



Software as a Service Agreement for

PRODUCT NAME

between

GREY MONARCH LIMITED

And

XXXXXXXXXX

Agreement Date: **xx xxx**

Agreement Reference: **PTDxxxxxxxx**

THIS AGREEMENT is made on the xx day of xxx 20xx

BETWEEN

- (1) Grey Monarch Limited (hereinafter known as the HOST) of 17 Solent House, Lansbury Business Estate, 102 Lower Guildford Road, Knaphill, Woking. Surrey GU21 2EP registered company number 6505300 and registered address of 6th FLOOR, BANK HOUSE, CHERRY STREET, BIRMINGHAM, B2 5AL who are the owner and developer of the SERVICE (hereinafter known as the HOST); and
- (2) XXXXXXXX of XXXX registered company number XXX (hereinafter known as the CLIENT).

WHEREAS:

- (1) The HOST is providing a hosted software solution to CLIENT using all appropriate hardware connected via secure network.
- (2) The CLIENT wishes to use the HOST's service under the terms and conditions of this Agreement.

IT IS AGREED as follows:

1. Definitions and Interpretation

- 1.1 In this Agreement, unless the context otherwise requires, the following expressions have the following meanings:

"Account"	means the details of the CLIENT that are required and held by the HOST to facilitate the provision of the SERVICE to the CLIENT including, but not limited to, identification and location details, connectivity and network details, username and password, and details of the SERVICE provided to the CLIENT;
"Availability of Service"	means the expected availability of the SERVICE and remediation for failing to meet the availability of the SERVICE as detailed in Clause 3.
"Business Days"	means a day (that is not a Saturday or Sunday) on which banks are open for business in the UK;
"Client Connectivity"	means that the SERVICE can connect successfully via a network to the CLIENT's systems;
"Client Prerequisites"	means the prerequisite requirements detailed in the HOST's documentation and correspondence that includes, but is not limited to, Client Connectivity, system accounts and access to key CLIENT personnel as required before the SERVICE can commence;
"Fee"	means the sum payable by the CLIENT to the HOST in order to receive the HOST's SERVICE as detailed in Exhibit A (SERVICE Details);
"Hosting Hardware"	means all computer and networking equipment used by the HOST in the provision of the SERVICE including, but not limited to, servers and network infrastructure;

"Hosting Software"	means all software used by the HOST in the provision of the SERVICE;
"Improper Use"	means any activity such as but not restricted to changing configuration settings or producing long running reports or queries that could impact the performance of the SERVICE.
"Licensed Volume"	means any restrictions placed on the use of the SERVICE as detailed in Exhibit A which may be changed from time to time by way of an Addendum to this agreement and according to any additional fees applicable within Exhibit A.
"Order"	means an order placed by the CLIENT with the HOST for the provision of the SERVICE which shall contain details of the CLIENT's chosen SERVICE; and
"Period of Service"	means the period of the SERVICE as detailed in Exhibit A;
"Scheduled Maintenance"	means an interruption to the AVAILABILITY OF SERVICE that has been scheduled with the CLIENT
"Service"	means the collective components of the HOSTING HARDWARE and HOSTING SOFTWARE as detailed in Exhibit A (Service Details) which includes, but is not limited to, the provision of internet connectivity, bandwidth, website storage, software, data back-ups, and can refer either to those components as a whole or to specific parts as the context may require;
"Support Procedures"	means the support and escalation procedures detailed in Exhibit B.

- 1.2 The clause headings used in this Agreement are used for convenience only and are not intended to affect the meaning or interpretation of the terms of this Agreement.

2. Service

- 2.1 Once the CLIENT's ORDER has been placed and processed the HOST will use its best endeavours to commence provision of the SERVICE as soon as reasonably possible. Unless otherwise agreed the provision of the SERVICE will commence no later than 15 BUSINESS DAYS after completion of the ORDER and the CLIENT PREREQUISITES.
- 2.2 In the event that the provision of the SERVICE is delayed by more than 15 BUSINESS DAYS from completion of the ORDER and the CLIENT PREREQUISITES the HOST will adjust the 12 month PERIOD OF SERVICE to expire 12 months after the SERVICE is made available. In the event the provision of the SERVICE is delayed by more than 20 BUSINESS DAYS from the completion of the ORDER and the CLIENT PREREQUISITES, the CLIENT shall have the right to terminate, at no cost, and receive a full refund for any subscription FEES paid. One-off set up FEES shall only be refunded should the reason that the SERVICE could not commence are at the fault of the HOST.
- 2.3 The HOST is under no obligation to provide any SERVICE that is not set out in the CLIENT's ORDER and the relevant SERVICE unless the HOST and CLIENT enter into a new written Agreement for the provision of additional SERVICES.
- 2.4 The HOST may, in its sole discretion, alter, improve or otherwise modify the SERVICE provided that any such change will not significantly alter the provision of the SERVICE to the CLIENT or result in the removal of any features or SERVICES that form part of the SERVICE.

