

DATED

POINTWIRE SOFTWARE MAINTENANCE AGREEMENT

between

PointWire Limited

and

Customer

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This agreement is dated

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Parties

- (1) **POINTWIRE LIMITED** incorporated and registered in England and Wales with company number 12206850 whose registered office is at 23 Algha Road, Skegness, England, PE25 2AG (**PointWire**)
- (2) **[FULL COMPANY NAME]** incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**Customer**)

BACKGROUND

- (A) PointWire has supplied and licensed certain software products to the Customer under the terms of the Licence (defined below) and has agreed to provide support and maintenance for such Software (and other software products) on the terms set out in this agreement.
- (B) [PointWire has also agreed to provide a dedicated hosting platform for the Software.]

Agreed terms

1. Interpretation

- 1.1 The definitions and rules of interpretation in this clause apply in this agreement and the schedules to it.

Advisory Service: the advisory services more particularly described in Part 1 of Schedule 2.

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

Charges: the charges payable for the Services under this agreement, being (where the context so requires) each or any of the following:

- a) the charges for the Advisory Service set out in Part 2 of Schedule 2;
- b) the charges for the Lite Touch Service set out in Part 2 of Schedule 3;
- c) the charges for the Fully Managed Service set out in Part 2 of Schedule 4;

(which charges also include the Updating Service)

- d) any charges agreed for Optional Services; and

- e) any charges agreed for New Versions.

Confidential Information: has the meaning given in clause 14.

Contract Year: any 12-month period ending on any anniversary of the date of this agreement (or an extended in writing by agreement between the parties).

Control: shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression **change of control** shall be construed accordingly and **controls, controlled** and the expression **change of control** shall be construed accordingly

Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical and organisational measures: as defined in the Data Protection Legislation.

Critical Fault: a reproducible fault which substantially hinders or prevents the Customer from using a material part of the functionality of the software in question.

Cybersecurity Requirements: all applicable laws, regulations, codes, guidance (from regulatory and advisory bodies, whether mandatory or not), international and national standards, industry schemes and sanctions relating to security of network and information systems and security breach and incident reporting requirements, including the Data Protection Legislation, the Cybersecurity Directive (EU) 2016/1148), Commission Implementing Regulation (EU) 2018/151), the Network and Information Systems Regulations 2018 (SI 506/2018), all as amended or updated from time to time.

Data Protection Legislation: the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications); and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party.

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

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

Fully Managed Service: the Support Service more particularly described in Part 1 of Schedule 4.

Hosted Platform: [to be confirmed].

Hosted Platform Service: the provision of a Hosted Platform and service of the Hosted Platform more particularly described in Part 1 of Schedule 6Part .

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and related rights, trade marks and service marks, trade names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in

designs, rights in computer software, database rights, rights to preserve the confidentiality of information (including know-how and trade secrets) and any other intellectual property rights, including all applications for (and rights to apply for and be granted), renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist, now or in the future, in any part of the world.

Licence: the non-exclusive, non-transferable licence of [DATE] made between [Tanium] and the Customer.

Lite Touch Service: the Lite Touch services more particularly described in part 1 of Schedule 3.

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

Manager: the person appointed by the Customer from time to time in order to fulfil the role described in clause 11.3.

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

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

Non-Critical Fault: any reproducible fault in the Software other than a Critical Fault.

Open-Source Software: open-source software as defined by the Open Source Initiative (<http://opensource.org>) or the Free Software Foundation (<http://www.fsf.org>).

Optional Service: any of the Services listed in Part 1 of Schedule 5 and any other services that the Customer and PointWire may from time to time agree shall be supplied to the Customer by PointWire under the terms of this agreement.

Service Levels: those standards of performance to be achieved by PointWire in performing the Advisory Service, the Lite Touch Service and the Fully Managed Service as set out in Part 3 of Schedule 2, Part 2 of Schedule 3, Part 3 of Schedule 3 and Part 3 of Schedule 6 respectively.

Services: includes (as appropriate) the the Advisory Service, the Lite Touch Service and the Fully Managed Service and any Optional Services which are included within an order for Optional Services under clause 5.

Software: has the same meaning as in the Licence.

Standard Support Hours: 9.00 am to 4.00 pm Monday to Friday, except on days which are bank holidays in England.

Support Manager: a person appointed by PointWire (if applicable) from time to time in order to fulfil the role described in clause 6.

Support Staff: those individuals who perform PointWire's obligations under this agreement including (where the context permits) the Support Manager.

Supported Software: has the meaning set out in clause 2.1.

Tanium: Tanium Malta Limited, a Maltese Corporation with offices located at LM Complex, Brewery Street, Mriehel BKR3000, Republic of Malta

Tanium Platform: means the various go-to-market models made available to PointWire by Tanium from time to time.

