

## ARUM – SOFTWARE AS A SERVICE CONTRACT

### ORDER FORM

DATE: [date]

### BACKGROUND

Arum has developed software which it will make available to the customer described below and its authorised users via the internet.

|                                     |                                                               |
|-------------------------------------|---------------------------------------------------------------|
| Customer Name:                      |                                                               |
|                                     |                                                               |
| Customer Company Number:            |                                                               |
|                                     |                                                               |
| Customer Registered Address:        |                                                               |
|                                     |                                                               |
| Services:                           | Fully hosted and supported Collections and Recoveries system. |
|                                     |                                                               |
| Software:                           |                                                               |
|                                     |                                                               |
| Term                                | 2 year term                                                   |
|                                     |                                                               |
| Special Terms:                      | None                                                          |
|                                     |                                                               |
| Start Date:                         | Such date as agreed by the parties in writing.                |
|                                     |                                                               |
| Subscription Fees:                  | Year 1 -<br>Year 2 -<br>plus VAT per annum.                   |
|                                     |                                                               |
| Maximum Number of Authorised Users: | 30                                                            |

1. This Contract is made up of the following:

- (a) The Order Form.
- (b) The SaaS Conditions entitled 'Arum – SaaS Conditions'.

2. If there is any conflict or ambiguity between the terms of the documents listed in paragraph 1, a term contained in a document higher in the list shall have priority over one contained in a document lower in the list.

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

Signed for and on behalf of **ARUM SYSTEMS LIMITED**

.....

Director

Signed for and on behalf of **CLIENT**

.....

Director

# Arum - SaaS Conditions

## 1. DEFINITIONS AND INTERPRETATION

**1.1** The definitions and rules of interpretation in this clause apply in these Conditions.

**“Arum”** means Arum Systems Limited, a company incorporated and registered in England and Wales with company number 03603562 whose registered office is at C/O Bishop Fleming Llp, 10 Temple Back, Bristol, United Kingdom, BS1 6FL.

**“Arum’s DPA”** means Arum’s data processing addendum which governs, amongst other things, Arum’s processing of the Customer Data.

**“Authorised Users”** means those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Services and the Documentation.

**“Business Day”** means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

**“Conditions”** these terms and conditions set out in clause 1 (Definitions and Interpretation) to clause 23 (Governing Law and Jurisdiction) (inclusive) and in the Schedule to these terms and conditions.

**“Confidential Information”** means information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 10.5 or clause 10.6.

**“Contract”** the contract between the Customer and Arum for the supply of the Services in accordance with the Order Form and these Conditions.

**“Contract Year”** means a 12-month period commencing with the Start Date or any anniversary of it.

**“Customer”** means the organisation referred to on the Order Form as the Customer.

**“Customer Data”** means the data inputted by the Customer, Authorised Users, or Arum on the Customer’s behalf for the purpose of using the Services.

**“Documentation”** means any documentation made available to the Customer by Arum which sets out a description of the Services and the user instructions for the Services.

**“Initial Subscription Term”** means 5 years from the Start Date.

**“Intellectual Property Rights”** patents, utility models, rights to inventions, copyright and related rights, trademarks 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.

**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.

**New Version:** any new version of the Software which from time to time is publicly marketed and offered for access by Arum 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.

**“Order Form”** means the order form signed by the Customer and Arum for the provision of the Services.

**“Renewal Period”** means the period described in clause 12.1.

**“Services”** means the subscription services provided by Arum to the Customer under the Contract as referred to in the Order Form.

**“Software”** the online software applications provided by Arum as part of the Services as referred to in the Order Form.

**“Start Date”** means the date referred to as the Start Date on the Order Form.

**“Subscription Fees”** means the subscription fees payable by the Customer to Arum to enable the Authorised Users to access the Software and use the Services as such fees are referred to in the Order Form and in these Conditions.

**“Subscription Term”** has the meaning given in clause 12.1 (being the Initial Subscription Term together with any subsequent Renewal Periods).

