

1. Commpli Omnichannel Communication (SaaS) Platform

among

Genius Software Solutions Limited

And

“Customer”

Ref: tt/417740



2. Table of Contents

1.	Definitions	1
2.	Interpretation	3
3	Services	4
4	Use of the Services and Applications	4
5	Fees and payment	5
6	Warranties	6
7	Compliance with Applicable Law	7
8	Genius Software Solutions Intellectual Property Rights and indemnity	7
9	Customer Data and indemnity	8
10	Data Protection	9
11	Sub-Contracting	9
12	Confidential Information	10
13	Information security	10
14	PCI-DSS	11
15	Limits on liability	11
16	Force Majeure	12
17	Term and Termination	12
18	Consequences of termination or expiry	12
19	Notices	13
20	Entire agreement	13
21	General	14
22	Governing law and jurisdiction	14
	Schedule 1 - Services	16
	Schedule 2 - Service Level Agreement	18
	Schedule 3 - Fees	23
	Schedule 4 – Data Processing Requirements	26

This agreement is dated [Insert date]

Between:

- 1 Genius Software Solutions Limited a company incorporated in Scotland whose registered number is SC361801 and whose registered office is at 1439 Cumbernauld Road, Glasgow G33 1AN (the "**Genius Software Solutions**"); and
- 2 [insert customer name] a company incorporated in [Scotland][England and Wales][other] whose registered number is [insert company number] and whose registered office is at [insert registered office] (the "**Customer**").

Background

- (A) Genius Software Solutions has developed an Omnichannel Communication (SaaS) platform 'Commpli' and associated applications that it wishes to make available as a service to Customer for use by the Users (as defined below).
- (B) Customer and Users will be able to benefit from the Omnichannel Communication (SaaS) platform 'Commpli' and associated applications by interacting with it remotely through the Internet.
- (C) Genius Software Solutions wishes to provide the Services (defined below) and associated Applications (defined below) and Customer agrees to pay for such Services and associated Applications on the terms of this Agreement.

It is agreed as follows;

1. Definitions

- 1.1 Words shall have the meanings given to them in this Agreement, including without limitation as set out below:

"Applicable Law" means any and all applicable laws, statutes, orders, rules, treaties, decree, regulations, directives, edicts, bye-laws, schemes, warrants, other instruments made under or to be made under any statute, any exercises of the royal prerogative and codes of conduct and regulatory rules or guidelines, whether local, national, international or otherwise existing from time to time, together with any other similar instrument having legal effect in the relevant circumstances;

"Applications" means any software or applications owned by Genius Software Solutions and made available to Customer as part of the Services;

"Business Day" means a day, other than a Saturday, Sunday or public holiday, on which clearing banks are open for non-automated commercial business in the United Kingdom;

"Confidential Information" all information whether technical or commercial know-how (including all specifications, inventions, processes, initiatives, drawings and designs, disclosed in writing, on disc, orally or by inspection of documents or pursuant to discussions between the parties) given by one party to the other or otherwise obtained by one party relating to the other party's business, finance or technology, know-how, Intellectual Property Rights, assets, strategy, products and customers, including information relating to management, financial, marketing, technical and other arrangements or operations of any person, firm, or organisation associated with that party where the information is:

- (a) identified as confidential at the time of disclosure; or
- (b) ought reasonably to be considered confidential given the nature of the information or the circumstances of disclosure;

"Customer Applicable Law" has the meaning set out in clause 7 (Compliance with Applicable Law);

"Customer Data" means all information of whatever form relating to Customer, its clients and or business that is provided or created by Customer in connection with the Services, including any information provided and or generated by Users in connection with their access to and/or use of the Services or Applications;

"Customer Data Claim" has the meaning set out in clause 9 (Customer Data and indemnity);

"Customer Indemnified Party" has the meaning set out in clause 9 (Customer Data and indemnity);

"Data Controller" means data controller as defined in the Data Protection Legislation;

"Data Processor" means data processor as defined in the Data Protection Legislation;

"Data Protection Legislation" means the Data Protection Act 2018 and the Privacy and Electronic Communications (EC Directive) Regulations 2003, as amended from time to time, and all other applicable privacy and data protection laws and regulations, as well as any guidance and/or codes of practice issued from time to time by the Information Commissioner;

"Documentation" means the documents (in whatever media) that accompany the Services or Applications, including all data, reports and specifications;

"Fees" means the fees referred to in clause 5 (Fees and payment) and further set out in Part 3 of the Schedule (Fees);

"Force Majeure" means an event or sequence of events beyond a party's reasonable control (which could not reasonably have been anticipated and avoided by a party) preventing or delaying it from performing its obligations hereunder, including without limitation war, revolution, terrorism, riot or civil commotion, or reasonable precautions against any such; strikes, lock outs or other industrial action, whether of the affected party's own employees or others; blockage or embargo; acts of or restrictions imposed by government or public authority; explosion, fire, corrosion, flood, natural disaster, or adverse weather conditions. Force Majeure does not include, without limitation, inability to pay, mechanical difficulties, shortage or increase of price of raw materials, over-commitment or market or other circumstances which may make the terms of this Agreement unattractive to a party;

"Genius Software Solutions Applicable Law" has the meaning set out in clause 7 (Compliance with Applicable Law);

"Genius Software Solutions IPR Claim" has the meaning set out in clause 8 (Genius Software Solutions Intellectual Property Rights and indemnity);

"Good Industry Practice" means the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector;

"Infringing Data" means Customer Data that breaches the provisions of subclause 9.3;

"Intellectual Property Rights" means any and all copyright, know-how, rights in inventions, patents, know-how, trade secrets, trade marks and trade names, service marks, design rights, rights in get-up, database rights and rights in data, semiconductor chip topography rights, the right to sue for passing off, utility models, domain names and all similar rights and, in each case:

(a) whether registered or not,

- (b) including any applications to protect or register such rights,
- (c) including all renewals and extensions of such rights or applications,
- (d) whether vested, contingent or future and
- (e) wherever existing;