Third-Party Licences: the licence entered into by PointWire and Tanium, or any other software licence provider.

Third-Party Software: the Tanium Platform, whether as an internetbased service (TaaS) or locally-installed software, as well as any other proprietary software and related proprietary components, sensors, scripts, packages, actions, and 'Saved Questions' made generally available by Tanium to its licensees and provided by or on behalf of Tanium to Participant in connection with this Agreement, as may be updated by Tanium from time to time.

UK Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

Updating Service: the service to be supplied by PointWire to the Customer under clause 3.1.

- 1.2 The headings in this agreement do not affect its interpretation. Except where the context otherwise requires, references to clauses and schedules are to clauses and schedules of this agreement.
- 1.3 Unless the context otherwise requires:
 - (a) The Schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the Schedules.
 - (b) Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
 - (c) Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

- (d) A reference to any party shall include that party's personal representatives, successors and permitted assigns.
 - (e) A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this agreement.
 - (f) A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this agreement under that statute or statutory provision.
 - (g) Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.4 If there is an inconsistency between any of the provisions in the main body of this agreement and the Schedules, the provisions in the main body of this agreement shall prevail. If any conflict arises between this agreement and the Licence, the terms of the Licence shall prevail.
- 1.5 Words in the singular include the plural and those in the plural include the singular.
- 1.6 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns.

2. Supported Software

- 2.1 The Supported Software is:
- (a) the Software;
 - (b) any Modification which is acquired by the Customer (whether under the Licence, this agreement or any other agreement between PointWire and the Customer) during the course of the Licence and which accordingly becomes part of the software defined as the Software under the Licence; and
 - (c) any other software which PointWire and Customer agree should be Supported Software for the purposes of this agreement.
- 2.2 In relation to Maintenance Releases:
- (a) as part of the Updating Service, PointWire shall from time to time make Maintenance Releases available to the Customer; and
 - (b) if the Customer fails to make arrangements for the installation of a Maintenance Release within one month of PointWire's notifying the Customer that such

Maintenance Release is available for installation, PointWire may terminate this agreement by giving one month's written notice to the Customer.

2.3 In relation to New Versions:

- (a) If PointWire releases a New Version, the Customer shall, within 7 working days of delivery, test whether the New Version operates without any impairment of functionality or facilities relative to the previous version (**Acceptance Testing**). If the Acceptance Testing is successful, the Customer shall promptly notify PointWire in writing of its acceptance of the New Version. If the Acceptance Testing fails, the Customer may reject the New Version by written notice to PointWire.
- (b) If the New Version is rejected, that decision shall not give rise to any right to terminate this agreement, nor shall it result in any adverse effect on the Services or the performance of PointWire's obligations under this agreement. However, if PointWire has released a New Version since the version which forms part of the Supported Software, and the Customer has not, within 12 months of PointWire having notified the Customer that a New Version is available, acquired and installed that New Version, PointWire may terminate this agreement by giving one month's written notice to the Customer, given at any time after the expiry of such period. Pending any such termination:
 - (i) PointWire's obligations in respect of the Supported Software shall be reduced to the Legacy Obligations; and
 - (ii) the Charges shall be reduced to the Legacy Fees.
- (c) The Customer shall be deemed to have accepted the New Version if PointWire does not receive any notice under 2.3(a) within seven days of delivery of the New Version or the Customer commences operational use of the New Version.

3. The services

3.1 PointWire are able to supply to the Customer the following Services:

- (a) the Advisory Service;
- (b) the Lite Touch Service;
- (c) the Fully Managed Service;
- (d) such of the Optional Services as are included from time to time within an order for Optional Services agreed between PointWire and the Customer under clause 5.
- (e) the Hosted Platform Service, as agreed between PointWire and the Customer under clause 4.

- 3.2 The parties agree PointWire shall supply and the Customer shall pay for the following Service: **[INCLUDE SERVICE]**.
- 3.3 PointWire may, on prior notice to the Customer, make changes to the Services, provided such changes do not have a material adverse effect on the Customer's business operations.
- 3.4 PointWire shall have no obligation to provide the Services where faults arise from:
- (a) misuse, incorrect use of or damage to the Software from whatever cause (other than any act or omission by PointWire), including failure or fluctuation of electrical power;
 - (b) failure to maintain the necessary environmental conditions for use of the Software;
 - (c) use of the Software in combination with any equipment or software not provided by PointWire or not designated by PointWire for use with any Modification forming part of the Supported Software, or any fault in any such equipment or software;
 - (d) relocation or installation of the Software by any person other than PointWire or a person acting under PointWire's instructions;
 - (e) any breach of the Customer's obligations under this agreement howsoever arising or having the Software maintained by a third party;
 - (f) any Modification not authorised by PointWire resulting in a departure from the Specification (as defined in the Licence); or
 - (g) operator error.

