

Terms and Conditions for Software Delivery on Cloud Services

1. PARTIES

These Terms and Conditions govern the buyer's access and use of the software as described below as WPC Software Ltd (The Licensor) and the customer (The Licensee). Specific Terms and Conditions for the hosting service is outlined on the Digital Marketplace.

2. DEFINITIONS

- I. 'Documentation' shall mean the manuals and other documents associated with the Program supplied by the Licensor to the Licensee.
- II. 'Equipment' shall mean the hardware and operating software as described in Appendix 1 and situated at the location or locations identified in Appendix 1.
- III. 'Licence' shall mean this document with its appendices.
- IV. 'Licensee' shall be defined in Appendix 1.
- V. 'Licensor' shall be defined in Appendix 1 and shall include the Licensor's legal personal representatives, successors and assigns.
- VI. 'Program' or 'Software' shall mean the computer program or programs specified in Appendix 1, and shall include any replacements, modifications or additions supplied under this Licence.
- VII. 'Proposal' or 'Tender' shall refer to the latest document produced by the Licensor specifying a solution and including a Quotation.
- VIII. "Quotation" shall be defined as the latest document produced by the Licensor precisely specifying a price to be paid for any hardware, software, service(s) or combination thereof.

3. LICENCE

The Licensor hereby grants to the Licensee a non-exclusive, non-transferable licence to use the Program in the cloud on the terms and conditions contained herein and for the period specified in clause 8 of Appendix 1 from the date of acceptance.

4. CHARGES

The licence and support charges are set out in the Appendices. Once-only licence charges shall not be subject to variation.

5. TERMS OF PAYMENT

- 5.1. Following acceptance under Clause 7, the Licensor shall be entitled to claim payment of those charges specified in the Appendices as due on acceptance.
- 5.2. All charges due under the Licence shall be paid by the Licensee either within the period specified in the Appendices from receipt of a correct invoice from the Licensor or by the due date whichever is the later.
- 5.3. The Licensee has the right to withhold payment against any invoice which is not submitted in accordance with the Licence and shall forthwith notify to the Licensor in writing the reasons for withholding payment.

- 5.4. If the payment of any sum due under the Licence shall be delayed by the Licensee other than in accordance with Sub-Clause 5.3, the Licensor shall be entitled to charge interest at the rate specified in Appendix 1 on the amount of the delayed payment for the period of the delay.

6. DELIVERY

Upon successful selection of the programs, configurations, and agreement on the hosting requirements, a contract will be signed by the Licensor and the Licensee. The Licensor and the Licensee will agree a go live date and time. The licensor will grant access to the configured program at the agreed time. The Licensee is responsible for ensuring the access is possible from the client access device.

7. ACCEPTANCE

Acceptance of the Program shall be deemed to take place on delivery of the Program and Documentation in accordance with Clause 6.

8. USE

- 8.1. The Program shall be used only for the Licensee's own data processing and shall not be used to provide a data processing service to any third party whether by way of trade or otherwise.
- 8.2. The Licensee shall follow all reasonable instructions given by the Licensor from time to time with regard to the use of the Program. The Licensee shall permit the Licensor, at all reasonable times, and at the Licensor's expense, to verify that the use of the Program is within the terms of the Licence.

9. DOCUMENTATION

Additional copies of the Documentation such as the Licensee may reasonably require for the normal operation of his business may be printed from the software media supplied.

10. PROGRAM COPYING

The Licensee may make only such copies of the Program as are necessary for his operational use and security. This Licence applies to such copies as it applies to the Program.

11. PERFORMANCE

The Licensor undertakes that, provided it is operated in accordance with the Licensor's instructions, the Program will perform in accordance with the Licensor's published specification and the Documentation existing at the date of delivery. The Licensor does not guarantee that the Program is free of minor errors not materially affecting such performance. The undertaking given in this Clause is in lieu of any condition or warranty express or implied by law as to the quality or fitness for any particular purpose of the Program.

