

Software Licence and Maintenance Agreement

Software Licence and Maintenance Agreement

DATE: 17th November 2020

PARTIES:

- (1) **SystemsLink 2000 Limited**, incorporated under the law of England and Wales with company registration number 3168771 whose registered office is at 29 Progress Park Orders Lane, Kirkham, Preston, England, PR4 2TZ (the "**Licensor**"); and
- (2) **Customer name** incorporated under the law of England and Wales with company number XXXXXXXX whose registered office is at Address (the "**Licensee**").

OPERATIVE PROVISIONS

1. Definitions and interpretation

1.1 In this Agreement:

"Acceptable Use Policy"

the acceptable use policy for the Software, as revised from time to time, the current version of which is set out in Schedule 5;

"Additional Services"

any services in addition to Maintenance Services such as consultancy, development or training services;

"Agreement"

means this software licence and maintenance Agreement (including the Schedules) and any amendments to it from time to time;

"Annual Fee"

As stated in Schedule 3, the Charge payable annually relating to the stated number of meters;

"Business Day"

means any week day, other than a bank or public holiday in England;

"Business Hours"

means between 09:00 and 17:00 London time on a Business Day;

"Charges"

means the amounts payable by the Licensee to the Licensor under or in relation to this Agreement (as set out in Schedule 3) including the Annual Fee and the Additional Meter Fee;

"Data"

means all data processed by the Licensor or provided to the Licensor for processing or which may be made available to the Licensor by the Licensee;

"Data Protection Laws"

means the Data Protection Act 1998 and, with effect from the date on which it enters into force, the General Data Protection Regulation (GDPR), and the enacted version of the Data Protection Bill 2017, and the Privacy and Electronic Communications (EC Directive) Regulations 2003 together with any other laws applicable to the protection of personal data in force from time to time in England and Wales and any related regulations and guidance (as from time to time

amended, extended, re-enacted or consolidated) and all subordinate legislation, regulations and guidance made pursuant to any of them;

"Effective Date"

means the date of execution of this Agreement;

"Force Majeure Event"

means an event, or a series of related events, that is outside the reasonable control of the party affected (including power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars) including any act, event, non-happening, omission or accident beyond Licensor's reasonable control and includes in particular (without limitation) terrorist attack, war, fire, malicious damage, epidemic, storm, flood or other natural disaster or adverse weather conditions, strikes, lock-outs, other industrial action or other shortage of available staff, impossibility of the use of public or private telecommunications networks, or interruption or failure of utility service, malicious activity against Licensor's computer systems such as unauthorised access, computer virus or denial of service attack, other illegal or unlawful actions of third parties, acts or omissions of other customers and/or their users or non-performance by suppliers, subcontractors or agents and the acts, decrees, legislation, regulations, policy or restrictions of any government or public authority;

"Intellectual Property Rights"

means all intellectual property rights wherever in the world, whether registered or unregistered, including any application or right of application for such rights (and the "intellectual property rights" referred to above include copyright and related rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trade marks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs);

"Licensee Branding"

the Licensee's name, logo and any other trade mark or branding of the Licensee;

"Licensee Content"

any content that the Licensee or a User may upload to the Software;

"Maintenance Services"

means the support and maintenance services provided or to be provided by the Licensor to the Licensee in accordance with Schedule 2;

"Modifications"

means additions, edits, alterations and modifications made to the Software by the Licensor under Schedule 2;

"Personal Data"

has the meaning given to it in the Data Protection Laws;

"Schedule"

means a schedule attached to this Agreement;

"Software"

means the computer software identified in Schedule 1 in executable format only, including where the context permits any Upgrades and Modifications applied to the Software;

"Term"

means the term of this Agreement; and

"Upgrades"

means new versions of, and updates to, the Software released by the Licensor to its customers generally, whether for the purpose of fixing an error, bug or other issue in the Software or enhancing the functionality of the Software.

"User"

an individual person who accesses the Software on behalf of the Licensee.

"User Guide"

the user documentation which describes the Software and provides guidance as to the proper use of the same (if any);

- 1.2 The terms "personal data", "process", "data controller", "data processor", "data subject" have the meanings attributed to them in the Data Protection Laws.
- 1.3 The ejusdem generis rule is not intended to be used in the interpretation of this Agreement.
- 1.4 Headings are included for convenience only and shall not affect the construction or interpretation of this Agreement.
- 1.5 Any reference to a clause or appendix shall (unless expressly provided otherwise) be a reference to a clause of or appendix to these terms. Appendices shall have the same force and effect as if set out in the body of these terms.
- 1.6 Any reference to the singular shall include the plural and vice versa and any reference to one gender shall include all genders including the neuter gender.
- 1.7 Any reference to a person shall, unless the context otherwise requires, include individuals, partnerships, companies and all other legal persons.
- 1.8 The words include, includes, including and included and like words and expressions will be construed without limitation unless inconsistent with the context.
- 1.9 Any reference to a notice or other communication being in writing shall be satisfied by that notice or communication being sent by email, provided this is permitted by and done in accordance with clause 16.2 where applicable. A reference to a signature shall include an electronic signature, such as a scanned or typed signature.
- 1.10 Any reference to law or to any statute, statutory instrument, directive, regulation, order or other enactment shall mean the same as shall be amended, enacted, replaced, extended, modified, consolidated or repealed from time to time.
- 1.11 Working days shall be all days other than Saturdays, Sundays and public holidays in England and working hours shall be 9am to 5pm UK time on working days.

2. Term

This Agreement will come into force on the Effective Date and will continue in force subject to 12 months' notice being served by either party provided that such notice may not be served before the first anniversary of the Effective Date.

3. Licence

- 3.1 In consideration of and subject to the receipt by the Licensor of the Charges as they fall due and payable under this Agreement, the Licensor grants to the Licensee for the Term, a non-exclusive, revocable licence to use the Software in accordance with and subject to the terms of this Agreement. Such licence does not entitle Licensee to modify, sub-licence or distribute the Software.

