

AGREEMENT FOR THE PROVISION OF

DEVELOPMENT, IMPLEMENTATION & SUPPORT SERVICES

EFFECTIVE DATE: dd mmm 2025

(1) MIKKOM LTD

and

(2) COMPANY XYZ

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THE EFFECTIVE DATE OF THIS AGREEMENT IS **DD MMM YYYY**

BETWEEN

- (1) **Mikkom Limited** registered in England with number 3739149, whose registered office is 3rd Floor Vista House, 2 William Street, Windsor, SL4 18A, United Kingdom (the “**The Company**”).
- (2) **COMPANY XYZ**, registered in England with number **[Company number]** whose registered office is **[Address]**, (the “**Contractor**”); and

1. DEFINITIONS INTERPRETATION AND STRUCTURE

- 1.1 In these terms and conditions the following expressions will have the following meanings unless inconsistent with the context:

“Authority to Proceed”	A document issued by Company that authorises Contractor to undertake the go-live process for the system.
“Business Day”	means any day other than a Saturday or Sunday or a public or bank holiday in England.
“Charges”	means the charges to be paid by the Company to the Contractor in respect of the Implementation Services and the Support Services and any other Services as set out in the applicable Schedule, including the Implementation Service Charges and the Support Service Charges.
“Confidential Information”	means the terms of this Agreement and each Service Schedule and all sums payable under the Agreement and each Service Schedule, all information in respect of the business of a Party including, but not limited to, Know-How, other technical, business, financial and product development plans, forecasts, customer lists, strategies or other matters connected with the Products or Services, and any other information which a reasonable person would consider to be of a confidential nature (whether or not marked as confidential) but shall exclude the Excluded Information with effect from the date that it becomes Excluded Information.
“Data Protection Laws”	means the DPA and all other privacy laws and regulations in any applicable jurisdiction.
“Deliverable”	means any Products or any other output from a task or series of tasks that Contractor is required to deliver to Company as detailed in the then current Implementation Schedule.

“Delivery Acknowledgement”	means an acknowledgement issued by the Contractor and indicating that the Products or Deliverable specified therein have been so delivered and installed.
“DPA”	means the Data Protection Act 1998 or any amendment, replacement or re-enactment for the time being in force.
“Effective Date”	means the date at the head of this Agreement, being the date of execution of this Agreement by both Parties.
“Excluded Information”	means information which: (1) was or becomes publicly known through no default or breach of the Agreement by the receiving Party; (2) was or becomes lawfully known to the receiving Party without restriction from a source other than the disclosing Party who itself obtained it without any confidentiality obligation or which has been demonstrated by the receiving Party to the disclosing Party to have been independently developed by the receiving Party; (3) is approved for disclosure by the Party which has provided it without restriction in a document signed by a duly authorised officer of such Party; or (4) to the extent that the receiving Party is compelled to disclose it by a court or competent regulatory body (in which case the receiving Party shall give the Party which has disclosed the information prompt notice of the relevant order).
“Force Majeure”	means any cause preventing a Party from performing any or all of its obligations under this Agreement and each Implementation Schedule which arises from or is attributable to acts, events, omissions or accidents beyond the reasonable contemplation and/or control of the Party including, without limitation, strikes, lockouts or other industrial disputes, protest, act of God, war, or national emergency, an act of terrorism, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fault or loss of electricity supply, fire, explosion, flood, storm, epidemic or any of the above events affecting suppliers or subcontractors.
“Hardware”	means any computer hardware, networking equipment, or peripheral products supplied by the Contractor to the Company but not including any consumables.

"Implementation Service Charges"	means that part of the Charges attributable to the Implementation Services and ancillary services, as set out in the applicable Implementation Schedule.
"Implementation Schedule"	means an implementation schedule (also called an Implementation Plan) signed by the Contractor and the Company from time to time which incorporates the terms of this Agreement substantially in the form of the first Implementation Schedule which is part of the Implementation Services Contract that is signed on or around the date of this Agreement.
"Implementation Services"	means the services described in the applicable Implementation Schedule.
"Initial Term"	means the period set out in the relevant Service Schedule starting from the Service Commencement Date.
"Intellectual Property Rights"	means copyrights, moral rights, patents, supplementary protection certificates, trademarks, trade names, service marks, design rights, database rights, rights in goodwill, rights in undisclosed or confidential information (such as Know-How, trade secrets and inventions (whether patentable or not)), and other similar or related intellectual property rights (whether registered or not) and applications for such rights anywhere in the world.
"Know-How"	means all information not in the public domain held in any form including that comprised in or derived from drawings, data, formulae, specifications, notes, computer software, component lists, instructions, manuals, brochures, catalogues and processed descriptions.
"Licence Agreement(s)"	means any licence agreement(s) relating to use of the Software and Third Party Software. The Contractor shall ensure that copies of the applicable licence agreement(s) are attached or incorporated into the applicable Service Schedule under which the Software or Third Party Software is being provided.
"Location(s)"	means the location(s) at which the Products are to be delivered or the Services are to be performed as may be agreed from time to time between the Contractor and the Company.
"Nominated Bank Account"	means the Contractor's bank account, details of which are set out in each Service Schedule.
"Nominated Payment Date"	means the payment date set out in each Service Schedule.

