordance with paragraph 10.1.

10.5. This paragraph 10 is intended to apply to the allocation of liability for Data Protection Losses as between the parties, including with respect to compensation to Data Subjects, notwithstanding any provisions under Data Protection Laws to the contrary, except:

10.5.1. to the extent not permitted by Applicable Law (including Data Protection Laws); and

10.5.2. that it does not affect the liability of either party to any Data Subject.

11. Survival of data protection provisions

11.1. Paragraphs 1 to 11 (inclusive) shall survive termination (for any reason) or expiry of this Schedule 5 and continue:

11.1.1. indefinitely in the case of paragraphs 9 to 11 (inclusive); and



11.1.2. until 12 months following the earlier of the termination or expiry of this Schedule 5 in the case paragraphs 1 to 8 (inclusive), provided always that any termination or expiry of paragraphs 1 to 8 (inclusive) shall be without prejudice to any accrued rights or remedies of either party under any such paragraphs at the time of such termination or expiry.

12. Miscellaneous

In case of any conflict between this Schedule 5 and the Agreement, the provisions of this Schedule 5 shall control as regards the Processing of Protected Data unless expressly stated otherwise herein.

ANY CLAIMS BROUGHT UNDER OR PURSUANT TO THIS SCHEDULE 5 OR OTHERWISE RELATED HERETO SHALL BE SUBJECT TO THE TERMS AND CONDITIONS OF THE AGREEMENT, INCLUDING BUT NOT LIMITED TO THE EXCLUSIONS OF LIABILITY AND THE LIMITATIONS OF LIABILITY SET FORTH IN PART B CLAUSE 10.3 THEREIN WHICH SHALL APPLY TO THE LIABILITIES AND INDEMNITIES UNDER AND IN CONNECTIONS WITH THIS SCHEDULE 5.



Appendix 1 to Schedule 5

Below is a list of the approved Kinetic third party processors and sub-contractors as of the date of the Agreement. This Appendix may be updated from time to time. If in the event, Kinetic determines an update to this Appendix will materially impact the manner in which Kinetic provides such Service, Kinetic will use commercially reasonable efforts to notify the Customer of such change and as necessary seek additional consent:

<u>SUPPLIER</u>	<u>LOCATION</u>	<u>NATURE OF PROCESSING</u>	<u>DATA TYPE</u>	<u>TRANSFER BASIS</u>
INGRAM MICRO	EEA	HOSTING SERVICES PROVIDER	NONE	DPA
MICROSOFT AZURE	EEA	HOSTING PROVIDER	NONE	DPA as published by Microsoft
CONTOUR SOFTWARE (Pvt.) Ltd	PAKISTAN	DEVELOPMENT AND SUPPORT SERVICES	PERSONAL AND SENSITIVE	DPA with STANDARD APPROVED EU MODEL CLAUSES
IT MENTOR	NEW ZEALAND	DEVELOPMENT AND SUPPORT SERVICES	PERSONAL AND SENSITIVE	DPA with STANDARD APPROVED EU MODEL CLAUSES
AMAZON WEB SERVICES (AWS)	EEA	CLOUD SERVICES PROVIDER (KXPAYMENTS)	NONE	DPA as published by AWS
GOOGLE CLOUD PLATFORM (GCP)	EEA	CLOUD SERVICES PROVIDER (PULSE)	NONE	DPA as published by GCP
CARDSTREAM	UK	PAYMENT SERVICE PROVIDER (KXPAYMENTS)	PERSONAL	DPA
SMARTHOTELS	EEA	CHANNEL MANAGER	PERSONAL	DPA



PROCESSING INSTRUCTIONS

Instructions

The Customer hereby instructs Kinetic to carry out Processing of the Customer's Personal Data for the performance of Services, as per the Main Agreement.

If Kinetic entrusts the Processing of the Customer's Protected Data to Sub-Processors, the Service Provider is responsible for entering into written agreements with them. Kinetic is responsible for ensuring that the Customer's instructions are sent to any Sub-Processors.