- 3.2 In relation to the licence granted under clause 3.1 above the Licensee agrees and undertakes to be bound by the terms of this Agreement.
- 3.3 All Intellectual Property Rights in the Software (as modified and developed from time to time) shall remain the property of the Licensor and Licensee shall have no rights in or to the Software other than as set out in this Agreement or as otherwise agreed by the Licensor in writing.
- 3.4 The Software is provided as is without any warranty or representation of any kind. Accordingly, all warranties and conditions not set out in this Agreement whether express or implied by statute or otherwise are excluded to the extent permitted by law.
- 3.5 As from the date of delivery to the Licensee of the Software the Licensee may:
- 3.5.1 install the Software on its systems in the United Kingdom;
 - 3.5.2 use the Software in accordance with the User Guide; and
 - 3.5.3 back-up the Software

PROVIDED THAT:

- 3.5.4 the Licensee must not sub-license any rights to which it is entitled under this Agreement;
- 3.5.5 the Licensee must not sell, resell, rent, lease, supply, publish or distribute the Software;
- 3.5.6 the Licensee must not modify, alter or adapt or edit the Software;
- 3.5.7 the Licensee must not de-compile or reverse engineer the Software or use the source code of the Software or use the Software in any human-readable format;
- 3.5.8 the Software may only be installed and used at the premises identified in Schedule 4;
- 3.5.9 the Software may only be used by the named users identified in Schedule 4, albeit the Licensee may change a designated named user by giving to the Licensor advance written notice of the change;
- 3.5.10 the Software must not be used at any point in time by more than the number of concurrent users specified in Schedule 4;
- 3.5.11 the Software may only be used by the employees of the Licensee and:
 - (a) if the Licensee is a company, the Licensee's officers;
 - (b) if the Licensee is a partnership, the Licensee's partners; and
 - (c) if the Licensee is a limited liability partnership, the Licensee's members;
- 3.5.12 if the Licensee wishes for an agent or subcontractor to be entitled to use the Software it shall first seek the prior written approval of the Licensor and such approval (if given) shall be subject to the following prerequisites:
 - (a) each such agent or subcontractor shall provide a signed declaration to the Licensor in writing in such form as reasonably required by the Licensor recording its undertaking to comply with the terms of this Agreement; and
 - (b) the Licensee shall be liable to the Licensor for any losses arising out of an act or omission of the agent or subcontractor which would have been a breach of this Agreement if committed or omitted by the Licensee.

- 3.5.13 The Licensor (or the Licensor's appointed representative) may audit the computer systems and manual records of the Licensee at the premises of the Licensee for the purpose of ascertaining whether the Licensee is complying with the terms of the licences set out in this Agreement. Such an audit shall be limited to those computer systems and manual records that are reasonably likely to provide evidence of compliance or non-compliance. The Licensee shall provide to the Licensor all reasonable co-operation in relation to the audit. The Licensor must give to the Licensee at least 5 Business Days' written notice of such an audit visit; and not more than 1 such audit visit may be conducted during any calendar year. This right of audit shall survive the termination of this Agreement and shall continue for a period of 12 months following the date of effective termination.
- 3.6 A separate User account must be registered for every individual User. Under no circumstances must User accounts be shared between two or more individuals. User accounts are strictly to be used by the User to whom they are originally allocated and must in no circumstances be reallocated or transferred to another individual. It is the Licensee's responsibility to ensure that User accounts are used only by the User to whom they are originally allocated and the Licensee shall be strictly liable for any failure to comply with this clause 3.6, whether or not the Licensee's consented to or was aware of such misuse.
- 3.7 A restriction on the number of Users is on the total amount of unique Users who may be allocated User accounts (and therefore access the Software) . Once the number of User accounts corresponding to the maximum set out in the Agreement have been created no further User accounts may be created, either during the current Term or any subsequent Term, without further Users being approved in writing by the Licensor.
- 3.8 The Licensee may from time to time seek to vary access restrictions (for example to increase the maximum number of Users or to add additional authorised locations) by submitting a written request to Licensor containing the details of the requested variation. If the request is accepted by Licensor then the variation shall take effect upon payment of any required Charges relating to the variation following acceptance of the request (unless an alternative date is agreed).
- 3.9 The Licensee shall immediately notify Licensor if any User ceases, or is due to cease, to be eligible to access the Software, for example as a result of the User leaving the Licensee's employment. In such case Licensee shall disable the User's account from the date specified in the Licensee's notice (or, where no date is specified, as soon as reasonably possible). The disablement of a User account shall not entitle the Licensee to any refund.
- 3.10 Without prejudice to its other rights or remedies, Licensor may require the Licensee to disable any User account at any time where it reasonably believes that the acts or omissions of such User has caused or is likely to cause the Licensee to breach this Agreement, that the User account has been used by multiple people or reallocated contrary to clause 3.6 or that the User is not a person who is eligible to use the Software.
- 3.11 In no circumstances shall the Licensee allow or permit any party other than a User to access the Software. Users shall be permitted access only to the extent that they are using the Software for the Licensee's business purposes.
- 3.12 Notwithstanding any other provision of the Agreement, licences granted by the Licensor under this Agreement are subject to the payment by the Licensee of all amounts owing to the Licensor under this Agreement in full and on time. In the event that the Licensee owes any amount to the Licensor under this Agreement and fails to pay that amount to the Licensor within 14 days of receiving a notice:

- 3.12.1 requiring it to do so; and
- 3.12.2 specifying that the licences will terminate if the amount remains unpaid;
then the Licensor may immediately terminate the licences granted by the Licensor under this Agreement by giving written notice of termination to the Licensee.
- 3.13 The Licensee grants to the Licensor during the Term a non-exclusive licence to copy, adapt and otherwise use:
 - 3.13.1 any works or materials provided by or on behalf of the Licensee to the Licensor for the purpose of assisting with or enabling the maintenance of the Software; and
 - 3.13.2 any works or materials the rights in which have been exclusively licensed by the Licensor to the Licensee under this Agreement;in each case to the extent reasonably necessary to enable the Licensor to fulfil its obligations, and exercise its rights, under this Agreement.
- 3.14 The licence granted under this Agreement shall cease if this Agreement is terminated for any reason or expires.

4. **Delivery of Software**

- 4.1 The Licensor will deliver the Software to the Licensee within 10 Business Days following the Effective Date.
- 4.2 For the avoidance of doubt, nothing in this Agreement requires the Licensor to deliver to the Licensee any copies of the source code of the Software, and nothing in this Agreement constitutes a licence to use the source code of the Software.
- 4.3 Licensor may from time to time make changes to the Software, including to improve its functionality or usability, add new features, remove features it reasonably considers to be obsolete, fix errors, improve its stability or address feedback received from customers. Licensor shall endeavour to minimise any disruption caused as a result of the implementation of such changes.
- 4.4 It may be necessary from time to time for Licensor to disable part or all of the Software for maintenance purposes. Where such maintenance is likely to affect the functionality or accessibility of the Software, Licensor shall use reasonable endeavours to provide reasonable notice to the Licensee of any such maintenance and to perform it outside of working hours.
- 4.5 The Licensee shall be fully responsible for any acts or omissions of any Users or any other party accessing the Software using any User's access credentials (where or not with the Licensee's permission), as if such acts or omissions were the acts or omissions of the Licensee. The Licensee shall ensure that all Users are aware of the Acceptable Use Policy and all applicable terms in respect of use of the Software.
- 4.6 The Licensee shall use the Software only in accordance with the Agreement (including the Acceptable Use Policy) and procure that all Users do the same.
- 4.7 The Licensee shall immediately notify Licensor if it believes or suspects either that it may have breached any terms applicable to its licence to use the Software, that a User (or other person using a User's access credentials) may have failed to comply with the Acceptable Use Policy or that any User's access credentials may have been compromised.
- 4.8 Licensor shall be entitled to suspend access to the Software (or any part thereof) for any or all Users without liability to the Licensee immediately and without notice or to take such action as it may in its discretion think appropriate if it reasonably believes (a) not doing so may prejudice the security, integrity or operability of the Software or part of it, cause harm to another customer or other third party or give