4. Hosted Platform Services

- 4.1 In the event the Customer requires the Hosted Platform Service the Customer shall acknowledge agreement by signing where indicated at the end of this agreement.
- 4.2 In relation to the Host Platform Service:
- (a) PointWire shall provide a dedicated hosting platform for the Software.
 - (b) PointWire shall be responsible for the design of the infrastructure and use its own resources or those of trusted partners.
 - (c) the Customer agrees PointWire may, at their own cost, use alternative infrastructure and services as a temporary hosting solution in overcoming Downtime related issues.
 - (d) PointWire shall at its sole discretion deem that the usage of the platform exceeds PointWire's hosting service; PointWire may incur additional direct

costed which shall pass on to the client should the capacity exceed [AMOUNT]. PointWire shall notify the Customer in advance of the additional cost.

- (e) PointWire does not warrant that the Hosting environment or the service on which the Software is hosted will be continuously available but it shall use reasonable endeavours to keep Downtime to a minimum.
- (f) PointWire accepts no liability for Downtime caused as a result of any third party service provider, Internet Service Provider or the Customer .

5. Orders for Optional Services

- 5.1 The Customer may from time to time request PointWire to supply Optional Services of the type set out in Part 1 of Schedule 5 at the rates referred to in clause 8.3. PointWire shall use its reasonable endeavours to comply with the Customer's request, but the Customer acknowledges that PointWire's ability to supply the Optional Services shall depend on the availability of appropriate resources at the time in question.
- 5.2 Where PointWire agrees to provide Optional Services, such agreement shall be embodied in an order for Optional Services. Each order for Optional Services shall be made under, and shall incorporate, the terms of this agreement.

6. Support Staff

- 6.1 As part of the Optional Service, PointWire may appoint a Support Manager. In the event an Support Manager is appointed, they shall be responsible for the co-ordination of all matters relating to the Services. All communications, documentation and materials relating to this agreement shall be sent as appropriate by the Support Manager to the Manager. Each party shall notify the other in writing promptly if there is any proposed change to those appointments.

7. Further terms relating to the Services

- 7.1 Where the Customer agrees to the Optional Service of PointWire providing on-site services, PointWire shall ensure that, while on the Customer's premises, the Support Manager (if applicable), the any Support Staff and all other persons who enter such premises with the authority of PointWire for the purpose of, or in connection with, this agreement or the provision of the Services, adhere to the Customer's security procedures and health and safety regulations, as from time to time notified to PointWire or otherwise brought to the notice of PointWire or such persons. The Customer may remove or refuse admission to any person who is, or has been, in material breach of such procedures and regulations. However, PointWire shall incur no liability for any delay in performing or failure to perform its obligations under this agreement as a result of compliance with the terms of this clause 7.1.

8. Charges

- 8.1 In consideration of the Services (excluding for this purpose any Optional Services), the Customer shall pay the Charges set out in Part 2 of Schedule 2, Part 2 of Schedule 3, Part 2 of Schedule 4 and Part 2 of Schedule 6 (as applicable). These Charges shall be paid monthly in advance by the Customer to PointWire within 30 days of the date of PointWire's invoice.
- 8.2 Any Licence purchased by the Customer under the terms of this agreement shall be paid in full (including VAT) on the date of this agreement.
- 8.3 Charges for any New Version or Optional Services to the Customer shall be agreed in writing before performance or supply by PointWire, and shall be charged and invoiced to the Customer by PointWire (and paid by the Customer) following acceptance by PointWire of the Customer's written order for such New Version or such Optional Service (as the case may be).
- 8.4 The Customer shall pay all costs (at PointWire's then prevailing rates) and reasonable expenses incurred by PointWire for work carried out by PointWire in connection with any fault which is not covered by this agreement.
- 8.5 The Customer shall reimburse any reasonable travel or subsistence expenses incurred by PointWire where such expenses are incurred wholly and exclusively for the purpose of providing on-site support as part of the Services, provided that any request for reimbursement is in the form of a proper invoice accompanied by appropriate receipts.
- 8.6 If the Customer fails to make any payment due to PointWire under this agreement by the due date for payment, then, without limiting PointWire's remedies under clause 21, the Customer shall pay interest on the overdue amount at the rate of 4% per annum above Barclays Bank Plc's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 8.7 All amounts payable under this agreement shall be exclusive of VAT or relevant local sales tax (if any) or any relevant local sales taxes which shall be paid at the rate and in the manner for the time being prescribed by law.
- 8.8 PointWire may increase the Charges as from each anniversary of the date of this agreement. Any increase shall be notified to the Customer at least three months before such anniversary.