"Insolvency Event" means an event where a party is unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986) or becomes insolvent or an order is made or a resolution passed for the administration, winding-up or dissolution of the other (otherwise than for the purposes of a solvent amalgamation or reconstruction) or an administrative or other receiver, manager, liquidator, administrator, trustee or similar officer is appointed over all or any substantial part of the assets of the other or the other enters into or proposes any composition or arrangement with its creditors generally or any analogous event occurs in any applicable jurisdiction;

"Losses" means all incurred losses, liabilities, damages, costs, claims, demands, actions, proceedings, orders and expenses (including legal fees on a solicitor/client basis) and disbursements and costs of investigation, litigation, settlement, judgment interest and penalties;

"PCI-DSS" means the Payment Card Industry Data Security Standard;

"Personal Data" means personal data as defined in the Data Protection Legislation and shall include, where applicable, personal data contained within the Customer Data;

"Schedule" means the schedule in three Parts referred to as annexed to this Agreement;

"Services" means the Omnichannel Communications (SaaS) platform 'Commpli' and telephony services and associated use of the Applications provided remotely to Customer and Users on a subscription basis in accordance with the terms of this Agreement, and as further set out in the Documentation and Part 1 of the Schedule (Services);

"Service Classifications" means the standards to which the Services (or any part of them) are to be provided as set out in Part 2 of the Schedule (Service Classifications);

"User(s)" means the individual employees of the Customer that are authorised by the Customer to use the Services the Applications and the Documentation in accordance with this Agreement; and

"VAT" means United Kingdom value added tax and any other tax imposed in substitution for it and any equivalent or similar tax imposed outside the United Kingdom.

2. Interpretation

In this Agreement, unless the context otherwise requires:

- 2.1.2 the singular includes the plural and vice versa;
- 2.1.3 references to subclauses, clauses or Schedules (if any) are to subclauses, clauses or Schedules of this Agreement;
- 2.1.4 references to persons include individuals, trusts, partnerships, unincorporated bodies, government entities, companies and/or corporations (in each case whether or not having separate legal personality);
- 2.1.5 references to including and include(s) shall be deemed to mean respectively including without limitation and include(s) without limitation;

- 2.1.6 in the event and to the extent only of any conflict between the clauses and the Schedules, the clauses shall prevail;
- 2.1.7 clause and schedule headings do not affect the interpretation of this Agreement; and
- 2.1.8 a reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

3 Services

- 3.1 In consideration of the mutual undertakings agreed under this Agreement, Genius Software Solutions shall:
 - 3.1.1 provide the Services to Customer with effect from the Commencement Date in accordance with this Agreement;
 - 3.1.2 comply with the requirements of Part 1 of the Schedule (Services) in performing its obligations under this Agreement;
 - 3.1.3 provide the Services to a standard that meets the Service Classifications; and
 - 3.1.4 ensure that the Services are provided with the skill and care to be reasonably expected of a service Genius Software Solutions which is a leader in the field of providing services similar to the Services, including in accordance with Good Industry Practice and with Genius Software Solutions's own established internal procedures.

4 Use of the Services and Applications

- 4.1 Genius Software Solutions hereby grants a non-transferable, non-exclusive licence for the term of this Agreement to Customer (including the right to sub-licence the Users) to use the Applications and Documentation to the extent necessary to receive the benefit of the Services.
- 4.2 Prior to providing Users with access to the Services, Applications or Documentation, Customer shall ensure that all Users are aware of the terms of this Agreement, including their obligation to comply with any other user terms applicable to the Services, Applications or Documentation provided or made available to Customer. Customer shall only provide Users with access to the Services via the access method provided by Genius Software Solutions and shall not provide access to anyone other than a User.
- 4.3 Customer shall ensure that in connection with the receipt of the Services, Applications or Documentation by itself and on behalf of the Users it shall comply, and shall procure that the Users comply, with the following conditions of use:
 - 4.3.1 the Services Documentation and/or Applications may only be used in connection with Customer's own internal business purposes; and
 - 4.3.2 the Services and/or Applications may only be used in connection with the compatible Internet browsers specified in the technical specification provided by Genius to Customer prior to the date of this Agreement which list of compatible browsers may be amended on notice to Customer by Genius from time to time.
- 4.4 Except to the extent such activities are expressly agreed by the parties to this Agreement:
 - 4.4.1 Customer's rights to use the Services and/or Applications does not permit it, or Users, to copy, cut and paste, email, reproduce, publish, distribute, redistribute, broadcast, transmit, modify, adapt, edit, abstract, create derivative works of, store,

archive, publicly display, sell or in any way commercially exploit any part of the Services and/or Applications;

- 4.4.2 Customer's rights to benefit from the Services and/or Applications does not permit it to combine, merge or otherwise permit the Services or Applications (or any part of them) to become incorporated in any other program, nor arrange or create derivative works based on it;
 - 4.4.3 Customer's rights to benefit from the Services and/or Applications does not permit it to attempt to decompile (as defined in section 50B of the Copyright, Designs and Patents Act 1988) the underlying software (or any part of it) that is used to provide the Services and/or Applications, except and only to the extent that such restriction is prohibited pursuant to section 50B of the Copyright, Designs and Patents Act 1988; and
 - 4.4.4 Customer's rights to benefit from the Services and/or Applications does not permit it to observe, study or test the functioning of the underlying software (or any part of it) that is used to provide the Services and/or Applications, except and only to the extent that such restriction is prohibited pursuant to section 50B of the Copyright, Designs and Patents Act 1988.
- 4.5 Customer warrants that it shall, and ensure that Users shall, keep confidential and, except as provided for in this Agreement, not share with any third party any 'PIN', 'ID' or similar password (if applicable) that it is provided with to facilitate Users' access to the Services and/or Applications. Customer shall keep up-to-date records of any such passwords issued to Users and the names of Users. Customer shall promptly notify Genius Software Solutions of the addition of any new Users and the removal of any Users from access to the Services and Applications. Customer agrees that it shall be responsible for disabling the access to the Services and Applications by former Users which it shall promptly carry out upon any individual ceasing to be a User.
- 4.6 Customer shall, and shall procure that the Users shall, use due care and diligence to avoid introducing any software virus or other contaminant (including any bugs, worms, logic bombs, trojan horses or any other self propagating or other such program) that may infect or cause damage to the Services, Applications or Genius Software Solutions's systems or otherwise disrupt the provision of the Services.
- 4.7 Where Customer is permitted in accordance with this Agreement to allow a third party to benefit from the Services and/or Applications, Customer shall ensure that all such use:
- 4.7.1 does not exceed Customer's permitted use;
 - 4.7.2 is controlled by Customer; and
 - 4.7.3 is otherwise subject to and in accordance with the terms of this Agreement.
- 4.8 Genius Software Solutions reserves the right to monitor usage by all Users (in terms of audits) during the term of this Agreement for the purpose of (among others) ensuring compliance with the terms of this Agreement. Any such audit may be carried out by Genius Software Solutions or a third party authorised by Genius Software Solutions. If any audit reveals that any password has been provided to an individual that is not a User, Customer shall, without delay, disable any such passwords and notify Genius Software Solutions immediately.
- 4.9 In case of unauthorised use of the Services by Customer or a User, Genius Software Solutions reserves the right to deny access to the Services and/or Applications to Customer or any User by blocking without prior notification the IP address(es) of Customer or Users used to access the Services and/or Applications.

