

## **AGREEMENT**

### **Scheduling Appointment Software and Web Booking System - Booking Autopilot**

#### **BETWEEN:**

- (1) **HORIZON SOFTWARE SOLUTIONS LIMITED** registered in England and Wales, number 5750041 whose registered office is at Booth Street Chambers, Ashton Under Lyne, Lancashire OL6 7LQ (“the Company”)

**and**

- (2) [Enter Customer name and address] (“Customer”).

#### **WHEREAS**

- (1) The Company is a company specialising in the licensing, implementation and maintenance of the Software and provision of software services.
- (2) Customer wishes to use certain cloud services, license the Software and utilise the implementation and maintenance services, training or any other services (“the Professional Services”) of the Company
- (3) The Company has offered to licence, implement and maintain the Software and make it available as a cloud service through a third party hosting provider to the Customer or any other Hosting arrangements as required by the Client, subject to the terms and conditions of this agreement.
- (4) The Company professional and consultancy services will be provided in line with our general consultancy Ts and Cs (**APPENDIX 1**)

In consideration for the mutual promises set forth below, and for other valuable consideration, the sufficiency of which is hereby acknowledged, the parties agree as follows:-

## 1. Definitions

In this Agreement unless inconsistent with the context or otherwise specified the following definitions will apply:

- |      |                                    |  |
|------|------------------------------------|--|
| 1.1  | <b>“Application”</b>               | means the product application necessary to deliver the full functionality as set out in Schedule 2 capable of running successfully in a live environment in conjunction with the Software. |
| 1.2  | <b>“Enhancements”</b>              | means modifications to the Software which add program features or functions not originally within the Software.  |
| 1.3  | <b>“Effective Date”</b>            | means the date this Agreement is signed by both parties.   |
| 1.4  | <b>“Functional Specifications”</b> | means the documentation describing the functionality provided within the Software.   |
| 1.5  | <b>“Licence”</b>                   | means the licence referred to in Clause 3.   |
| 1.6  | <b>“Live Operation”</b>            | means the first time a customer or business transaction is processed by the Software other than in a test environment.   |
| 1.7  | <b>“Locations”</b>                 | means only those premises identified in Schedule 1 as varied in accordance with this Agreement from time to time.  |
| 1.8  | <b>“Maintenance Services”</b>      | means the various maintenance services referred to in Schedule 3.  |
| 1.9  | <b>“Man Day”</b>                   | means a 7.5 hour day.  |
| 1.10 | <b>“Nonconformity”</b>             | means a failure of the Software to accurately process Customer’s data or to perform functions described in the Functional Specification.   |
| 1.11 | <b>“Software”</b>                  | means the standard, unmodified computer programs in object code, including any   |

Enhancements, and /or Upgrades, any new versions, intermediate upgrades and maintenance releases as such terms are briefly described in Schedule 3 and procedure statements in machine-readable form, together with one set of Company's standard documentation.

- 1.12 **“Taxes”** means all sales, use, excise, valued added, and other taxes and duties however designated which are levied by any taxing authority having jurisdiction over the Location.
- 1.13 **“Third Party”** means any party other than the Company, the Company's employees or subcontractors and Customer.
- 1.14 **“Timescales”** means the timescales for delivery and installation of the Application to Customer as set out in Schedule 2
- 1.15 **“Total Licence Fee”** means the total sum of the Licence Fees specified in Schedule 1 for the Software and the Application.
- 1.16 **“Upgrades”** mean changes made to maintain compatibility with new Software releases or to improve upon previously existing features and operations with the Software.
- 1.17 **“Use”** means copying or loading any portion of the Software from storage units or media into any equipment for the processing of data by the Software once so loaded, or the operation of any procedure or machine instruction utilising any portion of either the computer program or instructional material supplied with the Software.
- 1.18 **“Workday”** means the Company's working day for the purposes of this Agreement, as specified in Schedule 2.

## 2. **Interpretation**

- 21 The masculine includes the feminine and the neuter.
- 22 The singular includes the plural and vice versa.
- 23 A reference to any statute, enactment, order, regulation or other similar instrument shall be construed as reference to the statute, enactment, order regulation or instrument as amended from by any subsequent re-enactment, order, regulation or instrument or contained in any subsequent re-enactment or consolidation hereof.
- 24 Headings are included in this Agreement for ease of reference only and shall not affect the interpretation or construction of any of the terms and conditions herein.

### **3. Licence to Use the Software**

- 3.1. In consideration of the initial and annual payments to the Company by Customer of the Licence Fees, the Company agrees to deliver the Software to Customer and hereby grants to Customer a non-exclusive Licence, as specified in Schedule 2.
- 32 Except as allowed by law the Company prohibits the copying of any portions of the Software except that Customer may copy reasonable quantities of any standard end user documentation; and may copy machine language code, in whole or in part, in reasonable quantities, in printed or electronic form, for use by Customer for archive, back-up, testing, and support or emergency restart purposes, or to replace copy made on defective media. The original, and any copies of the Software, or any part thereof, shall be the property of the Company.
- 33 Customer shall maintain any such copies and the original at the Locations and one archive site. Customer may transport or transmit a copy of the Software from the Locations or the archive site to another location for back-up use when required by hardware malfunction or for disaster recovery, provided that the copy or original is destroyed or returned to the Locations or archive site when the malfunction is corrected. Customer shall reproduce and include the Company's copyright and other proprietary notices on all copies, in whole or in part, in any form, of the Software made in accordance with this section.
- 34 This Agreement shall begin on the Effective Date and shall continue indefinitely, subject to the provisions for early termination.
- 35 Delivery by the Company of the Software shall be affected in accordance with the timescales set out in Schedule 1.