- 8.9 All amounts due under this agreement shall be paid by the Customer to PointWire in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

9. Intellectual Property Rights

- 9.1 All Intellectual Property Rights in the Deliverables shall belong to PointWire (or Tanium (as applicable and in accordance with the Licence)), and the Customer shall have no rights in respect of any of the Deliverables except as expressly granted under this agreement. The Customer shall do or procure to be done all such further acts and things and sign or procure the signature of all such other documents as PointWire may from time to time require for the purpose of giving PointWire the full benefit of the provisions of this clause 9.1.
- 9.2 PointWire undertakes at its own expense to defend the Customer or, at its option, settle any claim or action brought against the Customer alleging that the use or possession of any of the Deliverables (or any part of them) by the Customer in accordance with this agreement infringes the UK Intellectual Property Rights of a third party (**Claim**) and shall be responsible for any reasonable losses, damages, costs (including legal fees) and expenses incurred by, or awarded against, the Customer as a result of or in connection with any such Claim. For the avoidance of doubt, clause 9.2 shall not apply where the Claim in question is attributable to possession, use, development, modification or maintenance of the Deliverables (or any part thereof) by the Customer other than in accordance with the terms of this agreement, use of the Deliverables in combination with any hardware or software not supplied or specified by PointWire, if the infringement would have been avoided by the use of the Deliverables not so combined, or use of a non-current release of the Software.
- 9.3 Clause 9.2 is conditional on the Customer:
- (a) as soon as reasonably practicable, giving written notice of the Claim to PointWire, specifying the nature of the Claim in reasonable detail;
 - (b) not making any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of PointWire (such consent not to be unreasonably conditioned, withheld or delayed);
 - (c) giving PointWire and its professional advisers at reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of the Customer, so as to enable PointWire and its professional advisers to examine them and to take copies (at PointWire's expense) for the purpose of assessing the Claim; and
 - (d) subject to PointWire providing security to the Customer to the Customer's reasonable satisfaction against any claim, liability, costs, expenses, damages or

losses which may be incurred, taking such action as PointWire may reasonably request to avoid, dispute, compromise or defend the Claim.

9.4 If any Claim is made, or in PointWire's reasonable opinion is likely to be made, against the Customer, PointWire may at its sole option and expense:

- (a) procure for the Customer the right to continue using, developing, modifying or maintaining the Deliverables (or any part of them) in accordance with the terms of this agreement;
- (b) modify the Deliverables so that they cease to be infringing;
- (c) replace the Deliverables with non-infringing works; or
- (d) terminate this agreement immediately on notice to the Customer and repay to the Customer all sums which the Customer has paid to PointWire under this agreement during the year in which the termination occurs, less a charge for the Services performed up to the date of termination.

9.5 Notwithstanding any other provision in this agreement, clause 9.2 shall not apply to the extent that any claim or action referred to in that clause arises directly or indirectly through the possession, use, development, modification or maintenance of any Open-Source Software incorporated into the Software or through the breach of any Third-Party Licence relating to any Open-Source Software so incorporated howsoever arising.

9.6 This clause 9 constitutes the Customer's exclusive remedy and PointWire's only liability in respect of Claims and, for the avoidance of doubt, is subject to clause 18.1.

10. Licence of Software

10.1 All Software is owned by Tanium, who determine the terms upon which the Software is licensed. Pointwire shall either:

- (a) grant to the Customer with effect from the actual date of delivery the Licence to use the Software for its own internal purposes only and in accordance with Tanium's standard licensing terms, and for operation in an environment deemed suitable under Tanium's standard licensing terms (which are available to the Customer on request); or
- (b) procure the grant of the Licence to enable the Customer to use the Software (on terms which shall be specified by Tanium).

10.2 The Customer hereby indemnifies PointWire in respect of any loss (of any kind) which PointWire may suffer as a result of the breach by the Customer of the Licence.

11. The Customer's responsibilities

- 11.1 Without prejudice to clause 7.1, the Customer shall provide PointWire, the Support Manager (if applicable) and all other persons duly authorised by PointWire with full, safe and uninterrupted access including remote access to the Customer's premises systems, facilities and the Software as may reasonably be required for the purpose of performing the Services, such access, except in the case of emergency or agreed out-of-hours downtime, to be within the Standard Support Hours. Where the Services are to be performed at any of the Customer's premises, the Customer shall provide adequate working space and office facilities (including telephone) for use by the Support Staff and take reasonable care to ensure their health and safety.
- 11.2 The Customer shall ensure that appropriate environmental conditions are maintained for the Supported Software and shall take all reasonable steps to ensure that the Supported Software is operated in a proper manner by the Customer's employees.
- 11.3 The Customer shall nominate a manager to be available to liaise with, and respond to queries from, the Support Manager.
- 11.4 The Customer shall:
- (a) co-operate with PointWire in performing the Services and provide any assistance or information as may reasonably be required by PointWire, including in relation to the diagnosis of any faults;
 - (b) report faults promptly to PointWire; and
 - (c) keep full backup copies of all of its data.
- 11.5 The Customer shall indemnify PointWire against any losses, damages, costs (including legal fees) and expenses incurred by or awarded against PointWire as a result of the Customer's breach of this agreement howsoever arising or any negligent or wrongful act of the Customer, its officers, employees, contractors or agents.