“Party”	means the Contractor or the Company (as appropriate) and “Parties” shall be construed accordingly.
“Products”	means the goods which the Contractor supplies to the Company (including any of them or any part of them) under this Agreement as set out in the applicable Service Schedule including, but not limited to the Software, Third Party Software and/or the Hardware and, if relevant, includes the Software or Third Party Software upgrades.
“Services”	means the services to be provided by the Contractor to the Company as set out in a Schedule to this Agreement including the Implementation Services and the Support Services.
“Service Commencement Date”	means the date on which the Parties agree that the Contractor will commence providing the applicable Services to the Company as set out in the applicable Service Schedule.
“Service Levels”	means the service level for the applicable Services as set out in the applicable Service Schedule.
“Service Schedule”	means an Implementation Schedule, Support Services Schedule or other Schedule setting out the Services and Charges.
“Software”	“Software” means the computer software owned and supplied by the Contractor, whether embodied in ROM, RAM, firmware or on disk, tape or other media including without limitation the open source software known as Mikkom mCB.
“Support Services”	means the support services to be provided to the Company by the Contractor as set out in the applicable Support Services Schedule.
“Support Services Schedule”	means a support services schedule signed by the Contractor and the Company from time to time which incorporates the terms of this Agreement substantially in the form of the first Support Schedule which is signed on or around the date of this Agreement.
“Third Party Software”	means the computer software supplied by the Contractor on behalf of a third party supplier, whether embodied in ROM, RAM, firmware or on disk, tape or other media.
“Working Hours”	means the hours between 8:00am and 18:00 pm Monday to Friday on any Business Day or such other times as are agreed in writing by the Contractor.

1.2 In this Agreement unless the context otherwise requires any reference to:

- 1.2.1 a “Clause”, “Schedule” or “Appendix” is a reference to a clause, schedule or appendix in this Agreement;

- 1.2.2 the word “including” shall mean “including without prejudice to the generality of the foregoing phrase or term” and references to “written”, “in writing” or any similar expression shall include all data in written form whether represented in hand-writing, facsimile, printed, electronic or other format.;
- 1.2.3 a statute, statutory instrument, regulation or order shall be construed as a reference to such statute, statutory instrument, regulation or order as amended or re-enacted from time to time;
- 1.2.4 the Parties shall include their permitted successors and assigns;
- 1.2.5 an obligation on a Party not to do any act or thing shall be deemed to include an obligation not to permit or suffer the doing of that act or thing.
- 1.2.6 another agreement or any deed or other instrument shall be construed as a reference to that other agreement deed or other instrument as from time to time amended, varied, supplemented or novated;
- 1.2.7 to the singular include the plural, references to any gender include all other genders, and references to “persons” shall include individuals, bodies corporate, unincorporated associations, professions, businesses and partnerships;
- 1.2.8 the Clause, Schedule and Appendix headings of this Agreement are for ease of reference only and shall not affect the interpretation or construction of this Agreement; and
- 1.2.9 the Schedules (including Service Schedules) form part of this Agreement and shall have full force and effect as if expressly set out in the body of this Agreement.

2. APPOINTMENT / COMMENCEMENT / DURATION

- 2.1 The Company and the Contractor may enter into Service Schedules from time to time. Each Service Schedule shall form a separate contract whereby the Company appoints the Contractor to provide the Services set out in that Service Schedule for the Initial Term set out therein and which shall commence on the Service Commencement Date set out in the respective Service Schedule. Each Service Schedule shall be deemed to incorporate the terms of this Agreement as if they were set out in the Service Schedule in full. Words and expressions which are defined in this Agreement shall have the same meanings when used in a Service Schedule. Where there is a conflict between the terms of this Agreement and the terms of a Service Schedule, then the latter shall prevail.
- 2.2 This Agreement shall commence on the Effective Date and shall continue until all of the Service Schedules entered into by the Parties have expired or been terminated but shall be subject to earlier termination as provided under Clause 11 or as otherwise provided under this Agreement .
- 2.3 In the case of ambiguity, conflict or inconsistency between the Clauses of this Agreement and the provisions contained in any Appendix or attachment to this Agreement (excluding Service Schedules which are dealt with in clause 2.1 above), the Clauses of this Agreement shall take precedence.