5 Fees and payment

- 5.1 Customer shall pay Genius Software Solutions the Fees in connection with the receipt of the Services and/or use of the Applications.
- 5.2 All amounts due under this Agreement are exclusive of VAT, sales or other tax applicable which shall be paid in addition by Customer at the rate and in the manner for the time being prescribed by law.
- 5.3 The parties acknowledge and agree that:
- 5.3.1 the Late Payment of Commercial Debts (Interest) Act 1998 applies to this Agreement;
 - 5.3.2 statutory interest applies to each qualifying debt, being each debt constituted by an obligation to pay the price for goods/services pursuant to this Agreement; and
 - 5.3.3 for the purposes of section 4 of Late Payment of Commercial Debts (Interest) Act 1998, interest runs on a qualifying debt from the day after the due date for payment as specified by this Agreement.

6 Warranties

- 6.1 Each of the parties warrants to the other that it has full power and authority to enter into and perform its obligations under this Agreement.
- 6.2 Genius Software Solutions warrants and represents to Customer that:
- 6.2.1 Genius Software Solutions has the right, power and authority to grant to Customer the rights (if any) contemplated herein and supply the Services and/or license the Applications;
 - 6.2.2 the Documentation will provide users with adequate instructions to enable them to effectively use the Services and/or Applications; and
 - 6.2.3 the receipt of the Services or the use of the Applications or Documentation does not infringe the Intellectual Property Rights of any third party.
- 6.3 The warranties and representations specified in subclause 6.2 are subject to Customer giving notice to Genius Software Solutions as soon as it is reasonably practicable to do so and in any event within 14 days of becoming aware of the breach of warranty or representation. When notifying Genius Software Solutions of a breach Customer shall use its reasonable endeavours to provide Genius Software Solutions with such documented information, details and assistance as Genius Software Solutions may reasonably request.
- 6.4 Upon notification in writing Genius Software Solutions undertakes to use all reasonable endeavours to remedy any fault arising from a breach of subclause 6.2 within 90 days after notification. If Genius Software Solutions rectifies such fault within such time then it will have no other liability of any kind in respect of the fault. Such remedy shall be free of charge to Customer unless the fault is found not to arise from a breach of subclause 6.2, at which point Customer shall pay all reasonable and demonstrable costs and expenses associated with the fault incurred by Genius Software Solutions.
- 6.5 Customer acknowledges and agrees that:
- 6.5.1 Genius Software Solutions is not and cannot be aware of the extent of any potential Losses resulting from any failure by Genius Software Solutions to discharge its obligations under this Agreement;
 - 6.5.2 the Services and/or Applications have not been prepared to meet Customer's individual requirements and that they cannot be tested in every operating

environment so as to produce software which is error free or operates without interruption; and

6.5.3 it is Customer's responsibility to ensure the facilities and functions of the Services and/or Applications meet Customer's requirements.

6.6 Genius Software Solutions does not warrant or represent that the Services and/or Applications shall be:

6.6.1 uninterrupted or error free; or

6.6.2 interoperable with third party software or equipment.

6.7 Save to the extent set out in this clause 6 (Warranties) or to the extent that any exclusion is prohibited by law, no other representations, warranties or conditions, express or implied, statutory or otherwise (including as to condition, satisfactory quality, performance or fitness for purpose), are given or assumed by Genius Software Solutions in respect of the Services, Applications and/or Documentation and any such representations, warranties or conditions are hereby excluded.

6.8 Any warranties given by Genius Software Solutions shall be subject to Customer using the Services and/or Applications in compliance with this Agreement, and Genius Software Solutions shall not be liable under this clause for, or required to remedy, any problem arising from any defect or error wholly caused by third party software used in connection with the Services and/or Applications.

7 Compliance with Applicable Law

7.1 Genius Software Solutions shall provide the Services in accordance with Applicable Law to the extent that such Applicable Law is general in nature or which affects or relates to a supply of services that are the same or similar to the Services (Genius Software Solutions Applicable Law).

7.2 Customer shall use the Services and/or Applications in accordance with Applicable Law to the extent that such Applicable Law is specific to the business of Customer (Customer Applicable Law). Customer shall be responsible for the costs of any changes to the Services required following any change in any Customer Applicable Law.

8 Genius Software Solutions Intellectual Property Rights and indemnity

8.1 All Intellectual Property Rights in and to the Services, Applications and Documentation shall vest and remain vested in Genius Software Solutions. To the extent that Customer acquires any Intellectual Property Rights in the Services, Applications and/or Documentation, Customer shall assign or procure the assignment of all rights title and interest in such Intellectual Property Rights (including by way of present assignment of future Intellectual Property Rights) to Genius Software Solutions. Customer shall execute all such documents and do such things as Genius Software Solutions may consider necessary to give effect to this clause.