- 2.5 Notwithstanding the provisions of sub-clause 2.4 the HOST may take any action necessary to address or repair faults in HOSTING HARDWARE or HOST SOFTWARE without any prior notice to the CLIENT. If such faults or remedial action results in an interruption to the provision of the SERVICE the CLIENT will be notified in accordance with the provisions of clause 3 of this Agreement.

3. Availability of Service and Remediation

- 3.1 The HOST will use its best and reasonable endeavours to ensure that the SERVICE is accessible to the CLIENT on a constant, uninterrupted basis throughout the Term of this Agreement.
- 3.2 Notwithstanding sub-clause 3.1, the HOST shall not be liable for HOSTING HARDWARE downtime or interruptions to the provision of the SERVICE where such downtime or interruptions do not reduce the AVAILABILITY OF SERVICE to less than 99.9% of the PERIOD OF SERVICE.
- 3.3 The HOST does not warrant that the functions contained in the SERVICE will meet any requirement of the CLIENT or that the operation of the HOSTING SOFTWARE will be error-free. Errors within the HOSTING SOFTWARE that do not impact availability or do not significantly reduce the operation of the HOSTING SOFTWARE shall not constitute an interruption to the AVAILABILITY OF SERVICE. For the avoidance of doubt errors that constitute an interruption to the AVAILABILITY OF SERVICE are restricted only to those with a severity level of Critical or High as defined in Exhibit B (SUPPORT PROCEDURES).
- 3.4 Where the SERVICE is inaccessible the HOST will contact the CLIENT and provide reasons for the interruption or, where this is not possible due to an undiagnosed problem, state that the problem is undiagnosed but is being investigated.
- 3.5 The CLIENT must notify the HOST of any faults that arise without delay according to the SUPPORT PROCEDURES detailed in Exhibit B. The CLIENT is responsible for reasonably supporting the HOST in troubleshooting the fault, but in particular where giving adequate information as requested. The HOST has no duty to accept any liability whatsoever for malfunctions/faults caused by IMPROPER USE of the SERVICE.
- 3.6 Where SERVICE interruption due to HOSTING HARDWARE failure cannot be remedied the HOST shall transfer the SERVICE to alternative HOSTING HARDWARE in order to restore the provision of the SERVICE.
- 3.7 Where the provision of the SERVICE is interrupted through SCHEDULED MAINTENANCE, the interruption of CLIENT CONNECTIVITY at the fault of the CLIENT, or the fault of any third party associate of the CLIENT, the HOST shall bear no responsibility or liability and such interruptions shall not be included in the AVAILABILITY OF SERVICE figure detailed in 3.2.
- 3.8 Should the AVAILABILITY OF SERVICE fall below 99.9% during the PERIOD OF SERVICE the HOST will reimburse the CLIENT for the interrupted period. The reimbursement will be calculated on a pro-rata basis and shall be paid to the CLIENT within 20 Business Days.

4. Fees and Payment

- 4.1 FEEs for the SERVICE offered by the HOST are set out in Exhibit A. All charges payable by the CLIENT shall be in accordance with the information therein.
- 4.2 For the first PERIOD of SERVICE as detailed in Exhibit A, payment of FEEs due

shall form part of the ORDER process. For all subsequent PERIODS OF SERVICE the CLIENT will be sent a renewal notice 60 Days before the current PERIOD OF SERVICE is due to expire. Unless the CLIENT provides written confirmation that they wish to renew the Agreement then the SERVICE will terminate in accordance with clause 9.3.2

- 4.3 The CLIENT will not be subject to any additional charges or refunds during a 12 month PERIOD OF SERVICE provision unless the LICENSED VOLUME of the SERVICE requires to be changed. The HOST may only change the FEE of its SERVICE at the point of sending a renewal notification as described in 4.2 and only as long as any increase to the FEES for providing equal SERVICE shall not increase annually by more than UK RPI.
- 4.4 The FEES stated in Exhibit A hereof are in accordance with the HOST's published charges in force on the date specified.
- 4.5 All FEES payable by the CLIENT to the HOST shall be paid in full, without set off or deduction. The HOST reserves the right to suspend the SERVICE or cancel the CLIENT's ORDER if FEES are not paid on or before the due date.
- 4.6 FEES shall be payable sixty (60) days after a valid and correct invoice has been received by the CLIENT
- 4.7 All FEES and charges are exclusive of Value Added Tax which will be charged at the rate ruling at the Tax Point.

