

SOFTWARE LICENCE,
MAINTENANCE
and
PROFESSIONAL SERVICES AGREEMENT

BETWEEN

TRACE SOLUTIONS LIMITED, a company incorporated in England and Wales whose
registered office is at Third Floor, 30a Great Sutton Street, London EC1V 0DU
England
("Trace")
AND

The Client
(the "Client")

THIS AGREEMENT is effective on the xx day of xx 2020
Reference No: <<Enter next available reference from central register on
Trace Solution's public folders>>

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1 Overview of this document (pre-amble)

This document is the primary Agreement between the two parties, Trace and the Client that defines the provision and terms of the software licence to use Trace's software products, the related support and maintenance services and also related services and add-on products or bespoke software that may be commissioned at any time during the term of this Agreement.

1.1 Summary content; explanation of clauses

This section summarises the main content of this Agreement to aid the reader's understanding of the content. Section 1 of this document does not constitute any content of the Agreement.

1.1.1 Definitions & interpretation

This section describes terminology used within the Agreement. Definitions are capitalised within the body of the Agreement.

1.1.2 Commencement and duration

The Agreement comes into effect on the date on the front page and will then run for a minimum term which is defined in the termination clause. Thereafter, the Agreement will continue to run until terminated by either party serving the notice period defined in the termination clause.

1.1.3 Obligations

Trace agrees to licence the products and provide the services in exchange for payment.

1.1.4 Warranties

This clause describes the warranties that Trace provides.

1.1.5 Access to systems

This describes the Client's obligations to allow Trace to provide its support and implementation services.

1.1.6 Staff

Both parties agree not to directly recruit each other's staff.

1.1.7 Intellectual Property Rights

Trace holds all intellectual property rights in its software and grants the Client a licence to use that software. Trace will indemnify the Client if it is found that Trace has breached any third party's intellectual property rights.

1.1.8 Dispute resolution

This clause describes how the two parties will settle any disputes.

1.1.9 Confidentiality

This sets out the confidentiality of each party under the terms of this Agreement.

1.1.10 Termination

This sets out the term of the Agreement, the notice period to terminate by either party or any other circumstances whereby termination may be invoked.

1.1.11 Force Majeure

This defines how the terms of the Agreement may be temporarily suspended in the case of a major event, normally a force of nature, which prevents either party from carrying out its normal business.

1.1.12 Limitation of Liability

This sets out Trace's liability if there is a breach of this Agreement.

1.1.13 Notices

The addresses and method for the service of any notices are defined in this clause.

1.1.14 Escrow

This is an optional, chargeable service arranged by Trace and undertaken by the NCC in Manchester, UK. Its purpose is to protect the Client's investment in the products should Trace cease to trade.

1.1.15 Entire agreement

This Agreement is considered to be the primary set of terms and conditions between the two parties.

Additional products and services may be added to this Agreement through the use of signed Professional Service Orders. Unless specifically stated within the Professional Services Order, the terms of this Agreement shall prevail.

1.1.16 Assignment

The Agreement may be assigned to a successor party on written agreement of the other party. The Agreement is binding on successors.

1.1.17 General provisions

As stated, standard contract clauses.

1.1.18 Data Protection Legislation

The Client remains the owner of its own data. Both parties will act in accordance with the terms of this Agreement if Trace is required to handle the Client's data for support purposes.

1.1.19 Governing law

This specifies the relevant jurisdiction.

1.1.20 Schedules

The Agreement then contains various schedules that further describe the parties' obligations.

1.1.21 Implementation

This covers delivery, related services and testing if applicable.

1.1.22 Licence

This describes the type of licence granted, permitted locations, number of concurrent users and number of databases.

1.1.23 Professional Services

This schedule describes how additional services are provided during the term of the Agreement.

1.1.24 Sample Professional Services Order

This is provided as further explanation as to how additional services and products can be covered under the terms of this Agreement.

1.1.25 Maintenance

This sets out the terms and scope of the maintenance services and service level agreement.

1.1.26 Payment

This describes the initial licence fee, the maintenance charges and price reviews.

1.1.27 Third party software

Trace products require third party products e.g. operating systems and databases. This schedule sets out the requirements. These requirements may change over time and the Client will be notified accordingly.

In broad terms, Trace will support third party products in line with the support terms offered by the relevant third party.

1.1.28 Software hosting

Some clients opt for software hosting at the onset of the Agreement, during the term of the Agreement or to terminate hosting during the term. This Agreement caters for these eventualities by allowing Professional Service Orders to control this requirement and accordingly it is defined in all Agreements for all clients.

1.1.29 Proposal and quotation

Prior to the execution of this Agreement, the Client and Trace will have agreed costs as set out in a quotation against which an order will have been placed. That quotation and any other documents that qualify the order are attached in this schedule.

2 OPERATIVE PROVISIONS

- a) Trace agrees to licence certain software to the Client on the terms and conditions set out in this Agreement.
- b) Trace will supply maintenance services in respect of software it licences to or develops for the Client under this Agreement in accordance with its terms and conditions.
- c) The Client may request and Trace may supply additional services including software development services, system maintenance and software hosting.
- d) Software hosting may be provided throughout the term of this Agreement or for part or parts of it. Certain of the clauses of this Agreement relate only to the situation where software hosting is provided and some clauses only apply when it is not provided. These clauses are identified accordingly. Software hosting will either be ordered by the Client at the onset of this Agreement or subsequently through a Professional Services Order. If software hosting is terminated in writing by the Client, the clauses of this Agreement that relate to hosting will no longer apply and those that relate to a non-hosted service will apply.

2.1 Definitions and interpretation

In this Agreement, unless the context otherwise requires.

"Acceptance Tests" means the acceptance tests and procedures set out in the Implementation Schedule and Acceptance Testing shall be construed accordingly;

"Acceptance" means the acknowledgement by the Client that the Software has successfully completed the Acceptance Tests, and "Accepted" shall be construed accordingly;

"Agreement" means this Agreement and the Schedules attached thereto or which are incorporated by reference;

"Business Day" means any day (other than a Saturday or Sunday) on which banks generally are open in the City of London for the transaction of normal banking business;

"Charges" means those charges payable by the Client to Trace as referred to in the Payment Schedule;

"Client's System" means the software (including the Software and the Third Party Software) and hardware systems used by the Client;

"Data Protection Legislation" means the EU Directive 95/46/EC and the EU Privacy & Electronic Communications Directive 2002/58/EC, any amendments and replacements legislation to the GDPR or the Data Protection Act 2018 (commonly referred to as "GDPR").

"Developed Software" means any software developed by or on behalf of Trace under a Professional Service Order as Modified or Updated;

"Documentation" means the documentation provided by Trace via its web site in relation to the Software;

"Effective Date" means the date this Agreement commences as set out on the front sheet; **[MUST BE FILLED IN FOR THIS TO BE A LEGAL DOCUMENT];**

"Fault" means:

- a) in relation to the Software or any algorithm, routine, sub-routine or other coded instruction contained in the Software, anything which is liable to have or does have any unintended effect which has a material impact on the operation of Software or any processor or other equipment or Third Party Software with which the Software is intended to be used, including:
 - i. a failure to meet the requirements of any Specification; or
 - ii. a slowing down in terms of response times compared to any response times for the Software in the relevant Specification or a stoppage at times when stoppage is not contemplated by any Specification or failure to meet any processing volume requirements for Software set out in any relevant Specification; or
 - iii. the production of unintelligible, misleading or incorrect output to screens, processors, storage media or other peripheral equipment; or
 - iv. the production of incorrect results when instructed to perform logical operations of the kind described in or contemplated by any Specification;
- b) in relation to any Documentation, anything in the Documentation which, in Trace's reasonable opinion, if acted upon, would cause the Software to be used or to perform otherwise than materially in accordance with the requirements set out in any relevant Specification.