rise to a claim against Licensor, (b) the Licensee or its Users have transmitted, uploaded or downloaded any content which contravenes the restrictions set out in the Acceptable Use Policy or (c) the Licensee is otherwise in breach of this Agreement. Promptly following such suspension Licensor shall notify the Licensee of the suspension, the reason for the suspension and what steps the Licensee can take so that the suspension can be brought to an end.

5. Maintenance Services

- 5.1 From the date of delivery of the Software, the Licensor will provide the maintenance services to the Licensee.
- 5.2 The Licensor may suspend the provision of the maintenance services if any amount due to be paid by the Licensee to the Licensor under this Agreement is overdue by more than 30 days.
- 5.3 If the Licensor considers that the volume of support requests is excessive, the Licensor may require the Licensee to nominate one or more employees as "support contacts", being the individuals who may file support requests with Licensor and communicate with Licensor regarding such requests. The names of the initial contacts shall be provided to Licensor prior to commencement of the Agreement and may be updated from time to time on written notice to Licensor.
- 5.4 If the Licensor has invoked clause 5.3, the Licensee shall arrange that any requests for support from Users are passed in the first instance to a support contact who will then file a support request with Licensor.
- 5.5 Additional Services may be ordered separately and shall be subject to the Agreement of the Licensor. A request for Additional Services may be made by filing a support request or otherwise by contacting Licensor, but unless otherwise agreed Additional Services shall only be provided following acceptance of a completed order form requesting such services.
- 5.6 Licensor shall be responsible for the provision of the consultants who provide the Additional Services. In the event that any individuals become unavailable due to (for example) accident, illness, termination of employment or reallocation to another task, Licensor shall endeavour to provide a suitable replacement.
- 5.7 Any timescales set out for the performance of the Additional Services are for indicative purposes only.
- 5.8 The Additional Services shall be provided to substantially conform to such specification as Licensor considers appropriate.

6. Licensee obligations

- 6.1 The Licensee will provide the Licensor with:
 - (a) such access to the Software and the Licensee's computer systems and such other co-operation as is required by the Licensor (acting reasonably) to enable the performance by the Licensor of its obligations under this Agreement; and
 - (b) all information and documents required by the Licensor (acting reasonably) in connection with the provision of the maintenance services.
- 6.2 The Licensee shall not:
 - (a) cause or permit anything which may damage or endanger the Intellectual Property or other intellectual property of Licensor or Licensor's title to it or assist or allow others to do so. Licensee hereby indemnifies Licensor for any liability incurred to third parties for any use of the Intellectual Property by the Licensee or on its behalf otherwise than in accordance with this Agreement both during and after expiry or termination of the Agreement;

- (b) use any name or mark similar to or capable of being confused with the trade marks of Licensor;
 - (c) assign, charge, grant any sub-licence of or otherwise deal with this Agreement, or any rights and licences granted by this Agreement in any way without the express written consent of Licensor; and
 - (d) describe itself as Licensor or as agent or representative of Licensor except as expressly authorised in writing by Licensor.
- 6.3 In performing its part of this Agreement, the Licensee shall not produce any marketing materials or use Licensor's name, logo or trade marks on any marketing materials without the prior written consent of Licensor.
- 6.4 To enable Licensor to provide the maintenance services and Additional Services, the Licensee agrees to provide on reasonable request unrestricted access to its premises, any information or documentation that Licensor may reasonably request and the full co-operation of its employees, directors, consultants and advisers. Licensor shall not be responsible for any delay caused as a result of the Licensee's failure to comply with this clause 6.4.
- 6.5 The Licensee shall take responsibility for the health and safety of any individual attending its premises on behalf of Licensor, including ensuring that they are made aware of any relevant policies and procedures and that they are not placed in danger in any manner, and the Licensee shall indemnify and hold Licensor harmless from and against all costs, claims, damages, liabilities, loss and demands relating to or arising from or in connection with any claim brought against Licensor arising out of the death, personal injury or other loss suffered by an individual attending at the Licensee's premises, save where this was as a result of Licensor's or that individual's negligence.
- 6.6 The Licensee agrees that, unless requested otherwise, it shall only provide copies of documentation to Licensor and shall maintain the originals, such that it shall suffer no loss if the documentation is lost or damaged. Where it is expressly requested to provide originals it shall make a copy prior to providing them such that if the documentation were lost or damaged the only loss would be the replacement cost of that documentation, which shall accordingly be Licensor's sole liability in such circumstances.
- 7. **Invoicing and payment**
- 7.1 The Licensor will issue invoices for the Charges to the Licensee as Charges fall due under Schedule 3.
- 7.2 The Licensee will pay the Charges to the Licensor within 30 days of the date of each invoice issued by the Licensor.
- 7.3 All Charges stated in or in relation to this Agreement are stated exclusive of VAT, unless the context requires otherwise.
- 7.4 Charges must be paid by bank transfer or by cheque using such payment details as are notified by the Licensor to the Licensee from time to time.
- 7.5 If the Licensee does not pay any amount properly due to the Licensor under or in connection with this Agreement, the Licensor may:
 - (a) charge the Licensee interest on the overdue amount at the rate of 5% per year above the base rate of HSBC Bank Plc from time to time; or
 - (b) claim interest and statutory compensation from the Licensee pursuant to the Late Payment of Commercial Debts (Interest) Act 1998.
- 7.6 Licensor may suspend access to the Software or the provision of any of the maintenance services and/or Additional Services without liability if any amount due to it from the Licensee is not paid by the due date and may maintain such

suspension until all outstanding sums due to Licensor from the Licensee have been paid. This does not affect the liability of the Licensee to pay for the Additional Services during any period of suspension.