- 2.4 The terms and conditions contained in this Agreement are the only terms and conditions which the Parties have agreed will apply in relation to the subject matter of this Agreement. For the avoidance of doubt, no terms or conditions endorsed upon, delivered with or contained in any Company documentation will form part of this Agreement unless specifically agreed in advance, in writing by the Contractor.
- 2.5 The Parties may, from time to time, enter into further Service Schedules after the date hereof. The terms and conditions contained in this Agreement will apply in full in relation to such subsequent Service Schedule to the exclusion of all other terms and conditions as if such Service Schedules were appended hereto.
- 2.6 This Agreement may only be varied or amended in writing and signed by an authorised representative of the Parties. The Parties agree that the Change Control Procedure set out in Schedule B of the first Implementation Schedule will apply to changes to this Agreement (including any Support Services Schedules and any other Implementation Schedules).
- 2.7 The Parties agree that they shall work and co-operate with each other during the period between the date of execution of the applicable Service Schedule and the Service Commencement Date to facilitate the orderly transfer of the provision of the applicable Services to the Contractor.
- 2.8 The Parties agree that the governance procedures set out in Schedule D of the first Implementation Schedule will apply to this Agreement (including any Support Services Schedule and any other Implementation Schedules).

3. SERVICE SUPPLY

- 3.1 The Contractor shall from the Service Commencement Date supply the Services to the Company in accordance with the terms of the applicable Service Schedule.
- 3.2 The Company and the Contractor shall with effect from the Effective Date carry out their respective obligations in accordance with the applicable Service Schedules and the terms of this Agreement.
- 3.3 If at any time the Company desires additional services or additional products from the Contractor, then the Company shall provide the Contractor with full written particulars of its requirements and with such further information as the Contractor may reasonably request in order to enable the Contractor to produce a written quotation. Any quotation given by the Contractor for additional products or services must be valid for a period of at least 30 Business Days provided the Contractor has not previously withdrawn such quotation.

4. CHARGES

- 4.1 The Charges payable by the Company will be calculated in accordance with the provisions set out in the applicable Service Schedule and are stated exclusive of any value added tax or other applicable sales tax or duty which will be added to the sum in question.
- 4.2 All payments due under this Agreement shall be subject to VAT at the prevailing rate.

5. PAYMENT

- 5.1 Subject to Clause 5.3, the Company shall pay the Charges on the dates set out in the applicable Service Schedule. The Company agrees that the Charges shall be paid by the Company to the Contractor's Nominated Bank Account within thirty (30) days after the date of the Contractor's invoice or on the Nominated Payment Date whichever is the later (the due date).
- 5.2 No payment will be deemed to have been received until the Contractor has received cleared funds. If the Company fails to make payment in accordance with Clause 5.1 then, subject to Clause 5.3, the Contractor shall be entitled to charge interest in respect of such non disputed outstanding sums and if such payments are not made within thirty (30) days of the due date, the Contractor shall be entitled to suspend provision of the Services, having first provided 28 days notice of intention to do so, until all outstanding non disputed sums due and payable are discharged in full. If the Contractor exercises its right to suspend provision of the Services in accordance with this Clause 5.2, the Company shall continue to pay the Charges on the due date for payment notwithstanding any suspension of the Services pursuant to this Clause 5.2 from time to time.
- 5.3 If the Company (acting in good faith) disputes all or any part of the Charges or any other amount that the Contractor claims is payable to it which has been validly invoiced in accordance with the terms of this Agreement, the undisputed amount of the Charges shall be paid by the Company in accordance with the terms of this Agreement but the Company shall be entitled to retain the disputed amount of the invoiced Charges or other amount (as the case may be) and the Parties shall work together in good faith to resolve the dispute in question as soon as reasonably possible. The Contractor shall not suspend the performance of any Services due to non payment or late payment of Charges or other amounts which are in dispute.
- 5.4 Subject to clause 5.3, all payments to be made by the Company under this Agreement and each Service Schedule will be made in full without any set-off, restriction or condition and without any deduction or withholding for or on account of, including but not limited to, any counterclaim or any present or future taxes, levies, duties, charges, fees, deductions or withholdings of any nature, unless the Company is required by law to make any such deduction or withholding.
- 5.5 If any undisputed sum payable under this Agreement or any Service Schedule, including any sums payable upon termination, is not paid within 5 Business Days after the due date then (without prejudice to the Contractor's other rights and remedies), the Contractor reserves the right to charge statutory interest on such sum on a day to day basis (after as well as before any judgment) from the date or last date for payment thereof to the date of actual payment (both dates inclusive) at the rate of eight per cent (8%) per annum plus the Bank of England base rate from time to time in force. Such interest shall be paid on demand by the Company.