"Fix" means a temporary workaround of a Fault required to ensure continuity of service to the Client prior to the remedy of that Fault in an Update or future release.

"Intellectual Property Rights" means all copyright; patent rights; trade or service marks; design right; rights in or relating to databases; rights in or relating to confidential information; and any other intellectual property rights (registered or unregistered) throughout the world; including all rights of reversion; and rights to any applications and the right to sue and recover damages for past infringements;

"Licensed Software" means the software specified in clause 5.1.1 of the Licence Schedule as Modified or Updated;

"Maintenance Charge" means the charges for the Maintenance Services set out in the Payment Schedule 8;

"Maintenance Services" means the Maintenance Services as listed in the Maintenance Schedule as modified or updated;

"Maintenance Sites" means sites as listed in the Maintenance Schedule;

"Modifications" means specific country, business and site integration and development, enhancement, Fault correction and other customisation and development (and all programs, algorithms, techniques, processes, methods, know-how and other information comprised therein) of the Software and "Modified" shall be interpreted accordingly;

"Professional Services" means any services which Trace agrees to supply to the Client under this Agreement other than the Maintenance Services;

"Professional Services Order" means an order submitted by the Client and accepted by Trace for Professional Services, which may include an additional Specification and which shall be incorporated into this Agreement once agreed;

"Project Management Group" means the committee formed by the staff of both parties (and other persons as agreed) with responsibility for overseeing management of this Agreement and performance of obligations under it;

"Services" means the Software Hosting Service where this is supplied by Trace, the Professional Services and the Maintenance Services;

"Service Manager" means the Service Managers appointed by the Client and Trace;

"Software" means the Licensed Software and the Developed Software (or either of them as the context dictates);

"Software Hosting Service" means the optional provision of a service whereby Trace and a third party partner take responsibility for the provision of the Software to be delivered as a service using the internet.

"Specification" means the attached specification (if applicable) for the Licensed Software, and any additional specification that may form part of a Professional Service Order, setting out scope and performance;

"Third Party Software" means the third party software required to run the Software as set out in the Third Party Software Schedule;

"Updates" means a modified or otherwise updated version of the Software and

"Updated" shall be interpreted accordingly;

"User" means the employees and contract staff of the Client.

In this Agreement, unless the context otherwise requires:

- a) the singular includes the plural and vice versa and words in one gender include both genders;
- b) a reference to a statute or statutory provision includes:
 - i. any subordinate legislation made under it;
 - ii. any repealed statute or statutory provision which it re-enacts (with or without modification); and
 - iii. any statute or statutory provision which modifies, consolidates, re-enacts or supersedes it;
- c) a reference to:
 - i. any party includes its successors in title and permitted assignees;
 - ii. a "person" includes any individual, firm, body corporate, association or partnership, government or state (whether or not having a separate legal personality); and

- iii. a Clause or Schedule is to a clause of or a schedule to this Agreement;
- d) the headings of Clauses are for convenience only and shall not affect the interpretation;
- e) reference to "including" in this agreement shall be treated as being by way of example and shall not limit the general applicability of any preceding words.

2.2 Commencement and duration

- 2.2.1** This Agreement shall commence on the Effective Date and shall continue in force subject to the terms of this Agreement and its Schedules unless and until terminated.

2.3 Obligations

- a) In consideration of the payment by the Client of the Charges in accordance with the terms and conditions of this Agreement, Trace hereby agrees:
 - b) to licence the Licensed Software on a non-exclusive basis;
 - c) to install the Licensed Software;
 - d) to supply the Services; and
 - e) to maintain the Licensed Software.
- 2.3.1** The Client agrees to pay Trace the Charges in accordance with the terms and conditions of this Agreement. All amounts payable by the Client shall be exclusive of value added tax (if any) or any other local applicable equivalent taxes, which shall be paid at the rate and the manner prescribed by law from time to time.

2.4 Warranties

- 2.4.1** Trace hereby warrants and undertakes to the Client that:
 - a) it has all requisite corporate power and authority to enter into this Agreement and to carry out the transactions contemplated hereby;
 - b) Trace has obtained all consents, permissions and licences necessary to enable it to perform its obligations.
- 2.4.2** Trace warrants, and undertakes to the Client that it will perform its obligations hereunder:
 - a) using the skill and care of a diligent supplier and in accordance with current IT industry practice and standards;
 - b) in a safe manner which, as a minimum, complies with all relevant health and safety legislation and regulations applicable in all relevant jurisdictions;
 - c) in compliance with the regulations which, to Trace's knowledge, are or may be relevant to the design, development, manufacture, supply, marketing, installation, maintenance or use of software whether from national, state, provincial or federal government, local government, any institution of the European Communities or any other body having power to require compliance with the regulation concerned (including without limitation all applicable technical, safety or other standards which are referred to in this Agreement);
 - d) using only software and systems which are Y2K compliant (meaning correct handling of all dates after 31st December 1999) and that all Licensed Software and any Developed Software will be Y2K compliant;

- e) using all reasonable and prudent means to ensure that no computer viruses, worms, software bombs or similar items have been or will be introduced by it into the Client's Systems.

- 2.4.3** Trace warrants and undertakes to the Client that on delivery of the Software to the Client and for a period of one year following Acceptance that the Software will operate in general accordance with the relevant current Documentation. Trace reserves the right to revise the Software and Documentation in line with Updates.

The warranty given in Clause 2.4.3 is in lieu of any condition or warranty express or implied by law including those as to the quality or fitness for any particular purpose, which are hereby excluded to the fullest extent permitted by law.

- 2.4.4** Trace warrants, and undertakes to the Client that it:
- a) shall possess and have the right to use:
 - i. knowledge and expertise sufficient to enable it to provide the Maintenance Services and/or the Professional Services; and
 - ii. all maintenance and other manuals, specifications, diagnostic aids and testing devices and specialised tools and equipment necessary to enable it to provide the Maintenance Services and/or the Professional Services;
 - b) will employ sufficient suitably trained staff to provide the Maintenance Services and/or the Professional Services notwithstanding holidays and sickness.

- 2.4.5** The Client hereby acknowledges that any alteration of the Software other than with Trace's assistance or at Trace's written direction may render the Software unusable and will render the warranties given by Trace hereunder null and void.

2.5 Access to systems, information and sites

- 2.5.1** The Client shall provide Trace, at the Client's expense, with any technical data and information as may be reasonably requested by Trace which it requires in order to carry out its obligations under this Agreement.

