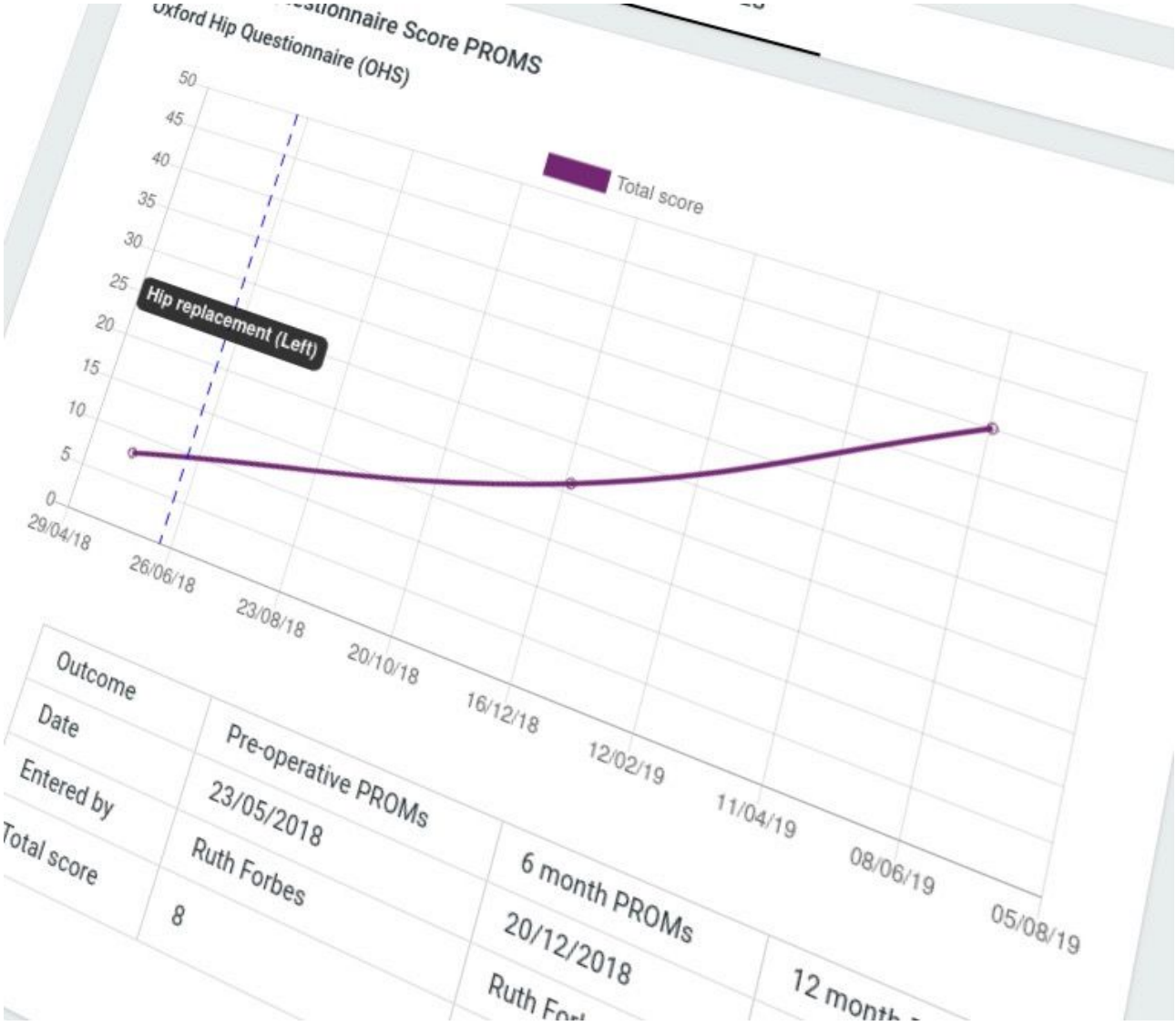
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Terms and conditions



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Introduction

This Service Level Agreement ("SLA") is to define the scope of Application Support (and where applicable the licence for the Product as set out in the Licence Agreement annexed hereto as Annex 1, (if any) to be provided by staircase13 Limited ("the Company") to ("the Customer") and the respective obligations of the parties in relation thereto.

1. Definitions

In this SLA the following terms shall carry the following meanings:

Term	Definition
Additional Charges	means the Company's charge from time to time for any additional work (which is not specified in the Existing Agreement or this SLA) requested or caused by the Customer, calculated using the Company Rates, together with any disbursements as calculated pursuant to the Additional Work Procedure.
Additional Work Procedure	means the procedure for agreeing the value of Additional Charges set out in Schedule 2 hereto.
Application Support	means the provision of application and technical support in accordance with clause 2. Application Support below.
Bespoke Product	means the products listed in the bespoke product section of Schedule 1 (if any) being software designed by the Company at the request of the Customer and not delivered as Licensed Program Materials.
Build	A unique compilation of the source code.
Company Rates	means the reasonable charging rates used by the Company in respect of its employees, as published by the Company and available on

request.