12. SUPPORT

A support service shall be provided as specified in Appendix 2 from the date of acceptance.

13. MODIFYING

The Licensee may not, without the prior written consent of the Licensor, modify the Program or incorporate the Program in programs not provided by the Licensor.

14. OWNERSHIP

- 14.1. Unless otherwise agreed by the Licensor in writing, title, copyright, intellectual property rights and all other proprietary rights in the Program, the Documentation and all parts and copies thereof, including any adaptations or additions to these parts or copies made during the life of the contract, shall remain vested in the Licensor.
- 14.2. The Licensee shall follow all reasonable instructions given by the Licensor from time to time with regard to the use of trade marks owned by the Licensor and other indications of the property and rights of the Licensor.

15. ASSIGNMENT

Neither party shall assign any of its obligations under the Licence without the prior written consent of the other party, which shall not be unreasonably withheld.

16. COPYRIGHT INDEMNITY

- 16.1. The Licensor shall fully indemnify the Licensee against all damages (excluding consequential damages), costs, charges and expenses arising from or incurred by reason of any infringement or alleged infringement in the United Kingdom of copyright in consequence of the authorised use or possession of the Program or Documentation supplied by the Licensor under the Licence, subject to the following:
- (i) the Licensee shall promptly notify the Licensor in writing of any alleged infringement of which he has notice
 - (ii) the Licensee must make no admissions without the Licensor's prior written consent
 - (iii) the Licensee, at the Licensor's request and expense shall allow the Licensor to conduct any negotiations or litigation and/or settle any claim. The Licensee shall give the Licensor all reasonable assistance. The costs incurred or recovered in such negotiations or settled claim shall be for the Licensor's account.
- 16.2. If at any time an allegation of infringement of copyright is made in respect of the Program, or if in the Licensor's reasonable opinion such an allegation is likely to be made, the Licensor may at his own expense modify or replace the Program so as to avoid the infringement, without detracting from overall performance, the Licensor making good to the Licensee any loss of use during modification or replacement.

17. INDEMNITY AND INSURANCE

- 17.1. The Licensor shall indemnify, and keep indemnified the Licensee, against injury (including death) to any persons or loss of or damage to any property (including the Program) which may arise out of the act, default or negligence of the Licensor, his employees or agents, in consequence of the Licensor's obligations under the Licence and against all claims, demands, proceedings, damages, cost, charges and expenses whatsoever in respect thereof or in relation thereto, provided that the Licensor shall not be liable for nor be required to indemnify the Licensee against any compensation or damages for or with respect to injuries or damage to persons or property to the extent that such injuries or damage result from any act, default or negligence on the part of the Licensee, his employees or contractors (not being the Licensor or employed by the Licensor).
- 17.2. The Licensee shall indemnify and keep indemnified the Licensor against injury (including death) to any persons or loss of or damage to any property (including the Program) which may arise out of the act, default or negligence of the Licensee, his employees or agents in consequence of the Licensee's obligations under the Licence and against all claims, demands, proceedings,

damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto, provided that the Licensee shall not be liable for nor be required to indemnify the Licensor against any compensation or damages for or with respect to injuries or damage to persons or property to the extent that such injuries or damage result from any act, default or negligence on the part of the Licensor, his employees or contractors.

- 17.3. Without thereby limiting their responsibilities under Sub-Clause 17.1 and 17.2, each party shall insure with a reputable insurance company against all loss of or damage to property and injury to persons (including death) arising out of or in consequence of his obligations under the Licence and against all actions, claims, demands, costs and expenses in respect thereof, save only as is set out in the exceptions in Sub-Clause 17.4 and Clause 18.
- 17.4. The liability of the parties under Sub-Clause 17.1 or 17.2, as appropriate, shall exclude damage or injury (other than injury including death resulting from negligence) consequent upon design, formula, specification or advice. Except in respect of injury, including death, to a person due to negligence for which no limit applies, the liability of the parties under Sub-Clause 17.1 or 17.2 as appropriate, shall not exceed the sums specified in Appendix 1 in respect of any event or series of connected events.