- 2.5.2** Where the Software Hosting Service is not provided:

- a) The Client shall provide Trace with remote and Maintenance Site access to the Client's System at such times as may be and to the extent reasonably required by Trace for the installation of the Software and the performance of the Services. Any access to the Client's System will be subject to reasonable notice and by such process as the Client outlines to Trace from time to time.
- b) The Client will ensure that it has installed on its Systems at all times the Third Party Software and that its System shall at all times be so configured and maintained to provide adequate response times.

The Client shall be obliged to install subsequent releases of the Third Party Software when Trace announces the availability of compatible Updates of the Software.

The Client acknowledges that in not doing so, this may prevent its ability to load new Updates of the Software.

Trace will provide Maintenance Services for the Software where possible if the Client uses non-current versions of the Third Party Software as long as that version of the Third Party Software is still supported by its provider.

New features in the Software may not be backwards compatible with older Third Party Software products.

- c) The Client will provide, at the Client's expense, internet access and such equipment at the Maintenance Sites as is reasonably requested by Trace to enable Trace to provide from Trace's premises the Maintenance Services and/or Professional Services.
- d) To the extent required for the provision of the Maintenance Services and/or the Professional Services, the Client shall permit Trace and its employees to enter the Maintenance Sites during each normal Business Day for the purposes of providing the Maintenance Services and/or the Professional Services and at other times on reasonable notice and with the Client's consent.
- e) Trace shall procure that all staff, when present on the Maintenance Sites, shall obey the reasonable instructions of representatives of the Client and shall observe any reasonable conditions or policies applicable to them laid down and advised from time to time by the Client.
- f) Trace shall ensure that all staff that work in providing the Maintenance Services and/or the Professional Services to the Client shall be suitably qualified and skilled staff for the performance of the Maintenance Services and/or the Professional Services.

2.6 Ownership and Intellectual Property Rights

- 2.6.1** Trace grants the Client a licence to use the Software and the Documentation on the terms set out in the Licence Schedule.
- 2.6.2** Where the Software Hosting Service is not provided, the Client will, simultaneously with the signing of this Agreement, enter into a licence or licences with any Third Party Software supplier if requested by Trace and undertakes hereby to observe all the terms and conditions of such licence or licences.
- 2.6.3** The Client undertakes not to reverse engineer the Software except to the extent permitted by law nor to commission such reverse engineering through a third party.
- 2.6.4** No title or ownership of the Software or any Third Party Software licensed to the Client under this Agreement is transferred to the Client under any circumstances.

2.7 Intellectual property rights indemnity

- 2.7.1** Trace shall at all times whether during or after termination or expiry of this Agreement indemnify and keep indemnified the Client from and against any and all losses, liabilities, costs, claims, damages and expenses in relation to any infringement or alleged infringement of any third party's contractual, industrial, commercial or Intellectual Property Rights (including but not limited to infringement or alleged infringements of any patents, trademarks, registered designs, design right or copyright or any applications thereof (if applicable)) suffered or incurred by the Client as a result of the use, possession or supply of the Licensed Software, Developed Software or any of the Documentation.
- 2.7.2** The indemnity in Clause 2.7.1 shall not apply to any infringement to the extent that it is exclusively and necessarily due to Trace having followed a design or instruction furnished or given by the Client.
- 2.7.3** The Client shall use its reasonable endeavours to give Trace the earliest possible notice in writing of any claims, actions or proceedings being made, threatened or brought against

the Client. The Client shall permit Trace at Trace's expense to conduct any litigation, which may ensue, and all negotiations for a settlement of any claim. The Client shall give Trace all reasonable assistance that may be requested by Trace and the Client agrees not to make any admission that might be prejudicial thereto.

- 2.7.4** In the event that infringement of rights as aforesaid prevents the Client from having the full beneficial use of the Licensed Software, Trace shall use its best endeavours either:
- a) to procure for the Client the right to continue the use of the Licensed Software or the relevant Documentation; or
 - b) to replace or modify the same so that it becomes non-infringing, (provided nevertheless that any replacement or modification shall not materially prejudice the Client's beneficial use of the Licensed Software or the relevant Documentation or cause it no longer to comply with the Specification and the Client's requirements and that such replacement or modification will be carried out forthwith so as to avoid or reduce so far as possible any interruption in the Client's business operations).

2.8 Consultation and dispute resolution

- 2.8.1** Any complaints or problems relating to the performance by Trace or the Client of their obligations under this Agreement shall be referred by one party's Service Manager to the other, and shall be discussed at the appropriate meeting and appropriate action shall be taken, with a view to resolving the issue as quickly as possible.
- 2.8.2** Should the Service Managers not be able to resolve any complaints or problems within five Business Days of the issue first being raised, the matter in dispute shall be referred to a Managing Director of the Client and a Managing Director of Trace, who shall attempt to resolve the issue as quickly as possible.
- 2.8.3** The provisions of this Clause 2.8 shall be without prejudice to the other rights and remedies which may be available to the parties under this Agreement.

2.9 Confidentiality

- 2.9.1** No party shall disclose or part with possession of any information or data of the other which is disclosed or otherwise comes into its possession directly or indirectly as a result of this Agreement (including without limitation, the terms of this Agreement) and which is marked as confidential or is of a confidential nature ("Confidential Information")
- 2.9.2** The obligations of confidentiality shall not apply to information:
- a) which the receiving party can prove was in its possession or in the public domain at the date it was received or obtained; or
 - b) which the receiving party lawfully or properly obtains without obligation of confidentiality; or
 - c) comes into the public domain otherwise than through the default or negligence of the receiving party; or
 - d) which was independently developed by the receiving party without reference to the Information of the other party; or
 - e) which, with the prior consent of the other party (such consent not to be unreasonably withheld or delayed) is disclosed to obtain or maintain any listing on any recognised stock exchange; or

- f) is required to be disclosed to a court or a body having similar authority provided that the other party is given prompt notice and, at the other party's request and expense, the receiving party uses reasonable endeavours to obtain a protective order and otherwise to protect the Information.

2.9.3 The obligations of confidentiality under the provisions of this Clause shall remain in full force and effect notwithstanding the termination or expiry of this Agreement howsoever caused.

2.9.4 Nothing in this Clause shall prevent either party including the other party's name or company logo within its marketing materials.

2.10 Termination

2.10.1 This Agreement shall commence on the Effective Date and continue for a minimum term of **thirty six** months. Thereafter this Agreement shall continue unless or until terminated by either party giving the other party not less than **12 months** prior written notice.

2.10.2 This Agreement may be terminated forthwith by written notice if:

- a) the other party commits a material breach of any of the terms and conditions set out in this Agreement provided that where such breach is capable of remedy the other party has been advised in writing of the breach and has not rectified it within thirty days of receipt of such advice; or if
- b) either party is involved in any legal proceedings concerning its solvency, or ceases trading, or commits an act of bankruptcy or is adjudicated bankrupt or enters into liquidation, whether compulsory or voluntary, other than for the purposes of an amalgamation or reconstruction, or makes an arrangement with its creditors or petitions for an administration order or has a Receiver appointed over all or any part of its assets or generally becomes unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986, then without prejudice to any other rights or remedies available to it, the other party shall have the right to terminate this Agreement forthwith; or if
- c) the other party's performance during a Force Majeure event is not resumed within 90 days of its suspension under the provisions below.
 - i. Trace may terminate this Agreement forthwith in the event that the Client uses the Software with the intention of undertaking outsourcing services to other property management companies that are either existing or prospective Trace customers.
 - ii. At the expiry of the term, or following termination under the provisions of Clauses 2.10.2 and (i) hereof, the Client shall cease to use the Licensed Software and any Developed Software and return or destroy and certify accordingly all copies thereof and copies of the Documentation to Trace within 30 days.
 - iii. Any termination of this Agreement pursuant to this Clause shall be without prejudice to any of the rights or remedies a party may be entitled to hereunder or at law, and shall not affect the accrued rights of either party.