Critical Fault	means the Product is not operational for business critical delivery.
Designated Equipment	means the servers, specified number of identified personal computers and operating system, details of which are given in the Existing Agreement or as otherwise agreed between the parties from time to time, or such other replacement or upgrade equipment which is equivalent to the Designated Equipment which is notified to the Company and which is in the ownership or control of the Customer.
Existing Agreement	means the agreement or agreements between the parties dated. for the delivery of the System including the Software. If no date is given here then this is not applicable.
Import Fault	means a fault which is agreed to be important by the Company and the Customer but does not constitute a Critical Fault or a Major Fault.
Licensed Program Materials	means the Product and the Program Documentation
Maintenance Release	means any release not constituting a Major Release or a Minor Release.
Major Fault	means a fault in any part of the Product which does not constitute a Critical Fault but which prevents the Customer operating a material part of its business for which it purchased the Product

Minor Fault	means a fault which is agreed to be minor by the Company and the Customer, but which does not constitute a Critical Fault, Major Fault or Important Fault.
Major Release	means any material improved, modified or corrected version of any of the Product or Program Documentation from time to time issued by the Company pursuant to Application Support which shall be identified as such by the Company at the time of issue of the Major Release to the Customer by the use of the Version Release Number.
Minor Release	means any minor improved, modified or corrected version of any of the Product or Program Documentation from time to time issued by the Company pursuant to Application Support below which shall be identified as such by the Company at the time of issue of the Minor Release to the Customer by the use of the Version Release Number.
Patch	means a solution to an issue notified to the Company by the Customer and which does not constitute a Release.
Priority	terminology used on the Support Portal to translate the criticality of a fault to its prioritisation. Critical, High, Medium and Low priorities correspond respectively to Critical, Major, Important and Minor faults.
Product	means the software programs and modules identified in Schedule 1 – Standard Products.

Program Documentation	means the instruction manuals, user guides and other information, including any New Release of the same, to be made available by the Company at its discretion in either printed or machine readable form to the Customer relevant to the Product.
Releases	means together Major Release, Minor Release, Maintenance Release, Patch and Script and 'Release' shall mean any of them.
Script	means batch instructions in an appropriate software language to update or alter the database schema.
Site	means the premises of the Customer where the Licensed Program Materials are used.
Third Party Software	means any software provided in connection with the Existing Agreement the copyright of which is not owned by the Company.
Use	means the copying or transmission of the Product or (where in machine readable form) the Program Documentation into the Designated Equipment for the processing of the instructions contained in the Product or (as the case may be) the Program Documentation for the internal data processing requirements of the Customer only and for no other purpose.
Version Release Number	means the number that designates a release. When the Product is released it will have a version number. The version number will be referred to by three numbers such as 1.2.3. The first number (1) will

indicate a major change of approach; the second number will indicate a major change or feature enhancement to the software; the third number (3) will indicate Minor Releases and arbitrary build rollups. A fourth number is employed in addition, this is the build number and delineates separate application compiles which may or may not contain specific fixes and/or patches.

2. Application Support

2.1 Application Support shall comprise the following:

2.1.1 advice by telephone, facsimile, the Company designated data storage facility or providers, E-mail post or by posting on the Company's website on the Use of the Product, or support through the dedicated Staircase13 online support solution;

2.1.2 information and advice by telephone, fax, E-mail or post on forthcoming Releases of the Product;

2.1.3 subject to clause 2.2, upon request by the Customer, the diagnosis of faults in the Product and the rectification (in accordance with clause 2.3) of such faults remotely (or if the Company considers necessary, by attendance on Site) by the issue of fixes (including without limitation Patches) in respect of the Product and the making of all necessary consequential amendments (if any) to the Program Documentation;

2.1.4 the creation and despatch to the Customer from time to time, at the Company's sole discretion, of fixes (including without limitation Patches) in respect of the Product;

2.2 The Customer agrees to use the support portal to record a detailed description of any fault requiring Application Support as set out in clause 2.1.3 above and the circumstances in which it arose, as soon as reasonably practicable upon becoming aware of the same, so that it can be replicated. The Customer shall provide such additional information as may be reasonably requested by the Company to enable the fault to be classified in accordance with clause 2.4. In the event of the support portal being unavailable then other channels of communication (email, telephone, fax) should be employed for the duration over which the support portal is unavailable.

2.3 Application Support shall only be provided between the hours of 9.00 a.m. and 5.00 p.m. (local standard time) Monday through Friday (excluding English bank and other public holidays) referred to hereafter as "Working Days".