**“Support and Service Levels”** the support and service levels set out in the Schedule which forms part of these Conditions.

**“User Limit”** the maximum number of Authorised Users as stated on the Order Form.

**“Virus”** any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

**1.2** Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

**1.3** A reference to a statute or statutory provision is a reference to it as it is in force as at the date of the Contract.

**1.4** A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of the Contract under that statute or statutory provision.

**1.5** Any words following the terms **including, include, 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.

## **2. USER SUBSCRIPTIONS**

**2.1** Subject to the Customer paying the Subscription Fees in accordance with the Contract, Arum grants to the Customer a non-exclusive, non-transferable right to permit the Authorised Users (up to the User Limit) to access the Software and use the Services and the Documentation during the Subscription Term solely for the Customer’s internal business operations (in their ordinary course).

**2.2** In relation to the Authorised Users, the Customer undertakes that:

**(a)** each Authorised User shall keep a secure password for his or her use of the Services and the Documentation and that each Authorised User shall keep his or her password confidential;

**(b)** it shall permit Arum or Arum’s designated auditor to audit the Services to check compliance with the Contract; and

**(c)** if any of the audits referred to in clause 2.2(b) reveal that any password has been provided to any individual who is not an Authorised User, then without prejudice to Arum’s other rights, the Customer shall promptly disable such passwords.

**2.3** The Customer shall not and shall ensure that the Authorised Users shall not access, store, distribute or transmit any material during the course of its or their use of the Services that:

**(a)** is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;

**(b)** facilitates illegal activity;

**(c)** depicts sexually explicit images or promotes unlawful violence;

(d) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or

(e) is otherwise illegal or causes damage or injury to any person or property;

and Arum reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's (and the Authorised Users') access to any material that breaches the provisions of this clause.

**2.4** The Customer shall not and shall ensure that its Authorised Users shall not:

(a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under the Contract:

(i) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or the Documentation in any form or media or by any means; or

(ii) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or

(b) access all or any part of the Services, the Software and/or the Documentation in order to build a product or service which competes with the Services, the Software and/or the Documentation; or

(c) except to the extent expressly permitted under the Contract use the Services, the Software and/or the Documentation to provide services to third parties; or

(d) subject to clause 18, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services, the Software and/or the Documentation available to any third party except the Authorised Users; or

(e) attempt to obtain, or assist third parties in obtaining, access to the Services, the Software and/or the Documentation, other than as provided under this clause 2; or

(f) introduce, or permit the introduction of, any Virus into Arum's network and information systems.

**2.5** The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services, the Software and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify Arum.

**2.6** The rights provided under this clause 2 are granted to the Customer only and shall not be considered granted to any subsidiary or holding company of the Customer.

### **3. ADDITIONAL USERS**

If the Customer wishes the number of Authorised Users to exceed the User Limit the Customer shall notify Arum in writing. The parties shall agree in writing the additional costs that the Customer shall pay Arum for exceeding the User Limit.

### **4. SERVICES**

**4.1** Arum shall, during the Subscription Term, provide the Services and make available the Documentation to the Customer on and subject to the provisions of the Contract.

**4.2** Arum shall use all reasonable commercial endeavours to make the Services available in accordance with the Support and Service Levels. Arum will provide a quarterly service review meeting that will cater for any support and service level discussions.

### **5. CUSTOMER DATA**

**5.1** As between the parties, the Customer shall be the data controller of the Customer Data and Arum shall be a data processor of the Customer Data. The Customer shall own all right, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Customer Data.

**5.2** In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy against Arum shall be for Arum to use reasonable commercial endeavours to restore the lost or damaged Customer Data. Arum shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party. If any loss or damage to Customer Data is caused by the Customer, any of its Authorised Users or any of its employees, agents or contractors then Arum may charge the Customer for the reasonable costs of restoring the Customer Data, such costs to be agreed between Arum and the Customer in advance.