2.11 Force Majeure

2.11.1 Neither party shall be liable to the other for any delay or non-performance of its obligations under this Agreement other than payment obligations arising from any cause beyond its reasonable control including, without limitation, any of the following: act of God, governmental act, war, fire, flood, explosion or civil commotion. Subject to the affected party promptly notifying the other party in writing of the cause and the likely duration of the cause, the performance of the affected party's obligations, to the extent affected by the cause, shall be suspended during the period that the cause persists, subject to Clause 2.10.2c) above.

2.12 Limitation of liability

2.12.1 Either party shall indemnify the other for direct physical injury or death caused solely by the gross negligence of its employees acting within the course of their employment and within the scope of their authority.

2.12.2 Except in respect of injury to or death of any person the liability of either party to the other for loss or damage arising out of or in connection with any breach of either party's obligations hereunder whether arising for breach of contract, negligence or howsoever shall in no event exceed 100% of the Charges received by Trace under the terms of this Agreement in the preceding twelve months and in no event shall either party be liable to the other for special, indirect or consequential damage including loss of profits.

2.13 Notices

2.13.1 Any notice or other document to be served under this Agreement may be delivered or sent by prepaid first class recorded delivery post to the party to be served as follows:

To the Client at:	To Trace at:
	The Third Floor
	30A Great Sutton Street
	London, EC1V 0DU
	UK
FAO:	FAO: Managing Director

or at any other address or to any other addressee as it may have notified to the other party in accordance with this clause.

2.13.2 In proving service of a notice or document it shall be sufficient to prove that delivery was made or that the envelope containing the notice or document was properly addressed and posted as a prepaid first class recorded delivery letter.

2.14 Escrow [Remove if not required]

2.14.1 Trace undertakes that at the Client's request it will provide an escrow service subject to the terms of a separate Professional Services Order which will be appended to this Agreement.

2.15 Entire agreement and conflicts

2.15.1 This Agreement sets out the entire and only agreement and understanding between the parties in relation to its subject matter.

2.15.2 Each party acknowledges that it has entered into this Agreement in reliance only upon the representations, warranties and promises specifically contained or incorporated in this Agreement and, save as expressly set out in this Agreement, each party shall have

no liability in respect of any other representation, warranty or promise made prior to the date of this Agreement unless it was made fraudulently.

2.15.3 In the event of conflict or inconsistency between the body of the Agreement, the Schedules and a Professional Services Order, the following order of precedence will apply: terms of the relevant Professional Services Order will prevail over the Schedules and the Agreement and the terms of the relevant Schedule shall prevail over the terms of this Agreement.

2.15.4 All prior Agreements for the Software and any related services between the parties are agreed to be terminated immediately without notice on execution of this Agreement. Trace may still claim for any legitimate unpaid invoices under any prior Agreement but will have no further claims in connection with those Agreements against the Client.

2.16 Assignment

2.16.1 This Agreement shall not be assignable by either party without the prior written consent of the other, such consent not to be unreasonably withheld.

2.16.2 This Agreement shall be binding upon any successors in title of the parties.

2.17 General provisions

2.17.1 No purported variation of this Agreement shall be effective unless it is in writing and signed by or on behalf of each of the parties.

2.17.2 To the extent that any provision of this Agreement is found by any court or competent authority to be invalid, unlawful or unenforceable in any jurisdiction, that provision shall be deemed not to be a part of this Agreement, it shall not affect the enforceability of the remainder of this Agreement nor shall it affect the validity, lawfulness or enforceability of that provision in any other jurisdiction.

2.17.3 No single or partial exercise, or failure or delay in exercising any right, power or remedy by any party shall constitute a waiver by that party of, or impair or preclude any further exercise of, that or any right, power or remedy arising under this Agreement or otherwise.

2.18 Data Protection

2.18.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

2.18.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Client is the data controller and Trace is the data processor of the Client's Personal Data (where Data Controller and Data Processor have the meanings as defined in the Data Protection Legislation). Appendix A below sets out the scope, nature and purpose of processing by Trace, the duration of the processing and the types of personal data (as defined in the Data Protection Legislation, Personal Data) and categories of Data Subject.

2.18.3 Without prejudice to the generality of clause 2.1, the Client will ensure that it has all

necessary appropriate consents and notices in place to enable lawful transfer of the Customer Personal Data to Trace for the duration and purposes of this agreement.

2.18.4 Without prejudice to the generality of clause 2.1, Trace shall, in relation to any Client Personal Data processed in connection with the performance by Trace of its obligations under this agreement:

- (a) process that Client Personal Data only on the written instructions of the Customer unless Trace is required by the laws of any member of the European Union or by the laws of the European Union applicable to Trace to process any Client Personal Data (Applicable Laws). Where Trace is relying on laws of a member of the European Union or European Union law as the basis for processing Client Personal Data, Trace shall promptly notify the Client of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit Trace from so notifying the Client;
- (b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Client, to protect against unauthorised or unlawful processing of Client Personal Data and against accidental loss or destruction of, or damage to, Client Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Client Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Client Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- (c) ensure that all personnel who have access to and/or process Client Personal Data are obliged to keep the Client Personal Data confidential; and
- (d) not transfer any Client Personal Data outside of the European Economic Area unless the prior written consent of the Client has been obtained and the following conditions are fulfilled:
 - (i) the Client or Trace has provided appropriate safeguards in relation to the transfer;
 - (ii) the data subject has enforceable rights and effective legal remedies;
 - (iii) Trace complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Client Personal Data that is transferred; and

- (iv) Trace complies with reasonable instructions notified to it in advance by the Client with respect to the processing of the Client Personal Data;
- (e) assist the Client, at the Client's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (f) notify the Client without undue delay on becoming aware of a Client Personal Data breach;
- (g) at the written direction of the Client, delete or return Client Personal Data and copies thereof to the Client on termination of the agreement unless required by Applicable Law to store the Client Personal Data; and
- (h) maintain complete and accurate records and information to demonstrate its compliance with this clause and allow for audits by the Client or the Client's designated auditor.

2.18.5 Without prejudice to the generality of the foregoing, for any transfer of data outside the United Kingdom, it is of the utmost importance to the Client that appropriate security measures are taken to protect the data and that Trace adopts the recognised standards within the industry to ensure such security. Whilst the following is not intended to be a definitive list, the following security measures are the minimum that the Client expects to be consistently applied by Trace in respect of such data:

- a) secure identity controlled access to the area of work where Trace (or its subcontractors) undertake any work for the Client;
- b) only checked staff are to be used by Trace (or its subcontractors) to undertake any work for the Client. Trace (and its subcontractors) will maintain and enforce a security policy;
- c) Trace will use all reasonable efforts to ensure that no copies of any data are taken or recorded;
- d) Trace (or its subcontractor) undertakes regular checks of staff to ensure that no breaches of data or information security occur.