2.4 Application Support shall be provided in accordance with the following procedure:-

2.4.1 if it is agreed that a fault is a Critical Fault (Critical Priority), then the Company shall use all reasonable endeavours, within 1 Working Day of such agreement (or sooner if reasonably practicable), to supply instructions to the Customer, which are intended to work around the fault or provide a correction;

2.4.2 if it is agreed that a fault is a Major Fault (High Priority), then the Company shall use all reasonable endeavours, within 2 Working Days of such agreement (or sooner if reasonably practicable), to supply instructions to the Customer, which are intended to work around the fault or provide a correction;

2.4.3 if it is agreed that a fault is an Important Fault (Medium Priority), then the Company shall use all reasonable endeavours, within 4 Working Days of such agreement (or sooner if reasonably practicable), to supply instructions to the Customer, which are intended to work around the fault or provide a correction;

2.4.4 if it is agreed that a fault is a Minor Fault (Low Priority), then the Company shall use its reasonable endeavours to provide a correction with the next New Release issued by the Company to the Customer following the date of notification of the Minor Fault;

2.5 For the purposes of clauses 2.4.1 to 2.4.3 inclusive:-

2.5.1 the periods of time referred to therein shall not commence until such time as the Customer has provided such necessary additional information as the Company may reasonably request upon or immediately after receipt of the notification pursuant to clause 2.2;

2.5.2 where the Company has provided instructions to work around the fault, it shall as soon as reasonably practicable thereafter provide a correction;

2.5.3 in the event that the Company cannot identify a work around for the fault or provided a correction within the timescale referred to therein, it shall notify the Customer of the date by which it reasonably believes it shall provide a work around for the fault or provide the correction and shall use best endeavours to achieve such date; and

2.5.4 the Company shall notify the Customer of the extent to which any Release contains any Patches or other fixes carried out by the Company pursuant to the terms of this SLA.

2.6 For the purposes of clauses 2.4.1 to 2.4.4 (inclusive):-

2.6.1 if the parties, acting with due diligence, are unable forthwith to agree on the designation of a fault, reported by the Customer pursuant to clause 2.2, the Company shall, acting reasonably, forthwith designate the level of fault and references to “agreed” and “agreement” in clauses 2.4.1 to 2.4.4 shall be deemed to refer to the designation of the fault by the Company; and

2.6.2 in the event that the Customer, disagrees with the designation of the Company pursuant to clause 2.6.1, it shall be entitled to escalate the designation in accordance with the provisions of clause 3 - Escalation and Reporting. The Company undertakes to provide the necessary contact details on request.

2.7 Notwithstanding the other provisions of this clause 2, the Company shall not be liable for any failure to perform any of its obligations hereunder if such failure is due directly or indirectly to the failure by the Customer to maintain or use its IT installation and/or operating environment or system in accordance with the guidance set out by the Company which shall be provided to the Customer. The Company may in its sole discretion and at the request of the Customer remedy such failure by the Customer subject to the Customer meeting the reasonable charges incurred by the Company in so doing, calculated in accordance with the Additional Work Procedure.

2.8 Application Support shall not include the diagnosis and rectification of any fault resulting from:

2.8.1 the improper use, operation or neglect, by the Customer, of either the Licensed Program Materials or the Designated Equipment;

2.8.2 the modification of the Product or their merger (in whole or in part) with any other software except where such modification or merger is carried out by the Company; or with the Company's prior written consent;

2.8.3 the use of the Product on equipment other than the Designated Equipment;

2.8.4 the failure by the Customer to implement recommendations in respect of or solutions to faults previously advised by the Company;

2.8.5 any repair, adjustment, alteration or modification of the Product by any person without the Company's prior written consent;

2.8.6 any breach by the Customer of any of its obligations under any maintenance agreement in respect of the Designated Equipment;

2.8.7 the use of the Product for a purpose either for which they were not designed or which was not specified by the Customer to the Company prior to delivery of the Product to the Customer;

2.8.8 the failure of any hardware, save where this is caused by the Company or by anything supplied by the Company;

2.8.9 any failure by the Customer to provide and maintain the arrangements referred to in clause 2.10;

2.8.10 any bespoke products other than the Bespoke Products outlined in Schedule 1 – Bespoke Products;

2.8.11 The provider of the operating system used within the Designated Equipment ceasing to support such operating system; or

2.8.12 the Third Party Software forming part of the Product (provided that the Company shall use reasonable endeavours to provide a work around in respect thereof in consultation with the owner of such Third Party Software);

2.9 The Company may upon request by the Customer provide Application Support notwithstanding that the fault results from any of the circumstances described in clauses 2.8.1 to 2.8.12 above. The Company shall in such circumstances be entitled to charge at the Company Rates.

2.10 In order for the Company to be able to provide Application Support to the Customer, it will be necessary (and is a condition of this Agreement) for the Customer:-

2.10.1 to continue to maintain any system requirement in accordance with the minimum operating requirements from time to time as notified by the Company or the owner thereof.

2.11 It is also a condition of the Application Support to be provided hereunder that the Customer ensures that their staff are properly and adequately trained to a level of competence in relation to the Licensed Program Materials, subject to such Licensed Program Materials being produced by the Company to the Customer.

3. Escalation and Reporting

3.1 The Customer shall be entitled to escalate any disagreement as to a designated fault level (as referred to in clause 2.4) to the Support Desk Manager within 1 hour of the fault level being designated by the Company and thereafter if the Customer remains dissatisfied with the designated fault level, it shall be entitled to escalate the dispute to the following employees of the Company:-

- to the Project Manager within 1 further hours thereafter;
- to the Account Manager within 2 further hours thereafter;
- and to the Technical Director within 2 further hours thereafter,

and for the purposes of this clause 3.1, the Company shall upon request from the Customer notify the Customer of the identity of the individuals holding each of those positions.