- 7.7 The Licensee agrees to carefully check any invoice received and to raise any dispute regarding its content within 21 days of the invoice date, such notice to confirm the amount disputed and the reason(s) for the dispute. Invoices will be deemed to have been properly submitted and due for payment where an invoice has not been disputed within 21 days of the invoice date.
- 7.8 Notwithstanding the fact that a dispute may have arisen the Licensee shall pay to Licensor any undisputed amount(s) as these undisputed amounts become due. The parties shall in good faith attempt to resolve the dispute as to the unpaid amount and, where it is agreed (or ordered by a court) that a further amount is payable, the Licensee shall immediately pay this to Licensor.
- 7.9 All amounts due shall be paid by the Licensee to Licensor in full without any set-off, counterclaim, deduction or withholding.

8. **Warranties**

- 8.1 The Licensee warrants that it has satisfied itself that the Software meets all of its requirements. By the nature of the Software, Licensor cannot warrant that it will be entirely error free. However, Licensor shall use reasonable endeavours to remedy any material error reported by a Licensee as soon as reasonably and commercially practicable following such report. In the event that the Licensee does experience issues with the Software the Licensor's remedial work to address each such issue shall be Licensee's sole and exclusive remedy for any problems or deficiencies with the Software.
- 8.2 The Licensor warrants to the Licensee:
- (a) that it has the legal right and authority to enter into and perform its obligations under this Agreement;
 - (b) that it will perform its obligations under this Agreement with reasonable care and skill;
 - (c) that the use of the Software by the Licensee in accordance with the terms of this Agreement will not:
 - (i) infringe any person's Intellectual Property Rights or other legal rights;
 - (ii) breach any laws, statutes or regulations; or
 - (iii) give rise to a cause of action against the Licensor or the Licensee or any other person;
- 8.3 The Licensee warrants to the Licensor:
- (a) that it has the legal right and authority to enter into and perform its obligations under this Agreement; and
 - (b) that any works or materials provided by or on behalf of the Licensee to the Licensor for the purpose of developing or assisting with or enabling the maintenance of the Software, and their use by the Licensor in accordance with the terms of this Agreement will not:
 - (i) infringe any person's Intellectual Property Rights or other legal rights;
 - (ii) breach any laws, statutes or regulations; or
 - (iii) give rise to a cause of action against the Licensor or the Licensee or any other person;
- in each case.

- 8.4 The Licensee acknowledges that:
- (a) complex software such as the Software is never wholly free from defects, errors and bugs, and the Licensor gives no warranty or representation that the Software will be wholly free from such defects, errors and bugs;
 - (b) the Licensor does not warrant or represent that the Software will be compatible with any application, program or software not specifically identified as compatible in the documentation accompanying the Software; and
 - (c) the Licensor will not and does not purport to provide any legal, taxation or accountancy advice under this Agreement or in relation to the Software and (except to the extent expressly provided otherwise) the Licensor does not warrant or represent that the Software will not give rise to any civil or criminal legal liability on the part of the Licensee or any other person.
- 8.5 All of the parties' warranties and representations in respect of the subject matter of this Agreement are expressly set out in the terms of this Agreement. To the maximum extent permitted by applicable law, no other warranties or representations concerning the subject matter of this Agreement will be implied into this Agreement.
- 8.6 All rights, title and interest (including Intellectual Property Rights) in the Software shall (as between Licensor and the Licensee) belong to Licensor, and nothing shall operate to transfer any such rights to the Licensee.
- 8.7 All rights, title and interest (including Intellectual Property Rights) in Modifications or Upgrades shall belong to Licensor, whether the Modifications or Upgrades were pre-existing or was developed as part of the services provided by the Licensor.
- 8.8 Subject to clause 8.9, the Licensee acknowledges that to the extent it acquires any rights in the Software or any Modifications or Upgrades it hereby assigns such rights absolutely (by way of present assignment of future rights) to Licensor. To the extent that this clause 8.8 does not operate to automatically assign such rights, or to the extent that Licensor requests a confirmatory assignment of such rights, the Licensee shall execute on demand all such documentation as Licensor may reasonably request to give effect to and document this assignment.
- 8.9 The Licensee shall retain all rights in the Licensee Branding and Licensee Content. The Licensee grants Licensor a non-exclusive royalty free licence to use such Licensee Branding and Licensee Content for the purposes of providing the Software, the maintenance services and the Additional Services to the Licensee and, in the case of the Licensee Branding, in publicity material.
- 8.10 Licensor will indemnify the Licensee against any losses, damages, claims, costs and expenses suffered or incurred by or awarded against the Licensee as a result of any claim (a **Claim**) that use of the Software and/or any Modifications or Upgrades in accordance with the relevant Contract, and/or receipt of any maintenance services and/or Additional Services, infringes any Intellectual Property Rights subsisting in the United Kingdom and belonging to a third party.
- 8.11 To obtain the benefit of the indemnity set out in clause 8.10:
- 8.11.1 the Licensee must promptly notify Licensor if it receives notice of any Claim or has reason to suspect that a Claim may be brought;
 - 8.11.2 following such notice the Licensee must allow Licensor to take full conduct of such Claim, including any negotiations and including the right to settle the Claim on such terms as Licensor sees fit and shall, at Licensor's reasonable expense, provide all such co-operation as Licensor may request; and

- 8.11.3 the Licensee must not make any admission, concession or other statement regarding the Claim to any party, other than to acknowledge receipt of documentation and to confirm (where applicable) that Licensor has conduct of the Claim.
- 8.12 The Licensee shall not be entitled to rely on the indemnity set out at clause 8.10 where the Claim arose (wholly or partially) as a result of the Licensee or any other User using the Software, the Modifications or Upgrades, the Maintenance Services and/or the Additional Services (as applicable) (a) in a way other than permitted by this Agreement, (b) in a manner that they knew or suspected may give rise to a Claim or (c) in a negligent manner, or where the Claim arose out of or in connection with any content that the Licensee asked the Software to include within Modifications or Upgrades.
- 8.13 Without prejudice to the indemnity set out at clause 8.10, where Licensor becomes aware of any claim or potential claim that the Software, or any Modifications or Upgrades and/or receipt of any of the maintenance services or Additional Services infringes any Intellectual Property Rights of any third party, whether or not this constitutes or may constitute a Claim falling within the scope of clause 8.10, Licensor may at its option:
- 8.13.1 suspend access to the Software (or the affected part), the Modifications or Upgrades (or the affected part) and/or suspend the Maintenance Services and/or Additional Services (or the affected parts);
- 8.13.2 modify the Software, the User Guide, the Modifications or Upgrades, the maintenance services and/or Additional Services to remedy the infringement;
- 8.13.3 obtain (at its own cost) the right for the Licensee to continue using the Software, the Modifications or Upgrades, the maintenance services and/or Additional Services; and/or
- 8.13.4 terminate the Agreement.
- 8.14 Where access to the Software or any Modifications or Upgrades, or the provision of the Maintenance Services or Additional Services, is suspended or terminated pursuant to clause 8.13 Licensor shall make a pro rata refund to the Licensee calculated by Licensor (acting reasonably) based on the proportion of the Software, the Modifications or Upgrades, the maintenance services or the Additional Services (as applicable) not received and the period over which it was not received.
- 8.15 The provisions of this clause 8 constitute the Licensee's sole and exclusive remedy for any Claim.
9. **Use of data**
- 9.1 The Licensor can share anonymised, site level data information, usage statistics and also such information that may reasonably be required for reporting as may be necessary to comply with reporting obligations required of a plc. Providing that at no stage shall individual meter identification numbers, addresses or user contact details be provided to any Group Company.
- 9.2 Subject to clause 9.1
- 9.2.1 the Licensor warrants that none of the Licensee's data held in the Software shall be shared with any Group Company except SystemsLink 2000 Limited