18. CONSEQUENTIAL LOSS

Save as expressly stated elsewhere in the Licence, the Licensor shall not be liable to the Licensee nor the Licensee to the Licensor for consequential loss or damage including loss of use or of profit or of contracts.

19. TERMINATION

- 19.1. The Licensee may terminate the Licence at any time by giving 30 days prior written notice to the Licensor.
- 19.2. The Licensor may terminate the Licence forthwith on written notice if the Licensee is in breach of the terms of Clause 8 of the Licence and, in the event of a breach capable of being remedied, fails to remedy the breach with 30 days of receipt of notice thereof in writing.
- 19.3. The Licensor may terminate the Licence forthwith on written notice if the Licensee shall become insolvent or bankrupt or makes an arrangement with his creditors or go into liquidation.
- 19.4. This Licence shall be irrevocable in the event that the Licensor shall become insolvent or bankrupt or makes an arrangement with his creditors or goes into liquidation.
- 19.5. Termination of the Licence shall not prejudice any rights of either party which have arisen on or before the date of termination.
- 19.6. The support service specified in Appendix 2 may be terminated by the Licensee if the Licensor is in significant breach of his obligations under Clause 11 and fails to remedy the breach within 30 days of receipt of notice in writing thereof or such longer period as may be reasonable in the circumstances. In this case the Licensor shall repay to the Licensee the proportionate part of any support charge paid in advance, to be calculated by reference to the proportion represented by the unexpired part of the support period in relation to the support period for which payment has been made. In the event that the Licensee can demonstrate that such breach has involved him in additional costs then he shall have the right to recover such costs from Licensor.
- 19.7. The support service specified in Appendix 2 may be terminated at any time at the Licensee's convenience but in such circumstances no refunds shall be due.

20. SOURCE CODING

20.1. All source code is lodged under an ESCROW agreement with TechUK.

21. CONFIDENTIALITY

21.1. The Licensee shall keep confidential the Program and the Documentation or any part thereof and shall not disclose the same to any third party without the prior written consent of the Licensors.

21.2. The Licensors' consent referred to in Sub-Clause 21.1 shall be given to enable the Licensee to disclose (under conditions or confidentiality satisfactory to the Licensors) the Program and/or the Documentation or any part thereof to a third party for the performance of services for the Licensee.

21.3. The Licensors and the Licensee shall keep confidential the Licence and all other information of the other party designated as 'confidential', or which despite the absence of such designation ought reasonably to be treated as confidential, obtained under or in connection with the Licence and shall not divulge the same to any third party without the prior written consent of the other party.

21.4. The provisions of this Clause shall not apply to:

- i) any information in the public domain otherwise than by breach of this Licence
- ii) information in the possession of the receiving party before divulgence as aforesaid
- iii) information obtained from a third party who is free to divulge the same
- iv) information required to be released under the Freedom of Information Act, or similar legislation.

21.5. The Licensors and the Licensee shall divulge confidential information only to those employees who are directly involved in the Licence or use of the Program and shall ensure that such employees are aware of and comply with these obligations as to confidentiality.

21.6. The obligations of both parties as to disclosure and confidentiality shall come into effect on the signing of the Licence and shall continue in force notwithstanding the termination of the Licence.

22. DATA OWNERSHIP

22.1. Title to, and all Intellectual Property Rights in, the data remains the property of the Licensee. However, the Licensee's access to the data is contingent on full payment of fees to the Licensors when due. The Licensee grants the Licensors a licence to use, copy, transmit, store and back-up the Licensee's information & data for the purposes of enabling the Licensee to access and use the services as well as for any other purpose related to provision of services to the Licensee.

22.2. The Licensee is responsible for providing information relating to Freedom of Information Act 2000 requests.

22.1. The Licensors shall (and shall procure that any of its Staff involved in the provision of the Software) comply with any notification requirements under relevant Data Protection legislation (namely GDPR) and both parties will duly observe all obligations under the Data Protection legislation which arise in connection with this Contract.