3.2 Notwithstanding the Customer exercising its right to escalate the dispute in accordance with clause 3.1, the Company shall continue to work towards the provision of a work around or correction of such fault.

3.3 The Company shall in respect of Critical and Major Faults only report to the Customer as follows:-

3.3.1 in respect of Critical Faults the Company shall provide an update of work being undertaken to circumvent, or provide a correction to, the fault at least once per Working

Day the first such update to be provided within 4 Working Hours of the designation of the fault as a Critical Fault, or such other frequency as shall be agreed between the parties from time to time unless the fault is awaiting a response from the Customer; and

3.3.2 in respect of Major Faults the Company shall provide an update of work being undertaken to circumvent, or provide a correction to, the fault as often as the Company reasonable deems appropriate being in any event no more frequently than once per Working Day unless the fault is awaiting a response from the Customer, the first such update to be provided within 8 Working Hours of the designation of the fault as a Major Fault.

Product deliverables and additional work schedules

Schedule 1: openOutcomes

Schedule 2: Additional Work Procedure

In the event that the Company is entitled, pursuant to the terms hereof, to charge Additional Charges, it shall as soon as reasonable practicable provide a quotation.

The quotation shall not be binding on the Company but shall constitute the best estimate of the Company as to the likely cost of the services required, and shall be based upon and show the relevant Company Rates. Upon receipt of the quotation from the Company, the Customer shall either:-

- sign and return the quotation by way of acceptance of the terms thereof within 30 Days of the date of receipt in which event the Company shall proceed to carry out the services in accordance with the timescale referred to in the quotation, provided that if the Customer does not return the quotation within such period, the quotation shall be deemed to have been rejected;
- dispute, acting reasonably, the value of the Additional Charges in which event the parties shall meet as soon as reasonably practicable to seek to agree the Additional Charges and in default of the any such agreement the Customer shall be deemed to have rejected the quotation;
- reject the quotation in which event the Company shall not provide the services in respect of which the quotation was raised.

Any services which the Company carries out pursuant to a quotation shall be in accordance with and subject to the terms of this Agreement.

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Contract summary

Licence agreement between Staircase13 Ltd and the following:

Customer name	
Customer address	
Customer PO number	
Customer PO date	

1. Software and services

		Initial license cost		Services		Annual licenses & support	
Description of product or	**Qty**	**Unit price**	**Total**	**Unit price**	**Total**	**Unit price**	**Total**
Total initial licenses							£0.00
Total services							£0.00
Total annual licenses &							£0.00
TOTAL							**£0.00**

2. Hardware, peripherals and 3rd party items to be supplied

Description	Qty	Value	Total
TOTAL			**£0.00**

3. Terms and conditions

This order is placed subject to the standard terms and conditions which are attached:

For the avoidance of any doubt, any terms and conditions which are contained or referred to in any purchase order generated by the Customer shall not apply unless specifically accepted in writing by the Company and referred to in this Agreement. The prices of the Company for its software and any services are based on the acceptance by the Customer of the attached terms and conditions. If the Customer requires or requests any variation to such terms and conditions, then the Company reserves the right to modify prices accordingly.

The fees and charges of the Company are exclusive of Value Added Tax or any other like tax which will be added in accordance with the then appropriate rates.

Both parties have signed below to confirm their agreement to the details set out in the Contract Summary and also confirm acceptance of the attached terms and conditions.

FOR THE CUSTOMER:	FOR THE COMPANY:
_____	_____
Signature	Signature
_____	_____
Name	Name
_____	_____
Title	Title
_____	_____
Date	Date

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LICENCE AGREEMENT

Background

The Company has agreed to grant the Customer a non-exclusive, non-transferable licence to use the computer software programs and associated documentation listed in the Contract Summary, to provide application and technical support of those programs and to provide certain services referred to in the Contract Summary upon the terms and conditions of this Agreement.

Operative Provisions

1. Definitions

TBC

2. Grant of Licence

2.1 The Company, in consideration of the payment by the Customer of the Licence Fee in accordance with clause 3 below, hereby grants to the Customer a non-exclusive, non-transferable licence to Use the Licensed Programs (and where appropriate, the Program Documentation) upon the Designated Equipment and to possess and refer to the Program Documentation at the Site for a period of 3 years from the Delivery Date (subject to earlier termination in accordance with the terms hereof). In the event that the number of users of the Licensed Programs and the Program Documentation exceeds the number of users referred to in of the Contract Summary the Company reserves the right to increase the Licence Fee to reflect the increased number of users.

2.2 If Third Party Software is supplied as part of this Agreement, then the Customer shall be deemed to have entered into a Third Party Licence. The Company shall provide the Customer with a copy of any relevant Third Party Licence upon request. In the event that the Third Party Proprietor withdraws the Third Party Software or changes the terms upon which the Third Party Software is made available to the Customer or to the Company for sub-licence to the Customer then the Company shall be entitled to increase the Licence Fee to cover such change in terms or at its option to terminate the licence in respect of that Third Party Software such termination shall be without liability on the Company provided that the Company uses its reasonable endeavours to procure the licence or sub-licence to the Customer of replacement software which will in all material respects carry out the same function as that Third Party Software.