2.19 Governing Law and Jurisdiction

2.19.1 This Agreement shall be governed by and construed in accordance with the laws of England and Wales. Each of the parties irrevocably submits for all purposes in connection with this Agreement to the exclusive jurisdiction of the courts of England and Wales.

Appendix A – Description of Processing

Subject matter of the processing	The processing of personal data to the extent necessary for the provision of the services set out in this Agreement by Trace to the Client
Duration of the processing	The term of the Agreement
Nature of the processing	The processing of personal data to the extent necessary in the provision of the Services set out in this Agreement by Trace to the Client
Purpose of the processing	The processing of personal data to the extent necessary in the provision of the Services set out in this Agreement by Trace to the Client

Personal data types

means any information relating to an identified or identifiable natural person ('data subject'); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person;

Categories of data subjects

any identified or identifiable natural person.

3 EXECUTION

Signed for
and on
behalf of
Trace by:

Signature

Signature

Name

Name

Position

Position

Date of Signing

Date of Signing

Signed for
and on
behalf of the
Client by:

Signature

Signature

Name

Name

Position

Position

Date of Signing

Date of Signing

At least one of the signatures on behalf of the Client must be from a director of the Client.
Both signatures on behalf of Trace are from directors of the company.

4 IMPLEMENTATION SCHEDULE

4.1.1 Deliverables

Trace shall provide, or where the Software Hosting Service is used, make available, to the Client:

- (a) one copy of the Licensed Software, and
- (b) access to the Trace web site client portal to access the Documentation .

4.1.2 Installation

Trace shall install and configure the Licensed Software and certify to the Client when the Licensed Software is ready for use.

4.1.3 Risk

Where the Software Hosting Service is not used, risk in the media on which the Licensed Software is recorded shall pass to the Client on delivery. If any part of the media is lost, destroyed or damaged after delivery, Trace shall replace it, subject to the Client reimbursing Trace in respect of actual costs incurred in providing the replacement and/or covering the costs of re-instatement of data.

4.1.4 Acceptance Testing

The Client and Trace will agree the Acceptance Testing procedure for the Software in the form of a Professional Services Order which will state (among other things):

- a) the nature of the tests and the criteria for passing them; and
- b) the period of time for Acceptance Testing.

Acceptance Testing usually only applies where the Client has commissioned Developed Software, not where only the standard software package (the Licensed Software) has been supplied.

4.1.5 In the event that the Client does not request an Acceptance Testing procedure for the Software, Acceptance Testing will be deemed to be completed on Delivery of the Software.

4.1.6 Within 10 working days of the end of the period agreed in Clause 4.1.4 above, the Client will inform Trace whether or not the relevant Software has passed the relevant Acceptance Tests. Failure by the Client to do so will result in the relevant Software being deemed to be Accepted.

4.1.7 In the event that the Software fails the relevant Acceptance Tests, the Client will inform Trace of the fact stating reasons for such failure and require Trace to modify the Software and submit it for re-testing within such period as set out in the relevant Professional Services Order.

4.1.8 In the event that any Software fails Acceptance Tests more than three times, the Client may:

- a) reject the relevant Software and Trace will refund to the Client any sums paid under this Agreement in relation to such rejected Software within 30 days of notice of rejection; or

- b) terminate this Agreement and Trace will refund to the Client all sums paid under this Agreement within 30 days of termination under this clause b).

4.1.9 If the Client uses the Software before Acceptance under this clause except for testing purposes then such Software shall be deemed to be Accepted by the Client on the date of such first use.

4.2 Training, Consultancy and other services

Trace will supply training, consultancy and other services in respect of the Software in accordance with any agreed Professional Services Order.

4.3 Implementation Project Management

Trace will supply implementation project management in respect of the Software in accordance with any agreed Professional Services Order.

4.4 Change Control and problems solving

4.4.1 The party requesting the change will deliver a "Change Request" to the other party. The Change Request will describe the nature of the change.

4.4.2 A Change Request may be initiated by either party. The Service Manager of the requesting party will review the proposed change with his/her counterpart. The parties will evaluate the Change Request and negotiate in good faith the changes to the Services and the additional charges, if any, required to implement the Change Request. If both parties agree to implement the Change Request, the appropriate authorised representatives of the parties will sign the Change Request, indicating the acceptance of the changes by the parties.

4.4.3 Upon execution of the Change Request, the said Change Request will be incorporated into, and made a part of, this Agreement.

4.4.4 Neither party is under any obligation to proceed with the Change Request until such time as the Change Request has been agreed upon by both parties.

5 LICENCE SCHEDULE

5.1 Scope of Licence

5.1.1 The following Software is licensed under this Agreement:

The following TRAMPS/BlueBox/o6ix [Delete 2 of these and change text colour] module(s):

Property Management & Accounting as described within Trace's proposal and quotations which is annexed to this Agreement in Schedule 12, Proposal and Quotation Schedule and subsequently Updated by subsequent Professional Service Orders.

5.1.2 In addition, if Trace has produced Developed Software for the Client in accordance with the provisions of the Professional Services Schedule hereto, such Developed Software shall, subject to the payment by the Client of the agreed Additional Licence Fee, be licensed on the terms and conditions contained in this Agreement.

5.1.3 The Licence is a non-exclusive licence to use, run and operate the Licensed Software in object code form (or in source code form where such source code is released under the optional escrow agreement) and also the database which also contains code in the form of stored procedures and triggers and the Documentation relating to the Licensed Software for the Client's business purposes at the License Sites defined below and for the number of users defined below. In addition, where the Software Hosting Service is not used, the Client may take copies of the Licensed Software for archival purposes and/or for use by disaster recovery facilities only.

5.1.4 Trace shall ensure that the Client has access to the Documentation through the Trace web site client portal. The Client may make such copies of Documentation relating to the Licensed Software as it reasonably requires and may display the Documentation on its intranet provided that such copies are treated as being subject to the licence in this Schedule and as Confidential Information.

5.1.5 Any Updates or Modifications to the Licensed Software will be treated as part of the Licensed Software.

5.1.6 The Client's use of the Software is contingent upon the provision by Trace of the Maintenance Services and for the avoidance of doubt the Licence granted herein shall terminate automatically upon the termination of the Maintenance Service.

5.2 Licence Restrictions

5.2.1 The Client's use of the Software is restricted as follows:

Licence Sites: [EITHER world-wide]
At any location from time to time of the Users.
[OR regional]
At any location from time to time of the Users within
[REGION]
[OR specific locations]
At the following location(s): [ADDRESS(ES)]

Trace may consent in writing to a change in the location, such consent not to be unreasonably withheld. Any

change may result in extra charges on a Time and Materials basis.

For the avoidance of doubt, Users may access the Licensed Software from other locations using the internet. Where the Hosting Service is not used, the License Site is defined as the location at which the database is located.