10. **Limitations and exclusions of liability**

- 10.1 The express terms set out in the Contract are in lieu of all warranties, conditions, terms, undertakings and obligations implied by statute, common law, custom, trade usage, course of dealing or otherwise, all of which are hereby excluded to the fullest extent permitted by law.
- 10.2 Save as provided by clause 10.3 below:
- 10.2.1 neither party's total aggregate liability in respect of all causes of action arising out of or in connection with this Agreement (whether for breach of contract, strict liability, tort (including negligence), misrepresentation or otherwise) shall exceed the total Charges paid under the Contract;
 - 10.2.2 neither party shall not be liable for any claim arising out of or in connection with this Agreement to the extent that it relates to loss of profits, goodwill, business opportunity or anticipated savings, loss of data, injury to reputation, wasted management time or indirect, consequential or special loss or damage regardless of the form of action (whether for breach of contract, strict liability, tort (including negligence), misrepresentation or otherwise) and regardless of whether that party knew or had reason to know of the possibility of the loss or damage in question; and
 - 10.2.3 neither party shall not be liable for any delay in or failure to comply with its obligations to the extent that such failure results from the actions or omissions of the other.
- 10.3 Nothing in this Agreement shall limit or exclude either party's liability:
- 10.3.1 under any indemnity;
 - 10.3.2 for breach of clauses 15 or 17;
 - 10.3.3 to pay the Charges;
 - 10.3.4 for death or personal injury caused by its negligence;
 - 10.3.5 for fraud or fraudulent misrepresentation; and/or
 - 10.3.6 for any other loss or damage the exclusion or limitation of which is prohibited by English law.
- 10.4 Nothing in the Agreement will:
- (a) limit or exclude the liability of a party for death or personal injury resulting from negligence;
 - (b) limit or exclude the liability of a party for fraud or fraudulent misrepresentation by that party;
 - (c) limit any liability of a party in any way that is not permitted under applicable law; or
 - (d) exclude any liability of a party that may not be excluded under applicable law.
- 10.5 The Licensor will not be liable in respect of any loss of profits, income, revenue, use, production or anticipated savings.
- 10.6 The Licensor will not be liable for any loss of business, contracts or commercial opportunities.
- 10.7 The Licensor will not be liable for any loss of or damage to goodwill or reputation.
- 10.8 The Licensor will not be liable in respect of any loss or corruption of any data, database or software.

- 10.9 The Licensor will not be liable in respect of any special, indirect or consequential loss or damage.
- 10.10 The Licensor will not be liable for any losses arising out of a Force Majeure Event.
- 10.11 Except as expressly stated in Clause 10.4 the total liability of the licensor, whether in contract, tort (including negligence) or otherwise and whether in connection with this license or any collateral contract, shall in no circumstance exceed a sum equal to the Charges.
- 10.12 The limitations and exclusions of liability set out in this Clause 10 and elsewhere in the Agreement:
- (a) are subject to Clauses 10.4 to 10.11 inclusive; and
 - (b) govern all liabilities arising under the Agreement or in relation to the subject matter of the Agreement, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty.
11. **Termination**
- 11.1 The Licensee may terminate this Agreement by giving to the Licensor not less than 12 months' prior written notice of termination not to be given before the first anniversary of the Effective Date.
- 11.2 Either party may terminate this Agreement immediately by giving written notice to the other party if the other party:
- (a) commits any material breach of any term of this Agreement, and:
 - (i) the breach is not remediable; or
 - (ii) the breach is remediable, but the other party fails to remedy the breach or provide a suitable workaround within 90 days of receipt of a written notice requiring it to do so; or
 - (b) persistently breaches the terms of this Agreement (irrespective of whether such breaches collectively constitute a material breach).
- 11.3 Either party may terminate this Agreement immediately by giving written notice to the other party if:
- (a) the other party:
 - (i) is dissolved;
 - (ii) ceases to conduct all (or substantially all) of its business;
 - (iii) is or becomes unable to pay its debts as they fall due;
 - (iv) is or becomes insolvent or is declared insolvent; or
 - (v) convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;
 - (b) an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party;
 - (c) an order is made for the winding up of the other party, or the other party passes a resolution for its winding up.
- 11.4 Licensor shall also be entitled to terminate any or all Contracts immediately if it reasonably apprehends that any of the events specified in clause 11.3 is about to occur in relation to the Licensee and notifies the Licensee accordingly.
- 11.5 Licensor may terminate this Agreement immediately on written notice if the Licensee:

- (a) commits an irremediable breach of any of the Contracts, persistently commits remediable breaches or commits any remediable breach and fails to remedy it within 30 days of receipt of notice of the breach requiring remedy of the same; or
- (b) fails to pay any amount due to Licensor as it falls due (under any contract)