3. Licence Fee and Support Charges

3.1 The initial Licence Fee and the Support Charges (together with value added tax thereon) shall be levied by the Company and shall be payable by the Customer in accordance with the arrangements set out in the Contract Summary or (as the case may be) the Payment Schedule. [If no payments arrangements are set out in the Contract Summary or Payment Schedule, then the Licence Fee and the Support Charges shall be payable, in full, annually in advance on or before each anniversary of this Agreement.] Subsequent Licence Fees and Support Charges shall be paid

on or before each anniversary of the first payment date. The Company shall be entitled to index the Licence Fee and the Support Charges once each year by reference to the annual Retail Prices Index (All Items) as published by the Office for National Statistics published or determined with respect to the month of February most recently preceding the date of indexation. The Company shall give the Customer at least sixty days' notice of any such increase.

3.2 In the event of termination of this Agreement, the Customer shall within 14 days of termination, return to the Company or at the Company's option, destroy or delete the Licensed Programs and all copies, forms and parts thereof in its possession or under its control (whether included in the register referred to in clause 7.3.3 or any other copies forms and parts of which it is aware) and will certify to the Company in writing that this has been done.

3.3 The Company reserves the right to charge the Customer interest in respect of the late payment of any sum properly due under this Agreement (as well after as before judgment) in accordance with and at the rates specified in the Late Payment of Commercial Debts (Interest) Act 1998 Up to a maximum of 4%.

3.4 The Company also reserves the right to make Additional Charges, at the prevailing rates of the Company, in accordance with the terms of this Agreement and in the following cases:

3.4.1 If there is a major change affecting this Agreement occasioned by statute by any court or regulatory authority of competent jurisdiction or by any act of a government body, assembly or agency.

3.4.2 In the event that the Customer fails to keep adequate security copies of Licensed Program Materials and a request being made of the Company to attempt to resurrect corrupt data or to aid in the organisation of re-entry of data.

4. Delivery and Risk

4.1 The Company shall use all reasonable endeavours to deliver one copy of each of the Licensed Programs and the Program Documentation and (if relevant) the Equipment, to the Site and provide the Services on the Delivery Date(s) or as soon thereafter as is possible.

4.2 If the Company shall fail to deliver the Licensed Program Materials, the Equipment or provide the Services within 28 days of the relevant Delivery Date(s), the Customer shall be entitled after reasonable consultation with the Company, to specify by notice to the Company such revised delivery date as shall be reasonable in all the circumstances, making time of the essence.

4.3 Risk in the Licensed Program Materials will pass to the Customer upon the Actual Delivery Date. If subsequently the Licensed Program Materials are (in whole or in part) destroyed damaged or lost the Company will upon request replace the same subject to the Customer paying its then prevailing charges for providing replacement of the physical media.

4.4 Risk in the Equipment will pass to the Customer upon the Actual Delivery Date. Notwithstanding delivery, title to the Equipment shall not pass to the Customer but shall be retained by the Company until full payment for the Equipment has been received by the Company.

Until such time, the Company shall have absolute authority to enter the premises of the Customer at any time (and the Customer hereby grants an irrevocable licence to the Company so to do) to retake, sell or otherwise deal with or dispose of the whole or any part of the Equipment.

5. Installation and the Services

5.1 If the Company agrees to install the Licensed Programs and (if relevant) the Equipment, at the Site, then the Customer shall pay the installation charges set out on the Contract Summary.

5.2 If the Company is to carry out installation of the Licensed Programs and (if relevant) the Equipment, the Customer shall upon reasonable notice from the Company provide full and free access to the Place of Use (properly prepared by the Customer to ensure (without limitation) the compliance of the Place of Use with all applicable health and safety regulations) at an agreed time.
5.3 The Company shall perform the Services specified in the Contract Summary which may be varied, modified or extended from time to time by written agreement between the parties. The Company reserves the right to allocate the Company's personnel in the furnishing of the Services.

6. Application Support

6.1 With effect from delivery of the Licensed Programs and for the duration of the Service Level Agreement, the Company, shall in consideration of the Licence Fee and Support Charges, provide Application Support in accordance with the terms of the Service Level Agreement.

7. Property and Confidentiality in the Program Materials

7.1 The Licensed Program Materials contain confidential information of the Company and/or the Third Party Proprietor (as the case may be) and all copyright, trademarks and other intellectual property rights in the Licensed Program Materials are the exclusive property of the Company and/or the Third Party Proprietor (as the case may be).

7.2 The Customer shall not:

7.2.1 save as provided in clause 8 below, copy the whole or any part of the Licensed Program Materials;
7.2.2 modify, merge or combine the whole or any part of the Licensed Program Materials with any other software or documentation;
7.2.3 assign, transfer, sell, lease, rent, charge or otherwise deal in or encumber the Licensed Program Materials nor use on behalf of or make available the same to any third party save that in appropriate circumstances the Company may grant permission for the Customer to sub-licence the Licensed Program Materials to third parties which the Company has previously approved in writing and which third parties have undertaken equivalent obligations as to confidentiality and use of the Licensed Program Materials as are set out in this Agreement and the Company reserves the right to levy an Additional Charge for such third party use; or
7.2.4 (save as expressly permitted by law) reverse compile the whole or any part of the Licensed Program Materials from object code into source code.