22.2. Where the Licensors is processing personal information as a data processor for the Licensee (personal data and data processor shall have the meanings as defined under GDPR), the Contractor shall ensure that it has in place appropriate technical and contractual measures to ensure the security of the personal data (and to guard against unauthorised or unlawful

processing of the personal data and against accidental loss or destruction of, or damage to, the personal data), as required under the GDPR, the LED, the Data Protection Act 2018, the Privacy and Electronic Communications (EC Directive) Regulations and any guidance or codes of practice issued by the European Data Protection Board or Information Commissioner from time to time (all as amended, updated or re-enacted from time to time).

23. FORCE MAJEURE

Neither party shall be liable for failure to perform its obligations under the Licence if such failure results from circumstances beyond the party's reasonable control.

24. WAIVER

No delay, neglect, or forbearance on the part of either party in enforcing against the other party any term or condition of the Licence shall either be or be deemed to be a waiver or in any way prejudice any right of that party under the Licence.

25. TRAINING

The Licensor shall provide instruction in the use of the program for the Licensee's personnel as specified in Appendix 1.

26. PUBLICITY

Neither party shall, without the prior written consent of the other (not to be unreasonably withheld), advertise or publicly announce that he is providing these services.

27. LAW

Unless otherwise agreed in writing between the parties, the Licence shall be subject to and construed and interpreted in accordance with English Law and shall be subject to the jurisdiction of the Courts of England.

28. ENTIRE AGREEMENT

This Licence together with the Quotation constitutes the entire agreement between the parties with respect to the subject matter of this Licence. Each of the Parties acknowledges that in entering into this Agreement it does not rely on and will have no remedy in respect of any statement of fact or opinion not recorded in this Agreement (whether negligently or innocently made) except for any representation made fraudulently. No amendment to this Licence shall be valid unless made in writing and signed by both parties to the Licence.

Appendix 1

1. Licensee (Clause 2.iv)

2. Licensor (Clause 2.v)

WPC Software Limited

Apex House, Kingsfield Lane, Longwell Green, Bristol, BS30 6DL

3. Title or Description of Program(s) (Clause 2.vi)

ELVIS-VR – Vehicle Recovery System

4. Equipment (Clause 2.ii)

As defined in the Service Definition.

5. Date of Delivery (Clause 6)

To be agreed with the Project Manager as part of the On Boarding process.

6. Type of Media (Clause 5)

Cloud Software

7. Documentation (Clause 9.1)

Appropriate documentation will be provided; a list will be supplied on request.

8. Period of Licence (Clause 3)

In perpetuity, provided always that a valid Support and Cloud service agreement is in place with the Licensor (see Appendix 2).

This licence is valid for a period of one year from the service commencement date. It may be renewed annually, in which case it will remain valid until the next anniversary of the service commencement date.

9. Licence Charges (Clauses 4 & 5)

See G Cloud Digital Marketplace,

10. Terms of Payment (Clause 5)

- a) Period for payment from receipt of a correct invoice is 30 days.
- b) The rate of interest to be charged by the Licensor to the Licensee in the event of delays in payment shall be 1.5% per month.

11. Training (Clause 24)

As specified in the quotation.

12. Indemnity and Insurance (Clause 17)

The liability of either party to the other under Sub-Clauses 17.1 and 17.2 in respect of any one event or series of connected events shall not exceed £10,000,000.

13. Details of, Procedures for and Commencement Date of Acceptance Tests (Clause 6)

To be agreed

14. Support Charges (Clauses 4 & 5)

As specified on the G Cloud Digital Marketplace.

15. Man Day Rates

The Licensor's current services rates for any additional work undertaken under the main agreement or the Support Services agreement defined in Appendix 2 are available at any time from WPC.