The nature and purpose of the Processing

The nature and purpose of the Processing of Protected Data shall take place in accordance with the Main Agreement and with reference to the products detailed in Schedule 1 of the Main Agreement Kinetic will provide:

- The Services as defined in Schedule 3
- The Support services as defined in Schedule 4

General description of the Processing

The primary activity for processing will be that of the provision of Support and the Services. This includes assisting with the Customer queries and questions regarding the Licenced Applications that Kinetic have provided.

Duration of the Processing

The duration of these instructions will last as long as the Main Agreement is in force. This is an annual recurring contract that shall end/be ended in line with PART B of the Agreement.

Processing of Protected Data will cease once the processing is no longer required for the provision of the specific Support or the Services to which the Processing relates. For example, if Kinetic access the Customer's systems in connection with providing technical support then processing will cease once that access has ceased.

Types of personal data

The Protected Data includes Personal Data of the categories checked off below.

Personal Data:

- ✓ Title
- ✓ First Name
- ✓ Last Name
- ✓ Email Address
- ✓ Phone Number
- ✓ Address Information
- ✓ Date of Birth
- ✓ Gender
- ✓ Identifiable unique Numbers
- ✓ Identifiable Location Data
- ✓ Identifiable Physical Data
- ✓ Identifiable Mental Data
- ✓ Identifiable Economic Data

Special Category Personal Data:

- ✓ Racial or ethnic origin
- ✓ Genetic / Biometric Data



Categories of data subjects

Data regarding the following categories of data subjects (for example, citizens, pupils, recipients of cash benefits, etc.) are Processed:

- A) Student Data
- B) Conferencing Data – Users, Suppliers, Customers
- C) Catering Data – Users, Suppliers, Customers
- D) Residential Data – Users, Suppliers, Customers



TECHNICAL AND ORGANIZATIONAL MEASURES

Below, the Service Provider will positively indicate, e.g. , or otherwise state, the applicable technical and organizational security measures within each section that have been applied to the Processing of Protected Data associated with this agreement.

1. Confidentiality (Article 32 (1)(a) and (b) GDPR)

Aim: To prevent unauthorized access or disclosure of protected data to individuals, entities or Processes.

- Physical Access Control - No unauthorised access to Data Processing Facilities, e.g.:

- Use of magnetic or chip cards
- Keys
- Electronic door openers
- Facility security services and/or entrance security staff
- Alarm systems
- Video/CCTV Systems
- Other (Specify below)

- Electronic Access Control - No unauthorised use of the Data Processing and Data Storage Systems, e.g.:

- Firewall,
- Use of (secure) passwords
- Automatic blocking/locking mechanisms
- Two-factor authentication
- Encryption of data carriers/storage media
- Other (Specify below)

- Internal Access Control (permissions for user rights of access to and amendment of data) - No unauthorised Reading, Copying, Changes or Deletions of Data within the system, e.g.:

- Rights authorisation concept
- Need-based rights of access / role based access control
- Logging of system access events
- Other (Specify below)

- Isolation Control - The isolated Processing of data e.g.:

- Multiple tenant/client support
- Sandboxing
- Other (Specify below)

- Pseudonymisation - The Processing of personal data in such a method/way, that the data cannot be associated with a specific Data Subject without the assistance of additional Information, provided that this additional information is stored separately, and is subject to appropriate technical and organisational measures.

- Pseudonymisation



- Anonymization
- Scrambling
- Masking
- Blurring
- Other (Specify below)

KxArchiver add-on

2. Integrity (Article 32 (1)(b) GDPR)

Aim: To provide assurance of consistency, accuracy and trustworthiness of protected data.