### **4. Application Delivery Terms**

- 4.1 The Company will deliver the Application specified in Schedule 2 subject to receipt of the fees, detailed in Schedule 1 and to the Timescales

42 The Software and the Application shall be deemed to have been accepted by Customer either upon the completion of a formal acceptance test or by the Live Operation and/or Use of the Software in Customer's business, whichever occurs first. Acceptance by Customer will not be unreasonably withheld or unduly delayed. Customer agrees promptly to notify the Company in writing (and with reasonable particularity) upon conclusion of the acceptance test or earlier upon discovery of any non-conformities with the Functional Specification disclosed by such testing or use. The Company shall correct any non-conformities disclosed by such testing under the Maintenance Service within a reasonable time of Customer's notice.

**5. Maintenance Services Terms**

5.1 The Company will provide Maintenance Services for the Software during the maintenance period specified in Schedule 3.

5.2 The Company's obligation to provide Maintenance Services is dependant on the continued existence of the Licence to Use the Software and the obligation to provide Maintenance Service will cease upon termination of the Licence.

**6. Training**

6.1 The Company shall provide five mandays of formal training, if required, to Customer's staff in the use of the Software, prior to the Live Operation

6.2. Training will be provided at the offices of Customer or other location agreed by the parties

**7. Use of and Rights to the Application Work Product**

7.1 All information, reports, studies, flow charts, diagrams and other tangible or intangible material of any nature whatsoever which are specific to Customer Application, (the "Work Product") and which does not form part of the Software shall be owned by Customer.

**8. Payment**

8.1 Amounts payable to the Company as set out in Schedule 1 are payable in full without deduction, or set off, and are net of all Taxes. Value Added Tax will be added as appropriate.

**9. Performance**

- 9.1 If the Software is hosted by the Customer of its hosting provider, the Customer shall upon receipt of reasonable notice give the Company full access to the Location, the Software, and the hardware and shall make available information, facilities, and services reasonably required by the Company for the performance of its obligations under this Agreement.
- 9.2 Work in determining the nature of any problem or in making corrections, amendments, or additions to the Software may be carried out at the Company's site or at the Location at the sole discretion of the Company.
- 9.3 Customer agrees to maintain the Software according to Company recommendations contained within the Company's standard documentation during the term of this Agreement.

**10. Warranties**

- 10.1 The Company warrants that for a period of ninety days (90) from the Effective Date the Software will perform the material functions specified in the Functional Specification provided for the Software identified in Schedule 1. For a period of ninety (90) days after delivery of the unmodified Software, the Company will promptly provide replacements or corrections to any part of the Software which does not so perform and is notified in writing to the Company within such period. This warranty shall not apply if the problem has been caused by unauthorised amendment to the Software, or by incorrect Use.
- 10.2 The Company's obligation under the warranty stated in the foregoing paragraph shall be to repair or replace defective or non-conforming parts of the Software at its own expense and within a reasonable time.
- 10.3 The Company warrants that it has the right to Licence the Use of the Software.
- 10.4 The Warranties stated above are limited warranties and are the only warranties made by the Company. The Company does not make, and Client hereby expressly waives, all other warranties of merchantability and fitness for a particular purpose. The stated express warranties are in lieu of all liabilities or obligations of Company for damages arising out of or in connection with the delivery, use or performance of the Software.

**11. Indemnity**

- 11.1 The Company warrants, represents and undertakes to Customer that the “Use” by Customer of the Software shall not lead to any liability, loss, demand, damage, claim, cost, expense or interest being incurred by Customer as a result of the infringement of any patent, copyright or other proprietary right of a third person providing Customer shall not have caused the action to be brought by its own breach of the terms of this Agreement. The Company now indemnifies Customer against all liability, losses, demands, damages, claims, costs, expenses and interest suffered by Customer as a result of any breach by the Company of this clause
- 11.1. Customer agrees that it will notify the Company promptly in writing of any such claim and grants the Company sole right to control the defence and disposition of such claim. Customer shall at the Company’s cost afford to the Company all reasonable assistance in contesting any such claim and in particular will make available all documents, evidence or other information in the custody of Customer.
- 11.2 If as a result of any such claim the Company or Customer is permanently enjoined from using the Software by a final, non-appealable decree, the Company at its sole option and expense may procure for Customer the right to continue to “Use” the Software or at its sole option and expense, may provide a replacement or modification for the Software of equivalent functionality so as to settle such claim.
- 11.3 The foregoing states the entire liability of the Company for the infringement of any copyrights, patents or other proprietary rights of a third person by the Software or any parts thereof, and Customer hereby expressly waives any other liabilities on the part of the Company arising there from.
- 11.4 The Company shall have no liability for any claim, which is based upon
- (a) the Use of any part of the Software in combination with materials or software not provided by the Company; or
  - (b) modifications made by Customer or any Third Party other than where following HSS’s written instructions; or
  - (c) alleged infringing activity which continues after the Company has notified Customer thereof or after the Company has provided Customer with modifications that would have avoided the alleged infringement.

12 **Limitation of Liability of the Parties**

The Company shall have no liability with respect to its obligations under this Agreement for loss of Use, profit or goodwill, or for special, indirect,

consequential, or incidental damages, whether in tort or in contract, even if it has been advised of the possibility of such damages. In any event, the liability of the Company to Customer for any reason and upon any cause of action whatsoever shall be limited to the amount of any fee which Customer has paid to Company for the twelve (12) month period immediately prior to the date on which such cause of action accrues. Providing that nothing in this clause shall operate so as to exclude the application of Section 12 of the Sale of Goods Act 1979 as amended by the Sale of Goods Act 1994 or to exclude liability for fraudulent misrepresentation. This clause 12 shall not operate to limit or exclude any liability of the Company to Customer under Clause 11.1.