Number of Users:

[EITHER unlimited]

For any number of Users

[OR limited/concurrent usage]

For the concurrent use of up to [NUMBER] Users at any time, each of who may access multiple copies of the Licensed Software

Number of
Databases

[Normally One]

This restriction excludes:

- a) The Demonstration database supplied with the Licensed Software
- b) Any database created for the purpose of training or testing
- c) Databases used for the purpose of archiving or disaster recovery
- d) OTHER RESTRICTIONS TO THE LICENCE e.g. specific operation, backup, development, testing, cold stand-by, warm stand-by, business volumes, processor size, etc

Country

For the Client's business purposes in the following countries:

United Kingdom

Etc

Trace will advise the Client from time to time through release notes which countries the Licensed Software has been adapted for to meet legislative requirements. Use of the Licensed Software in countries that have not been qualified by Trace is entirely at the Client's own risk.

Insert clause below this if unlimited user licence

Trace reserves the right to increase the Licence Fee and Maintenance Charges on a reasonable basis and in line with the increased user numbers in the event that the Client acquires another company. Any such increase will be made only with the agreement of both parties.

6 PROFESSIONAL SERVICES SCHEDULE

6.1 Scope of Services

- 6.1.1** Any Professional Services must be agreed in writing advance by the Client and Trace using a Professional Services Order.
- 6.1.2** The Professional Services which may be provided by Trace may include, but are not limited to, facilities management, training, consulting, regular project meetings, special studies, installation, evaluations, programming and documentation, application design and development, systems analysis and design, re-commissioning following a disaster, additional software, conversions, the provision of Updates, and implementation planning.

6.2 Professional Service Orders

- 6.2.1** The Client may submit a Professional Service Order to Trace and upon acceptance by Trace, the Professional Service Order will become part of and subject to the terms and conditions of this Agreement.
- 6.2.2** Professional Service Orders will set out at least:
- a) the scope of the Professional Services to be performed;
 - b) the locations at which the Professional Services are to be performed;
 - c) the milestones for any deliverables to be produced by the Professional Services;
 - d) any acceptance criteria for the Professional Services or deliverables; and
 - e) any Charges payable for the relevant Professional Services.

6.3 Change Orders

- 6.3.1** In the event that either party considers that a change ("Change") to a professional Services Order is necessary, then both parties will use their best endeavours to agree a variation to the Professional Services Order to implement agreed Changes as soon as it is reasonably practical. Neither party shall be under any obligation to accept any Change unless and until all details of such a Change are recorded and appended to this Agreement.

7 MAINTENANCE SCHEDULE

7.1 Scope of Maintenance

7.1.1 Maintained Software. Maintenance Services are provided in respect of all of the Software.

7.1.2 Maintenance Sites. The Maintenance Services shall be provided to

[ADDRESS, normally the primary site of the Users]

and/or [the following locations:]

[Insert locations]

or such alternative location(s) as are notified by the Client to Trace in writing from time to time which may incur additional charges to be agreed between the Client and Trace.

Where the Software Hosting Service is used, Trace may also provide the Maintenance Services to the site from which the hosting service is provided.

7.2 Maintenance Term

7.2.1 The Maintenance Services shall be provided from the date of delivery of the Licensed Software or any Developed Software as and when delivered, or made available by the Software Hosting Service if this is used, by Trace and shall continue for as long as this Agreement remains in force.

7.2.2 Trace may terminate its obligation to perform Maintenance Services forthwith in the event that the Client makes, allows, authorises or otherwise permits any alteration to any of the Licensed Software or permits updates to the database by any means other than through Licensed Software other than with Trace's assistance or at Trace's written direction or permission (not to be unreasonably withheld).

7.2.3 In order to enable Trace to perform its obligations under this Agreement, the then current and previous version of the Software will be kept on-line at the Trace premises (currently 30A Great Sutton, Street, LONDON, EC1V 0DU).

7.3 Maintenance Services

7.3.1 In addition to the warranties in clause 2.4, Trace will use reasonable endeavours to provide the Maintenance Services in accordance with the terms of the Standards and Procedures defined in clause 7.4 below.

7.3.2 The Client undertakes that it will follow the procedures required of it in the Standards and Procedures defined in clause 7.4 below.

7.4 Standards and Procedures for Maintenance Services

7.4.1 Hours of Service Availability

Payment of the total Annual Maintenance Charge (as defined in the Payment Schedule) entitles the Client to the Services described in Clause 7.5 between the hours of 09:00hrs and 17:00hrs (UK Time) on English Business Days.

7.4.2 The Client may request, in writing, special extended periods of coverage. Extended service options are subject to Trace's approval and Trace's terms, conditions and prices

for such services prevailing at the time.

7.5 Helpline service

7.5.1 Trace will provide a helpline service as further set out in this clause 7.5.

7.5.2 The helpline telephone number shall be 020 7825 1234 or such other number that Trace shall notify to the Client from time to time. In addition to the helpline telephone, the Client is able to contact the helpline by e-mail or through the Trace web site. Details of these are available via the helpline telephone.

7.5.3 In addition to reporting Faults, the Client may use the helpline for general enquiries relating to the operation of the Software with the Client's System. Such enquiries will be classified as Priority C.

7.5.4 Reporting of Faults

All Faults must be reported and sent to the helpline team by facsimile transmission, e-mail, mail or logged and uploaded via the help desk web site. Wherever possible it should be ensured that a screen-print or report copy illustrating the problem accompanies the Fault as this greatly assists Fault qualification and subsequent rectification. The information required by the helpline team is as follows:-

- a) Client Details:
 - Client name
 - Client contact
 - Department
 - Contact telephone number
- b) Fault Details
 - Screen or report name
 - Version number
 - Date and time of occurrence
 - A description of the problem
 - Assumed Fault categorisation group.

7.5.5 Acknowledgement of Faults

All communications to the helpline support team will be directly answered. The helpline support team will log details of the Fault onto the helpline logging system. The Client will be advised of a Fault reference number.

7.5.6 Categorisation of Faults

The Fault will be categorised (subject to the Client supplying such information as Trace reasonably requires), into one of the following classifications if there is a discussion between the relevant Client and the Trace personnel, otherwise category 'C' is the default. Where the Client and Trace are unable to agree on a call classification, the issue will be escalated to the Trace support service manager and Client service centre manager:

- a) Priority A
 - a Fault materially affecting the Client System for which there is no workaround;
- b) Priority B
 - a Fault materially affecting the Client System for which there is a workaround; and

c) Priority C

a Fault preventing part of the Client System operating properly. A Fault of this type would not prevent the completion of a necessary business process in the usual manner. However, a part of the Client's System would not be operating correctly causing inconvenience or delays to the Client.

7.5.7 Response Times

a) Response times to Faults reported to the helpline will be no more than as follows:

i. for Priority A calls:

1½ hour	Trace will provide telephone response
2 hours	Trace will provide dial-in response
1 working day	Trace will deliver a Fix to the Client where required.

ii. for Priority B calls:

2 hours	Trace will provide telephone response
2 working days	Trace will provide dial in or on site response as appropriate.
5 working days	Trace will deliver a Fix to the Client where required or acknowledge a Fault with a likely future release date.

iii. for Priority C calls:

1 working day	Trace will provide initial telephone response
10 working days	Trace will provide dial-in or on site response as appropriate
20 working days	Trace will deliver a Fix to the Client where required or acknowledge a Fault with a likely future release date.

b) the response times will be calculated from the time the Fault is first reported to Trace.

c) If Trace is unable to replicate the Fault within its own environment and the Client's environment is different from Trace's environment then Trace will work with the Client to replicate the Fault at one of the Maintenance Sites.