- Data Transfer Control - No unauthorised Reading, Copying, Changes or Deletions of Data with electronic transfer or transport, e.g.:
 - Certificate based controls, (HTTPS, FTPS etc.)
 - Use of encryption
 - Virtual Private Networks (VPN)
 - Electronic/digital signature
 - Checksums
 - Other (Specify below)

- Data Entry Control - Verification, whether and by whom personal data is entered into a Data Processing System, is changed or deleted, e.g.:
 - Use of Logging,
 - Document Management,
 - Quality control,
 - Change management
 - Other (Specify below)

- Data Integrity Control - Awareness or control of changes to data.: e.g.:
 - File integrity monitoring
 - Rights management
 - Value limit
 - Completeness
 - Validation
 - Entity
 - Other (Specify below)

3. Availability and Resilience (Article 32 (1)(b) GDPR)

Aim: To ensure that information is accessible to authorized individuals, entities, or Processes when needed.

- Availability Control, e.g.:
 - Backup Strategy (online/offline; on-site/off-site)
 - Capacity plans
 - Uninterruptible Power Supply (UPS)
 - Virus protection



- Reporting procedures
- Contingency planning
- Other (Specify below)

- Ability for timely recovery (Article 32 (1)(c) GDPR); e.g.:
 - Use of backup strategy – recovery time objectives, recovery point objectives
 - Disaster recovery plans
 - Other (Specify below)

- Architectural Control; To reduce the possibility of loss of service through architectural/structural design e.g.:
 - High availability designs
 - Load balancing
 - Redundancy
 - Failover
 - Raid configurations
 - Software update/upgrade Processes
 - Patch management
 - Other (Specify below)

4. Effectiveness - Procedures for regular testing, assessment and evaluation (Article 32 (1)(d) GDPR)

- Data Protection Management, e.g.:
 - Use of data register
 - Data inventory
 - User awareness training
 - Other (Specify below)

- Data Privacy Impact Assessments, e.g.:
 - Continued use of Privacy Impact Assessments
 - General risk assessments
 - Other (Specify below)

- Incident Response Management; e.g.:
 - Use of the corporate Incident handling procedure
 - Use of industry standard security incident handling procedures
 - Other (Specify below)

- Data Protection by Design and Default (Article 25 Paragraph 2 GDPR); e.g.:
 - Pseudonymisation
 - Data minimization



- Data segregation
- Role base access controls
- Encryption at rest
- Other (Specify below)

- Order or Contract Control - No third party data Processing as per Article 28 GDPR without corresponding instructions from the Client, e.g.:

- Clear and unambiguous contractual arrangements
- Formalised Order Management
- Due diligence in selection of the Sub-Processor,
- Duty of pre-evaluation
- Duty of protection assurance
- Supervisory follow-up checks
- Other (Specify below)



OPTIONAL SCHEDULE – KxPayments

Kinetic is a reseller of the third party payment gateway of Cardstream Partners Limited (“Cardstream”) collectively (“Services”). Accordingly, Kinetic is authorized to integrate Cardstream with the Licenced Application as procured by the Customer under the Agreement and will provide to it to Customer such Services subject to the following terms:

1. Customer agrees it will not sell or make available the Services to any other party.

2. Security. Customer will:

2.1. be responsible for the security and proper use of all user identities (“User IDs”) and passwords in connection with the Services (including changing passwords on a regular basis) and agrees to ensure that User IDs are kept confidential, secure, used properly and not disclosed to any unauthorised person and to inform Cardstream immediately if there has been (or is likely to be) a breach of security on misuse of the Service;

2.2. Ensure user passwords meet the required password complexity under PCI requirements. Passwords must be a minimum of seven characters in length and contain both numeric and alphabetic characters.

2.3. Ensure users of the Services are given and use individual user accounts and do not share or employ a generic access account.

2.4. immediately remove any users for the system on termination of employment; or where access needs to be revoked from the Services for any reason.