**13. Title**

13.1 Nothing in this Agreement shall convey to Customer any title to or any rights in the Software including but not limited to all proprietary rights or ownership of any modifications. Customer's sole right in relation to the Software or any modifications is to Use the same for the duration of this Agreement under the terms and conditions herein contained.

13.2 The Software and all modifications, enhancements, or upgrades made to the Software and all patents, copyrights, or other proprietary rights related to each of the above are the sole and exclusive property of the Company.

**14. Non-Disclosure**

14.1 The Company has granted Customer the Licence to use the Software as provided in this Agreement. Customer acknowledges that:-

- (a) the Software, including all specifications and other materials developed by the Company; and
- (b) the terms and conditions of this Agreement contain highly confidential, unique, secret and valuable information of the Company. Customer agrees that it shall not decompile, disassemble or reverse engineer the Software and that it shall not, save as where permitted by this Agreement, sell, transfer, publish, disclose, display or otherwise make available to others the Software, any materials relating to or forming a part of the Software or any other proprietary information of the Company without the prior written consent of the Company not to be unreasonably withheld. Customer agrees to secure and protect the Software and proprietary information and to take appropriate action by written agreement with its employees who are permitted access to such materials to satisfy its obligations hereunder. Customer further agrees that it shall use its reasonable efforts to assist the Company in identifying and preventing any use or disclosure of any portion of the Software or proprietary information. All obligations and undertakings of Customer relating to confidentiality and non-disclosure, whether contained in this section or elsewhere in this



Agreement, shall survive the termination of this Agreement.

- 142 Each party acknowledge that all information concerning the other party, its customers, servants or agents is “Confidential and Proprietary Information”. Each party agrees that it will not permit the duplication, use or disclosure of any such Confidential and Proprietary Information to any person (other than its own employees who must have such information for the performance of his obligations under this Agreement), unless authorised in writing by the other party. “Confidential and Proprietary Information” is not meant to include any information which, at the time of disclosure, is generally known by the public and any competitors of either party. In the event of breach of the above provisions each party agrees to indemnify without limitation the other in respect of all costs losses and damages attributable to the breach of confidentiality by the other party.

## 15. **Termination**

- 151 Upon the termination of this Licence under the terms of this Clause 15 as a result of a default by Customer all rights in and to the Software shall automatically revert to the Company. The Company shall have the right to take immediate possession of the Software and all copies thereof wherever located without further notice or demand.
- 152 If Customer has the right to terminate this Agreement or the Licences and Maintenance Services under the terms of this Clause 15 as a result of a default by the Company. Customer shall, at its absolute discretion, have the right to terminate the Maintenance Services only and with at least 3 months notice. In these circumstances the Company will continue to allow Customer to use the Software under the terms of this Agreement. Additionally if the default relates to Clause 15.4. or Clause 15.5 the Company shall deliver to Customer the source code of the Software and the necessary documentation and other information to permit Customer to continue to use the Software in perpetuity and modify or amend the Software as it see fits without breach of this Agreement.
- 153 Either party may terminate the (a) Licence, or (b) Maintenance Services in the event of a material default by either party that is not cured within the applicable cure period specified in this Agreement, or a reasonable cure period (with the minimum being thirty (30) day if no other cure period is stated) from receipt of written notice specifying the nature of the default with reasonable particularity.
- 154 If Customer violates any of the Non-Disclosure, Non-Assignment, or Licence to Use provisions of this Agreement and fails to remedy any such breach within thirty (30) days of notice thereof from the Company, the Company may terminate this Agreement without further notice.
- 155 If an order is made or an effective resolution passed for the winding-up of either party otherwise than for the purpose of re-construction or amalgamation either party may give written notice declaring this Agreement is terminated.

- 156 If one party commits an act of bankruptcy the other party may give written notice declaring this Agreement is terminated.
- 157 Exercise of the right of termination afforded to either party shall not prejudice legal rights or remedies either party may have against the other in respect of any breach of the terms of this Agreement.
- 158 The Company may by notice in writing terminate this Agreement forthwith if Customer is in breach of its obligations to make payment of any sums properly due and owing to the Company and has failed to remedy such breach within thirty days after service of a written notice from the Company specifying the breach and requiring it to be remedied.

**16. Force Majeure**

Neither party shall be liable for any delay or failure to perform its obligations if such failure or delay is due to Force Majeure. For the purpose of this Agreement, “Force Majeure” shall mean any act, omission, cause or circumstance beyond the reasonable control of the Company and shall include but not limited to war, rebellion, civil commotion, lock-outs, fires, explosion, earthquake, act of God, flood, drought or the unavailability of material, deliveries, supplies or requisitioning or other act or order of any government department, council or other constituted body.

**17. Escrow**

Customer shall have the right to enter into an agreement with the National Computing Centre and the Company on the terms of the escrow agreement and shall at all times comply with such agreement. Customer shall be responsible for all fees payable under the escrow agreement.

**18. Non-Assignment**

- 18.1 Customer may not assign or transfer its rights, duties or obligations under this Agreement to any person or entity, in whole or in part, without the prior written consent of the Company, such consent not to be unreasonably withheld. Where any proposed assignment or transfer is to an organisation whose primary activity is the provision of software services and is a direct competitor of the Company, the Company shall be under no obligation to consent to such transfer or assignment.

**19. Entire Agreement**

19.1 This Agreement and the Schedules to it constitutes the complete and exclusive statement of the Agreement between the parties. Nothing in this clause shall operate so as to exclude the liability of either party for fraudulent misrepresentation.