12. Non-solicitation

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

13. Risk and title

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

14. Confidentiality and publicity

- 14.1 Each party shall, during the term of this agreement and thereafter, keep confidential all, and shall not use for its own purposes (other than implementation of this agreement) nor without the prior written consent of the other disclose to any third party (except its professional advisors or as may be required by any law or any legal or regulatory authority) any, information of a confidential nature (including trade secrets and information of commercial value) which may become known to such party from the other party and which relates to the other party or any of its Affiliates (**Confidential Information**), unless such information is public knowledge or already known to such party at the time of disclosure, or subsequently becomes public knowledge other than by breach of this agreement, or subsequently comes lawfully into the possession of such party from a third party. Each party shall use its reasonable endeavours to prevent the unauthorised disclosure of any such information.
- 14.2 Each party shall notify the other party if any of its staff connected with the provision or receipt of the Services becomes aware of any unauthorised disclosure of any Confidential Information and shall afford reasonable assistance to the other party, at that other party's reasonable cost, in connection with any enforcement proceedings which that other party may elect to bring against any person.
- 14.3 The terms of this agreement may not be disclosed by the Customer (other than to its legal advisors) without the prior written consent of PointWire.
- 14.4 PointWire may refer to the Customer as being a client of PointWire in customer reference lists and sales presentations, but shall not refer to the Customer in any advertising or press release without the prior written consent of the Customer.
- 14.5 The provisions of this clause 14 shall remain in full force and effect notwithstanding any termination of this agreement.

15. Data protection

- 15.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 15 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 15.2 The parties acknowledge that:

- (a) if PointWire processes any personal data on the Customer's behalf when performing its obligations under this agreement, the Customer is the controller and PointWire is the processor for the purposes of the Data Protection Legislation.
 - (b) the personal data may be transferred or stored outside the EEA or the country where the Customer is located in order to carry out the Services and PointWire's other obligations under this agreement.
- 15.3 Without prejudice to the generality of clause 15.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to PointWire for the duration and purposes of this agreement so that PointWire may lawfully use, process and transfer the personal data in accordance with this agreement on the Customer's behalf.
- 15.4 Without prejudice to the generality of clause 15.1, PointWire shall, in relation to any personal data processed in connection with the performance by PointWire of its obligations under this agreement:
 - (a) process that personal data only on the documented written instructions of the Customer unless PointWire is required by the laws of any member of the European Union or by the laws of the European Union applicable to PointWire and/or Domestic UK Law (where **Domestic UK Law** means the UK Data Protection Legislation and any other law that applies in the UK) to process personal data (**Applicable Laws**). Where PointWire is relying on Applicable Laws as the basis for processing personal data, PointWire shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit PointWire from so notifying the Customer;
 - (b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by PointWire, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it).

- (c) not transfer any personal data outside of the EEA unless the following conditions are fulfilled:
 - (i) the Customer or PointWire has provided appropriate safeguards in relation to the transfer;
 - (ii) the data subject has enforceable rights and effective legal remedies;
 - (iii) PointWire complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and
 - (iv) PointWire complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the personal data;
- (d) assist the Customer, at the Customer's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (e) notify the Customer without undue delay on becoming aware of a personal data breach;
- (f) at the written direction of the Customer, delete or return personal data and copies thereof to the Customer on termination of the agreement unless required by Applicable Law to store the personal data; and
- (g) maintain complete and accurate records and information to demonstrate its compliance with this clause 15 and allow for audits by the Customer or the Customer's designated auditor and immediately inform the Customer if, in the opinion of PointWire, an instruction infringes the Data Protection Legislation.

15.5 Either party may, at any time on not less than 30 days' notice, revise this clause 15 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this agreement).

15.6 Except as expressly provided otherwise, this agreement does not transfer ownership of, or create any licences (implied or otherwise), in any Intellectual Property Rights in any (non-personal) data.

16. Export

16.1 Neither party shall export, directly or indirectly, any technical data acquired from the other party under this agreement (or any products, including software, incorporating any such data) in breach of any applicable laws or regulations (**Export Control Laws**), including United States export laws and regulations, to any country for which the United States or any other government or any agency thereof at the time of export requires an

export licence or other governmental approval without first obtaining such licence or approval.