2.5. promptly change any or all of the passwords used in connection with the Service when requested to do so by Cardstream or Kinetic where Customer reasonably believes that there is or is likely to be a breach of security or misuse of the Services;

2.6. not store card details on Customer systems whether in plain text or encrypted form

2.7. immediately notify Cardstream or Kinetic if it becomes aware of any unauthorised use of all or any part of the Services.

2.8. acknowledge that the Cardstream is responsible for the security and safe handling of sensitive cardholder data and that Kinetic is not responsible for this data. Cardstream will return an obfuscated card number, payee name and address back to Customer once payment has been made and this data is stored in the relational database as defined in 7.4 below.

2.9. acknowledge that the Customer is responsible for safe and correct use of the Services, including configuration of the Customer’s access to the payment gateway.

3. Use of the Service. Customer will:

3.1. only access the Services as permitted by the Agreement and shall not make any attempt to circumvent the system security of the Services or those of Cardstream at any time;

3.2. acknowledge and accept that neither Cardstream or Kinetic shall have no responsibility for nor any liability in respect of any Authorisation and/or Settlement process provided by any party other than Cardstream;

4. Regulations. Customer will:

4.1. comply with all legislation, instructions or guidelines issued by any regulatory authority, relevant licensees and any other codes of practice that apply to the Customer;



4.2. be responsible and liable for the acts and omissions of all Customer's users of Services and shall indemnify Kinetic against all costs, expenses, claims, loss or damage incurred or suffered by Kinetic, or for which Kinetic may become liable, arising out of any act or omission of Customer or Customer's users.

5. Intellectual Property Rights

5.1. Except for the right to use the Services as provided in this Schedule, Customer acquires no rights in the Intellectual Property Rights in the Services or KxPayments. Customer's right to use KxPayments expires or terminates with the Agreement.

5.2. The Customer understands and accepts that neither Kinetic or Cardstream will have direct control over the way that the Customer may use the Services and consequently any misuse of the Services by the Customer may have serious implications for both Kinetic or Cardstream. The Customer therefore agrees to indemnify fully from and against any claims or legal proceedings that are brought or threatened against Kinetic or Cardstream by a third party where:

5.2.1. the act and/or omissions of the Customer have resulted in the Services' not being used in accordance with the Agreement and Schedule; or

5.2.2. use of the Services in conjunction with other software and special services not supplied by Cardstream or by Kinetic and has caused a Third Party's intellectual property right to be infringed.

6. Non-Disclosure, Confidentiality and Cardstream's Property

6.1. Subject to the terms of the Agreement, the Customer agrees that this Schedule and any information regarding the Service will not be disclosed to any third party and will remain strictly confidential, including, without limitation, the charges, unless required to do so under UK law.

6.2. The Parties agree that they will perform their obligations under the Schedule in strict compliance with the Data Protection Legislation. Customer expressly permits Cardstream to process the personal data of it and individual users of their services as contemplated by the Schedule.

6.3. The Customer acknowledges that the Customer's personal data will be processed by and on behalf of Cardstream in connection with its provision of the Services for the purposes of performing the Services under this Schedule and for the purposes of Cardstream's legal and regulatory obligations and its legitimate interests, namely the collection of metrics and analytics on those metrics; detection of service abuse; auditing; legal and technical matters that may be associated with those interests, all including its obligations pursuant to the PCI-DSS, and not including any advertising, promotional, sales or marketing, or other similar initiatives.

6.4. In processing the personal data obtained from Customer and individuals using the Services as contemplated by this Schedule Cardstream shall be the data processor (as defined in the Data Protection Legislation) in respect of the personal data processed as required for performance of the Services.