8.2 Genius Software Solutions shall indemnify, and keep Customer, indemnified at all times from and against any and all Losses, which are suffered by, and defend, and hold harmless against any Losses which are brought or threatened against, the Customer, in respect of the use of the Services and/or Applications or possession of the Documentation infringing the Intellectual Property Rights of any third party (Genius Software Solutions IPR Claim), provided that Genius Software Solutions shall have no such liability if Customer:

8.2.1 does not notify Genius Software Solutions in writing setting out full details of any Genius Software Solutions IPR Claim of which it has notice as soon as is reasonably possible;

- 8.2.2 makes any admission of liability or agrees any settlement or compromise of the relevant Genius Software Solutions IPR Claim without the prior written consent of Genius Software Solutions (which shall not be unreasonably withheld or delayed);
 - 8.2.3 does not let Genius Software Solutions at its request and own expense have the conduct of or settle all negotiations and litigation arising from the relevant Genius Software Solutions IPR Claim; or
 - 8.2.4 does not, at Genius Software Solutions's request and own expense, give Genius Software Solutions all reasonable assistance in the circumstances described above.
- 8.3 If any Genius Software Solutions IPR Claim is made or is reasonably likely to be made against Customer, Genius Software Solutions shall promptly and at its own expense either:
- 8.3.1 procure for Customer the right to continue using the Services and/or Applications or possess the Documentation; or
 - 8.3.2 modify or replace the infringing part of the Services, Applications and/or Documentation and without adversely affecting the functionality of the Services as set out in this Agreement so as to avoid the infringement or alleged infringement, provided that if Genius Software Solutions having used its reasonable endeavours, neither of the above can be accomplished on reasonable terms, Genius Software Solutions shall (without prejudice to the indemnity above) refund the Fees paid by Customer in respect of the Services and/or Applications. Apart from the indemnity given by Genius Software Solutions above, this shall be Customer's sole and exclusive remedy in respect of the Services infringing Intellectual Property Rights.

9 Customer Data and indemnity

- 9.1 Customer hereby grants (and shall procure the grant of) a royalty-free, non-transferable (save to the extent set out in this clause 9), non-exclusive licence for the term of this Agreement to Genius Software Solutions (together with a right for Genius Software Solutions to sub-license the same to and any third party suppliers for use on Genius Software Solutions's behalf) to use the Customer Data to the extent necessary to perform the Services and/or provide access to the Applications.
- 9.2 Customer acknowledges that Genius Software Solutions has no control over any Customer Data hosted as part of the provision of the Services and does not purport to monitor the content of the Customer Data. Customer further acknowledges and agrees that it shall be responsible for all Customer Data created by Users when using the Services and or Applications, including the accuracy of all such Customer Data.
- 9.3 Customer shall not, and shall procure that the Customer Data does not:
- 9.3.1 breach Applicable Law;
 - 9.3.2 infringe any third party Intellectual Property Rights; or
 - 9.3.3 include any material which is obscene, indecent, pornographic, seditious, offensive, defamatory, threatening, liable to incite racial hatred, menacing, blasphemous.
- 9.4 Genius Software Solutions shall notify Customer immediately if it becomes aware of any allegation that any Customer Data may be Infringing Data and Genius Software Solutions shall have the right to remove Customer Data from the Services without the need to consult Customer.
- 9.5 Customer shall indemnify, and keep Genius Software Solutions, officers, directors, employees, agents, successors, and assignees (the Customer Indemnified Party) indemnified at all times from and against any and all Losses, which are suffered by, and defend, and hold harmless against any Losses which are brought or threatened against, Customer Indemnified

Party, in respect of any Infringing Data (Customer Data Claim), provided that Customer shall have no such liability if Genius Software Solutions:

9.5.1 does not notify Customer in writing setting out full details of any Customer Data Claim of which it has notice as soon as is reasonably possible; or

9.5.2 makes any admission of liability or agrees any settlement or compromise of the relevant Customer Data Claim without the prior written consent of Customer (which shall not be unreasonably withheld or delayed).

10 Data Protection

10.1 Each party shall provide the other party with reasonable assistance in complying with its obligations under applicable Data Protection Legislation insofar as necessary to facilitate each party's compliance with each party's obligations in this Agreement.

10.2 The parties acknowledge and agree that Customer shall be the Data Controller in respect of any Personal Data contained within the Customer Data.

10.3 In connection with the provision of the Services, the Data Processor shall:

10.3.1 process the Personal Data belonging to the Data Controller only in accordance with instructions from the Data Controller;

10.3.2 process the Personal Data belonging to the Data Controller only to the extent, and in such manner, as is necessary for the performance of its obligations under this Agreement;

10.3.3 implement appropriate technical and organisational measures to protect the Personal Data belonging to the Data Controller against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected; and

10.3.4 not process or otherwise transfer any Personal Data belonging to the Data Controller outside the European Economic Area without the consent of Customer.

10.3.5 assist the Data Controller by appropriate technical, organisational or other measures as may be required by the Data Controller for the fulfilment of the Data Controller's obligation to respond to requests for exercising a Data Subject's rights as detailed in Chapter III of the GDPR (or other prevailing Data Protection Legislation); and

10.3.6 maintain complete and accurate records and information to demonstrate its compliance with this agreement and allow for audits and / or inspections by the Data Controller or the Data Controller's designated auditor or inspector for such same purpose.

11 Sub-Contracting

11.1 The Processor shall not sub-contract any of its rights or obligations under this Agreement without the prior written consent of the Controller.

11.2 Where the Processor, with the consent of the Controller, sub-contracts its obligations under this agreement it shall do so only by way of a written agreement with the Sub-Contractor which imposes the same obligations in relation to the security of the processing on the Sub-Contractor as are imposed on the Processor under this Agreement.