7.3 The Customer shall:

7.3.1 keep confidential the Licensed Program Materials and limit access to the same to those of its employees, agents and sub-contractors who either have a need to know or who are engaged in the Use of the Licensed Programs (including where appropriate the Program Documentation);

7.3.2 reproduce on any copy of the Licensed Program Materials the Company's copyright and trade mark notices;

7.3.3 maintain an up to date written record of the number of copies of the Licensed Program Materials and their location and upon request, or upon expiration or termination of this Agreement forthwith produce such record to the Company; and

7.3.4 without prejudice to the foregoing, notify the Company of any actual, perceived or threatened disclosure or breach of the confidential information and/or intellectual property rights of the Company in the Licensed Program Materials and take all such other steps as shall from time to time be notified to it by the Company to protect such information and rights.

7.4 The Customer shall inform all relevant employees, agents and sub-contractors that the Licensed Program Materials constitute confidential information of the Company and that all intellectual property rights therein are the property of the Company and the Customer shall take all such steps as shall be necessary to ensure compliance by its employees agents and sub-contractors with the provisions of this clause 7, including at the request of the Company procuring written undertakings (on such terms as shall be provided by the Company) from some or all of such individuals that they will at all times protect such information and rights.

8. Warranties

8.1 The Company warrants that its title to the property in those Licensed Program Materials of which it is the copyright owner is free and unencumbered and that it has the right power and authority to license the same and the Third Party software upon the terms and conditions of this Agreement.

8.2 The Company warrants that it will use reasonable endeavours to procure for the benefit of the Customer, any warranty or right which it has against the manufacturer/ supplier of the Equipment should the Equipment be defective in materials or workmanship or otherwise not be of satisfactory quality. Save for this obligation, the Company shall have no liability of any nature whatsoever, howsoever arising to the Customer in respect of the Equipment.

8.3 The Company warrants that all Services to be provided by it under this Agreement will be provided with reasonable skill and care.

8.4 Subject to the foregoing and any other express terms of this Agreement all conditions, warranties, terms and undertakings express or implied statutory or otherwise are hereby excluded to the fullest extent permitted by law.

9. Duration of Agreement

9.1 This Agreement shall, in accordance with its provisions continue for a minimum period of 1 years and shall continue thereafter subject to the right of either party to terminate upon 6 months prior written notice to the other.

9.2 The Customer hereby acknowledges and confirms that it is and will remain liable for any Support Charges set out in the Contract Summary for the term of this Agreement notwithstanding any notice of termination served by the Company pursuant to clause 17, on the following terms:-

Date of termination

Proportion of balance of Support Charges payable; 80% prior to the first anniversary of this Agreement 60% prior to the second anniversary of this Agreement 40% prior to the third anniversary of this Agreement

10. Customers' Representatives

10.1 The Customer shall communicate to the Company upon the date hereof the identity of the person(s) or the department within its undertaking at the Site who shall act as the sole contact point and channel of communication for the provision by the Company of the Services during the currency of this Agreement. The Customer shall forthwith inform the Company of any change in the identity of any such person or department.

11. Indemnity for Intellectual Property Infringement

11.1 Subject to clause 13.7, the Company will indemnify and hold harmless the Customer against any damages (including reasonable costs) that may be awarded or reasonably agreed to be paid to any third party in respect of any claim or action that the normal operation, possession or use by the Customer of those Licensed Program Materials in which the Company owns the copyright, infringes the United Kingdom patent, copyright, design (registered or unregistered) trade mark or trade name of the said third party (an "Intellectual Property Infringement") provided always that the Customer:-

11.1.1gives notice, as soon as reasonably practicable, (if oral to be confirmed in writing) to the Company of any Intellectual Property Infringement forthwith upon becoming aware of the same;

11.1.2 gives the Company the sole conduct of the defence to any claim or action in respect of an Intellectual Property Infringement and does not at any time admit liability or otherwise attempt to settle or compromise the said claim or action except upon the express written instructions of the Company; and

11.1.3 acts in accordance with the reasonable instructions of the Company and gives the Company such assistance as it shall reasonably require in respect of the conduct of the said defence including without prejudice to the generality of the foregoing the filing of all pleadings and other court process and the provision of all relevant documents.

11.2 The Company shall reimburse the Customer's reasonable costs incurred in complying with the provisions of clause 11.1 above.

11.3 The Company shall have no liability to indemnify the Customer in respect of an Intellectual Property Infringement if the same results from:-

11.3.1 any unauthorised alteration, modification or adjustment to the Licensed Program Materials without the prior written consent of the Company; or

11.3.2 the combination, connection, operation or use of the Licensed Program Materials with any other equipment, software, goods or documentation not supplied by the Company; or

11.3.3 any breach of the Customer's obligations under this Agreement.