19.2 Each party hereby acknowledges that it has not entered into this Agreement in reliance upon any representation made by the other party but not embodied herein.

**20. Employment of Staff**

Neither party shall canvass or otherwise engage the services of any employee of the other connected with the subject of this Agreement without the prior written consent of the other party. This clause shall apply for one (1) year after the termination of the Maintenance Services.

**21. Variation**

No variation of this Agreement shall be binding on either party unless such variation is incorporated in a revised schedule to this Agreement and signed by a main board director of the Company and an authorised signatory of Customer.

**22. Notices**

Any notice required to be given hereunder shall be given by sending the same:

- (a) by first class post to the addresses as first set out above or to any subsequent address designated by either party for the purpose of receiving notice pursuant to this Agreement, and any notice so sent shall be deemed to have been given three (3) business days after the same was mailed; or
- (b) by confirmed facsimile.

**23. General Terms**

23.1 The prevailing party in an action brought against the other to enforce the terms of this Agreement or any rights or obligations hereunder, shall be entitled to receive its reasonable costs and expenses of bringing such action including its reasonable legal fees.

23.2 The Company and Customer agree that each provision in this Agreement is deemed equally essential to each party.

- 233 If any provision of this Agreement is held to be unenforceable, the other provisions shall nevertheless continue in full force and effect.
- 234 The failure of either of the parties to insist upon strict performance of any of the provisions of this Agreement shall not be construed as the waiver of any subsequent default of a similar nature.
- 235 This Agreement shall be governed by and construed in accordance with English Law and both parties irrevocably submit to the jurisdiction of the English courts.
- 236 The rights and obligations under Clauses 12 and 14 shall survive the termination of this Agreement for any reason whatsoever.
- 237 None of the provisions of this Agreement are intended to or will operate to confer any benefit pursuant to the Contracts (Rights of Third Parties Act 1999) on a person who is not named as party to this Agreement.
- 238 This Agreement may be executed in any number of counterparts each of which when executed shall be an original, but all the counterparts shall, taken together constitute one and the same instrument.

## **LICENCE, APPLICATION AND MAINTENANCE SERVICE FEES**

### **SCHEDULE 1**

#### **Licence Section**

##### **A. 1. Software Licence – Booking Autopilot**

**Location:** Customer offices or hosted by a third party hosting provider

**Licence Fees:**

##### **A. 2. Application**

A customised Application built on the Booking Autopilot (the Software).

**Location:** Customer offices or hosted by a third party hosting provider

**Fee:** HSS will provide IT consultancy on T&M bases that will be charged on a monthly bases.

#### **2. Application Development Charges**

#### **3. Maintenance Services**

The fees for Maintenance Services, as defined in Schedule 3, in respect of the Software and the Application are set out below:

##### **3.1 An Annual Support Fee**

3.2 Payment of the Annual Support Fee shall continue to be made and the Support Services shall continue to be provided from year to year for as long as the Contract shall subsist. Such Annual Support Fee shall be calculated by reference to the previous year's charge with provision for an uplift in line with the increase in the retail price index.

3.3 Annual Support period starts on 1<sup>st</sup> of January and finishes on the 31<sup>st</sup> December.

3.4 The Annual Support Fees due will be paid by Customer to the Company before the end of every 12 months support period (31<sup>st</sup> of December).

3.5 The Annual Support Fee covers the following services provided by the Company:

3.5.1 Provision of telephone support for reporting of Software and Application Non-conformities

3.5.2 Incident logging and keeping a track of all incidents (related to both Software and Application) and their resolution

3.5.3 Provision of advice and guidance (related to both Software and Application) confined to aspects that may reasonably be discussed in a telephone conversation of up to 15 minutes.

3.5.4 Compliance with the Response times as defined in Schedule 3 for both Software and Application incidents

3.5.5 Free of charge investigation and problem resolution for Software related incidents. Although Support provided by the Company in respect of the excluded incidents (as defined in Schedule 3) shall be paid for by Customer at the Company's current daily rate for technical or management consultancy.

3.5.6 To maintain relevant staff that will be able to handle incidents related to the Application. The fees for the actual work are defined in section 3.6.

3.6. The time spent by the Company for investigation and resolution of problems related to the Application or the enhancements described in Schedule 2 (which are not part of the Software) shall be paid for by Customer at the Company's current daily rate for technical or management consultancy.

#### **4. Value Added Tax (VAT)**

VAT, at the then current UK rate, will be added to all Licence Fees and Maintenance

Service fees set out in this Schedule, if appropriate

## **SCHEDULE 2**

### **Application and Timescales**

#### **A. Application**

The Application specification will be defined in a set of documents. These documents will be developed by both parties in the Initial or Prototyping Stage. Once the specification documents are signed off by both parties, deliverables, timescales and costs will be determined and added as an Appendix to this Agreement.

#### **B. Timescales**

The delivery of the Application by the Company to Customer in accordance will be in following phases;

- 1. Analysis of the existing business processes, data and applications. Determine the scope of the project.**
- 2. Initial Prototyping and Detailed Business Requirements Definition**
- 3. Application Delivery and Upload for Testing**
- 4. Data migration**
- 5. System Testing in the Hosting Environment (including User Acceptance Testing)**
- 6. Tested Application suitable for Live Operation**
- 7. Post Live Support and Fixes**

## **SCHEDULE 3**

### **Maintenance Services**

#### **Maintenance Services**

As part of Maintenance Services, the Company shall provide telephone support for reporting of Software and Application Non-conformities 9.00 am to 5.30 pm (GMT), Monday to Friday.