12. **Effects of termination**

- 12.1 Upon termination of this Agreement, all the provisions of this Agreement (including for the avoidance of doubt all licences and rights to use the Software) will cease to have effect, save that the following provisions of this Agreement will survive and continue to have effect (in accordance with their terms or otherwise indefinitely): Clauses 1, 2, 3, 6, 8, 13, 15, 17 and 18.
- 12.2 Termination of this Agreement will not affect either party's accrued liabilities and rights as at the date of termination.
- 12.3 Upon termination of this Agreement by the Licensee under Clause 11.2 or Clause 11.3 the Licensee will be entitled to a refund of any Charges paid by the Licensee to the Licensor in respect of any maintenance services which were to be performed after the date of effective termination, and will be released from any obligation to pay such Charges to the Licensor (such amount to be calculated by the Licensee using any reasonable methodology).
- 12.4 In the event of termination for any reason:
 - (a) any Charges already paid shall be non-refundable;
 - (b) any amounts invoiced as at the date of termination shall become immediately due and payable;
 - (c) Licensor may invoice for any Additional Services provided up until the date of termination and any expenses incurred in respect of maintenance services and Additional Services, and those invoices shall be immediately due and payable;
 - (d) the accrued rights of the parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, shall not be affected or prejudiced; and
 - (e) all maintenance services and Additional Services (and contracts for those maintenance services and Additional Services) shall also immediately terminate, unless otherwise agreed;
 - (f) the right to access Modifications or Upgrades shall immediately cease and no further use may be made of that Modifications or Upgrades; and
 - (g) the Licensee's (and all Users') access to the Software shall be withdrawn by Licensor and the Licensee shall not (and shall ensure that the Users do not) make any further attempt to access the Software;

13. **Anti-bribery**

- 13.1 Each party shall comply with all applicable laws relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (**Relevant Requirements**) and shall have and shall maintain in place throughout the Term its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements and will enforce them where appropriate.

14. **Force Majeure**

- 14.1 Licensor shall not be liable or responsible for any failure to perform, or delay in performance of, any of its obligations under this Agreement that is caused by events outside its reasonable control a Force Majeure Event.

- 14.2 Where the Force Majeure Event affects the Software or the Modifications or Upgrades the Licensee accepts that access to the Software or the Modifications or Upgrades (as applicable) may be unavailable or restricted during the continuance of the Force Majeure Event. Where the Force Majeure Event affects services, the Licensee's right to receive such services is deemed to be suspended for the period that the Force Majeure Event continues, and Licensor shall have an extension of time for performance for the duration of that period. Licensor shall use its reasonable endeavours to bring the Force Majeure Event to a close or to find a solution by which its obligations under this Agreement may be performed despite the Force Majeure Event.

15. **Confidentiality**

- 15.1 Each party undertakes that it shall not at any time disclose to any third party any confidential information (being any and all know-how, documentation and information, whether commercial, financial, technical, operational or otherwise relating to the business, affairs, customers, suppliers or methods of one party and disclosed to or otherwise obtained by the other party in connection with this Agreement), nor use such information for any purpose other than to exercise its rights and perform its obligations under this Agreement, except as otherwise permitted by the Contract or with the prior written consent of the other party.

- 15.2 The provisions of this clause 15 shall not apply to any confidential information that the receiving party can demonstrate:

- 15.2.1 is in the public domain in substantially the same combination as that in which it was disclosed to the receiving party other than as a result of a breach of this Agreement or any other obligations of confidentiality;
- 15.2.2 is or was lawfully received from a third party not under an obligation of confidentiality with respect to it;
- 15.2.3 is required to be disclosed under operation of law, by court order or by any regulatory body of competent jurisdiction (but then only to the extent and for the purpose required); or
- 15.2.4 was developed independently of and without reference to confidential information disclosed by the other party;

provided always that, except where it is prohibited from doing so by law or court order, a party wishing to rely on an exception contained in this clause 15 shall provide the other with at least ten (10) days' written notice of its intention to do so, such notice specifying details of the exception to be relied upon and the information concerned.

- 15.3 Each party shall be entitled to divulge the other party's confidential information to its employees, agents, directors, officers, authorised sub-contractors, professional advisors and consultants who have a need to know the same in connection with this Agreement, provided that the receiving party shall ensure that such persons are aware of, and shall procure that such persons comply with, these obligations as to confidentiality.

- 15.4 Where the Licensee is a public authority which is subject to the Freedom of Information Act 2000 (the **FOIA**):

- 15.4.1 the Licensee shall promptly inform Licensor if it receives a request under the FOIA (a **Request**) which may lead to it disclosing Licensor's confidential information (unless prohibited to do so by law);
- 15.4.2 where and to the extent that Licensor requests that it does so, the Licensee shall use all reasonable endeavours to avoid disclosing Licensor's commercially sensitive information, including relying on any

exceptions provided for by the FOIA, it being acknowledged that the provisions of this clause 15.4.2 do not override the Licensee's duties under the FOIA; and

15.4.3 subject to clauses 15.4.1 and 15.4.2, the Licensee may make any disclosures it is required to make by the FOIA notwithstanding the other provisions of this clause 15; and

15.4.4 Licensor shall (at the Licensee's expense) provide all such assistance in complying with the Request as the Licensee may reasonably request.

16. **Notices**

16.1 Any notice given under this Agreement must be in writing (whether or not described as "written notice" in this Agreement) and must be delivered personally, sent by first class post, or sent by fax or email, for the attention of the relevant person, and to the relevant address, fax number or email address given below (or as notified by one party to the other in accordance with this Clause).

The Licensor: SystemsLink 2000 Limited at Bedford i-Lab, Stannard Way, Priory Business Park, Bedford, MK44 3RZ

The Licensee: **Customer Name** at **Address**

16.2 A notice will be deemed to have been received at the relevant time set out below (or where such time is not within Business Hours, when Business Hours next begin after the relevant time set out below):

- (a) where the notice is delivered personally, at the time of delivery;
- (b) where the notice is sent by first class post, 48 hours after posting; and
- (c) where the notice is sent by fax or email, at the time of the transmission (providing the sending party retains written evidence of the transmission).

17. **Data protection**

17.1 The Licensee warrants that it has the legal right to disclose all Personal Data that it does in fact disclose to the Licensor under or in connection with this Agreement.

17.2 The Licensor warrants that:

- (a) it will act only on instructions from the Licensee in relation to the processing of any Personal Data performed by the Licensor on behalf of the Licensee; and
- (b) it has in place appropriate security measures (both technical and organisational) against unlawful or unauthorised processing of Personal Data and against loss or corruption of Personal Data processed by the Licensor on behalf of the Licensee.

17.3 Each party acknowledges that the Licensee operates as the data controller and the Licensor as a data processor in respect of the personal data within the Data.

17.4 The Licensee consents and gives general authority to the Licensor to:

- (a) appoint sub-processors in relation to the performance of this Agreement; and
- (b) use sub-processors who are based outside of the EEA on condition that the Licensor puts in place measures to ensure adequacy of the protection of the personal data within the Data in accordance with Data Protection Laws.