**5.3** Both parties will comply with Arum's DPA in connection with the processing of the Customer Data.

**5.4** Subject to 5.2 above, Arum shall indemnify the Client and shall keep the Client indemnified against all direct liabilities, losses, damages, costs or expenses including but not limited to penalties and legal costs (calculated on a full indemnity basis) suffered or incurred by the Client arising out of any claim made against it in relation to any breach by Arum of applicable data protection laws or Arum's obligations in respect of personal data under this Contract (or both) provided that, if any third party makes a claim, or notifies an intention to make a claim, against the Customer which may reasonably be considered likely to give rise to a liability under this indemnity (**Data Claim**), the Customer:

(a) as soon as reasonably practicable, gives written notice of the Data Claim to Arum, specifying the nature of the Data Claim in reasonable detail;

(b) does not make any admission of liability, agreement or compromise in relation to the Data Claim without the prior written consent of Arum (such consent not to be unreasonably conditioned, withheld or delayed);

(c) gives Arum and its professional advisers access 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 Arum and its professional advisers to examine them and to take copies (at Arum's expense) for the purpose of assessing the Data Claim; and

(d) subject to Arum providing security to the Customer to the Customer's reasonable satisfaction against any claim, liability, costs, expenses, damages or losses which may be incurred, takes such action as Arum may reasonably request to avoid, dispute, compromise or defend the Data Claim.

**5.5** Arum shall not in any circumstances have any liability for any Data Claim:

(a) to the extent that the Data Claim is caused by the Customer's breach of this Contract and/or applicable data protection laws; or

(b) to the extent that any breach by Arum of applicable data protection laws or Arum's obligations in respect of personal data under this Contract is as a result of Arum following the Customer's written directions regarding the processing of the personal data and/or regarding the performance of this Contract.

**5.6** Nothing in this clause 5 shall restrict or limit the Customer's general obligation at law to mitigate a loss it may suffer or incur as a result of an event that may give rise to a claim under the indemnity in clause 5.4

## **6. ARUM'S OBLIGATIONS**

**6.1** Arum undertakes that the Services will be performed substantially in accordance with the Documentation and with reasonable skill and care and that the Software will function substantially in accordance with the Documentation.

**6.2** The undertaking at clause 6.1 shall not apply to the extent of any non-conformance which is caused by use of the Services or the Software contrary to Arum's instructions, or modification or alteration of the Services or the Software by any party other than Arum or Arum's duly authorised contractors or agents. If the Services or the Software do not conform with the foregoing undertaking, Arum will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 6.1.

**6.3** Arum:

(a) does not warrant that the Customer's use of the Services or of the Software will be uninterrupted or error-free; or that the Services, the Software, the Documentation and/or the information or functionality obtained by the Customer through the Services will meet the Customer's requirements; and

**(b)** is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services, the Software and the Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

**6.4** The Contract shall not prevent Arum from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under the Contract.

## **7. CUSTOMER'S OBLIGATIONS**

The Customer shall:

**(a)** provide Arum with:

**(i)** all necessary co-operation in relation to the Contract; and

**(ii)** all necessary access to such information as may be required by Arum;

in order to provide the Services, including but not limited to Customer Data, security access information and configuration services;

**(b)** without affecting its other obligations under the Contract, comply with all applicable laws and regulations with respect to its activities under the Contract;

**(c)** carry out all other Customer responsibilities set out in the Contract in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, Arum may adjust any agreed timetable or delivery schedule as reasonably necessary;

**(d)** ensure that the Authorised Users use the Services, the Software and the Documentation in accordance with the Contract and shall be responsible for any Authorised User causing a breach of the Contract;

**(e)** obtain and shall maintain all necessary licences, consents, and permissions necessary for Arum to perform its obligations under the Contract, including, without limitation the Services;

**(f)** ensure that its network and systems comply with the relevant specifications provided by Arum from time to time; and

**(g)** be, to the extent permitted by law and except as otherwise expressly provided in the Contract, solely responsible for procuring, maintaining and securing its network connections and telecommunications links from its systems to Arum's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

## **8. CHARGES AND PAYMENT**

**8.1** The Customer shall pay the Subscription Fees to Arum in accordance with this clause 8.

**8.2** Arum shall invoice the Customer on the Start Date and then annually in advance in respect of the Subscription Fees for the next 12 months and the Customer shall pay the payments due under each invoice within 30 days of receipt.