6. COMPANY WARRANTIES

- 6.1 The Company warrants to the Contractor: -

- 6.1.1 it has obtained all necessary permissions and consents required by it to enter into this Agreement and each Service Schedule;
- 6.1.2 it will provide the Contractor with such information as it may reasonably need concerning the Customer's operations and answers to queries, decisions and approvals which may be reasonably necessary for the Contractor to undertake any of the Services. The Company is responsible for ensuring that such information and answers are accurate and complete. The Contractor will, to the extent reasonably practicable, give the Company reasonable prior notice of any information or answers it requires in accordance with this Clause 6 or if it has reason to suspect that any information is inaccurate or incomplete, it shall provide the Contractor with all assistance, materials and accurate information reasonably required by the Contractor for the purposes of enabling it to provide the Services;
- 6.1.3 it shall ensure that all personnel assigned by it to provide assistance to the Contractor shall have the requisite skill, qualification and experience to perform the tasks assigned to them and should the Contractor identify an issue with the skill, qualification or experience of any personnel assigned to a task then this should be drawn to the Company's attention at the earliest opportunity;
- 6.1.4 it shall provide such access to its premises, personnel and facilities and the Customer's premises, personnel and facilities as the Contractor shall reasonably require in order to provide the Services or deliver the Products;
- 6.1.5 where the Products are provided to the Customer on a lease or licence basis, it shall require the Customer to keep the Products free and clear from all and any claims, liens, charges or encumbrances whether in law or in equity;

7. RISK / OWNERSHIP

- 7.1 Risk of damage to or loss of the Products will pass to the Company on delivery. However this does not remove the Contractor's responsibility for ensuring that it uses all reasonable care and skill when dealing with the Products and for ensuring that in carrying out any Services in relation to the Products it does not cause any loss or damage to the Products. Where the Contractor causes any loss or damage to the Products, it shall be responsible for the costs of remedying such loss or damage or replacing such Products.
- 7.2 Notwithstanding that the relevant Products have been delivered and/or incorporated in or affixed to other products including, for the avoidance of doubt, the storage of or incorporation of any Software in ROM, RAM or any other hardware, software or firmware or other media whatsoever, ownership of any Products which are provided to the Customer on a licence or lease basis will not pass to the Company or the Customer under any circumstances.
- 7.3 Where Products are sold to the Company by the Contractor and not provided on a licence or lease basis, title to the Products will pass to the Company upon payment by the Company for those Products.

- 7.4 Where the Products are provided to the Customer on a licence or lease basis, the Customer has no title, right or interest in the Products other than the right of quiet and peaceful enjoyment of the Products and the use thereof and as otherwise set out in this Agreement.
- 7.5 Subject to Clauses 11.5 and 11.6, where the Products are provided to the Customer on a licence or lease basis, the Customer's right to possession of the Products will terminate immediately if any of the circumstances set out in Clause 11.1 or 11.2 occur. This provision will not apply in relation to Software or Third Party Software which is licenced to the Customer on a perpetual basis or which is subject to an open-source licence.
- 7.6 The Contractor will be entitled to recover payment for the Products notwithstanding that title in any of the Products has not passed to the Customer.