17.5 The Licensor agrees in relation to the Data to:

- (a) only process personal data in accordance with the relevant principles under the Data Protection Laws;

- (b) only process the Data for and on behalf of the Licensee for the purposes of performing this Agreement with the Licensee and in accordance with any other instructions issued by the Licensee in writing from time to time unless otherwise required by law or any other regulatory body (in which case the Licensors shall, where permitted, inform the Licensee of that legal or regulatory requirement before processing);
- (c) require that each third party sub-processor (and procure each such third party sub-processor's compliance with) the terms of this clause 17 as if the processing being carried out by the sub-processor was being carried out by the Licensors and to give the Licensee notice of any changes to its sub-processors;
- (d) ensure that persons authorised by it to process any personal data within the Data have committed themselves to duties of confidentiality or are under an appropriate statutory duty of confidentiality;
- (e) only transfer or allow the transfer of personal data outside the European Economic Area where adequate protections for the personal data within the Data exist as required by Data Protection Laws;
- (f) at the choice of the Licensee, delete or return all the personal data within the Data to the Licensee after the end of this Agreement and delete existing copies unless required by law or regulatory requirements to retain such personal data;
- (g) make available to the Licensee all information necessary to demonstrate compliance with the obligations laid down in Article 28 GDPR and allow for and contribute to audits, including inspections, conducted by the Licensee or another auditor appointed by the Licensee;
- (h) notify the Licensee if in its opinion any instruction from the Licensee would contravene the Data Protection Laws or any other laws;
- (i) if requested by the Licensee, notify the Licensee from time to time of the location of the personal data and, where relevant of any computer system on which the personal data is held by the Licensors;
- (j) ensure that only such of the Licensors' personnel who may be required by the Licensors to assist it in meeting its obligations under this Agreement shall have access to any personal data; and
- (k) notify and provide full details to the Licensee of any potential or actual loss of personal data, take all measures necessary to remedy or address the breach or potential breach and cooperate with the Licensee to resolve such issue.

17.6 Where the Licensee requires assistance from the Licensors in order to respond to requests, queries and/or investigations in respect of the personal data within the Data or requires that the Licensors help the Licensee in reconstructing and/or otherwise safeguarding the personal data within the Data or requires that the Licensors assist the Licensee in complying with Data Protection Laws, the Licensors shall (at its cost) provide the Licensee with such assistance as the Licensee reasonably requests within any timescales reasonably specified by the Licensee.

17.7 The Licensee warrants that:

- (a) all personal data provided by or on behalf of the Licensee shall have been lawfully obtained and retained by the Licensee (or its nominated third party);
- (b) all necessary consents and data processing notices have been provided in relation to the processing of personal data; and

- (c) the Licensee is lawfully entitled to provide, procure the provision of or authorise the Licensor to obtain (as the case may be) personal data for the purposes envisaged by this Agreement.

17.8 Each party shall:

- (a) comply with all Data Protection Laws;
- (b) co-operate with any regulatory authority for data processing; and
- (c) not do or omit to do anything which will place the other party in breach of any Data Protection Laws.

17.9 Save as otherwise agreed with the Licensee, the Licensor undertakes to keep confidential the Data and in particular not to allow any third party (other than sub-processors) to access the Data including without limitation all companies affiliated to the Licensor and/or within the same group of companies as the Licensor.

18. **General**

- 18.1 This Agreement constitutes the entire Agreement between the parties and supersede and extinguish all previous Agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. Each party acknowledges and accepts that, in entering into this Agreement, it has not relied upon any representation, undertaking or promise except as set out in this Agreement.
- 18.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.
- 18.3 The failure or delay of either party to enforce or to exercise, at any time or for any period of time, any term of or any right, power or privilege arising pursuant to this Agreement does not constitute and shall not be construed as a waiver of such term or right, remedy, power or privilege and shall in no way affect either party's right later to enforce or exercise it, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any further exercise of the same or the exercise of any other remedy, right, power or privilege.
- 18.4 The invalidity or unenforceability of any provision of or any part of a provision of or any right arising pursuant to this Agreement shall not in any way affect the remaining provisions or rights, which shall be construed as if such invalid or unenforceable part did not exist.
- 18.5 The Licensee may not assign, transfer, sub-contract or otherwise part with this Agreement or any right or obligation under it without Licensor's prior written consent.
- 18.6 Licensor may amend the terms of this Agreement from time to time by notice to the Licensee. The revised terms shall take effect on such date as Licensor may nominate, provided that such date must not be less than 30 days from the date of the notice save where the change is required by law to take place earlier. If the Licensee objects to the change it must notify Licensor within 14 days of the date of the notice, in which case this Agreement may be terminated at the sole option of the Licensor.
- 18.7 Nothing in this Agreement shall confer any rights upon any person who is not a party to the Agreement, whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise.
- 18.8 This Agreement (including any associated non-contractual disputes or claims) is governed by English law and the parties hereby accept the exclusive jurisdiction of the English courts in relation to any dispute arising under or in connection with this Agreement.
- 18.9 No breach of any provision of this Agreement will be waived except with the express written consent of the party not in breach.
- 18.10 If a Clause of this Agreement is determined by any court or other competent authority to be unlawful and/or unenforceable, the other Clauses of this Agreement will continue in effect. If any unlawful and/or unenforceable Clause would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the Clause will continue in effect (unless that would contradict the clear intention of the parties, in which case the entirety of the relevant Clause will be deemed to be deleted).
- 18.11 Nothing in this Agreement will constitute a partnership, agency relationship or contract of employment between the parties.

- 18.12 This Agreement may not be varied except by a written document signed by or on behalf of each of the parties.
- 18.13 This Agreement is made for the benefit of the parties, and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree any amendment, waiver, variation or settlement under or relating to this Agreement are not subject to the consent of any third party.

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

EXECUTION:

SIGNED by
duly authorised for and on behalf
of the Licensor

.....

Date:

SIGNED by
duly authorised for and on behalf
of the Licensee

.....

Date:

Schedule 1

Specification of Software

The Software is supplied as a series of modules.

These modules are as follows:

Type 1

Energy Manager – Energy Management Software

Type 2

Web Portal – Web Based Energy Management Tool

Type 3

AMR Data Collection Service (Data Automation) – Half Hourly automated data collection/import service

Type 4

TBC

Type 5

TBC

Type 6

TBC

Schedule 2

Maintenance Service Levels

1. Introduction

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

2. Helpdesk

2.1 The Licensor will make available, during Business Hours, a telephone and email helpdesk facility for the purposes of:

- (a) assisting the Licensee with the proper use of the Software;
- (b) determining the causes of errors in the Software; and/or
- (c) fixing errors in the Software.

2.2 The Licensee must make all requests for Maintenance Services through the helpdesk, and all such requests must include at least the following information: Version Number of Software.