11.4 In the event of an Intellectual Property Infringement the Company shall be entitled at its own expense and option either to:-

11.4.1 procure the right for the Customer to continue using the Licensed Program Materials; or

11.4.2 make such alterations modifications or adjustments to the Licensed Program Materials that they become non- infringing without incurring a material diminution in performance or function; or

11.4.3 replace the Licensed Program Materials with non-infringing substitutes provided that such substitutes do not entail a material diminution in performance or function.

11.5 If the Company in its reasonable judgment is not able to exercise any of the options set out in clauses 11.4.1 to 11.4.3 above within 90 days of the date it received notice of the Intellectual Property Infringement it shall so notify the Customer who shall be entitled to terminate this Agreement by 14 days' notice in writing to the Company.

11.6 The provisions of this clause 11 set out the entire liability of the Company to the Customer for any Intellectual Property Infringement.

11.7 The Customer agrees and acknowledges that the Company shall have no liability of any nature whatsoever to the Customer in respect of any Intellectual Property Infringement relating to Third Party Software other than to use its reasonable endeavours to procure for the benefit of the Customer any indemnity or right it may have against the Third party Proprietor

12. Limitation of Liability

12.1 The following provisions set out the Company's entire liability (including any liability for the acts and omissions of its employees, agents or sub-contractors) to the Customer in respect of:

12.1.1 any breach of its contractual obligations arising under this Agreement; 14.1.2 any representation (unless fraudulent), statement or tortuous act or omission, including negligence, arising under or in connection with this Agreement AND THE CUSTOMER'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF THIS CLAUSE 12.

12.2 Any act(s) or omission(s) on the part of the Company or its employees, agents or sub-contractors falling within clause 12.2.1 above shall for the purposes of this clause 12 be known as "Event(s) of Default"

12.3 The Company's liability to the Customer for:

12.3.1 death or personal injury resulting from its own or that of its employees' agents, or sub-contractors' negligence; and

12.3.2 subject to clause 11.7 of this Agreement, all damage suffered by the Customer as a result of any breach by the Company of the condition as to title or the warranty as to quiet possession implied by section 2 of the Supply of Goods and Services Act 1982, shall not be limited.

12.4 Subject to the provisions of clause 12.3 above, the Company accepts liability for damage caused to tangible property through its negligence provided always that the Company's maximum liability for any one claim shall not exceed £2,000,000 (two million pounds).

12.5 Subject to the provisions of clause 12.3 above and clause 12.6 below, in relation to all other Events of Default which do not fall within the provisions of clause 12.4 above, the Company's entire liability to the Customer in any year of the term of this Agreement shall be the sum which is 100% of the amount paid by the Customer to the Company in respect of all items of Licensed Program Materials and Services to be supplied by the Company to the Customer for such year.

12.6 Subject to clause 12.3 above, the Company shall not be liable to the Customer in respect of any Event of Default for loss of profits, loss of goodwill, loss of contracts, or any type of financial, economic, special, indirect or consequential loss (including loss or damage suffered by the Company as a result of an action brought by a third party) of any nature whatsoever, howsoever arising.

12.7 Notwithstanding any other provision of this Agreement the Customer hereby acknowledges that the entire liability of the Company to the Customer for any Event of Default in relation to Third Party Software shall be to use its reasonable endeavours to procure for the Customer the benefit of any warranty or indemnity given by the Third Party Proprietor under the Third Party Licence or (as the case may be) and warranty or indemnity available to the Company from the Third Party Proprietor.

12.8 Subject to clause 12.3 above, the Company shall not be liable to the Customer in respect of any Event of Default which has not been notified to the Company in writing within 12 months from the date upon which the Customer first becomes aware of that Event of Default.

12.9 Save as set out in this Agreement, the Company shall have no liability of any nature whatsoever, howsoever arising to the Customer.

13. Patents, Trademarks and Intellectual Property Rights

13.1 The Customer acknowledges that any and all of the trade-marks, trade names, copyrights, patents and other intellectual property rights used or embodied in or in connection with any item provided under any part of this Agreement including the Licensed Programs, the Equipment and any parts thereof is and shall remain the sole property of the Company or such other party as may be identified therein or thereon ("the Owner").

13.2 In the event that new inventions, designs or processes evolve in performance or as a result of this Agreement, the Customer acknowledges that the same shall belong to the Company unless otherwise agreed in writing by the Company.

13.3 The Customer shall indemnify the Company or the Owner (as appropriate) fully against all liabilities of any nature whatsoever, including (without limitation) all costs and expenses which the Company or the Owner (as appropriate) may incur as a result of work done in accordance with the Customer's specifications involving infringement of any copyright, trade mark, patent or other proprietary right of any nature.

13. Force Majeure

13.1 Neither party shall be liable to the other for any breach of its obligations hereunder (other than payment obligations on behalf of the Customer) resulting from any cause beyond its reasonable control including but not limited to, delays in transportation or inability to obtain supplies (where the same is itself caused by Force Majeure), fire, strikes hostilities, regulations of any civil or military authority ("Force Majeure"). In the event that such event continues for a continuous period of three months either party may terminate this Agreement forthwith upon notice in writing to the other.