- 11.3 For the avoidance of doubt, where the Sub-Contractor fails to fulfil its obligations under any subprocessing agreement, the Processor shall remain fully liable to the Controller for the fulfilment of its obligations under this Agreement

12 **Confidential Information**

- 12.1 Each party shall maintain the confidentiality of the other party's Confidential Information and shall not without the prior written consent of the other use, disclose, copy or modify the other party's Confidential Information (or permit others to do so) other than as necessary for the performance of its rights and obligations under this Agreement.

- 12.2 Each party undertakes to:

12.2.1 disclose the other party's Confidential Information only to those of its officers, employees, agents, professional advisers and contractors (including Genius Software Solutions personnel) to whom and to the extent to which such disclosure is necessary for the purposes contemplated under this Agreement; and

12.2.2 to procure that such persons are made aware of and agree in writing to observe the obligations in this clause.

- 12.3 Each party shall give notice to the other of any unauthorised misuse, disclosure, theft or loss of the other party's Confidential Information immediately upon becoming aware of the same.

- 12.4 The provisions of this clause shall not apply to information which:

12.4.1 is or comes into the public domain through no fault of the recipient, its officers, employees, agents or contractors;

12.4.2 is lawfully received by the recipient from a third party free of any obligation of confidence at the time of its disclosure;

12.4.3 is independently developed by the recipient, without access to or use of such information; or

12.4.4 is required by law, by court or governmental or regulatory order to be disclosed provided that the relevant party, where possible, notifies the other party at the earliest opportunity before making any disclosure.

- 12.5 The obligations under this clause shall survive the variation, expiry or termination of this Agreement for a period of five years thereafter.

13 **Information security**

- 13.1 Genius Software Solutions shall be responsible for taking reasonable and prudent measures in accordance with ISO27001 to safeguard the security of the Customer Data in its possession, including maintaining appropriate firewalls, encryption and anti-virus protection, as set out in Part 1 of the Schedule (Services).

- 13.2 Genius Software Solutions shall notify Customer as soon as possible upon discovery of any data security incident impacting the Customer Data.

- 13.3 Genius Software Solutions shall not be responsible for any loss or damage to Customer Data to the extent that such loss or damage was caused by Customer or a third party (other than a Genius Software Solutions subcontractor or representative).

14 **PCI-DSS**

14.1 Genius Software Solutions confirms that it is a PCI DSS Third Party Service Provider and agrees to maintain compliance to the Payment Card Industry Data Security Standard for the duration of the Contract Term. Whilst doing so, the Supplier shall:

- 14.1.1 Provide a valid Attestation of Compliance for the payments related Services being provided to the Customer;
- 14.1.2 Take responsibility for the security of the Customers payment card account data whilst within the Suppliers control;
- 14.1.3 Provide documentation showing which PCI DSS Requirements that the Provider is responsible for, which the Customer is responsible for, and which are shared; and
- 14.1.4 Provide full and unredacted copies of scans as required by the PCI DSS when reasonable requested to do so.

15 **Limits on liability**

15.1 Subject to subclause 13.3, in no event shall the aggregate liability of any party to the other party (or any Users), including liability for breach of contract (including under any indemnity), misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty, warranty, strict liability or any other legal theory howsoever arising, in respect of all Losses arising under this Agreement exceed:

- 15.1.1 £1,000 in respect of any one claim or series of related claims; and
- 15.1.2 £1,000 or the total Fees payable under this Agreement in any rolling 12 month period during the term of this Agreement (whichever is greater) in respect of the maximum aggregate sum of all claims arising under this Agreement.

15.2 Subject to subclause 15.3, under no circumstances shall either party be liable to the other party (or any Users) for any of the following types of loss or damage arising under or in relation to the Agreement (whether arising for breach of contract (including under any indemnity), misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty, warranty, strict liability or any other legal theory howsoever arising):

- 15.2.1 any loss of profits, business, contracts, anticipated savings, goodwill, or revenue, any wasted expenditure, [or any loss or corruption of data] (regardless of whether any of these types of loss or damage are direct, indirect or consequential) ; or
- 15.2.2 any indirect or consequential loss or damage whatsoever,

even if that party was aware of the possibility that such loss or damage might be incurred by the other.

15.3 Notwithstanding the above neither party excludes or limits any liability for:

- 15.3.1 personal injury (including sickness and death) to the extent that such injury results from the negligence or wilful default of a party or its employees;
- 15.3.2 fraud, fraudulent misrepresentation or fraudulent concealment;
- 15.3.3 any breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
- 15.3.4 any other liability to the extent the same cannot be excluded or limited by law.

15.4 Subject always to clause 13.3 but notwithstanding any other provision in this Agreement, Customer acknowledges that Genius shall not be liable for any claim arising under or in the performance of this Agreement if at the time of the relevant claim Customer is in breach of its obligations under this Agreement.

15.5 The parties agree that the limitations on liability in this Agreement are reasonable given their respective commercial positions and ability to purchase relevant insurance in respect of risks under this Agreement.

16 **Force Majeure**

16.1 Neither party (the 'claiming party') shall be liable to the other for any delay or failure to perform any of its obligations hereunder to the extent such delay or failure is due to Force Majeure provided that:

16.1.1 the claiming party could not have avoided such circumstances by taking precautions which it ought reasonably to have taken or planned for;

16.1.2 the claiming party has used and continues to use its reasonable endeavours to mitigate the consequences of such an event upon the performance of its obligations under this Agreement and to continue to perform its affected obligations;

16.1.3 the claiming party shall not be excused performance of its obligations unaffected by Force Majeure; and

16.1.4 the claiming party shall resume performance of its obligations affected by Force Majeure as soon as reasonably practicable.

16.2 The claiming party shall promptly give written notice forthwith to the other upon becoming aware of Force Majeure, which notice shall contain details of the circumstances giving rise to Force Majeure and its anticipated duration.

16.3 If, due to Force Majeure, a party is unable to perform a material obligation, or is delayed in or prevented from performing its obligations for a continuous period of more than 90 days, the other party may, within a further 10 days terminate this Agreement on notice, otherwise this Agreement shall continue in full force and effect.