8. CONTRACTOR WARRANTIES

- 8.1 The Contractor, to the extent that it is permitted to do so hereby assigns the benefit of any guarantee or warranty covering any defects in Products received by the Contractor under an agreement with the manufacturer or supplier of the relevant Products. The warranty of the manufacturer or supplier is in lieu of all other terms or conditions whether express or implied concerning the quality or fitness for purpose of the Products save for any warranties given by the Contractor under this Agreement or Service Schedule.
- 8.2 The Contractor warrants that the Services will be carried out with reasonable care and skill and by suitably trained and qualified persons.
- 8.3 The Contractor warrants that the Services will be carried out in line with good industry practice.
- 8.4 The Contractor warrants that the Products will be free from known viruses or contaminants and the Contractor will use up to date anti-virus processes to screen any Products for viruses and contaminants immediately before those Products are provided to the Company.
- 8.5 The Contractor warrants that the Products will operate correctly and in accordance with any specifications or requirements defined and agreed in the Service Schedule or otherwise made known to the Contractor by the Company during the development and implementation process.
- 8.6 The Contractor warrants that all of the Contractor's personnel will comply with the Company's health and safety policies when on working on the Company's premises and that all of the Contractor's personnel engaged in the provision of the Services will comply with the Company's Information Governance and Information Security Policies whilst working on the Company's premises or accessing any of the Company's information or systems.
- 8.7 The Contractor warrants that all of the Contractor's personnel will comply with the Customer's health and safety policies when on working on the Customer's premises and that all of the Contractor's personnel engaged in the provision of the Services will comply with the Customer's Information Governance and Information Security Policies whilst working on the Customer's premises or accessing any of the Customer's information or systems.

9. LIABILITY

- 9.1 The following provisions of this Clause 9 set out the total liability of each Party in respect of any breach of its obligations arising under or in connection with this Agreement or any Service Schedule.
- 9.2 Nothing in this Agreement or any Service Schedule shall limit or exclude either Party's liability:
- 9.2.1 for fraud; or
 - 9.2.2 for death or personal injury resulting from negligence; or
 - 9.2.3 to the extent not permitted by law.
- 9.3 The Contractor's total liability in respect of loss of or damage to tangible property shall not in any circumstances exceed **two million pounds (£2,000,000)**.
- 9.4 Subject to clause 9.1 and 9.6, the Contractor's total liability to the Company, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this Agreement (including any Service Schedule) shall be limited to the greater of one million pounds (£1,000,000) or one hundred per cent (100%) of the total Charges paid or payable by the Company under this Agreement (including any Service Schedule) in the 12 month period prior to the event giving rise to the claim.
- 9.5 Subject to clause 9.1 and 9.6, Company's total liability to the Contractor, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this Agreement (including any Service Schedule) shall be limited to one hundred per cent (100%) of the Charges paid or payable by the Company to the Contractor under Service Schedule to which the claim relates in the 12 month period prior to the event giving rise to the claim.
- 9.6 Subject to clause 9.1, neither Party will be liable to the other Party whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this Agreement (including any Service Schedule) for any indirect or consequential loss.

10. FORCE MAJEURE

- 10.1 Neither Party will be deemed not to be in breach of this Agreement or any Service Schedule or otherwise liable to the other Party in any manner whatsoever for any failure or delay in performing its obligations under this Agreement or any Service Schedule due to Force Majeure.
- 10.2 If a Party's performance of its obligations under this Agreement or any Service Schedule is affected by Force Majeure:
- 10.2.1 it will give written notice to the other Party, specifying the nature and extent of the Force Majeure, as soon as reasonably practicable after becoming aware of the Force Majeure and will at all times use all reasonable endeavours to bring the Force Majeure event to an end and, whilst the Force Majeure is continuing, mitigate its severity; and

10.2.2 subject to the provisions of Clause 10.3, the date for performance of such obligation will be deemed suspended only for a period equal to the delay caused by such event.

10.3 If the Force Majeure in question continues for more than six months, either Party may give written notice to the other to terminate this Agreement. The notice to terminate must specify the termination date, which must not be less than 30 Business Days after the date on which the notice is given, and once such notice has been validly given, this Agreement will terminate on that termination date. If this Agreement is terminated in accordance with this clause, then the provisions of Clause 11.5 shall apply.

11. TERMINATION / CONSEQUENCES OF TERMINATION

Termination

11.1 Either Party may by notice in writing served on the other Party terminate this Agreement and/or any Service Schedule forthwith if the other Party:

11.1.1 is in material breach of any of the terms of this Agreement or any Service Schedule and, where the breach is capable of remedy, the other Party fails to remedy such breach within 20 Business Days service of a written notice from the Party not in default, specifying the breach and requiring it to be remedied;

11.1.2 shall convene a meeting of its creditors or if a proposal shall be made for a voluntary arrangement within Part I of the Insolvency Act 1986 or a proposal for any other composition scheme or arrangement with (or assignment for the benefit of) its creditors or if the other shall be unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or if a trustee, receiver, administrative receiver or similar officer is appointed in respect of all or any part of the business or assets of the other party or if a petition is presented or a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding up of the other party or for the making of an administration order (otherwise than for the purpose of an amalgamation or reconstruction); or

11.1.3 the equivalent of any of the above events set out in Clause 11.1.2 occurs in relation to the other Party under any jurisdiction to which the other Party is subject; or

11.1.4 the other Party reasonably anticipates that one of the above events set out in Clause 11.1.2 or Clause 11.1.3 is about to occur in relation to the other Party.