7.6 Update Service

7.6.1 Updates will be provided by Trace to the Client free of charge as follows:

- a) where an Update is required in order to correct a Fault;
- b) where an Update is required to remedy a breach of warranty under clause 2.4 of this Agreement;
- c) where an Update is supplied under clause 2.7.4 of this Agreement; or
- d) Trace makes an Update generally available to other licensees of the Licensed Software.

7.6.2 Where the Software Hosting Service is used updates will be installed by Trace free of charge if they are supplied free of charge under clauses 7.6.1 b) or c).

7.6.3 Where the Software Hosting Service is not used, Updates under clauses 7.6.1 a) and d) are the responsibility of the Client to install.

7.6.4 Any other Updates will be supplied and installed as Professional Services under an appropriate Professional Services Order.

7.7 Maintenance Service Limitations

- 7.7.1** The Client and Trace acknowledge that the level of service that can be provided may be affected by:
- a) the inability of Client staff to describe to and interact with Trace support staff in resolving a Fault. The Client will provide the names of up to five qualified Client staff, to be agreed by the Client and Trace and advised in writing, who will be permitted to contact the helpline to request support. The Client must advise substitutions to the list of supported Client staff in writing;
 - b) where the Software Hosting Service is not used, the Client failing to provide a good level of remote dial-in access to the Client System;
 - c) the Client failing to make every reasonable effort to assist Trace in activities associated with identifying the cause of any Fault.

7.8 Maintenance Service exclusions

- 7.8.1** Trace reserves the right to charge at the Time and Materials Rates for Maintenance Services supplied in respect of Faults which on investigation are found not to have been caused by Trace or the Software or are due to the Software being used other than in accordance with the relevant Specifications.

- 7.8.2** Trace accepts no responsibility for and will in no event be liable for any Faults arising out of use by the Client of any third party software other than the Third Party Software. Trace reserves the right to charge for any effort in resolving such Faults at its Time and Materials Rates.

For the avoidance of doubt, if the Client alters or updates the structure or content of the database other than through use of the Software or at Trace's explicit instruction, this action will render the warranties given by Trace in clause 2.4 null and void.

- 7.8.3** The Maintenance Charge does not cover the following services which will only be carried out as agreed under a Professional Services Order and will be supplied as Professional Services:
- a) installation or reinstallation of the Software unless such installation or reinstallation is required as a result of a Fault or is performed free of charge as part of the Update Service.
 - b) visits to the Client by a Trace technician where such visit is carried out because Trace, acting reasonably, determines that there have been an excessive amount of calls to the helpline which have not been made in respect of Faults;
 - c) initial set up of data to be used on the databases forming part of the Licensed Software;
 - d) modifications of the Software made at the Client's request other than due to a Fault;
 - e) advice and consultancy on design of procedures;
 - f) development of Developed Software; and
 - g) The re-commissioning of the Licensed Software or Developed Software following a disaster unless such disaster is attributable to any action or inaction of Trace or its subcontractors.
- 7.8.4** The Services are contingent upon the use of the Software in accordance with the Specifications and does not include any of the following:

- a) service to a version of the Software other than the current or immediate prior release
- b) efforts to restore a release of Software beyond the current or immediate prior release
- c) efforts to restore Client data beyond the most recent successful backup
- d) the resolution of software defects or errors due to accidental damage by the Client or misuse by the Client
- e) attendance at project meetings or investigations into system enhancements which will be charged in addition
- f) all reasonable expenses incurred whilst visiting the Client's premises or the premises of another company on behalf of the Client.

8 PAYMENT SCHEDULE

8.1 Licence Charges

- 8.1.1 Trace may invoice the following Charges for the Licensed Software on the date of the signature of this Agreement:

TRAMPS/BlueBox/o6ix module(s):	Charge [GBP]
[Delete as required: The Charges for the Licensed Software are included within the monthly service fee as defined in Clause 11.6 of the Software Hosting Schedule.]	
TOTAL	

8.2 Maintenance Charges

- a) Maintenance Charges are included within the monthly service fee as defined in Clause 11.6 of the Software Hosting Schedule.
- b) OR [Delete the first two or paragraphs c-e]
- c) Trace will invoice its annual Maintenance Charge of [£] in advance from the commencement of the Maintenance Term.
- d) In the event that the Client requests and Trace agrees to the payment of the Maintenance Charges in quarterly instalments, then the Client shall pay an additional sum equal to 5% of the total Maintenance Charge in respect of this facility, payable in equal quarterly instalments. Trace reserves the right to withdraw this facility by notice in writing to the Client such that the whole of the amount outstanding becomes due for payment forthwith.
- e) The Maintenance Charge will not be reduced during the initial term as a result of a reduction of the number of Users defined in the Licence Schedule or for non-use of any part of the supplied Software. After the initial term, any reduction in the Maintenance Charge will be calculated pro-rata against the original elements of the quotation that supports the Licence Charges in clause 8.1.1.

8.3 Software Hosting Service Charges

- 8.3.1 Where Trace provides a Software Hosting Service, Licence and Maintenance Charges are included within/excluded from [Delete one of these] the monthly service fee as defined in Clause 11.6 of the Software Hosting Schedule.

8.4 Expenses

- 8.4.1 All reasonably incurred out of pocket expenses for subsistence and travelling to all locations and for accommodation outside London will be charged by means of a monthly summary of such expenses.

8.5 Price Reviews

- 8.5.1 Where the Software Hosting Service is not used or the Charges for the Software Hosting Service specifically exclude the Maintenance Charges;

- a) The annual Maintenance Charges and any Rental Charges may increase to reflect the increase in the costs to Trace of providing the Maintenance Services for the next twelve-month period should provision of the Maintenance Services become economically unviable to Trace. In addition Trace will increase the Maintenance Charges by no more than the increase in **the RPIX plus 3% (whatever cap is)** since the last anniversary. If the increase in the RPIX falls below zero, it will be treated as being zero for the purposes of this calculation. If the value of RPIX exceeds **6% (whatever RPIX cap is)** it will be treated as **6%** for the purposes of this calculation.

After the initial term, Trace will increase the Maintenance Charges by no more than the increase in the RPIX plus 3%. since the last anniversary.

- b) In this paragraph, "RPIX" means the general index of UK retail prices published in the monthly Digest of Statistics by the Office for National Statistics or, if such index shall cease to be published, such other retail prices index as may be published in substitution for it. The latest available index at the time of production of an invoice shall be used. Invoices are usually issued up to four weeks prior to the start date of the maintenance period.

8.6 Invoicing

- 8.6.1** All sums due to Trace under this Agreement shall be payable by the Client within 30 days of receipt of a correct and properly due invoice. Any sums not paid after 60 days will cause instant suspension of the Maintenance Services until payment is received and cleared through the bank.
- 8.6.2** The Client shall not be entitled to withhold payment of any undisputed element of Charges that are properly due and payable in accordance with the Agreement.
- 8.6.3** The Client shall pay interest on all undisputed outstanding sums due under the Agreement at the rate of 3 per cent above the base rate of the National Westminster Bank, compounded monthly.