17 **Term and Termination**

17.1 This Agreement shall commence on the Commencement Date and shall (subject to earlier termination pursuant to this clause 17) continue for an initial period of 12 months. It shall thereafter continue automatically until terminated in accordance with the terms of this Agreement.

17.2 Either party shall have the right to terminate this Agreement without liability to the other party on the provision of six months written notice to the other party.

17.3 Either party may, without prejudice to its other rights and remedies, by notice in writing to the other party immediately terminate this Agreement if the other:

17.3.1 is in material or persistent breach of any of its obligations under this Agreement and if that breach is capable of remedy and the other has failed to remedy that breach within 30 days after receiving written notice requiring it to remedy that breach; or

17.3.2 is the subject of an Insolvency Event.

18 **Consequences of termination or expiry**

18.1 In the event of termination of this Agreement for any reason:

- 18.1.1 Customer shall immediately pay all sums due to Genius in full;
- 18.1.2 the right to access the Services, Applications and/or Documentation provided under this Agreement shall terminate immediately;
- 18.1.3 Customer shall within fourteen days return or destroy (at Genius Software Solutions's option) all Provider's Confidential Information and Documentation in its possession or under its control and all copies of such information;
- 18.1.4 Genius Software Solutions shall within fourteen days of receipt of payment of all sums due to it in accordance with this Agreement, return or destroy (at Customer's option) all Customer's Confidential Information, Customer Data and Documentation in its possession or under its control and all copies of such information; and
- 18.1.5 all provisions of this Agreement shall cease to have effect, except that any provision which can reasonably be inferred as continuing or is expressly stated to continue shall continue in full force and effect.

19 Notices

- 19.1 Any notice or other communication given to a party under or in connection with the Agreement (a 'Notice') shall be in writing addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause.
- 19.2 A Notice shall be deemed to have been received:
 - 19.2.1 if delivered personally: when left at the address referred to in subclause 19.1;
 - 19.2.2 by first-class post: two Business Days after posting;
 - 19.2.3 by airmail: seven Business Days after posting;
 - 19.2.4 by hand: on delivery;
 - 19.2.5 by e-mail: on receipt of a read return mail from the correct address within 24 hours from delivery if no notice of delivery failure is received.
- 19.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

20 Entire agreement

- 20.1 This Agreement constitutes the entire agreement between the parties in relation to its subject matter and replaces and extinguishes all prior agreements, draft agreements, arrangements, undertakings, or collateral contracts of any nature made by the parties, whether oral or written, in relation to that subject matter.
- 20.2 Each party acknowledges that in entering into this Agreement it has not relied upon any oral or written statements, collateral or other warranties, assurances, undertakings or representations which were made by or on behalf of the other party in relation to the subject-matter of this Agreement at any time before its signature, other than those which are set out expressly in this Agreement.
- 20.3 Each party hereby waives all rights and remedies which might otherwise be available to it in relation to any statements or other representations made under subclause 20.2, but for clause 20.4.

20.4 Nothing in this clause shall exclude or restrict the liability of either party arising out of its pre-contract fraudulent misrepresentation or fraudulent concealment.

21 **General**

21.1 Any variation to the Agreement, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by an authorised signatory of each party.

21.2 In respect of any indemnity given by either party under this Agreement, the party which receives the benefit of the indemnity shall take all reasonable steps so as to reduce or mitigate the loss covered by the indemnity.

21.3 Nothing in this Agreement shall (except as expressly provided) be deemed to constitute a partnership, or create a relationship of principal and agent between the parties for any purpose.

21.4 This Agreement is not intended to and does not give any person who is not a party to it any right to enforce any of its provisions.

21.5 No party may assign, novate, transfer, subcontract or encumber any right or obligation under this Agreement, in whole or in part, without the other's prior written consent or except as expressly permitted in this Agreement.

21.6 If any provision (or part of a provision) of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

21.7 A waiver of any right under this Agreement is only effective if it is in writing, and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given. No waiver shall be implied by taking or failing to take any other action.

21.8 Unless specifically provided otherwise, rights arising under this Agreement are cumulative and do not exclude rights provided by law.

21.9 All payments under this Agreement will be made without set-off or counterclaim, free and clear of and without deduction of any taxes, levies, duties, charges and withholdings of any kind now or in future imposed in any jurisdiction.

21.10 The amounts due under this Agreement shall not change except as mutually agreed by the parties.

21.11 Each party will, at its own cost, do all further acts and execute all further documents necessary to give effect to this Agreement.

21.12 Provisions which by their terms or intent are to survive termination of this Agreement will do so.

22 **Governing law and jurisdiction**

22.1 This Agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with the laws of Scotland.

22.2 The parties irrevocably agree that the courts of Scotland have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

Agreed by the parties on the date set out at the head of this Agreement

In witness whereof this Agreement consisting of this and the preceding [14] pages and the Schedule hereto are executed as follows;-

Subscribed for and on behalf of Genius Software
Solutions Limited

by

*Authorised Signatory/Director/Company Secretary
Full Name (Please Print)

at

on

before

Witness
Full Name (Please Print)
Address

*Please delete as applicable

Subscribed by [Insert name of Customer]

at

on

before

Witness
Full Name
Address

This is the Schedule referred to in the foregoing Agreement between Genius Software Solutions Limited and [insert full customer name]

3. Schedule 1 - Services

Services

Omnichannel communication (SaaS) platform

Telephony services

SMS services

Email services

Web chat services

Payment processing

Services description

- Outbound dialling – in preview, progressive (power), predictive modes
- Blended communications – agents can log into an outbound campaign but be members of inbound queues to facilitate blend. The system will automatically reserve agents for inbound or outbound communications based on the volumes of calls.
- Inbound call management, including IVR
- Call Recording – blanket call recording (although optional) is in place with metadata to identify agent, customer and associated (configurable) call data.
- Email – is integrated within the agent applications to automatically send emails based on a button click, data capture, or some other logic. Email campaigns can also be sent via the management tool in bulk.
- SMS – similar to email, is integrated within the agent application and can be sent via the management tool in bulk.
- Web chat – provision of this service is via the Genius API, embedded into the customers web site.
- PCI Compliant Payment Processing – the agent scripser application has a fully compliant payment processing capability, whereby the customer enters all payment details via their telephone keypad however the tones are masked to ensure compliance with PCI (DSS)
- Text to speech engine – can be used for Virtual Agent (Robot) campaigns, or within agent campaigns for automated messages, e.g. voicemails or terms & conditions scripting at the end of a call.
- Call-back Management
- Agent Application
- GDMS (Management Interface) including:
 - Real Time / Historic Management Information and analysis
 - Data management
 - Live agent monitoring