**8.3** If Arum has not received a payment due to it under the Contract by its due date, then, without prejudice to any other rights and remedies of Arum:

**(a)** Arum may, without liability to the Customer, disable the Customer's and the Authorised Users' passwords, accounts and access to all or part of the Services and the Software and Arum shall be under no obligation to provide any or all of the Services or the Software while the invoice(s) concerned remain unpaid; and

**(b)** interest shall accrue on a daily basis on such due amounts at a monthly rate of 1.5% commencing on the due date and continuing until fully paid, whether before or after judgment; and

(c) if non-payment continues for a period of more than 30 days, Arum will provide notice by email to **ADDRESS** and **PERSON**, of the continuing non-payment.

(d) if non-payment continues for a period of more than 30 days following step (c) above, Arum may, at its option, delete all the Customer Data.

**8.4** All amounts and fees stated or referred to in the Contract:

(a) shall be payable in the currency in which they are invoiced;

(b) are non-cancellable and non-refundable;

(c) are exclusive of value added tax, which shall be added to Arum 's invoice(s) at the appropriate rate, if applicable.

**8.5** During the Initial Subscription Term, Arum may increase the Subscription Fees by up to 2% each year.

**8.6** Following the Initial Subscription Term, Arum may increase the Subscription Fees at the start of each Renewal Period upon four months prior written notice to the Customer.

## **9. PROPRIETARY RIGHTS**

**9.1** The Customer acknowledges and agrees that Arum and/or its licensors own and shall own all Intellectual Property Rights in the Services, the Software (including, for the avoidance of doubt any Maintenance Releases and any New Versions) and the Documentation including in the product of any development and/or integration work that Arum may carry out for the Customer including where any elements of such product were developed as a result of or using the Customer's ideas, suggestions or other feedback supplied by the Customer. Except as expressly stated herein, the Contract does not grant the Customer any Intellectual Property Rights in or any other rights or licences in respect of the Services, the Software (including, for the avoidance of doubt any Maintenance Releases and any New Versions), the Documentation or of the product of any development and/or integration work that Arum may carry out for the Customer.

**9.2** Arum confirms that it has all the rights in relation to the Services, the Software and the Documentation that are necessary to grant all the rights it purports to grant under the Contract.

**9.3** Arum shall indemnify the Customer 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 the Customer arising out of or in connection with any claim that the Customer's use of the Software infringed a third party's Intellectual Property Rights, provided that, if any third party makes a claim, or notifies an intention to make a claim, against the Customer which may reasonably be considered likely to give rise to a liability under this indemnity (**Claim**), the Customer:

(a) as soon as reasonably practicable, gives written notice of the Claim to Arum, specifying the nature of the Claim in reasonable detail;

(b) does not make any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of the Supplier (such consent not to be unreasonably conditioned, withheld or delayed);

(c) gives Arum and its professional advisers access 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 Arum and its professional advisers to examine them and to take copies (at Arum's expense) for the purpose of assessing the Claim; and

(d) subject to Arum providing security to the Customer to the Customer's reasonable satisfaction against any claim, liability, costs, expenses, damages or losses which may be incurred, takes such action as Arum may reasonably request to avoid, dispute, compromise or defend the Claim.

**9.4** Arum shall not in any circumstances have any liability for any Claim:

(a) caused or contributed to by the Customer's use of the Software, Documentation, or Services (as the case may be) in combination with software not supplied or approved in writing by Arum; or

**(b)** based on use of any version of the Software other than the latest version supplied by Arum, if such claim could have been avoided by the use of such supplied version.