Appendix 2 WPC Software Support Services Agreement

1. Eligibility

This support agreement applies to the software identified in Appendix 1. Support must be purchased at the same time as the software is licensed. Failure to do so may result in the Licensee being required to purchase support for a prior period to be determined by WPC.

2. Fee and Term

Support is supplied and charged on a monthly basis ("the Term"). Support shall commence upon payment of the applicable fee and shall continue until terminated by either party upon a minimum of 30 days notice prior to the end of any given year of the Term.

3. Telesupport

The Licensee shall designate an authorised representative for each full Support location. Telephone requests for assistance must be made by the Licensee's designated authorised representative. Any individual contacting WPC Software for Support must have a working knowledge of the product supported. The standard period of coverage for Support is from 09.00 to 17.00 (UK time), Monday to Friday excluding English Bank Holidays.

4. Support

This includes:

- Telesupport during office hours as specified in Clause 3 (Telesupport).
- Software upgrades, including enhancements and bug fixes with accompanying release notes listing the changes for use by the licensee's staff.
- Documentation.

5. Scope of Support

Enquiries for the current version of the Software will be accepted by WPC during a support Term. For all such enquiries accepted, WPC will, at its discretion, provide one or more of:

- guidance, to facilitate working around or avoiding an identified problem.
- an interim fix.
- a permanent fix in the Software or documentation.
- or where none of the above is appropriate and the system is functioning in accordance with the current Functional Specification, provide the Licensee with one of the following responses:
 - "Problem not reproducible".
 - "user error".
 - "to be considered in future revisions".

6. Fault Reporting

Faults should be reported to WPC by telephone or email. WPC Software will respond to incidents and investigation work will commence in line with the incident priorities set out below. WPC Software will allocate a fault number and undertake to investigate the incident within 4 working hours of the initial report.

We will make best endeavours to respond and fix faults as follows:

	Time to respond	Time to fix
Critical (system unavailable to users)	4 working hours	4 working hours
Major (many users affected but limited impact)	4 working hours	8 working hours
Minor (few users affected with little impact)	8 working hours	2 working days
Cosmetic (no impact on functionality)	2 working days	Next release, or earlier by agreement.

Where faults remain unresolved, WPC Software will provide a weekly report detailing progress.

7. Escalation Procedures

WPC Software has a number of staff trained to provide telephone support and software fault fixes. Should the technical staff be unable to provide a solution to a genuine fault the problem will be escalated to the technical support manager within the SLA target for each priority type.

8. Exclusions

Support to be provided hereunder shall not include:

- Support required by reason of the failure of hardware, firmware or media not supplied by WPC.
- Failure of Software not supplied by WPC.
- Failure of Software caused by fault or negligence of the Licensee.
- Failure of Software caused by operator error.
- Failure of Software caused by unauthorised modification other than by the Licensor.
- Use of non-WPC software which is not itself supported by its supplier's standard/public support arrangements.

WPC Software reserves the right to invoice the Licensee for any site visit or time spent as a result of the causes listed above. Such invoices shall be billed in accordance with WPC's then current service rates for labour and materials.

9. Ownership

All enhancements, patches and so forth are the property of WPC Software and are provided to the Licensee subject to the terms and conditions of the WPC licence for use of the Software.

10. Warranty and Warranty Disclaimer

WPC Software warrants that the support services provided under this agreement shall be of reasonable quality consistent with industry standards. The foregoing warranty is in lieu of all other conditions, representations, or warranties, whether expressed or implied by statute common law or otherwise. Any such conditions, representations or warranties are hereby expressly excluded.

11. Termination

Notwithstanding Clause 2 in this appendix (Fee and Term), WPC Software shall have the right to terminate this Agreement upon the occurrence of the Licensee failing to perform or observe any of its obligations to WPC under this Agreement or any other then current licence agreement with WPC and such failure remains un-remedied ten days after written notice to the Licensee including, but not limited to, the timely payment of any sums due to WPC, or the

appointment of a receiver, liquidator, trustee in bankruptcy or similar officer regarding the Licensee's property.