3. Response and resolution times

3.1 The Licensor will:

- (a) use all reasonable endeavours to respond to requests for Maintenance Services made through the helpdesk; and
- (b) use all reasonable endeavours to resolve issues raised by the Licensee, promptly.

3.2 Subject to Paragraphs 5 and 6, Maintenance Services will only be provided under this Paragraph 3 for the following purposes:

- (a) assisting with the proper use of the Software;
- (b) determining the causes of errors in the Software; and/or
- (c) fixing errors in the Software.

4. Upgrades

4.1 The Licensor will give to the Licensee reasonable prior notification of the general release of an Upgrade.

5. Additional development work

5.1 After the delivery to the Licensee of the Software, the Licensee may request that the Licensor perform development work as part of the Maintenance Services for the purpose of creating new functionality for the Software, in which case the Licensor will only be obliged to perform such development work if the parties agree in writing to their performance.

5.2 Where the Licensor agrees to perform the development work, the following matters shall be agreed in writing by the (either before that obligation crystallises, or otherwise acting reasonably as soon as practicable thereafter): the scope of the development work, the Charges, and the timetable for the performance of the development work.

6. Limits on Maintenance Services

6.1 The Licensor will have no obligation under this Agreement to provide Maintenance Services in respect of any fault or error caused by:

- (a) the improper use of the Software;

- (b) the use of the Software otherwise than in accordance with its documentation; or
- (c) any alteration to the Software (including repairs and upgrades) made without the Licensor's prior written consent.

Schedule 3 Charges

1. Introduction

- 1.1 References in this Schedule to Paragraphs are to the paragraphs of this Schedule, unless otherwise stated.
- 1.2 The Charges under the Agreement are specified below:

SystemsLink License fees

To be completed based on product

Charges payable Annually or Monthly, commencing immediately installation and on the same day each year or month thereafter (incrementing by an amount approximating to RPI, applied annually).

2. Other Charges

- 2.1 The Licensor will invoice in respect of, and the Licensee shall pay to the Licensor:
 - (a) Charges payable under Paragraph 5 of Schedule 2; and
 - (b) all other Charges that are agreed between the parties in writing from time to time

3. Charges for additional services

- 3.1 Save where and to the extent that a fee for Additional Services is agreed in advance, Additional Services shall be charged at Licensor's then applicable day rates. Details of these rates are available from Licensor on request.
- 3.2 Charges for Additional Services shall be invoiced in advance, save where charges are on a time worked basis, in which case they shall be invoiced by Licensor in arrears on an interim basis and at the conclusion.
- 3.3 Where and to the extent that services are provided from any location other than Licensor's own premises, the Licensor reserves the right to charge for all and any reasonable expenses incurred by Licensor in providing the Maintenance Services and/or Additional Services including travel, lodging, meals, and miscellaneous out of pocket expenses.
- 3.4 All invoices for Additional Services and expenses are payable within 30 days of the date of the invoice.
- 3.5 All Charges are exclusive of VAT which is chargeable in addition at the prevailing rate. VAT shall also be payable on expenses where applicable.

Schedule 4 Licensing

Type 1 Modules

Number of computers on which Software may be installed:
unlimited

Premises at which the Software may be used:
offices owned or rented by Licensee

Number of concurrent Users:
unlimited

Type 2 Modules

Premises at which the Software may be used:
offices owned or rented by Licensee or customers of the Licensee

Number of concurrent Users:
unlimited

Type 3

Premises at which the Service may be provided:
offices owned or rented by Licensee

Number of concurrent Users:
Unlimited

Type 4 Modules

TBC

Type 5

TBC

Type 6

TBC

Schedule 5

Acceptable Use Policy

1. This Acceptable Use Policy has been designed to protect the Software and to ensure that it remains functional, accessible and secure for all customers and their users.
2. It is a requirement of this Acceptable Use Policy that it is strictly complied with, both in letter and in spirit. In the event that you are unsure as to whether any particular use of the Software is permitted, please submit a support request seeking clarification.
3. This Acceptable Use Policy applies to all users of the Software. A reference in this Acceptable Use Policy to “you” is to any User.
4. You must:
 - 4.1 use the Software in accordance with this Acceptable Use Policy and the relevant Contract;
 - 4.2 use the Software in good faith and in the manner in which is intended;
 - 4.3 read the User Guide and ensure that you use the Software in accordance with it; and
 - 4.4 let us know if you become aware of anything which concerns you regarding the Software, including any security issues or any breach or potential breach of our Contract or this Acceptable Use Policy by you or any other party.
5. You must not use the Software in a manner that:
 - 5.1 breaches any applicable local, national or international law or regulation;
 - 5.2 may damage Licensor’s reputation, that of the Software, or the reputation of any customer or User; and/or
 - 5.3 is unlawful or fraudulent, or has any unlawful or fraudulent purpose or effect.
6. You may not use the Software for the following purposes:
 - 6.1 uploading, downloading, using or re-using any material which:
 - 6.1.1 expresses an opinion which is not genuinely held;
 - 6.1.2 contains any material which is defamatory or derogatory of any person;
 - 6.1.3 contains any material which is obscene, offensive, hateful or inflammatory;
 - 6.1.4 promotes sexually explicit material, violence, any illegal activity or discrimination based on race, sex, religion, nationality, disability, sexual orientation or age;
 - 6.1.5 infringes the Intellectual Property Rights or other rights of any person;
 - 6.1.6 is likely to deceive any person;
 - 6.1.7 is made in breach of any legal duty owed to a third party, such as a contractual duty or a duty of confidence; and/or
 - 6.1.8 advocates, promotes or assists any unlawful act such as (by way of example only) copyright infringement or computer misuse; and
 - 6.2 harming or attempting to harm any individual, company or other body in any way; and

- 6.3 accessing any computer, system, data or network in an unauthorised manner.
- 7. You must not:
 - 7.1 reproduce, duplicate, copy or re-sell any part of the Software except as permitted by this Agreement;
 - 7.2 impersonate any person or misrepresent your identity or affiliation with any person;
 - 7.3 access without authority, interfere with, damage or disrupt:
 - 7.3.1 any part of the Software; or
 - 7.3.2 any software used in the provision of the Software;
 - 7.4 attempt to circumvent any security measure or other restriction; and
 - 7.5 transmit any data, send or upload any material that contains viruses, Trojan horses, worms, time-bombs, keystroke loggers, spyware, adware or any other harmful programs or similar computer code designed to adversely affect the operation of any computer software or hardware, or to attack the Software via a denial-of-service attack or a distributed denial-of service attack.