11.2 Without prejudice to the Company's rights under Clause 11.1.1, the Company may terminate this Agreement or any Service Schedule by giving notice in writing to the Contractor if the Contractor fails to perform the Services (or any part of the Services) in accordance with one or more of the Service Levels for such Services for 3 consecutive months or for 5 months in any 12 month period (or such other period as may be stated in the applicable Service Schedule).

Consequences of Termination

- 11.3 If this Agreement and/or any Service Schedule and/or the provision of the Services is terminated in accordance with the terms of this Agreement for any reason, the provisions of this clause shall apply without prejudice to the other rights and remedies of the Parties:
- 11.3.1 the Company shall pay on demand all outstanding and unpaid Charges due to the Contractor in respect of the period up to and including the date of termination;
 - 11.3.2 the Contractor shall refund to the Company any Charges paid by the Company which relate to the period after termination;
 - 11.3.3 the Contractor shall immediately destroy or deliver to the Company (at the Company's election) any confidential information of the Company or of the Customer which is in the Contractor's possession; and
 - 11.3.4 the Company and/or Customer shall have the right to continue using any Software and Third Party Software which has been made available to the Company and/or Customer on the basis of a perpetual or open-source licence and in relation to any other Products, the Contractor shall (at the request of the Company) use all reasonable endeavours to ensure that any licence, support or maintenance agreement in place with a third party in relation to those Products is transferred to the Company and/or Customer or that a replacement agreement is entered into with the Company and/or Customer by such third party to enable the Company and/or Customer to continue using the Products and receiving any support and maintenance services required by the Company and/or Customer following termination of this Agreement.
- 11.4 The termination of this Agreement and/or any Implementation Schedule howsoever arising is without prejudice to the rights, duties and liabilities of either the Company or the Contractor accrued prior to termination and the conditions which expressly or impliedly have effect after termination will continue to be enforceable notwithstanding termination.
- 11.5 If this Agreement and/or any Service Schedule is terminated for any reason, the Contractor shall provide all reasonable cooperation and assistance to the Company at the Company's cost to enable the smooth transfer of the Products and transition of the Services to the Company or, at the Company's request, to another supplier. The Company shall pay the Contractor's reasonable costs for such cooperation and assistance provided that such costs are agreed by the Parties in writing in advance.
- 11.6 Without prejudice to clause 11.5, the Contractor will ensure that from the Service Commencement Date of the SLA, where requested by the Company, all source code for the Software shall be placed in escrow with the NCC on the basis of the appropriate standard agreement or on such other terms as the Company, the Contractor and the NCC shall agree. In the event of termination of this Agreement as a result of the Contractor's breach or insolvency, the Contractor shall ensure that the Company has access to the source code for the Software to enable the Company to make alternative arrangements for its on-going use of the Software and related support. The Contractor shall ensure that the source code for the Software held in escrow is promptly updated to reflect any new releases, updates and amendments to the Software made during the term of this Agreement. The Company shall pay the Contractor's reasonable costs for preparing and maintaining both the escrow agreement

with the NCC and for preparing and submitting each version of the Software to the NCC such reasonable costs shall be agreed by the Company and the Contractor in writing in advance.

- 11.7 On termination of this Agreement all provisions in this Agreement which expressly or impliedly have effect after termination shall remain in effect including without limitation clauses 8, 9, 11, 12, 13 and clauses 14 to 18 (inclusive).