6.5. In respect only of personal data that Cardstream processes on behalf of the Customer in connection with the Services, Cardstream shall:

6.5.1. only process the personal data in accordance with instructions from Customer which may be provided through Kinetic, which may be specific instructions or standing instructions of general application in relation to the Services, or otherwise notified to Cardstream;

6.5.2. unless otherwise agreed in writing, only process the personal data to the extent and in such manner as is necessary for the provision of the Services or as is required by law or any regulatory body or otherwise as appropriate



including where necessary involving credit reference, fraud prevention and law enforcement agencies and other organisations in relation to preventing fraud and money laundering;

6.5.3. maintain sufficient technical and organisational measures to prevent unauthorised or unlawful processing of personal data and to prevent any loss, destruction or unauthorised disclosure of personal data having regard to the nature of the personal data to be protected and inform Kinetic promptly and in any event within 48 hours of any breach of security affecting or compromising the Customer's personal data;

6.5.4. promptly notify Kinetic and/or Customer if it receives a request from a data subject (as defined in the Data Protection Legislation) to have access to personal data or any other complaint or request relating to the Customer's obligations under the Data Protection Legislation and provide full co-operation and assistance to the Customer in relation to any such complaint or request (including, without limitation, by allowing data subjects to have access to their personal data); and

6.5.5. otherwise provide reasonable assistance to Kinetic and/or Customer as necessary to allow Kinetic and/or Customer to comply with the Data Protection Legislation with respect to the Service.

6.6. We use the Google Cloud Platform as a part of provisioning the Services which includes the storage of transaction history.

7. Fees are paid annually in advance based on the mutually agreed upon fee calculation of expected transactions based on Customer's size and estimated use factors. Both parties reserve the right to immediately increase or decrease the annual fees on review of the number of transactions from the point at which the Customer number of projected transactions changed.

8. For clarity, except as expressly provided herein, the Agreement is in full force and effect, including without limitation, the limitation of liability and data protection provisions in that Agreement.



OPTIONAL SCHEDULE – Pulse

1. License to Use SaaS. In consideration of the payment of the Fees and subject to Customer's compliance with the terms of the Agreement, Kinetic hereby grants to Customer a revocable, non-exclusive, non-transferable right and license to remotely access and use the SaaS. Customer agrees it will not sell or make available the Services to any other party.

2. Access to SaaS. Customer must provide and is responsible for all equipment necessary for Customer to access the SaaS. Customer shall ensure that its network and systems comply with any relevant specifications provided by Kinetic from time to time, Customer shall be solely responsible for procuring and maintaining its network connections and telecommunications links from Customer's systems to Kinetic's SaaS, and Customer shall be solely responsible for all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to Customer's network connections or telecommunications links or internet. Customer shall not make the administrative interface of the SaaS available to anyone other than its Authorized Users. Kinetic will require Customer and its Authorized Users to the administrative interface of the SaaS to use a valid password (each a "Password"). Kinetic will provide the Customer with options for SaaS access. Customer will notify Kinetic promptly of any such unauthorized access or use. Customer is entirely responsible for any and all activities which occur under its Passwords. Customer shall be responsible for its and its End Users' compliance with this Schedule.

3. Availability. Kinetic shall use commercially reasonable efforts to make the SaaS accessible to Customer and End Users twenty-four (24) hours a day, seven (7) days a week, except for (i) scheduled maintenance and required repairs and (ii) any loss or interruption due to causes beyond the control of Kinetic or which are not reasonably foreseeable by Kinetic, including, but not limited to, delay, interruption or failure of telecommunication or Internet transmission links and hardware failures.

4. Acceptable Use Policy – AUP

Kinetic's SaaS environment is powered by third party data centre providers which may include Microsoft Azure, Amazon Web Services, Google Cloud Platform or any of the cloud services providers identified [here](#). Customer agrees to the following AUP:

Acceptable Use Policy

Neither Customer, nor those that access through Customer, may use the Service:

- in a way prohibited by law, regulation, governmental order or decree;
- to violate the rights of others;
- to try to gain unauthorized access to or disrupt any service, device, data, account or network;
- to spam or distribute malware;
- in a way that could harm the Service or impair anyone else's use of it;
- in any application or situation where failure of the Service could lead to the death or serious bodily injury of any person, or to severe physical or environmental damage; or
- to assist or encourage anyone to do any of the above.