- Access to call recordings, with unlimited storage
- Management of campaign parameters/settings
- User management

Support services

Support services are provided via telephone, email and an online ticketing system:

The operational hours of the support team are:

- Monday to Friday - 0730-2000
- Saturday – 0730-1530
- Sunday – (Client Dependent)

Further support process documentation is provided and may be updated from time to time.

Documentation

GDMS user guide

Agent training documentation

Genius support documentation

4. Schedule 2 - Service Level Agreement

If all invoices have at the relevant time been paid by the Customer when due, a fixed credit will be applied to the monthly fixed price 'Commpli' user invoice in the following month should the level of System availability have fallen below 98% availability in the prior month.

The Supplier shall use all reasonable endeavours to ensure that System downtime does not occur. However, in the event of any unforeseen System downtime, credits will be calculated as documented below.

Any System downtime will be constituted as the platform being completely down, with all agents unable to make and receive calls

It is agreed that 98% and above of the total monthly hours is a reasonable level of System availability (during the agreed hours of availability as set out below) and no financial penalties will be applied for performance in line with this level of service.

In the event that System availability falls below 98% in a month, financial penalties will be applied in line with the calculation below:

Downtime <= 2%:	No Penalty
Downtime > 2% but < 5%:	5% of monthly fixed price 'Commpli' user invoice
Downtime > 5% but < 10%:	10% of monthly fixed price 'Commpli' user invoice

The calculation for downtime will be the total number of downtime hours, divided by the total of all fixed cost agent contracted hours at 162.5 hours per agent per month and the total number of any PAYG agent hours recorded in the applicable period.

The Supplier shall not be liable for System downtime related to attempted access outwith the agreed hours of availability (as set out below). The Supplier shall not be liable where the downtime relates to any local service provision failure which is out of the Supplier's reasonable control e.g. if ever a local internet or power issue prevents access to the System from the Customer site when the System is fully operational at the access point on the Supplier's hosted network, or where The Customer cannot access the System due to an act or omission of the Customer including incidents of downtime not reported to the Supplier, or an event of Force Majeure.

Downtime calculation - Worked Examples:

3000 fixed cost agent hours / 30 hours downtime = 30/3000 = 99% uptime (No penalty)

3000 fixed cost agent hours / 70 hours downtime = 70/3000 = 97.67% uptime (5% penalty applied)

3000 fixed cost agent hours & additional 500 PAYG hours / 40 hours downtime = 40/3500 = 98.85% uptime (No penalty)

3000 fixed cost agent hours & additional 500 PAYG hours / 100 hours downtime = 100/3500 = 97.15% uptime (5% penalty applied)

The total number of downtime hours will be measured from the point at which the Supplier issues a service desk ticket to the Customer and will end at notification of service restoration by the Supplier.

The provision of the support services described in Part 1 of the Schedule shall be measured by reference to the following Service Classifications or such other Service Classifications as Genius and Customer may otherwise agree in writing.

Service Classifications

The provision of the support services described in Part 1 of the Schedule shall be measured by reference to the following Service Classifications or such other Service Classifications as Genius and Customer may otherwise agree in writing.

Priority	Criteria	Examples (not exhaustive)	Response Target	Resolution Target	Escalation 1 To Genius Customer Account Manager	Escalation 2 To Senior Genius Executive
High	Impacting a production environment/ operations	System –can't make calls due to hardware/internet/s oftware fault or login issues (affecting all/most users)	1 hr and updates every 1 hr	The support team will continue to work on the problem until it is resolved or a workaround is provided.	1 business day	2 business days
	Causes a Severe impact on business operations (e.g. critical application functions are unavailable).	Data – cannot import/prioritise data per existing process				
	Continuous or near continuous interruption of service	Call Query – why called/not called (the majority of data being dialled is incorrect)				
	No workaround available <i>(High Priority incidents must be reported or followed up via telephone)</i>	meaning the agents cannot dial				
		Audio Quality issue - affecting all / most users				
		GDMS – system unavailable				
Medium	Impacting production In production environment, causes a minor	Call Query – why called/not called (small proportion of records but several	1 business day	The support team will make reasonable efforts to provide a correction or	3 business days	5 business days

	impact on business operations.	examples) but can continue dialling		workaround within 2-3 business days		
		System/Call Performance query (e.g. query on wait times)				
		New GDMS user request				
		GDMS / MI – data query				
		Agent script / screen problem				
		New Data Import				
		Data Extract – update/change to selection parameters (e.g. date change, new parameters for selection)				
Low	In production environment, causes little or no impact of application functions	Call Query – why called/not called (one or two examples) but no impact to dialling	2 business days	The support team will make reasonable efforts to provide a correction or workaround within 5 business days	5 business days	10 business days
		One off queries on why something happened (non recurring)				
Change Request	A request to make a change to the current setup	New campaign request	2 business days	Each change request will be agreed on a case	5 business days	10 business days

Agent Screen
Changes (e.g.
screen
modification, add
new data capture
requirements, new
outcome button)
New data export
request

Any other
development
request

by case basis,
depending on the
complexity.
For simple, new
campaign requests
the support team
will make
reasonable efforts
to build these
within 5 business
days

5. Schedule 3 - Fees

6. All fees shall be calculated and charged in accordance with this Part 3 of the Schedule.

Option 1 - Unlimited License

Access to our integrated digital channel functionality is included in the agent fee.