12. INTELLECTUAL PROPERTY

- 12.1 All Intellectual Property Rights in or in relation to the Products and Implementation & Support Services (including any manuals and operating documentation relating thereto) or in any materials (including Software and Third Party Software) provided by the Contractor shall vest in the Contractor or its suppliers as the case may be. The Company shall have no title to or interest in any such Intellectual Property Rights except to the extent specifically set out in this Agreement.
- 12.2 The Company shall notify the Contractor immediately if it becomes aware during the term of this Agreement of any illegal or unauthorised use of any of the Products or any of the Intellectual Property Rights in the Implementation & Support Services and will assist the Contractor and/or its suppliers (at the Contractor / suppliers own cost) in taking steps necessary to defend the owners' rights.
- 12.3 The Company and the Contractor undertake to comply with the terms of any Licence Agreement(s) to the extent that the Licence Agreement(s) relate to their use of the Software and Third Party Software.
- 12.4 Unless specifically authorised under a Licence Agreement(s), the Company undertakes that it shall not (and that it shall not employ nor permit any third party) attempt to copy, adapt, amend, disassemble, de-compile or reverse engineer Software or Third Party Software or any part thereof except to the extent allowed by English law. Where the Contractor agrees to provide Services in relation to Third Party Software, the Contractor is responsible for ensuring that its provision of the Services complies with the Licence Agreement(s) for such Third Party Software.
- 12.5 The Company further acknowledges that Software and Third Party Software (excluding any open-source or publicly available Software) and all accompanying operating documentation and manuals are confidential and subject to the terms of Clause 13.
- 12.6 The Contractor warrants that it owns or has procured the appropriate licences for all Intellectual Property Rights in the Software and Third Party Software and other Products, Services and Deliverables it has provided and indemnifies the Company against all liabilities, costs, expenses, damages and losses suffered or incurred by the Company arising out of or in connection with any claim made against the Company for actual or alleged infringement of a third party's Intellectual Property Rights or other rights arising out of or in connection with receipt or use of the Products, Deliverables or Services. The limitation of liability provisions set out in clause 9 of this Agreement will not apply to the Contractor's liability under this indemnity.

13. CONFIDENTIALITY / DATA PROTECTION

- 13.1 The Parties will keep confidential any and all Confidential Information that they may acquire pursuant to this Agreement.
- 13.2 Each Party will not use the Confidential Information for any purpose other than to perform its obligations under this Agreement. Each Party will ensure that its officers, employees and other personnel comply with the provisions of this Clause 13.
- 13.3 The Parties shall comply with the Data Protection Laws applicable to them and shall not, by any act or omission, put the other Party in breach of any of the Data Protection Laws (in so far as such laws are applicable to the other Party) in connection with this Agreement.
- 13.4 Where, in connection with this Agreement, the Contractor acts as the Company's or the Customer's data processor (as defined in the DPA) and processes personal data (as defined in the DPA) for and on behalf of the Company or the Customer, the Contractor shall:
- 13.4.1 process those personal data only on the instructions and with the prior approval of the Company;
 - 13.4.2 implement appropriate technical and organisational measures to protect those personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against other unlawful forms of processing;
 - 13.4.3 upon written request from the Company from time to time inform the Company of the measures it has taken to comply with the provisions of this Clause 13.4 and will at its own cost implement any further steps that are necessary for compliance with the DPA; and
 - 13.4.4 not transfer any personal data outside of the European Economic Area without the prior written consent of the Company;
 - 13.4.5 not sub-contract the processing of any personal data to a third party without the prior written consent of the Company and without first ensuring that it has a written contract in place with such sub-contractor which mirrors the provisions set out in this clause 13 and which may be directly enforced by the Company against such sub-contractor;
 - 13.4.6 provide co-operation and assistance to the Company in:
 - 13.4.6.1 allowing data subjects (as defined in the DPA) to have access to those data and/or to ensure that those data are deleted or corrected if they are incorrect (or, if the Company does not agree that they are incorrect, to have recorded the fact that the data subject considers the data to be incorrect); and

- 13.4.6.2 complying with any order, notice, assessment or other instruction of the Office of the Information Commissioner or any similar or equivalent body.

14. EMPLOYEES / NON SOLICITATION

- 14.1 The Parties acknowledge that each has incurred significant costs in the recruitment and training of its employees engaged in connection with the Services. Accordingly the Parties agree with each other that it will not, and it will ensure that its associated companies will not, solicit or approach in any way, any of the other's employees or Customer's employees who are engaged in connection with the Services with a view to offering them employment or to solicit services from them on their own account (whether for itself or another party) during the period of this Agreement and for a period of six (6) months after the termination or expiration of this Agreement.
- 14.2 If any employee leaves the employment of the Contractor or Company (as appropriate) (the "Non-Breaching Party") as a result of a breach by the other Party or its associated companies ("the Breaching Party") of Clause 14.1 and commences employment with, or provides services to the Breaching Party, the Breaching Party shall pay to the Non-Breaching Party 50% of the higher of: -
- 14.2.1 the annual salary (including any benefits-in-kind, bonus payments, commissions and other emoluments) of the employee at the date that they ceased to be an employee of the Non-Breaching Party; or
- 14.2.2 the annual salary of the employee at the time they commence employment with the Breaching Party
- and the Parties acknowledge that any such payment is by way of liquidated damages and is reasonable and genuine pre-estimate of the Non-Breaching Party's losses.