14. Termination

14.1 This Agreement may be terminated:

14.1.1 forthwith by the Company if the Customer fails to pay any sum due hereunder within 30 days of the due date therefore;

14.1.2 forthwith by either party if the other commits any material breach of any term of this License Agreement and which (in the case of a breach capable of being remedied) shall not have been remedied within 90 days of a written request to remedy the same or within such other time as may be expressly provided herein; and

14.1.3 forthwith by the Company if the Customer 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 Customer or if a petition is present or a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding up of the Customer or for the making of an administration order (otherwise than for the purpose of an amalgamation or reconstruction) or the Customer suffers or takes any analogous action in any jurisdiction.

14.2 Subject to the limitations of the liability of the Company contained in any part of this document, any termination of this Agreement pursuant to this clause 4 shall be without prejudice to any other rights or remedies a party may be entitled to hereunder or at law and shall not affect any accrued rights or liabilities of either party nor the coming into or continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination. In particular, but without prejudice to the generality to the foregoing, all exclusions of and limitations on the liability of the Company contained in any part of this Agreement shall survive termination or expiry.

14.3 In the event of termination of this Agreement:-

14.3.1 the Customer shall within 14 days of termination, return to the Company or at the Company's option, destroy or delete the Licensed Programs, the Program Documentation and all other documents and paperwork produced by the Company and all copies, forms and parts thereof in its possession or under its control (whether included in the register referred to in clause 7.3.3 or any other copies forms and parts of which it is aware) and the Customer hereby grants an irrevocable licence to the Company to enter the premises of the Customer to retake possession of any such documents;

14.3.2 the licence to use the Licensed Program Materials granted by this Agreement shall forthwith cease and determine absolutely, and the Customer shall, if so requested by the Company provide a written undertaking in such form as the Company shall require confirming compliance with such obligations.

15. Waiver

15.1 The waiver by either party of a breach or default of any of the provisions of this Agreement by the other shall not be construed as a waiver of any succeeding breach of the same or other provisions nor shall any delay or omission on the part of either party to exercise or avail itself of any right, power or privilege that it has or may have hereunder operate as a waiver of any breach or default by the other party.

16. Notices

16.1 Any notice, request, instruction or other document to be given hereunder may be delivered or sent by first class post or by fax to the address of the other party set out in this Agreement (or such other address as may have been notified) and any such notice or other document shall be deemed to have been served (if delivered) at the time of delivery (if sent by post) upon the expiration of 48 hours after posting and (if sent by fax) upon the expiration of 12 hours after dispatch. competent jurisdiction or by any act of a government body, assembly or agency.

In the event that the Customer fails to keep adequate security copies of Licensed Program Materials and a request being made of the Company to attempt to resurrect corrupt data or to aid in the organisation of re-entry of data.

17. Invalidity and Severability

17.1 If any provisions of this Agreement shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable the invalidity or un-enforceability of such provision shall not affect the other provisions of this Agreement and all provisions not affected by such invalidity or un-enforceability shall remain in full force and effect. The parties hereby agree to attempt to substitute for an invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible, the economic, legal and commercial objectives of the invalid or unenforceable provision.

18. Entire Agreement / Selection of Licensed Program Materials

18.1 The Company shall not be liable to the Customer for loss arising from or in connection with any representations (unless fraudulent), agreements, statements or undertakings made prior to the date of execution of this Agreement other than those representations, agreements, statements and undertakings confirmed by a duly authorised representative of the Company in writing or expressly incorporated or referred to in this Agreement.

18.2 The Customer acknowledges and accepts that the Licensed Program Materials were not designed and produced to its individual requirements and that it was responsible for their selection.

19. Successors

This Agreement shall be binding upon and endure for the benefit of the successors in the title of the parties hereto.

20. Assignment

20.1 The Customer shall not be entitled to assign this Agreement (or any part thereof) nor all or any of its rights and obligations hereunder nor sub-license the use (in whole or in part) of the Licensed Program Materials.

21. Headings

21.1 Headings to clauses and the use of bold type and underlining in this Agreement are for the purpose of information and identification only and shall not be construed as forming part of this Agreement.

22. Law

22.1 This Agreement shall be governed by and construed in accordance with English law and the parties hereto agree to submit to the exclusive jurisdiction of the English courts.

Payment schedule

Software

The full amount of the price for all Licensed Program Materials must be paid upon or prior to delivery of the first good or service.

Services

The full amount of the price for the Services must be paid upon or prior to delivery of the first good or services.

Support

The first year's Application Support charges are payable annually in advance within 7 days of the date of delivery of the first goods or services. Charges for Application Support for subsequent years will be invoiced prior to the commencement of the relevant year and all such invoices must be paid within 30 days of their date or the commencement of the relevant year, whichever shall occur first.

Expenses

Expenses will be charged in addition to the costs identified in the proposal for all on site work at 40p per mile for travel and from £100 per night for accommodation including subsistence.

VAT

All values are shown excluding VAT. This will be applied at the prevailing rate at the time of invoice.