16.2 Each party undertakes:

- (a) contractually to oblige any third party to whom it discloses or transfers any such data or products to make an undertaking to it in similar terms to the one set out above; and
- (b) if requested, to provide the other party with any reasonable assistance, at the reasonable cost of the other party, to enable it to perform any activity required by any competent government or agency in any relevant jurisdiction for the purpose of compliance with any Export Control Laws.

17. PointWire's Warranties

17.1 PointWire represents and warrants to the Customer that:

- (a) the Services will be performed:
 - (i) in accordance with all laws and regulations which are directly applicable to PointWire; and
 - (ii) with all reasonable skill and care;
- (b) to the best of its knowledge and belief, the Deliverables will not infringe the UK Intellectual Property Rights of any third party; and
- (c) at the date of this agreement, PointWire has obtained and will maintain for the duration of this agreement all permissions, licences and consents necessary for PointWire to perform the Services.

17.2 If, during the term of this agreement, PointWire receives written notice from the Customer of any breach by PointWire of the representations and warranties contained in clause 17.1(a), PointWire shall, at its own option and expense, remedy that breach within a reasonable period following receipt of such notice, or terminate this agreement immediately on written notice to the Customer and repay to the Customer all sums which the Customer has paid to PointWire under this agreement during the year in which the termination occurs, less a charge for the Services performed up to the date of termination. The Customer shall provide all information reasonably necessary to enable PointWire to comply with its obligations under this clause 17.2. This clause sets out the Customer's sole remedy and PointWire's entire liability for breach of clause 17.1(a).

17.3 No representation or warranty is given by PointWire that all faults will be fixed, or will be fixed within a specified period of time.

- 17.4 All other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into this agreement or any collateral contract, whether by statute, common law or otherwise, are hereby excluded, including the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose and the use of reasonable skill and care.

18. Limits of liability

- 18.1 Except as expressly stated in clause 18.2:

- (a) PointWire shall not in any circumstances have any liability for any losses or damages which may be suffered by the Customer (or any person claiming under or through the Customer), whether the same are suffered directly or indirectly or are immediate or consequential, and whether the same arise in contract, tort (including negligence) or otherwise howsoever, which fall within any of the following categories:

- (i) special damage, even though PointWire was aware of the circumstances in which such special damage could arise;
- (ii) loss of profits;
- (iii) loss of anticipated savings;
- (iv) loss of business opportunity;
- (v) loss of or goodwill;
- (vi) loss of, or damage to (including corruption of), data;

provided that this clause 18.1(a) shall not prevent claims for loss of or damage to the Customer's tangible property that fall within the terms of clause 18.1(c) or any other claims for direct financial loss that are not excluded by any of categories (i) to (vi) inclusive of this clause 18.1(a);

- (b) the Customer agrees that, in entering into this agreement, either it did not rely on any representations (whether written or oral) of any kind or of any person other than those expressly set out in this agreement or (if it did rely on any representations, whether written or oral, not expressly set out in this agreement) that it shall have no remedy in respect of such representations and (in either case) PointWire shall not in any circumstances have any liability otherwise than in accordance with the express terms of this agreement; and
- (c) the total liability of PointWire, whether in contract, tort (including negligence) or otherwise and whether in connection with this agreement or any collateral contract, shall in no circumstances exceed a sum equal to the less of one hundred percent (100%) of the Charges payable by the Customer in the Contract Year in which the liability arises and one million pounds (£1,000,000)..

- 18.2 The exclusions in clause 17.4 and clause 18.1 shall apply to the fullest extent permissible at law but PointWire does not exclude liability for:
- (a) death or personal injury caused by the negligence of PointWire, its officers, employees, contractors or agents;
 - (b) fraud or fraudulent misrepresentation;
 - (c) breach of the obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 Supply of the Goods and Services Act 1982; or
 - (d) any other liability which cannot be excluded by law.
- 18.3 The Customer acknowledges that:
- (a) it is exclusively responsible for:
 - (i) reviewing any new Modifications in accordance with clause 2;
 - (ii) ensuring that the staff of the Customer and its Affiliates are trained in the proper use and operation of the Software;
 - (iii) ensuring the security, completeness and accuracy of all inputs and outputs and compliance with the Cybersecurity Requirements;
 - (iv) making regular backup copies of its data to ensure recovery of its data if the Software malfunctions; and
 - (v) the selection, use of and results obtained from any other programs, equipment, materials or services used in conjunction with the Software;
 - (b) the level of the Charges reflects the allocation of risk between the parties set out in clause 17 and clause 18; and
 - (c) it is in a better position than PointWire to assess and manage its risk in relation to use of the Software.
- 18.4 All dates supplied by PointWire for the delivery of the Modifications or the provision of Services shall be treated as approximate only. PointWire shall not in any circumstances be liable for any loss or damage arising from any delay in delivery beyond such approximate dates.
- 18.5 All references to PointWire in this clause 18 shall, for the purposes of this clause only, be treated as including all employees, subcontractors of PointWire and its Associates, all of whom shall have the benefit of the exclusions and limitations of liability set out in this clause, in accordance with clause 29.
- 18.6 The Customer shall comply with the Third-Party Licences and shall indemnify PointWire against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and