**9.5** If use of the Software, Documentation or Services causes, or in the opinion of qualified legal counsel is likely to cause a Claim, Arum may:

**(a)** replace all or part of the Software, Documentation or Services (as the case may be) with functionally equivalent software or documentation or services without any charge to the Customer;

**(b)** modify the Software, Documentation or Services (as the case may be) as necessary to avoid such Claim, provided that the same (as amended) functions in substantially the same way as it did before modification; or

**(c)** procure for the Customer a licence from the relevant claimant to continue using the Software, Documentation or Service (as the case may be).

**9.6** Nothing in this clause 9 shall restrict or limit the Customer's general obligation at law to mitigate a loss it may suffer or incur as a result of an event that may give rise to a claim under the indemnity in clause 9.3.

## **10. CONFIDENTIALITY**

**10.1** Each party may be given access to Confidential Information from the other party in order to perform its obligations under the Contract. A party's Confidential Information shall not be deemed to include information that:

**(a)** is or becomes publicly known other than through any act or omission of the receiving party;

**(b)** was in the other party's lawful possession before the disclosure;

**(c)** is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or

**(d)** is independently developed by the receiving party, which independent development can be shown by written evidence.

**10.2** Subject to clause 10.4, each party shall hold the other's Confidential Information in confidence and not make the other's Confidential Information available to any third party or use the other's Confidential Information for any purpose other than the implementation of the Contract.

**10.3** Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the provisions of the Contract.

**10.4** A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 10.4, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.

**10.5** The Customer acknowledges that details of the Services constitute Arum's Confidential Information.

**10.6** Arum acknowledges that the Customer Data is the Confidential Information of the Customer.

**10.7** Arum may compile statistical information related to the performance of the Services for the purposes of improving the Software and Services, provided that such information does not identify any individual End User or personal data.

**10.8** Unless the Customer requests otherwise in writing, Arum may include the Customer's name and logo in its marketing materials and on its website.

**10.9** The above provisions of this clause 10 shall survive termination of the Contract, however arising.



## **11. LIMITATION OF LIABILITY**

**11.1** Except as expressly and specifically provided in the Contract:

(a) the Customer assumes sole responsibility for results obtained from the use of the Services, the Software and the Documentation by the Customer, and for conclusions drawn from such use. Arum shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Arum by the Customer in connection with the Services, or any actions taken by Arum at the Customer's direction;

(b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from the Contract; and

(c) the Services and the Documentation are provided to the Customer on an "as is" basis.

**11.2** Nothing in the Contract shall limit or exclude the liability of Arum:

(a) for death or personal injury caused by Arum's negligence;

(b) for fraud or fraudulent misrepresentation; or

(c) for any matter in respect of which it would be unlawful to limit or exclude liability.

**11.3** Subject to clause 11.1 and clause 11.2:

(a) Arum shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under the Contract; and

(b) Subject to clause 11.2 and clause 11.5, Arum's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall not exceed the cap.

**11.4** In clause 11.3(b) and in this clause 11.4:

(a) cap. The cap is one hundred per cent (100%) of the total charges in the Contract Year in which the breach of contract, tort, duty, misrepresentation or other default attributable to Arum occurred; and

(b) total charges. The total charges means all sums paid to Arum by the Customer under the Contract in the Contract Year in which the breach of contract, tort, duty, misrepresentation or other default attributable to Arum occurred.

**11.5** Arum's total aggregate liability arising out of or in connection with both of the indemnities in clause 5.4 and clause 9.3 shall not exceed £1 million (one million pounds sterling).