5. Intellectual Property and Proprietary Rights

- 5.1 The CLIENT will not acquire ownership rights over any of the HOST's Intellectual Property in or in relation to the SERVICE or in relation to any other property owned by the HOST.
- 5.2 The HOST will not acquire ownership rights over any of the CLIENT's Intellectual Property or any other material belonging to the CLIENT.

6. Liability

- 6.1 Subject to Clause 3 and sub-clauses 8.2 and 8.3 the HOST shall not be liable to the CLIENT or to third parties for:
 - 6.1.1 Any losses resulting from interruptions or downtime to the SERVICE;
 - 6.1.2 Any inability on the part of the CLIENT to use the SERVICE;
 - 6.1.3 Any damage or loss resulting from the loss of confidentiality caused by the storage of information.
- 6.2 Nothing in this Clause shall exclude the liability of the HOST for death or personal injury resulting from the HOST's negligence or that of its employees or agents.
- 6.3 Nothing in this Clause or in this Agreement shall exclude the liability of the HOST for fraudulent misrepresentation.
- 6.4 Both parties will indemnify each other against direct damage or injury to property or persons to the extent caused by their acts or omissions or those of their subcontractors or agents under this agreement, but not otherwise, by making good such damage to property or compensating personal injury, provided that the total liability with regard to injury to property shall not exceed £5,000,000.00.
- 6.5 Neither party shall be liable to the other for consequential loss, including loss of profits or of contracts.

7. Warranty Disclaimer

Subject to the provisions of this Agreement, the HOST gives no warranty, express or implied, in connection with the SERVICE as to fitness for purpose, quality, non-infringement or merchantability.

8. Indemnity

8.1 The CLIENT will fully indemnify the HOST against all costs, expenses, liabilities, losses, damages and judgments that the HOST may incur or be subject to as a result of any of the following:

8.1.1 The CLIENT's misuse of the SERVICE;

8.1.2 The CLIENT's breach of this Agreement;

8.2 The HOST will indemnify the CLIENT in full against any claim for infringement of third party United Kingdom patents, copyright and registered designs by the CLIENT's use of the SERVICE subject to the following conditions:-

8.2.1 the CLIENT must promptly notify the HOST in writing of any allegation or infringement.

8.2.2 the CLIENT must make no admission without the HOST's consent.

8.2.3 the CLIENT must, at the HOST's request, allow them to conduct and/or settle all negotiations and litigation and must give all reasonable assistance to do so. The cost incurred or recovered in such negotiations and litigations will be for the HOST's account.

9. Term and Termination

9.1 The initial PERIOD OF SERVICE provision will commence on the date that the CLIENT's ORDER is processed and the CLIENT PREREQUISITES are complete. This term shall last for a period of 12 months, subject to the termination provisions below and to the refund provisions of sub-clause 2.2 of this Agreement.

9.2 Subsequent periods of SERVICE Provision shall last for a period of 12 months each and will follow on from a previous period, without interruption, subject to the fulfilment of the CLIENT's payment obligations under Clause 4 of this Agreement. All subsequent periods are subject to the termination provisions below.

9.3 The HOST reserves the right to terminate this Agreement or to suspend the SERVICE in the following circumstances:

9.3.1 If the CLIENT fails to pay FEEs due under Clause 4 of this Agreement; If the CLIENT fails to pay FEEs due under Clause 4 of this Agreement;

9.3.2 If the CLIENT does not provide written confirmation that they wish to renew the SERVICE for an additional period as per clause 4.2

9.3.3 If the CLIENT is in breach of the terms of this Agreement;

9.3.4 If the CLIENT becomes the subject of a voluntary arrangement under Section 1 of the Insolvency Act 1986;

9.3.5 If the CLIENT is unable to pay its debts within the definition of Section 123 of the Insolvency Act 1986; or

9.3.6 If the CLIENT has a receiver, manager, administrator or administrative receiver appointed over all or a substantial part of its undertakings, assets, or income; has passed a resolution for its winding up; or is the subject of a petition presented to a court for its winding up or for an administration order.