legal and other reasonable professional costs and expenses) suffered or incurred by PointWire arising out of or in connection with the Customer's breach of the terms of any such Third-Party Licences.

- 18.7 PointWire may treat the Customer's breach of any Third-Party Licence as a breach of this agreement.

19. Assignment and subcontracting

- 19.1 The Customer shall not assign, novate, charge, subcontract or deal in any other manner with any or all of its rights and obligations under this agreement without the prior written consent of PointWire (such consent not to be unreasonably withheld or delayed).
- 19.2 PointWire may at any time assign, novate, charge, subcontract or deal in any other manner with any or all of its rights and obligations under this agreement, provided it gives written notice to the Customer.
- 19.3 Each party confirms it is acting on its own behalf and not for the benefit of any other person.
- 19.4 Notwithstanding clause 14, a party assigning any or all of its rights under this agreement may disclose to a proposed assignee any information in its possession that relates to this agreement or its subject matter, the negotiations relating to it and the other party which is reasonably necessary to disclose for the purposes of the proposed assignment, provided that no disclosure pursuant to this clause 19.4 shall be made until notice of the identity of the proposed assignee has been given to the other party.

20. Duration

Supply of the Services by PointWire to the Customer shall commence on the date of this agreement and, subject to termination in accordance with the provisions of this agreement, shall continue for a fixed term of 12 months. After expiry of the fixed term, the supply of the Services shall (subject to any such termination) continue under this agreement from year to year until terminated by either PointWire or the Customer on 90 days' prior written notice to the other to expire at the end of the current Contract Year of the term.

21. Termination

- 21.1 Without prejudice to any rights that have accrued under this agreement or any of its rights or remedies, either party may at any time terminate this agreement and/or the Support Services with immediate effect by giving written notice to the other party if:

- (a) the other party fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;
- (b) the other party commits a material breach of any term of this agreement (other than failure to pay any amounts due under this agreement) and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
- (c) the other party repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;
- (d) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- (e) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (f) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (g) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party;
- (h) the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
- (i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- (j) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- (k) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 21.1(d) to clause 21.1(j) (inclusive);

- (l) the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business;
- (m) any warranty given in clause 17 is found to be untrue or misleading; or
- (n) the Licence and/or the Third Party Licence is terminated.

21.2 Either party may terminate this agreement in accordance with clause 31.

21.3 PointWire may, without prejudice to its other rights or remedies, terminate this agreement immediately by notice to the Customer if the Customer:

- (a) undergoes a change of Control;
- (b) sells all of its assets or is merged or re-organised in circumstances where it is not the surviving entity; or
- (c) disputes the ownership or validity of PointWire's Intellectual Property Rights.

21.4 This agreement shall automatically terminate on termination or expiry of the Licence, but expiry or any termination of this agreement (however caused) shall have no effect on the rights granted under the Licence.

22. Effect of termination

22.1 Other than as set out in this agreement, neither party shall have any further obligation to the other under this agreement after its termination.

22.2 Any provision of this agreement which expressly or by implication is intended to come into or continue in force on or after termination of this agreement, including clause 1, clause 9, clause 14 to clause 16 and clause 18, shall remain in full force and effect.

22.3 Termination of this agreement, for any reason, shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination.

22.4 Notwithstanding its obligations in this clause 22, if a party is required by any law, regulation, or government or regulatory body to retain any documents or materials containing the other party's Confidential Information, it shall notify the other party in writing of such retention, giving details of the documents and/or materials that it must retain.

22.5 On termination of this agreement for any reason, the Customer's right to receive the Services shall cease automatically and each party shall as soon as reasonably practicable:

- (a) return, destroy or permanently delete (as directed in writing by the other party and in accordance with clause 15.4(g)) any documents, handbooks, CD-ROMs

or DVDs or other information or data provided to it by the other party containing, reflecting, incorporating or based on Confidential Information belonging to the other party. If required by the other party, it shall provide written evidence no later than 14 days after termination of this agreement that these have been destroyed and that it has not retained any copies of them (except for one copy that it may use for audit purposes only and subject to the confidentiality obligations in clause 14), provided that the Customer may retain copies of any PointWire Confidential Information incorporated into the Software;

- (b) return all of the other party's equipment and materials, failing which, the other party may enter the relevant premises and take possession of them. Until these are returned or repossessed, the party in possession shall be solely responsible for their safe-keeping,

and any electronic data shall be considered deleted, for the purposes of this clause 22.5 and clause 15.4(f), where it has been put beyond use by the deleting party.