Violation of the Acceptable Use Policy in this section may result in suspension of the Service. If Kinetic suspends the Service, Kinetic will suspend only to the extent reasonably necessary. Unless Kinetic believes an immediate suspension is required, Kinetic will provide reasonable notice before suspending the Service for the reasons stated above.

5. Configuration SaaS.

5.1. Data; Marks.



5.1.1. End User Data. In the course of providing the SaaS to Customer hereunder, Kinetic shall collect End User Data from End Users only as directed by Customer and use them solely for the purpose of providing the Service. Kinetic shall provide the Customer with access through the Service to End User Data. Kinetic shall put in place reasonable security measures to protect against unauthorized access, alteration, disclosure, and destruction of End User Data saved through the Service.

5.1.2. Customer Data and Configuration Data. Kinetic does not obtain ownership of any Customer Data or Configuration Data. However, Customer grants to Kinetic a royalty-free and non-exclusive license to reproduce, modify, adapt, publish, translate, create derivative works from, distribute, communicate to the public, perform and display the Customer Data and Configuration Data, if any (in whole or in part) solely as part of the Service.

5.1.3. Data. Customer shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the End User Data, Customer Data and Configuration Data (collectively the "Data"). In the event of any loss or damage to Data, Customer's sole and exclusive remedy shall be for Kinetic to use commercially reasonable efforts to restore the lost or damaged Data from the latest available back-up of such Data. We shall not be responsible for any loss, destruction, alteration or disclosure of Data caused by any third party (including any third party service provider).

5.1.4. SaaS Usage Data. Kinetic shall provide the Customer with access through the SaaS to SaaS Data. Customer hereby grants to Kinetic a worldwide, perpetual, non-exclusive, royalty-free license (with a right to sublicense) under Customer's Intellectual Property Rights to use, reproduce, transmit, distribute, license, modify, edit, adapt, translate, reformat, create other derivative works of, publicly perform and publicly display (i) SaaS Usage Data, in whole or in part and (ii) modifications and any other derivative works thereof, alone or in combination with any other information or data, for any purposes, including but not limited to, improvements and enhancements of the Software, or the Service, and in any manner whatsoever, provided that no information or data derived from SaaS Usage Data that could be used to identify the Customer or any End User shall be disclosed, distributed, licensed, transmitted, displayed or performed.

5.1.5. Marks. Some aspects of the Service may allow Customer to add and display Customer trademarks, trade names and logos (collectively the "Marks"). Kinetic does not obtain ownership of any Marks. However, Customer grants to Kinetic a royalty-free and non-exclusive license to reproduce, modify, adapt, publish, translate, create derivative works from, distribute, communicate to the public, perform and display the Marks solely as contemplated by this Schedule.

6. DATA LOCALISATION – Data localisation is Ireland/West Europe

7. TRAINING SERVICES. As provided in Schedule 3.

8. SUPPORT SERVICES As provided in Schedule 4.

9. KINETIC SHALL NOT BE LIABLE FOR DAMAGES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, DIRECT, SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES RESULTING FROM DELAY, INTERRUPTION OR FAILURE OF TELECOMMUNICATION, DIGITAL AND INTERNET TRANSMISSION OR THIRD PARTY DATA CENTER PROVIDER UTILIZED IN PROVIDING THE SERVICE. **ANY CLAIMS BROUGHT UNDER OR PURSUANT TO THIS SCHEDULE OR OTHERWISE RELATED HERETO SHALL BE SUBJECT TO THE TERMS AND CONDITIONS OF THE AGREEMENT, INCLUDING BUT NOT LIMITED TO THE EXCLUSIONS OF LIABILITY AND THE LIMITATIONS OF LIABILITY SET FORTH IN PART B CLAUSE 10.3 THEREIN.**