#### **Customer Support**

The Company's Customer Support is the first point of contact with the Company, to resolve any incidents related to the Software or the Application. In addition to the incident logging and resolution procedures outlined below, Customer Support can provide general advice and guidance on functionality. Advice and guidance offered is confined to aspects that may reasonably be discussed in a telephone conversation of up to 15 minutes.

#### **Incident Logging**

Incidents are logged with Customer Support explaining the incident and providing examples. This can be done by telephone, by e-mail, fax or post.

Details to be reported include:

- Customer details (including contact name, company and telephone number)
- Priority of the call
- Incident description

Customer Support may not be able to log the incident if full information is not provided.

#### **For the avoidance of doubt the following elements are excluded**

Incidents occurring in the following situations are outside the scope of the annual support fee paid service

- Support any third party software, accessories, attachments, machines, systems or other devices;
- Attend to faults caused by using the Software outside design or other specifications;
- Diagnosis and/or rectification of problems not associated with the Software.



- When intermediate upgrades or maintenance releases have not been applied
- Malicious intent
- Inappropriate use of the Software
- Where the Software is integrated with third party components and those components are changed without an appropriate Software change having been implemented.
- Problems caused by faults in third party components, for example, hard disks, printers or databases

### **Classification of incidents**

Incidents are classified with one of the following priorities:

#### **Priority A**

Inoperable, or so reduced as to be unusable, or an important, time critical project stopped.

Data corruption problems that cannot be contained and could lead to a significant loss of data with no feasible work-around

#### **Priority B**

Important or time critical project at risk

Important component unusable

Data corruption problems that cannot be contained

Malfunction having frequent and major impact

#### **Priority C**

Non-urgent or intermittent incident causing inconvenience

An incident which has no current impact, or for which a locally identified cure or circumvention is available, that is passed on for information only to ensure registration of the incident and clearance as appropriate

**Response times**

Target times are in working days except where stated otherwise:

<i>Action</i>	<i>Priority</i>		
	<i>A</i>	<i>B</i>	<i>C</i>
Initial response	Immediate	Immediate	Immediate
Advise Work around	+ 4 hours (from log date and time)	+ 6 hours (from log date and time)	+ 12 hours (from log date and time)
If no work around found within 4 hours, on site support will be despatched.	+ 4 hours (from log date and time)	+ 4 days (from log date and time)	+ 8 days (from log date and time)
Advise full solution	+ 3 days (from log date and time)	+ 6 days (from log date and time)	+ 10 days (from log date and time)
Provide full solution	+ 5 days (from log date and time) via a Maintenance Release	Next Intermediate Upgrade	Next Intermediate Upgrade

Times relate to the cover period. For example, a priority A incident logged at 14:30 on a Friday afternoon is due for a Work around 10:00 on the following Monday after the three months following Live Operation.

**Remote access**

In the course of incident investigation, it may be necessary for Customer Support to access Customer’s system directly.

When access is required, Customer Support agrees this with Customer prior to the link being established. The link is then made available to Customer Support either by the Customer or the hosting provider.

Failure to provide remote access may make it impossible for Customer Support to achieve the above response times.

**Escalation**

At any stage during the life of an incident, enquiries may be made on the current status of an incident.

If Customer finds that an incident is more serious than originally agreed, the incident may be escalated to the appropriate priority by agreement with Customer Support.

If an incident is not resolved within the target time scale, it is escalated to the next highest priority, unless an extension is agreed with Customer.

## **Customer's responsibilities**

### **Documentation**

If the Customer or its hosting provider host the Software, in order that incidents are resolved as quickly as possible Customer shall supply accurate and up to date documentation covering:

- System and configuration details including hardware specification, basic systems and software set-up and versions
- Details on modem access and security
- System Change management procedures that advise Customer Support of any proposed changes to the system such as software version changes, hardware upgrades etc.

### **Co-operation**

Co-operate with Customer Support by taking reasonable actions in accordance with requests for the purpose of:

- Ensuring that incidents have been caused by an error in the Software or the Application
- Reporting all such incidents to Customer Support
- Extracting and supplying information, in electronic or hardcopy format, which Customer Support require to progress incidents
- Informing Customer Support when corrective actions have been tested successfully

### **Single point of contact**

Customer will:

- Provide a single point of contact where Customer Support can progress incidents and deliver releases
- Be able to extract and supply electronically diagnostic information, which Customer Support may require in order to help resolve incidents
- Own and control Customer's responsibilities for incident progression e.g. service management, modem access etc.

### **Christmas and New Year period**

The main Company, office closes from Christmas Day to New Years day inclusive. During this period, a priority support service is available on weekdays between Boxing Day and New Years Day. The support service is only available between the hours of 9am to 5pm when incidents may be logged. Any priority A incidents are progressed in line with the above response times. All other incidents are progressed from 2<sup>nd</sup> January or the next working weekday.

Note: Support is not available on Christmas Day, Boxing Day and New Year's Day.

### **New Versions, Intermediate Upgrades and Maintenance Releases**

#### **New Versions of the Software**

New versions may be released, from time to time. These versions will be designated by a whole number increment in the version number (e.g. Version 1 changes to Version 2).

New versions contain new functionality and existing applications may require modification to take advantage of such functionality.

Provision of New Versions of the Software is included in the Software Licence.

#### **Intermediate Upgrades**

Intermediate upgrades will, as appropriate, be released at shorter intervals than Versions. These upgrades may introduce new functionality and / or fix notified problems. Such upgrades are designated by incrementing the decimal number (e.g. from Version 1.0 to Version 1.1). Upgrade paths are supplied for each intermediate release, although existing applications may need modification to take advantage of new functionality.