22.6 On termination of this agreement for any reason, PointWire shall:

- (a) promptly refund such portion of the Charges as relates to the period after expiry or termination on a pro rata basis;
- (b) as soon as reasonably practicable, vacate the Customer's premises leaving them clean and tidy and removing any goods, materials or equipment belonging to it. Any goods, materials or equipment that have not been removed after 30 days after termination of this agreement may be disposed of by the Customer as it thinks fit.

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

23. Waiver

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

24. Remedies

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

25. Entire Agreement

- 25.1 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 25.2 Each party acknowledges that in entering into this agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement.
- 25.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

26. Variation

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

27. Severance

- 27.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.
- 27.2 If any provision or part-provision of this agreement is deemed deleted under clause 27.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

28. Counterparts

- 28.1 This agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.
- 28.2 Transmission of an executed counterpart of this agreement (but for the avoidance of doubt not just a signature page) by (a) fax or (b) e-mail (in PDF, JPEG or other agreed

format) shall take effect as delivery of an executed counterpart of this agreement. If either method of delivery is adopted, without prejudice to the validity of the agreement thus made, each party shall provide the others with the original of such counterpart as soon as reasonably possible thereafter.

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

29. Third-party rights

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

30. No partnership or agency

- 30.1 Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, nor authorise any party to make or enter into any commitments for or on behalf of any other party.
- 30.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

31. Force majeure

- 31.1 Neither party shall be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed. If the period of delay or non-performance continues for 12 weeks the party not affected may terminate this agreement by giving 30 days' written notice to the affected party.
- 31.2 If termination occurs under clause 31.1, all sums paid to PointWire by the Customer under this agreement shall be refunded to the Customer, except that PointWire shall be entitled to payment on a *quantum meruit* basis for all work done before termination, provided that PointWire takes all reasonable steps to mitigate the amount due.

32. Notices

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

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

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

- (a) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
- (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service.
- (c) if sent by email, at 9.00 am on the next Business Day after transmission.

32.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

33. Dispute resolution

33.1 It is the intention of the parties to settle amicably by negotiation all disagreements and differences of opinion on matters of procedure and management arising out of this agreement. Accordingly, it is agreed that the procedure set out in this clause 33 shall be followed before the serving of written notice terminating this agreement, or in relation to any matter of dispute between the parties concerning procedure or management.

33.2 If any disagreement or difference of opinion arises out of this agreement, the matter shall be disposed of as follows:

- (a) the Manager and the Support Manager shall meet to attempt resolution. Should they not meet within 14 days of the date on which either party convenes a meeting to resolve the matter, or should they not be able to resolve the matter within 14 days of first meeting; then
- (b) the matter shall promptly be referred by either party to the chief executive officer of the Customer and a director of PointWire for immediate resolution.

33.3 If, within 14 days of the matter first having been referred to the individuals in clause 33.2 no agreement has been reached as to the matter in dispute, the dispute resolution process set out in this clause 33 shall be deemed to have been exhausted in respect of the matter in dispute, and each party shall be free to pursue the rights granted to it by this agreement in respect of such matter without further reference to the dispute resolution process.

33.4 For the avoidance of doubt, this clause 33 shall not prevent either party from seeking injunctive relief in the case of any breach or threatened breach by the other of any obligation of confidentiality or any infringement by the other of the first-named party's Intellectual Property Rights.

34. Governing law

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

35. Jurisdiction

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

This agreement has been entered into on the date stated at the beginning of it.

Schedule 1 Supported Software

Schedule 2 Advisory Service

Part 1 Description

Part 2 Charges

Part 3 Service Levels

Part 4 Charges for New Versions

Schedule 3 Lite Touch Service

Part 1 Description

Part 2 Charges

Part 3 Service Levels

Schedule 4 Fully Managed

Part 1 Description

Part 2 Charges

Part 3 Service Levels

Schedule 5 Optional Services

Part 1 Description

Part 2 Charges

Schedule 6 Hosted Platform Services

Part 1 Description

Part 2 Charges

Part 3 Service Levels

Schedule 7 Licence

Signed by

for and on behalf of

POINTWIRE LIMITED

.....

Director

Signed by [NAME OF
DIRECTOR] for and on
behalf of [NAME OF
CUSTOMER]

.....

Director