## **12. TERM AND TERMINATION**

**12.1** The Contract shall, unless otherwise terminated as provided in this clause 12, commence on the Start Date and shall continue for the Initial Subscription Term and, thereafter, the Contract shall be automatically renewed for successive periods of 12 months (each a Renewal Period), unless:

(a) the parties have agreed in writing that the Contract shall be subject to a "trial period" and the Customer notifies Arum in writing at least 7 days before the expiry of the trial period that it does not wish to receive the Services beyond the expiry of the trial period; or

(b) either party notifies the other party of termination, in writing, at least 3 months before the end of the Initial Subscription Term or any Renewal Period, in which case the Contract shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Period; or

(c) otherwise terminated in accordance with the provisions of the Contract;

and the Initial Subscription Term together with any subsequent Renewal Periods shall constitute the Subscription Term.

**12.2** Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

(a) the other party fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 15 days after being notified in writing to make such payment;

(b) the other party commits a material breach of any other provisions of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 15 days after being notified in writing to do so;

(c) the other party makes a resolution for its winding up, makes an arrangement or composition with its creditors or makes an application to a court of competent jurisdiction for protection from its creditors or an administration or winding-up order is made or an administrator or receiver is appointed;

**12.3** On termination of the Contract for any reason:

(a) all licences granted under the Contract shall immediately terminate and the Customer shall immediately cease all use of the Services and/or the Software and/or the Documentation;

(b) the Customer shall immediately and permanently erase any Software made available or supplied by Arum to the Customer and contained within any of the Customer's platforms, networks or systems;

(c) each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party;

(d) Arum may destroy or otherwise dispose of any of the Customer Data in its possession unless Arum receives, no later than ten days after the effective date of the termination of the Contract, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. Arum shall use reasonable commercial endeavours to deliver the back-up to the Customer within 30 days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by Arum in returning or disposing of Customer Data; and

(e) any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination shall not be affected or prejudiced.

### **13. FORCE MAJEURE**

Arum shall have no liability to the Customer under the Contract if it is prevented from or delayed in performing its obligations under the Contract, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, epidemic, pandemic, strikes, lock-outs or other industrial disputes (whether involving the workforce of Arum or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that the Customer is notified of such an event and its expected duration.

### **14. VARIATION**

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

### **15. WAIVER**

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

## **16. SEVERANCE**

**16.1** If any provision or part-provision of the Contract 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 the Contract.

**16.2** If any provision or part-provision of the Contract is deemed deleted under clause 16.1 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.

## **17. ENTIRE AGREEMENT**

**17.1** The Contract 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.

**17.2** Each party acknowledges that in entering into the Contract 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 the Contract.

**17.3** Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

## **18. ASSIGNMENT**

**18.1** The Customer shall not, without the prior written consent of Arum, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Contract.

**18.2** Arum may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Contract. Such assignment, transfer, charge, sub-contract will not be made without the prior written consent of the Customer (such consent not to be unreasonably withheld or delayed).

## **19. THIRD PARTY RIGHTS**

This agreement does not confer any rights on any person or party (other than the parties to this agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

## **20. COUNTERPARTS**

This Contract (and any Order Form) 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.

## **21. NO PARTNERSHIP**

Nothing in this Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other party, or authorise either party to make or enter into any commitments for or on behalf of the other party. Each party confirms it is acting on its own behalf and not for the benefit of any other person.

## **22. NOTICES**

**22.1** Any notice given to a party under or in connection with this Contract shall be in writing and shall be: (a) delivered by hand to its registered office (if a company) or its principal place of business (in any other case); (b) sent by email to the relevant contact email address as stated by each party in or in accordance with the Order Form.

**22.2** Any notice shall be deemed to have been received if (a) delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; or (b) if sent by email at the time of the transmission provided that no bounceback message is received. This clause 22 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

## **23. GOVERNING LAW AND JURISDICTION**

**23.1** The Contract 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.

**23.2** 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).

## Schedule – Support and Service Levels

### 1. Interpretation

The following definitions apply in this Schedule in addition to the definitions and rules of interpretation in clause 1 of the main body of these Conditions.