Agent access fee is pre-paid monthly usage payable in advance on the 1st of the calendar month on a named per login basis. Users can be increased or decreased on a monthly basis in advance.

Number of system logins (active monthly users)	Cost for unlimited access to the system per month per login
Pricing table as per proposal	
Copy in the pricing here	

Option 2 - Pence per Logged On Minute

Only pay for when an agent has logged on to the system. Access to our integrated digital channel functionality is included in the agent fee.

Number of active users	Pence per logged on minute
All Users	X

Logged on minutes are invoiced in arrears at the end of the calendar month on a per minute basis.

Option 3 - PBX Users (remove if n/a)

Number of extensions	Cost per month
Pricing table as per proposal	
Copy in the pricing here	

PBX fee is pre-paid monthly usage payable in advance on the 1st of the calendar. Users can be increased or decreased on a monthly basis in advance.

Robot Agent Fee:

Robotic agents can be deployed to automate outbound campaigns, handle inbound calls, facilitate data collection and call routing, in the absence of or instead of physical agents. You only pay for the agents when they are “talking” with no minimum or idle/license charge.

Number of active users	Pence per minute talk time
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All Users	£0.03
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7. Call Charges

Each call made will be billed on a per second basis, with no connection charge or minimum call cost using IP telephony, at the following rates:

- £XX.XX per minute to UK landlines
- £XX.XX per minute to UK mobiles.

Any calls which are not made to UK landlines or UK mobiles will be billed to Customer at the applicable network rates.

8. CLI Rental

Calling Line Identity (CLI) rental is available, if required, at £XX.XX per allocated number, per month. This includes the allocation of any available local number in the UK, or non-geographic.

9. Extension / Handset Rental *(remove if n/a)*

Telephone extensions and handsets are available, if required, at £XX.XX per extension/handset per month.

10. SMS

Integrated within the agent application and can be sent via the management tool in bulk, available at the following rates per credit (153 characters): £XX.XX per credit used.

PCI Compliant Payment Processing

11. Fully PCI (DSS) compliant payment capture capability available at the rate of £XX.XX per payment transaction processed across all channels including IVR.
12. Payment processing via Genius's partner is an additional charge of £XX.XX per payment transaction.

13. Payment Terms

Unlimited License

- (i) **Fixed Price Discounted User Fee-** is payable in advance on the 1st of the calendar month for which the desired usage arises; i.e. payable no later than 1st January for usage period January 1st – January 31st. Genius will issue an invoice for this fee at least 14 days prior to the due date of payment and the customer has the period between the invoice being issued and the due date to make any amendments to the user numbers. Retrospective credits will not be issued if notification of usage reduction is not received prior to the 1st of the month that the invoice relates.

- (ii) Each User will have his/her own unique login details which must be used only by them to access the 'Commpli' system. Genius will bill on the basis of the number of Users who log in each month provided that if a new User is added by Customer during any month Genius shall charge Customer for that new User on a pro rata basis for the part of that month commencing on the date that the new User became a User. Genius will assume any increase in Users for future invoices, unless notified as described above (i).
- (iii) Where original Users are replaced by a new User on or after the date the original User ceases use (i.e. the usage across the two different Users does not overlap), the system usage that was pre-paid will be transferred from the original User to the new User without any additional charge for the given month, for the new User.
- (iv) Subject to (iii) above where a new User is added by Customer during a calendar month Genius shall be entitled to invoice (and Customer shall pay within 7 days of such invoice) an amount equal to the Fixed Price Discounted Fee reduced on a pro rata basis relative to the date in the relevant month on which the new User was added by Customer.
- (v) If Genius does not receive payment in full by its due date, Genius reserves the right to bill Customer for all Users at the non-discounted **Pence Per Minute User Fee** rate until such time as payment is received in full.

Pence Per Minute User Fee and Robot Agent Fee is billed in monthly in arrears, payable within 7 days of the date of the invoice.

Call Charges are billed monthly in arrears, payable within 7 days of the date of the invoice.

CLI Rental Charges are billed monthly in advance, payable within 7 days of the date of the invoice.

14. Extension / Handset Rental Charges are billed in [advance][arrears]. **(remove if n/a)**

SMS Charges are billed in arrears except where the Customer a bundled SMS solution which shall be paid for in advance.

Payment Processing Charges are billed in arrears.

Professional services resource

Genius may provide professional services resource required for 'Commpli' usage to the customer for the duration of the agreement. Professional services resource required for 'Commpli' usage may encompass the services below:

Project Management
Software Development
Installation & Set Up
System Training
System Customisation & Change Requests
Access to Genius Support Teams
System Maintenance

Genius will provide the above at no additional cost. Payment for these services are included in the **Commpli User Fee**.

Travel costs etc

Any travel/accommodation/subsistence costs that Genius incurs in delivering any Services will recharged to the Customer at cost.

15.Schedule 4 – Data Processing Requirements

Description	Details
Subject matter of the processing	[Overview of the way the system will be used and why].
Legal basis for the processing	Art 6. 1 (b) for the performance of a contract; and [amend as necessary]
Duration of the processing	For the duration of the contract.
Nature and purposes of the processing	To facilitate contact to Customers [amend as necessary].
Type of Personal Data	Names, address, contact details, account information [add any further types of data as necessary]
Categories of Data Subject	Customers [amend as necessary].
Plan for return and destruction of the data once the processing is complete	Customer data uploaded will be retained for [XXX]. Call recordings will be retained for XXX. Upon the termination of the contract, arrangements will be made between both parties to securely delete data held by Processor and/or transfer all current data to Customer.

Document Control

Date	Description
11/03/2015	Initial draft
06/05/2016	Updated with additional sections
16/8/18	Branding Updated
11/07/2023	Data Protection Act updated to 2018 from 1998. Part 1 scope of services also updated. Part 3 Charging section also updated.
04/03/2024	Updated clause 10 (Data Protection) with additional 10.3.5 & 10.3.6 Added clause 11 (Sub Contracting) Added clause 14 (PCI DSS) Added schedule 4 (Data Processing Requirements).