9.4 The CLIENT may request the termination of the SERVICE and this Agreement by written notice, during the Renewal Period. The following shall apply to such situations:

9.4.1 The issuing of refunds is at the sole discretion of the HOST;

9.4.2 On termination of the SERVICE and this Agreement the HOSTED SOFTWARE, ACCOUNT and all related data and material will be removed from the HOSTING HARDWARE.

10. Assignment

Neither party may assign this agreement without the others written consent (such consent not to be unreasonably withheld), other than for the purposes of amalgamation, reconstruction, or other company reorganisation. Both parties reserve the right to make additional FEEs or charges for any re-assignment made in such cases whereby they may incur additional administration or legal charges during the process of reassignment.

11. Force Majeure

Neither party will be liable for delay in performing obligations or for failure to perform obligations if the delay or failure results from any of the following whether happening in the UK or elsewhere: force majeure, Act of God, governmental act, fire, explosion, accident, industrial dispute, impossibility of obtaining materials or anything beyond the party's control.

12. Waiver

No waiver by either party or any breach by the other party of any obligation contained herein shall constitute a waiver of any other obligation contained herein. Any waiver to be effective must be in writing.

13. Notice

Any notice or communication required to be given to or by either party must be given by being sent by ordinary prepaid mail to the nominated address of either party.

14. Confidentiality

Both parties each agree to hold in the strictest confidence any information and material which is related to the other party's business or is designated as proprietary and confidential, herein or otherwise, by either party in connection with the transactions contemplated by this Agreement and disclose only to those employees or independent consultants that need to know. Each party agrees not to make use of such designated information and material except as may be necessary in connection with the performance of this Agreement. Proprietary and confidential information includes without limitation

information related to research, development, pricing, trade secrets, customer lists, salaries or business affairs of the parties to this Agreement. The parties' obligations of confidentiality under this Agreement shall survive termination of this Agreement.

The HOST agrees to comply with the CLIENT's security policies and IT code of conduct which may be amended from time to time by the CLIENT.

15. Governing Law And Entire Agreement

The construction, validity and performance of this agreement shall be governed by the law of England and Wales and all parties agree to submit to the Courts of England. This agreement sets out the entire Agreement and understanding between the parties with respect to the subject matter of this Agreement and supersedes all prior discussions between the parties, or their agents and all conditions, warranties, guarantees, representations, proposals, communications and understandings (whether oral or in writing) with respect to the subject matter hereof (whether given or made before or after the date hereof) other than a modification (in writing) expressed to be an amendment to this agreement and signed by an Authorised officer of the CLIENT and by an authorised officer of the HOST. If any provision of this agreement is found invalid or unenforceable pursuant to judicial decree the remainder of this agreement shall remain valid and enforceable according to its terms. Without limiting the foregoing it is expressly agreed that each and every provision of this agreement which provides for a limitation of liability, disclaimer of warranties and exclusion of damages is intended by the parties to be severable and independent of each provision and to be enforced as such.

Signed on behalf of Grey Monarch Limited (HOST)

Signature:

Name:	
Title	Director
Address:	Grey Monarch Limited 17 Solent House Lansbury Business Estate 102 Lower Guildford Road Knaphill, Woking Surrey GU21 2EP

Signed on behalf of XXXXXXXX (CLIENT)

Signature:

Name:	
Title	
Address:	XXXXXXXXXX

EXHIBIT A: SERVICE DETAILS

This Software Subscription is made pursuant to the Software as a Service Agreement dated xxxst xxxx 20xx

1. Service Description:

SERVICE	LICENSED VOLUME	PERIOD OF SERVICE	TOTAL FEE
A single hosted instance of XXXXX	Up to XXXXX Users Up to XXXX connected systems	12 Months Commencing on date of first data collection	£ XXXXXX per calendar month
Technical Support Level (as detailed in Exhibit B - 8am - 6pm BUSINESS DAYS)		12 Months	Included

2. Consulting Services:

DESCRIPTION	UNITS	TOTAL FEE
Fixed price setup fee of XXXXXX	1 x XXX Instance	£XXXXXX.00
Training	X days @ £XXX per day excluding expenses	£XXXXXX.00
Additional Services	X days @ £XXX per day including expenses	£XXXXXX.00
TOTAL FEE		£XXXXXX.00

3. Additional Services:

Additional services can be purchased at £XXX.00 per day excluding expenses.

Exhibit A will be amended and reissued as an addendum to this Agreement on the occasion of the CLIENT purchasing additional subscriptions.

EXHIBIT B: TECHNICAL SUPPORT PROCEDURES