Provision of intermediate upgrades of the Software is included in the Software Licence.

New releases are supplied by Customer Support, who assumes control of such releases.

Release documentation includes the following:

- Changes and / or fixes included in this release
- Any changes to the environment required
- Installation instructions

Subsequent releases assume that all previous releases have been correctly installed.

IN WITNESS WHEREOF this Agreement has been signed the day and year first above written.

Signed by  
For and on behalf of  
**Horizon Software Solutions Ltd**

Signed by  
For and on behalf of **Customer**

## APPENDIX 1

# Horizon Software Solution Consultancy Services

## Standard Terms and Conditions

### Definitions and Interpretation

**Additional Charges** - means any additional costs incurred by HORIZON SOFTWARE SOLUTIONS as a result of specification variations or the actions or inactions of the Client or its agents HORIZON SOFTWARE SOLUTIONS will be reimbursed by the Client;

**Client** - means the person or company for whom HORIZON SOFTWARE SOLUTIONS has agreed to provide the Specified Consultancy Service in accordance with these Conditions;

**Conditions** - means HORIZON SOFTWARE SOLUTIONS' standard terms and conditions for the supply of consultancy services set out in this document;

**Contract** - means the Specification, together with these Conditions and any Special and Overriding Terms and Conditions for the provision of the Specified Consultancy Service;

**Contract Period** - means the time to complete the Specified Consultancy Service stated in the Specification.

**Document** - includes, in addition to a document in writing, any map, plan, graph, drawing or photograph, film, negative, tape or other device embodying visual images and any disc, tape, flash drive or other device embodying any other data;

**Input Material** - means any Documents or other materials, and any data or other information provided by the Client to HORIZON SOFTWARE SOLUTIONS relating to the Specified Consultancy Service;

**Key Personnel** - means any key HORIZON SOFTWARE SOLUTIONS personnel named in the Specification;

**Output Material** - means any Documents or other materials, and any data or other information provided by HORIZON SOFTWARE SOLUTIONS to the Client relating to the Specified Service;

**Parties** - means the Client and HORIZON SOFTWARE SOLUTIONS;

**Price** - means the price or fee to be paid by the Client to HORIZON SOFTWARE SOLUTIONS for the Specified Consultancy Service;

**Special and Overriding Terms and Conditions** - means any additional terms and conditions included in the Specification that are in addition to and/ or override these Conditions.

**Specification** - means the details of the Specified Consultancy Service;

**Specified Consultancy Service** - means the service to be provided by HORIZON SOFTWARE SOLUTIONS for the Client and referred to in the Specification;

**HORIZON SOFTWARE SOLUTIONS Limited** registered in England and Wales, number 5750041 whose registered office is at Booth Street Chambers, Ashton Under Lyne, Lancashire OL6 7LQ.

## **1. SUPPLY OF THE SPECIFIED CONSULTANCY SERVICE**

1.1 HORIZON SOFTWARE SOLUTIONS shall provide the Specified Consultancy Service to the Client subject to these Conditions and any Special and Overriding Terms and Conditions. Any changes or additions to the Specified Consultancy Service, the Specification, the Conditions or any Special and Overriding Terms and Conditions must be agreed in writing by HORIZON SOFTWARE SOLUTIONS and the Client.

1.2 No terms or conditions endorsed upon, delivered with or contained in the order or similar from the Client shall form part of the Contract.

1.3 In the event of any ambiguity or conflict arising between these Conditions and any Special and Overriding Terms and Conditions, the Special and Overriding Terms and Conditions shall prevail.

1.4 The Specified Consultancy Service shall be provided in accordance with the quotation provided by HORIZON SOFTWARE SOLUTIONS and as agreed by the Client.

1.5 HORIZON SOFTWARE SOLUTIONS may correct any typographical or other errors or omissions in any quotation, brochure, promotional literature or other Document relating to the provision of the Specified Consultancy Service without any liability to the Client.

1.6 HORIZON SOFTWARE SOLUTIONS may at any time without notifying the Client make any changes to the Specified Consultancy Service which are necessary to comply with any applicable safety or other statutory requirements, or which do not materially affect the nature or quality of the Specified Service.

1.7 Not used

1.8 The Client shall be responsible to HORIZON SOFTWARE SOLUTIONS for ensuring the accuracy of the terms of any order.

1.9 No order which has been accepted by HORIZON SOFTWARE SOLUTIONS may be cancelled by the Client except with the agreement in writing of HORIZON SOFTWARE SOLUTIONS and on terms that the Client shall indemnify HORIZON SOFTWARE SOLUTIONS in full against all loss (including loss of profit), costs, damages, charges and expenses incurred by HORIZON SOFTWARE SOLUTIONS as a result of cancellation.

1.10 The Client shall supply HORIZON SOFTWARE SOLUTIONS with all necessary Input Materials within sufficient time to enable HORIZON SOFTWARE SOLUTIONS to provide the Specified Consultancy Service in accordance with the Contract. The Client shall ensure the accuracy of all Input Material.

## **2. GENERAL DUTIES OF HORIZON SOFTWARE SOLUTIONS**

2.1 HORIZON SOFTWARE SOLUTIONS shall provide the Specified Consultancy Services to the Client in a professional manner with due care and diligence to the best of its abilities.

2.2 HORIZON SOFTWARE SOLUTIONS accepts no liability for the use of any information or data provided.

2.3 HORIZON SOFTWARE SOLUTIONS shall not be restricted in providing similar services to other third parties.

2.4 HORIZON SOFTWARE SOLUTIONS shall supply the Specified Consultancy Service using the Key Personnel where identified and shall have the right to nominate alternative personnel if any or all of the Key Personnel become unavailable.