9 PERSONNEL SCHEDULE

9.1 Replacement and Removal

9.1.1 The Client may replace any of the Client's Personnel on written notice to Trace.

9.1.2 Trace:

- a) may remove any of its Personnel, assuming they remain employed by Trace, on written notice to the Client; and
- b) shall remove any of Trace Personnel on the Client's reasonable written request stating reasons for requiring removal.

10 THIRD PARTY SOFTWARE SCHEDULE

10.1 Third Party Software Requirements

10.1.1 This schedule is only applicable where the Software Hosting Service is not used.

10.1.2 The following Third Party Software products are the minimum required to support the Software. These products may be supplied by Trace or the Client may purchase the products from an alternative source.

Description	Product Name	Version
Database Software	Microsoft SQL Server	2019

The version stated above is applicable as at the Effective Date. Updates of supported versions of the Third Party Software will be published in a technical profile document on the Trace web site from time to time.

10.1.3 The Client is responsible for ensuring it has proper licences for any Third Party Software.

10.1.4 The Client is responsible for ensuring it has software maintenance agreements for the Third Party Software.

11 SOFTWARE HOSTING SCHEDULE

11.1 Software Hosting Service

11.1.1 This schedule is only relevant where Trace supplies to the Client a Software Hosting Service at any time throughout the term of this Agreement. The Software Hosting Service includes provision of the Software to the Client via the Internet, Maintenance Services and reasonable administration of the database(s) as requested via the helpline.

11.1.2 The Software Hosting Service will be provided during the term of the Agreement, unless otherwise agreed by Trace and the Client by way of an additional Professional Services Order, from the Effective Date.

11.1.3 Charges for the Software Hosting Service will be fixed for the initial 12 months of the provision of the service.

11.1.4 Trace will increase the Charges for the Software Hosting Service by no more than the increase in the **RPIX plus 3% (whatever cap is)** since the last anniversary. If the increase in the RPIX falls below zero, it will be treated as being zero for the purposes of this calculation. If the value of RPIX exceeds **6% (whatever RPIX cap is)** it will be treated as **6%** for the purposes of this calculation.

In this paragraph, "RPIX" means the general index of UK retail prices published in the monthly Digest of Statistics by the Office for National Statistics or, if such index shall cease to be published, such other retail prices index as may be published in substitution for it.

11.2 Host Site

11.2.1 The Software Hosting Service will be delivered to the Client via the internet. The location of the host site may be varied by Trace from time to time but shall at all times be located within the United Kingdom.

11.3 Access

11.3.1 The Client is responsible for ensuring that it has internet access with sufficient bandwidth to provide acceptable response times for the Licensed Software allowing for file transfers and printing which will use part of the available bandwidth.

11.3.2 Access to the Software is provided using Citrix over a secure 'https' connection. Each user will have a unique account.

11.3.3 Each user may copy or transfer data to or from the hosting server subject to security settings to be determined by the Client's system administrator. In this regard, Trace operates a fair usage policy of up to 5GB of data per user.

11.3.4 The Client's database is backed up on-line regularly throughout the day using a transaction log. In addition, a separate secure copy is copied to a remote site overnight.

11.3.5 The Client's database can be copied to a location of the Client's choosing on a weekly basis.

11.3.6 The Client's data, excluding the database structure, can be exported on demand as required by any exit strategy of the Client, Trace or the hosting partner.

11.3.7 On termination of this Agreement by the Client, the Client will be responsible for transferring its data from the hosting site to its own systems prior to the termination

date. Trace will assist in the transfer of the data if required, subject to the terms of a Professional Services Order agreed between the parties.

11.3.8 The Client's access to the hosting site will be permanently disconnected as at the agreed termination date.

11.3.9 Within 10 Business Days of the termination of this Agreement, Trace will permanently delete all of the Client's data from the hosting site.

11.4 Service Availability

11.4.1 The Software Hosting Service will be provided at the following times:

Days	Business Days
Hours	From 09:00 to 17:00 UK Time, supported via the helpline The Service may be used outside of these hours, subject to availability, without support. The Client will be advised of Planned Downtime.
Availability	The service will be available for 99% of the time in the stated hours in any given 12 month period.

11.4.2 **"Availability"** in Clause 11.4.1 means that the service can be accessed and that it is fully functional in all material respects. For the avoidance of doubt, such terms exclude any periods of Planned Downtime (defined below) and any period during which the system is unavailable for reasons of Force Majeure.

In the event of a viral or similar attack which penetrates the Software Hosting Service's firewall ("Web Attack") which causes unavailability of the system, the first 24 hours of such availability shall not be measured for the purpose of calculating the achieved service level.

The Availability is provided by:

- a) Communications lines to the hosted server are duplicated
- b) Power supplies are duplicated within the hosted environment
- c) Hardware peripherals such as switches are duplicated
- d) Servers have RAID arrays fitted with same day business response covered by the manufacturer.

"Planned Downtime" means

- a) periods where the system is taken down and the timing, duration and extent of such an event is notified to the Client in writing no less than 30 days in advance (or less than 30 days if agreed by the Service Managers); or
- b) periods where the system (or any component thereof) is taken down at the Client's request
- c) Installation of a new version of the Software where Trace makes an Update generally available to other licensees of the Licensed Software. The date and time of the installation will be advised not less than 30 days in advance (or less than 30 days if agreed by the Service Managers) by Trace following a recommendation from Trace for the Update to be installed.
- d) Maintenance of the database by Trace as requested by the Client.

11.4.3 Availability is to be measured monthly based on the Hours stated above in Clause 11.4.1.

11.5 Service Levels

11.5.1 Following the Effective Date, Trace shall provide the Software Hosting Service in accordance with the Service Levels.

11.5.2 Interruptions to the Software Hosting Service not expressly set out in the Service Levels may be necessary but shall only be made with prior notification to the Client when Trace, in its reasonable opinion, believes they are necessary to improve or maintain the Software Hosting Service and compliance with the Service Levels.

11.5.3 If at any time after the Effective Date the Software Hosting Service is not supplied in accordance with the Service Levels, Trace shall, at no additional charge to the Client and without prejudice to the Client's other rights and remedies, use commercially reasonable efforts to remedy any failure to the Service Levels including:

- a) promptly investigating the causes of the problem and discussing the results of such investigation with the Client;
- b) arranging all additional resources necessary to perform the Software Hosting Service in accordance with the Service Levels as soon as reasonably possible; and
- c) using its reasonable endeavours to promptly remedy and remove the cause of non-performance; and
- d) promptly advising the Client of all remedial efforts.

11.6 Charges

11.6.1 Charges for the Software Hosting Service will be invoiced on the following basis:

Date	Description	Amount
Effective Date	Set up fee	£XX
As supplied	Implementation Services	As Quotation XXXX
Effective Date and monthly thereafter for the term of the Agreement	Monthly service fee incorporating hosting service, licence fee and maintenance charge	£XX

12 PROPOSAL AND QUOTATION SCHEDULE

This schedule contains the licence, maintenance and other implementation costs as described in Trace's proposal to the Client which forms the basis of this Agreement.

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