15. DISPUTE RESOLUTION PROCEDURE

- 15.1 All disputes, differences or questions arising in relation to this Agreement or any Service Schedule shall be referred in the first instance to a senior manager of the Contractor and a senior manager of the Company who shall meet together and attempt to settle the dispute (acting in good faith) within 10 Business Days.
- 15.2 If the persons appointed in Clause 15.1 are unable to resolve the dispute, it shall be referred to a Director of the Contractor and a Director of the Company who shall meet together and attempt to settle the dispute (acting in good faith) within 10 Business Days.
- 15.3 If the persons appointed in Clause 15.2 are also unable to resolve the dispute within 10 Business Days, the Parties may within a further 10 days elect to refer the dispute to mediation. Such mediation shall be dealt with in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure. Unless otherwise agreed between the Parties within 14 days of notice of the decision to refer the dispute to mediation, the mediator will be nominated by CEDR.

- 15.4 Neither party may initiate any legal action until the procedure set out in Clauses 15.1, 15.2 and 15.3 has been completed except that in no event shall the provisions of this Clause 15 operate to prevent a Party seeking interim relief in respect of any dispute or differences.

16. COMMUNICATIONS

- 16.1 All notices that are required to be given under this Agreement shall be in writing and shall be sent to the addresses set out in the front of this Agreement by first class pre-paid letter or by hand and shall be deemed to have been received;

16.1.1 by first class post, 48 hours after the date of mailing;

16.1.2 by hand, the following Business Day.

17. GENERAL

- 17.1 Each right or remedy of a Party under this Agreement or any Service Schedule is without prejudice to any other right or remedy of the Party under this Agreement or any Service Schedule.
- 17.2 If any condition or part of this Agreement or any Service Schedule is found by any court, tribunal, administrative body or authority of competent jurisdiction to be illegal, invalid or unenforceable then that provision will, to the extent required, be severed from this Agreement or the relevant Service Schedule and will be ineffective without, as far as is possible, modifying any other provision or part of this Agreement or the relevant Service Schedule and this will not affect any other provisions of this Agreement or the relevant Service Schedule which will remain in full force and effect.
- 17.3 No failure or delay by a Party to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy.
- 17.4 The Contractor may with the prior written consent of the Company (such consent not to be unreasonably withheld or delayed) assign, delegate, license, hold on trust or sub-contract all or any part of its rights or obligations under this Agreement including, for the avoidance of doubt, the right to assign the receivables and Products under this Agreement and the right to enforce any obligation of the Company.
- 17.5 The Company may with the prior written consent of the Contractor (such consent not to be unreasonably withheld or delayed) assign, delegate, license, and hold on trust or sub-contract all or any of its rights or obligations under this Agreement or any Service Schedule.
- 17.6 A person who is not a party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement. This Clause does not affect any right or remedy of any person that exists or is available otherwise than pursuant to that Act.
- 17.7 This Agreement and the Service Schedules contain all the terms which the Contractor and the Company have agreed in relation to the Services and supersede any prior written or oral agreements, representations or understandings between the Parties relating to such Services.

Each Party acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the other Party which is not set out in this Agreement or a Service Schedule.

- 17.8 The Parties shall use all reasonable endeavours to mitigate losses, damages and expenses that it may suffer or incur as a result of any breach by the other Party of its obligations under this Agreement or any Service Schedule or otherwise and in respect of which it desires to make recovery in whole or in part from the other Party.
- 17.9 Neither Party shall be entitled to recover from the other Party under this Agreement or any Service Schedule more than once to the extent and in respect of the same liability of the other Party or its own loss.
- 17.10 Unless otherwise expressly agreed, all communications between the Parties shall be in the English language.

18. LAW AND JURISDICTION

The formation, existence, construction, performance, validity and all aspects whatsoever of this Agreement will be governed by English law. The English Courts will have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Agreement.

IN WITNESS of which the Parties have signed this Agreement on the date set out above.

For and on behalf of the Contractor

Name -----

Title -----

Signed -----

For and on behalf of the Company

Name -----

Title -----

Signed -----