### **3. WORK ON CLIENT'S PREMISES**

3.1 Where HORIZON SOFTWARE SOLUTIONS requires access to the Client's premises for the purposes of performance of the Specified Consultancy Service the Client shall provide reasonable access and all services necessary to permit HORIZON SOFTWARE SOLUTIONS to fulfil its obligations under the Contract at mutually convenient times.

3.2 HORIZON SOFTWARE SOLUTIONS will commit no act or omission at the Client's premises which would render the Client liable to any person and HORIZON SOFTWARE SOLUTIONS shall observe the Client's regulations and provisions in force relating to the safety of persons when using the Client's premises.

### **4. PRICE OF SERVICES**

4.1 The Price, unless otherwise so stated, shall be exclusive of value added tax which shall be payable by the Client (subject to receipt of a VAT invoice) at the rate prevailing at the relevant tax point.

4.2 The Price includes the cost of all Materials unless otherwise expressly stated in the Contract.

4.3 Exceptional costs including exceptional travelling costs may be itemised separately in the specification or subject to a separate additional charge based on actual costs incurred by HORIZON SOFTWARE SOLUTIONS.

4.4 No variation in the Price will be accepted by the HORIZON SOFTWARE SOLUTIONS without its express consent in writing.

### **5. TERMS OF PAYMENT**

5.1 In the event of no special payment terms being specified payment of the Price shall be made 50% with order and 50% within 30 days of the date of the invoice for each and all invoices.

5.2 The Client may not withhold payment for any disputed amount greater than the value of rectifying the disputed element of the Specified Consultancy Service

5.3 If payment is not made on the due date, HORIZON SOFTWARE SOLUTIONS shall be entitled without limiting any other rights it may have to charge interest on the outstanding amount (both before and after any judgment) at the rate of 3 per cent above the base rate from time to time of Royal Bank of Scotland Bank PLC from the due date until the outstanding amount is paid in full.



5.4 If any payment is not received on the due date HORIZON SOFTWARE SOLUTIONS reserves the right to cease providing any Service until the payment is received.

## **6. VARIATIONS AND ADDITIONAL CHARGES**

6.1 HORIZON SOFTWARE SOLUTIONS shall make Additional Charges to the Client for any variation requested by the Client that results in additional costs being incurred by HORIZON SOFTWARE SOLUTIONS.

6.2 HORIZON SOFTWARE SOLUTIONS shall give not less than two weeks' written notice to the Client of its intention to invoice the Additional Charges.

6.3 All Additional Charges are exclusive of any value added tax, for which the Client shall be additionally liable.

6.4 HORIZON SOFTWARE SOLUTIONS' Additional Charges shall be paid by the Client together with any applicable value added tax and without any set-off or other deduction within 30 days of the date of HORIZON SOFTWARE SOLUTIONS' invoice.

6.5 No variations to the Contract shall be made or binding unless agreed in writing by the Parties.

## **7. INTELLECTUAL PROPERTY RIGHT AND RIGHTS IN INPUT MATERIAL AND OUTPUT MATERIAL**

7.1 Any Background Intellectual Property shall belong to the Party that created it.

7.2 Any Input Material originating from the Client shall belong to the Client.

7.3 All Foreground Intellectual Property shall belong to HORIZON SOFTWARE SOLUTIONS subject only to the right of the Client to use that intellectual property for the purposes of utilising the Specified Consultancy Service by way of a non exclusive licence subject only to payment in full of all sums payable under the Contract unless otherwise agreed in writing between the two Parties.

7.4 Any Output Material shall, unless otherwise agreed in writing between the Client and HORIZON SOFTWARE SOLUTIONS, belong to HORIZON SOFTWARE SOLUTIONS, subject only to the right of the Client to use the Output Material for the purposes of utilising the Specified Consultancy Service by way of a non exclusive licence subject only to payment in full of all sums payable under the Contract.

7.5 Any Input Material or other information provided by the Client which is so designated by the Client shall be kept confidential by HORIZON SOFTWARE SOLUTIONS, and all Output Material or other information provided by HORIZON SOFTWARE SOLUTIONS which is so designated by HORIZON SOFTWARE SOLUTIONS shall be kept confidential by the Client, except that the foregoing shall not apply to any Documents or other materials, data or other information which are public knowledge at the time when they are so provided by either party, and shall cease to apply if at any future time they become public knowledge through no fault of the other party.

7.6 The Client warrants that any Input Material and its use by HORIZON SOFTWARE SOLUTIONS for the purpose of providing the Specified Consultancy Service will not

infringe the copyright or other rights of any third party and the Client shall indemnify HORIZON SOFTWARE SOLUTIONS against any loss, damages costs expenses or other claims arising from any such infringement.

7.7 Subject to clause 7.6, HORIZON SOFTWARE SOLUTIONS warrants that any Output Material and its use by the Client for the purposes of utilising the Specified Consultancy Service will not infringe the copyright or other rights of any third party and HORIZON SOFTWARE SOLUTIONS shall indemnify the Client against any loss damages costs expenses or other claims arising from any such infringement.

## **8. FORCE MAJEURE**

8.1 If either party is affected by Force Majeure it shall forthwith inform the other party in writing of the matters constituting the Force Majeure and shall keep the party fully informed of the continuance and of any change of circumstances whilst such Force Majeure continues.