#### 1.1 Definitions:

**Commercially Reasonable Efforts:** the same degree of priority and diligence with which Arum meets the support needs of its other customers.

**Core Hours:** 9am to 5pm during a Business Day.

**Customer Cause:** any improper use, misuse or unauthorised alteration of the Software, the Documentation or the Services by the Customer or any of the Authorised Users or any use by the Customer or any of the Authorised Users of any software not provided or approved by Arum.

**Fault:** any failure of the Software to operate in all material respects in accordance with its specification.

**Service Levels:** the service level responses and response times referred to in the Service Level Table.

**Service Level Table:** the table set out in paragraph 2.1.

**Solution:** either of the following outcomes:

- (a) correction of a Fault; or
- (b) a reasonable workaround in relation to a Fault.

**Out-of-scope Technical Support Services:** any services provided by Arum in connection with any apparent problem regarding the Software or the Services reasonably determined by Arum (i) not to be a Fault, or (ii) to have been caused by a Customer Cause or a cause outside Arum's control (including any investigational work resulting in such a determination).

**Technical Support Manager:** a technical support manager of a party whose name and contact details are provided by a party to the other in advance of them dealing with any Technical Support Request.

**Technical Support Request:** a request made by the Customer for the correction of a Fault.

### 2. Service Levels

#### 2.1 Arum shall:

(a) prioritise all Technical Support Requests based on its reasonable assessment of the severity level of the problem reported; and

(b) respond to all Technical Support Requests in accordance with the responses and response times specified in the table set out below:

| Severity level of Fault | Definition                                                         | Service Level response and response time |
|-------------------------|--------------------------------------------------------------------|------------------------------------------|
| 1                       | <b>Business Critical Failures:</b> The Fault is critical and has a | <b>Level 1 Response:</b>                 |

|   |                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|---|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|   | significant and immediate impact on the use or operation of the Software, resulting in (or suggesting impending) total or near total loss of operations or such disruption that a majority of processes and/or operations cannot be performed using the Software without resolution of the Fault. Faults pertaining to distributions and payments will normally be considered severity level 1 issues. | <p>Acknowledgment of receipt of a Technical Support Request within one (1) Core Hour.</p> <p><b>Level 2 Response:</b></p> <p>Arum shall, within twenty-four (24) Core Hours after the Level 1 Response time has elapsed, provide:</p> <p>a) an emergency fix or workaround; or</p> <p>b) temporary release or update release,</p> <p>which allows the Customer to continue to use all functions of the Software in all material respects.</p> <p><b>Level 3 Response:</b></p> <p>Arum shall work on the problem continuously and implement a Solution to be released at the next relevant version update.</p> <p>If Arum delivers a Solution by way of a reasonable workaround, the severity level assessment shall reduce to a severity level 2 or lower.</p>                               |
| 2 | <p><b>System Defect with Workaround:</b></p> <p>a) The Fault has a serious impact or may result in a potentially serious impact on the use or operation of one or more key elements of the Software for two or more Authorised Users.</p>                                                                                                                                                              | <p><b>Level 1 Response:</b></p> <p>Acknowledgment of receipt of a Technical Support Request within three (3) Core Hours.</p> <p><b>Level 2 Response:</b></p> <p>Arum shall, within four (4) Business Days after the Level 1 Response time has elapsed, provide:</p> <p>a) an emergency fix or workaround; or</p> <p>b) temporary release or update release,</p> <p>which allows the Customer to continue to use all functions of the Software in all material respects.</p> <p><b>Level 3 Response:</b></p> <p>Arum shall work on the problem continuously and implement a Solution to be released at the next relevant version update.</p> <p>If Arum delivers a Solution by way of a reasonable workaround, the severity level assessment shall reduce to a severity level 3 or lower.</p> |
| 3 | <p><b>Minor Error:</b></p> <p>An isolated or minor error in the Software that:</p> <p>a) does not significantly affect the Software; or</p> <p>b) may disable only certain non-essential functions.</p>                                                                                                                                                                                                | <p><b>Level 1 Response:</b></p> <p>Acknowledgment of receipt of the Technical Support Request within two (2) Business Days.</p> <p><b>Level 2 Response:</b></p> <p>Arum shall provide a permanent Fault correction and implement a Solution to be released at the next scheduled relevant version update.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |

- 2.2 The parties may, on a case-by-case basis, agree in writing to a reasonable extension of the Service Level response times.
- 2.3 The Customer acknowledges that Arum's ability to fix Faults is dependent upon the full and timely co-operation of the Customer (which the Customer agrees to provide).
- 2.4 Prior to notifying Arum of any Fault, the Customer shall follow Arum's operating and troubleshooting procedures for addressing issues with the Software or the Services.

### **3. Fixing Faults**

- 3.1 Arum shall use Commercially Reasonable Efforts to correct all Faults notified to it by the Customer.
- 3.2 Arum may reasonably determine that any services are Out-of-scope Technical Support Services. If Arum makes any such determination, it shall promptly notify the Customer of that determination and suggest a way forward.
- 3.3 Arum shall use its reasonable endeavours to provide Out-of-scope Technical Support Services. In respect of any such services that it provides, additional charges may apply which will be agreed in advance with the Customer.
- 3.4 Arum shall prioritise all Technical Support Requests based on its reasonable assessment of the severity level of the problem reported in accordance with this Schedule.
- 3.5 All Technical Support Requests shall be made by one of the Customer's Technical Support Managers who shall liaise with Arum's Technical Support Manager in connection with the fixing of any Fault.

### **4. Maintenance Releases and New Versions**

From time to time during the Subscription Term, in addition to the services referred to above, Arum may modify and/or upgrade the Software with Maintenance Releases and New Versions. The Customer shall provide such assistance as reasonably required by Arum to implement any such Maintenance Releases and New Versions. Any maintenance releases and new versions will be notified to the customer with a reasonable notice period and will aim to avoid customer heavy load periods. Arum will abide by the customer's change management processes where feasible for releases.

### **5. Development Work**

The Customer acknowledges that any customised requirements or features which do not already form part of the Software and which would require separate development work to be carried out by Arum may be subject to separate fees and will be considered and agreed to separately on a case-by-case basis.

### **6. Supported Browsers**

The Software will be compatible with the latest versions of internet browsers such as Google's Chrome, Apple's Safari, and Edge. Due to limitations in the browsers themselves and changes beyond the control of Arum, the supported internet browsers may change from time to time and some functionality of the Software may not work as expected in some internet browsers, particularly older browser versions.

### **7. System Availability**

Arum will achieve System Availability of at least 99.7%. "**System Availability**" means the number of minutes in a week during the term of this agreement that all key components of the Software are operational as a percentage of the total number of minutes in such week, excluding downtime resulting from (a) scheduled maintenance, (b) events of Force Majeure, (c) malicious attacks on the system, (d) issues associated with the Customer's or its Authorised Users' computing devices, local area networks or internet service provider connections including firewall issues, or (e) inability to deliver services because of acts or omissions of the Customer or any of the Authorised Users including because of any Customer Cause. Arum reserves the right to take the Software offline for scheduled maintenance for which the Customer has been provided notice of at least seventy two Hours and Arum reserves the right to change its maintenance window upon prior notice to the Customer of at least seventy two Hours. If Arum fails to meet 99.7% System Availability in any week during the term of this agreement, upon written request made by the Customer within five (5) days after the end of such week, Arum will issue a credit against Customer's next invoice in an amount equal to the Subscription Fees pro rata for the relevant week multiplied by the inverse of System Availability of 99.7% for the relevant week, up to a maximum of the Subscription Fees pro rata for the relevant week. This paragraph 7 sets out the Customer's sole remedy and Arum's entire liability for failing to meet System Availability.