8.2 HORIZON SOFTWARE SOLUTIONS shall not be liable for any breach of its obligations resulting from a cause beyond its control including but not limited to fire, strikes, insurrection, riots, embargoes, shortage of materials, delays in transportation, requirements of civil or military authority, war, civil unrest or terrorist action. If a default due to any of these matters shall continue for 60 days, HORIZON SOFTWARE SOLUTIONS shall have the right to terminate the Contract without liability to the Client by serving written notice on the Client.

8.3 Save as provided for in clause 8 a Force Majeure shall not entitle the Client to terminate this Contract and neither party shall be in breach of this Contract nor otherwise liable to the other party, by reason of any delay in performance or non-performance of any of its obligations due to a Force Majeure.

## **9. WARRANTIES AND LIABILITY**

9.1 HORIZON SOFTWARE SOLUTIONS warrants to the Client that the Specified Consultancy Service will be provided using reasonable care and skill and, as far as reasonably possible in accordance with the Specification and at the intervals and within the times referred to in the Specification.

9.2 Not used.

9.3 Any claim by the Client of any breach by HORIZON SOFTWARE SOLUTIONS of the Contract or these Conditions (including the warranty contained in Clause 9.1 above), must be notified to the HORIZON SOFTWARE SOLUTIONS within 30 days of the supply of the Specified Consultancy Service. If the Client does not notify HORIZON SOFTWARE SOLUTIONS accordingly, the Client will be deemed to have accepted the Specified Consultancy Service and HORIZON SOFTWARE SOLUTIONS shall have no liability in relation to the provision of the Specified Consultancy Service and the Client shall be bound to pay the Price in full. Where the Client has made a valid claim, HORIZON SOFTWARE SOLUTIONS will at its sole discretion either re-perform the part of the Specified Consultancy Service which does not comply with the Contract or refund the Client of such amount of the Price as is reasonable on a quantum meruit basis.

9.4 HORIZON SOFTWARE SOLUTIONS shall have no liability to the Client for any loss damage costs expenses or other claims for compensation arising from any Input Material or instructions supplied by the Client which are incomplete, incorrect, inaccurate, illegible, out of sequence or in the wrong form or arising from their late arrival or non-arrival or any other fault of the Client.

9.5 Except in respect of death or personal injury caused by HORIZON SOFTWARE SOLUTIONS' negligence or as expressly provided in these Conditions HORIZON SOFTWARE SOLUTIONS shall not be liable to the Client by reason of any representation (unless fraudulent) or any implied warranty condition or other term or any duty at common law, or under the express terms of the Contract for any loss of profit or any indirect, special or consequential loss, damage, costs, expenses or other claims (whether caused by the negligence of HORIZON SOFTWARE SOLUTIONS, its servants or agents or otherwise) which arise out of or in connection with the provision of the Specified Service or their use by the Client, and the entire liability of HORIZON SOFTWARE SOLUTIONS under or in connection with the Contract shall not exceed the amount of HORIZON SOFTWARE SOLUTIONS' charges for the provision of the Specified Service, except as expressly provided in these Conditions.

9.6 Subject as expressly provided in these Conditions, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

9.7 Any dates quoted for delivery of the provision of the Specified Consultancy Services are approximate. HORIZON SOFTWARE SOLUTIONS shall not be liable to the Client or be deemed to be in any breach of the Contract by reason of any delay in performing, or any failure to perform, any of HORIZON SOFTWARE SOLUTIONS' obligations in relation to the Specified Service. Unless stated in the Overriding Terms and Conditions time of delivery of the Specified Consultancy Service shall not be of the essence of the Contract.

## **10. CONFIDENTIALITY**

10.1 The Client shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Client by HORIZON SOFTWARE SOLUTIONS or its agents and any other confidential information concerning HORIZON SOFTWARE SOLUTIONS' business or its products which the Client may obtain and the Client shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know the same for the purpose of discharging the Client's obligations to HORIZON SOFTWARE SOLUTIONS and shall ensure that such employees, agents or sub-contractors are subject to like obligations of confidentiality as bind the Client.

## **11. TERMINATION**

11.1 Either party may (without limiting any other remedy) at any time terminate the Contract by giving written notice to the other if the other commits any breach of these Conditions and if capable of remedy fails to remedy the breach within 30 days after being

required by written notice to do so, or if the other goes into administration, administrative receivership, receivership, voluntary arrangement or liquidation or in the case of an individual or firm becomes bankrupt, makes a voluntary arrangement with his or its creditors or has a receiver or administrator appointed.

11.2 The cost of all and any work completed by HORIZON SOFTWARE SOLUTIONS up to the date of termination and any costs incurred by HORIZON SOFTWARE SOLUTIONS as a result of a cancellation by the Client under clause 11.1 will be payable by the Client to HORIZON SOFTWARE SOLUTIONS.

## **12. DATA PROTECTION ACT 1998**

12.1 HORIZON SOFTWARE SOLUTIONS will only use any personal information made available to it for the purpose of providing the Specified Consultancy Service to the Client outlined in the Contract.

## **13. GOVERNING LAW**

13.1 The construction, validity and performance of the Contract and these terms and conditions shall be governed and construed in accordance with English law.

## **14. GENERAL**

14.1 These Conditions (together with the terms, if any, set out in the Specification and/or Special and Overriding Terms and Conditions) constitute the entire agreement between the Parties, supersede any previous agreement or understanding and may not be varied except in writing between the Parties. All other terms and conditions, express or implied by statute or otherwise, are excluded to the fullest extent permitted by law.

14.2 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to the other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

14.3 No failure or delay by either party in exercising any of its rights under the Contract shall be deemed to be a waiver of that right, and no waiver by either party of any breach of the Contract by the other shall be considered as a waiver of any subsequent breach of the same or any other provision.

14.4 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected.