



LICENCE AGREEMENT

This Agreement effectively made this day of (the "Effective Date"), between:

Name and Address of Licensor:

Xn Leisure Systems Limited
Stables 1 Howbery Park
Wallingford
Oxfordshire.
OX10 8BA

Name and Address of Licensee:

This Agreement represents the complete and exclusive agreement between Licensor and Licensee concerning Licensee's use of the Software and all related matters and supersedes all prior agreements, negotiations, or understandings between Licensor and Licensee in any way relating to these matters. This Agreement may not be modified except by a later written agreement signed by both parties. The entire Agreement consists of the Order Form (and any subsequent Order Forms agreed by the parties) and enclosed Terms and Conditions together with this signing page. In the event of any conflict or inconsistency between the provisions of this Agreement and any, schedules, exhibits or appendices, the terms and conditions of this Agreement will govern to the extent of such inconsistency, unless it is expressly stated that a particular provision of such documents replaces a certain section of the Agreement and such modification is executed by both the Licensor and Licensee.

By signing below, the Licensor agrees to provide the Software to the Licensee as set out in the attached Terms and Conditions. By signing below, the Licensee agrees to pay the Fees for the Software as set out in the Order Form. Licensor and Licensee acknowledge having read and understood this Agreement and hereby agree to be bound by the attached Terms and Conditions.

Xn Leisure Systems Ltd

LICENSEE

Signature:

Signature:

Name:

Name:

Title: Managing Director

Title:

Date:

Date:

The remainder of this page has deliberately been left blank. Order Form, Terms and conditions and Data Processor Addendum to follow



ORDER FORM TO MASTER SERVICES AGREEMENT

1. Licensee Information	
Customer:	[Insert Customer]
Address:	[Insert Address]
Company registration number:	[Insert Company registration No]
Contact:	[Insert Main contact]
Phone:	[Insert Main contact telephone No]
E-Mail:	[Insert Main contact email address]
2. Permitted Use	
The Following Licensee sites or Locations:	[Insert site addresses] Any additional licensee sites may be requested by email to sales@xnleisure.com . A confirmatory email from the Sales Director of Xn Leisure will be required to approve any new site.]
3. Term	
Initial Term:	[Insert Initial Term]
Length of Renewal Term:	1 year automatic renewals
4. Software Description	
Name of Software, Modules or Add-Ons:	[Insert Full Details of Software, Modules and Add Ons]
5. Fees – Excluding VAT	
Software support fee	[Insert Software Support Fees]
Fees for third party software.	[Insert Fees for 3 rd Part software]
Hardware support fee	[Insert Hardware Support Fees]
Training fee:	[Insert Training Fees]
Technical, configuration and engineering fees:	[Insert Technical, Configuration & Engineering Fees]
Hosted Services Subscription Fee	[Insert Hosting Subscription Fees]
Annual fees as at	[Insert Total Annual Fees]



6. Implementation and Training Services

If the Licensee cancels a scheduled and confirmed training session or technical services days within thirty (30) days prior to the dates booked, then the Licensee will be responsible for any costs and expenses so incurred by the Licensor. The Licensor reserves the right to cancel a training session or technical services days due to unforeseen circumstances, with a full refund to the Licensee for any advance fees paid by the Licensee for the same, should such a refund be required. In the case of any such cancellation, Licensor will not be liable for any costs already incurred by the Licensee in planning to attend any onsite tasks (if applicable), e.g. travel or accommodation costs.

7. Currency

Specify currency: £ GBP

8. Additional Payment Terms

The Hosted Services Subscription Fee shall be effective from the date of commencement of the build of the cloud environment for the Licensee.

The Software support fee shall be effective from the date of the installation of the Software.

The annual license, support and hosting fees shall be subject to annual increase.

Payment Profile will be variable. By way of part payment for all services, hardware and software delivered within each calendar month to be invoiced in arrears in accordance with the agreed project plan.

All invoices will be payable within 30 days of date of invoice. Please refer to Clause 9 Payment Terms.

9. Minimum Requirements

Computer Hardware
Equipment Requirements:

The prerequisites for each Licensor product to be used and installed are as published on the Licensor's SharePoint website.

Third Party Software Programs
Required:

The prerequisites for each Licensor product to be used and installed are as published on the Licensor's SharePoint website.

10. Other Schedules to Order Form

Please refer to:

Data Processing Addendum – is attached and forms part of this agreement

11. Technical Support

Any incidents requiring support should be logged by the Xn Leisure Support Portal in the first instance or by calling the Support Desk on telephone number:

Support Portal: <https://xnleisure.zohodesk.eu/portal/en/home>

Contact Number: 0345 5120004

Support Telephone is monitored at the following times: 07:00am until 22:00pm GMT: Mon - Fri, 08:00 – 22:00 Sat/Sun inclusive of all bank holidays with the exception of Christmas Day. Support Portal is available to log tickets 24/7.

Calls received out of office hours (08.00 – 17.30 GMT) will be forwarded to a mobile phone and reasonable efforts will be made to answer / action the call, however there will be a backup answer phone service. Support Portal tickets logged received outside of office hours will be collected, however no action can be guaranteed until the next working day.

SERVICE LEVELS

Information regarding the incident should be provided by the Customer, including:

- The Customer's name along with confirmation of the contact name and telephone number;
- Function in use or programme involved, if known; and
- Description of the problem, including any error message etc.
- Xn Leisure will provide a ticket reference number. This unique reference should be used when referring to the call subsequently.



The Xn Leisure analyst will endeavour to contact the Customer back within the response time detailed in the category table of the problem and to progress the incident to resolution.

Support Hours

Days	Times	Priority Type
WEEKDAYS	08.00 - 17:30	All
WEEKDAYS	07:00 – 08:00 17:30 – 22:00	P1
WEEKENDS	08:00 – 22:00	P1
BANK HOLIDAYS	08:00 – 22:00	P1
CHRISTMAS DAY	NO SUPPORT SERVICES	N/A

NB: ANY P1 CASES REQUIRE CALLING THE SUPPORT DESK

Escalation

- Initial call to the Xn Leisure support desk.
- No progress or poor response escalation by customer to Xn Leisure Head of Support via the Xn Leisure Support Desk Phone Number.
- Should the response from the HOS be unsatisfactory then escalation by the customer to the Account Manager via Xn Leisure office.
- Should the response from the AM be unsatisfactory then escalation by the customer to the Operations Director via the Xn Leisure office.
- Should the response from the OD be unsatisfactory then escalation by the customer to the Managing Director via the Xn Leisure office.

12. Priority Response Protocol

Category	Definition	Response	Updates	Target Fix
Priority 1	System unusable through failure of entire system or largely unusable through the failure of more than one area of functionality.	1 hours	2 hours	4 hours
Priority 2	System operable but the issues are not performing to specification and causing serious business implications.	2 hours	4 hours	16 hours
Priority 3	There are minor software issues or cosmetic issues that are not stopping the operation.	8 hours	16 hours	Future Software Release

NB: Hours refer to business hours.

Note: While Licensor will respond to any reported issue, and commence problem resolution efforts, within the above-specified timeframes and will resolve each case as soon as reasonably possible, giving appropriate consideration to the impact of the issue upon Licensee's business operations, actual resolution time will depend on the nature of the case and the resolution itself. A resolution may consist of a fix that resolves the issue, a reasonable workaround for the issue, delivery of information that effectively resolves the issue, or another commercially reasonable solution to the issue. The priority assigned to any case shall be determined by Licensor in accordance with the descriptions and examples given above, at Licensor's discretion. Certain services depend on third party providers and response time are subject to their Service Level Agreement (SLA). While we strive to meet these SLAs, variations may occur. We will promptly communicate any changes in the third-party SLA to minimize potential impact on the overall service provided.

13. Hardware Maintenance.

Licensee desires, and Licensor agrees to provide, support for Hardware based upon and subject to the terms and conditions set out below. Paragraph (d) below shall replace the second paragraph of Section 14 (Warranties) of the License Agreement.

- Hardware Configuration. Licensee agrees that the Software licensed hereunder will be installed on Hardware compatible with Licensor's current minimum recommended specifications. Such Hardware configuration, as approved by Licensor (the "Hardware Configuration"), is more specifically listed and described in this Order Form. Licensee will notify Licensor of any proposed changes to the Hardware Configuration in writing within thirty



(30) days thereof. Upon Licensor's written approval of such modification, Licensee's notices will constitute addenda hereto. Licensee will be responsible for supplying the Hardware and procuring Hardware maintenance as required throughout the term of this Agreement. For the avoidance of doubt, Licensor will not be responsible for Hardware supply or maintenance unless expressly agreed in this Order Form. Licensor will not be responsible for providing technical support of the operating system and/or related configuration. (b) Hardware Maintenance Services. If any Hardware is purchased from Licensor, the initial purchase price for such Hardware (the "Hardware Purchase Price") shall include hardware maintenance services from Licensor ("Hardware Maintenance Services") throughout the Initial Term. In the event that Licensee wishes to procure additional Hardware Maintenance Services from Licensor after such initial twelve (12) month term, Licensee must pay the Page 5 of 23 Hardware Maintenance Services Fee as set out in this Order Form, which may be adjusted on an annual basis by Licensor. Hardware Maintenance Services include the maintenance of the computer and IT equipment purchased by Licensee from Licensor set out on Schedule A on an unscheduled, remedial on-call basis, inclusive of parts and labour. Licensor shall have no obligation to provide Hardware Maintenance Services in respect of any other products. Licensor shall have no obligation to provide Hardware Maintenance Services other than during normal business hours of 8:00 a.m. to 5:00 p.m. (GMT), Monday to Friday, and not on Christmas or New Year Day. Licensor reserves the right to prioritize all maintenance requests and calls in its sole judgment and discretion. Licensor does not guarantee maintenance availability at certain times or within certain response times. Licensee shall ensure that Licensor's personnel shall have free access to the Hardware as required in order to complete the Hardware Maintenance Services.

(c) Not Covered by Hardware Maintenance. Licensor shall have no obligation to provide Hardware Maintenance Services in respect of any Hardware modified by Licensee or some other third party without Licensor's express prior written approval. Licensor will not be responsible for and the Hardware Maintenance Services shall not cover the repair of damage resulting from, or furnishing parts required as a result of, causes other than ordinary wear and tear, including, without limitation, neglect, misuse (including faulty repair or maintenance by unauthorized parties), accidents, vandalism, failure of electrical power, air conditioning, humidity control, or acts of God. Licensee agrees that Licensor will not be responsible for the installation specifications (including cabling, power, space, etc.), or the installation, operation, maintenance or technical support of the Hardware unless expressly agreed in writing between Licensor and Licensee.

(d) Hardware Warranty: Licensor warrants that, under normal conditions of use and operation, the Hardware supplied, and parts furnished, by Licensor pursuant to this Agreement shall be free from defects in workmanship and material for a period of twelve (12) months from the Effective Date ("Hardware Warranty Period"). Licensor will, subject to the terms and conditions set out in paragraphs (a) through (c) immediately above, at its own expense and as its sole and exclusive obligation and Licensee's sole and exclusive remedy for any breach of this warranty, use commercially reasonable efforts to correct any defects in workmanship and parts with respect to the Hardware supplied by Licensor for which Licensee has paid, reported to Licensor by Licensee in writing during the Hardware Warranty Period, or, if Licensor determines that it is unable to correct the error, Licensor will refund to Licensee all Fees in respect of the Hardware. Any such error correction provided to Licensee will not extend the original Hardware Warranty Period.

14. Hosting Services

Licensee desires, and Licensor agrees to provide, Hosting Services (as defined below) based upon and subject to the terms and conditions set out below.

(a) Hosted Services Implementation. To the extent that Licensee has ordered any component that is hosted by Licensor and/or, if elected by Licensor and so indicated on the Order Form, the hosting of the Software (collectively, "Hosted Services"), Licensor will set-up and install the Hosted Services in a diligent and professional manner in accordance with this Agreement. Set up and installation fees for Hosted Services will be billed as incurred by Licensee at Licensor's prevailing daily rates.

(b) Hosted Services Subscription. To the extent that Licensee has ordered any Hosted Services and pays the applicable subscription fee ("Hosted Services Subscription Fee"), Licensor will make available to Licensee (on a non-exclusive basis) the applicable Hosted Services indicated in the Order Form. Licensee will use the Hosted Services only for its own, internal business purposes, and will not resell them or otherwise make them available to any third party. Licensee will not copy, frame or mirror any part or content of the Hosted Services, nor permit any third party to access the Hosted Services, except as such third-party access is expressly agreed to with Licensor in writing. As between Licensee and Licensor, Licensor shall retain our ownership of all intellectual property in and to the software and modules comprising the Hosted Services. Licensee shall use and take all reasonable security precautions, including all upgrades and security patches to web applications installed and/or running in connection with Licensee's use of the Hosted Services. Licensee shall fully cooperate with Licensor's reasonable investigation of any service outages, security problems, and any suspected breach of this Agreement.

(c) Subscription Term. The Hosted Services Subscription Fees will commence once installation has been completed and access instructions have been provided to Licensee with respect to the applicable Hosted Services. Licensee's subscription to the Hosted Services shall continue so long as the Licensee pays the Hosted Services Subscription Fee. In the event that Licensee does not pay the Hosted Services Subscription Fee within the timeline set out in the invoice in respect thereof, Licensor may discontinue Licensee's access to the applicable Hosted Services until such time that Licensee's outstanding Hosted Subscription Fees are in good standing.

(d) Hosted Service Consents. Licensee shall obtain and maintain in effect all consents, approvals and licenses that may be necessary for Licensor to perform the services hereunder including any consents required to provide Licensee Data to the Licensor and to permit Licensor to collect and use this information in the course of performing the services.

(e) Acceptable Use Policy. Notwithstanding anything herein to the contrary, Licensor may terminate the Agreement at any time, if in Licensor's reasonable discretion Licensee breaches the Acceptable Use Policy of Licensor's hosting services partner (the "AUP"), as amended from time to time, a copy of which Licensor will provide to Licensee upon request. If a change to the AUP materially and adversely affects Licensee, Licensee may terminate



the Hosting Services, without any penalty, by providing Licensor written notice of termination on such grounds no later than thirty (30) days following the date the change became effective as to Licensee.

(f) Suspension of Hosted Services. Licensee agrees that Licensor may suspend Hosted Services to Licensee without liability if: (i) Licensor reasonably believes that the Services are being used in violation of the Agreement or applicable law; (ii) Licensee fails to cooperate with any reasonable Licensor investigation of any suspected violation of the AUP; (iii) there is a denial of service attack on Licensee's servers or other event for which Licensor reasonably believes that the suspension of the Hosted Services is necessary for network protection purposes or to protect its other licensees; or (iv) requested by a law enforcement or government agency. Information stored in the Hosted Services will be unavailable during such suspension of Hosted Services. Licensor shall give Licensee written notice of a suspension under this section, which notice shall be at least forty-eight (48) hours in advance of the suspension unless a law enforcement or government agency directs otherwise or suspension on shorter or contemporaneous notice is necessary to protect Licensor or Licensor's other Licensees from an imminent and significant risk. Licensor shall not suspend the Hosted Services if the grounds for the suspension is cured during the notice period, and shall promptly reinstate suspended Hosted Services when the grounds for the suspension are cured.

(g) Uptime Guarantee. Licensee is guaranteed 99% Network Uptime (as defined below), exclusive of Scheduled Service Downtime. Licensor shall provide Licensee with twenty-four (24) hours advance written notice (by electronic mail) of Scheduled Service Downtime. Licensor shall use all commercially reasonable efforts to perform the Scheduled Service Downtime during off-peak hours. Licensee shall be eligible to receive a credit ("Downtime Credit") (or refund if no further amounts are due) in the amount equal to five percent (5%) of the of the monthly amount of the Hosted Services Subscription fee for each three-hundred (300) consecutive minutes of Service Downtime (up to 100% of the monthly amount of the Hosted Services Subscription Fee). Licensee shall not be entitled to any Downtime Credit for Scheduled Service Downtime. Licensee shall be entitled to receive a Downtime Credit only if: (i) Licensee's account is in good standing, (ii) Licensee has opened a trouble ticket to report the Service Downtime, and (iii) Licensee sends an email requesting the Downtime Credit, which includes supporting data and documentation, to info@xnleisure.com within thirty (30) days of becoming eligible to receive the Downtime Credit. Licensor shall not be liable for, and measurements of Service Downtime shall not include, Service Downtime caused by: (i) failure or malfunctioning of Licensee's local area network; (ii) failure or malfunctioning of Licensee's Internet connectivity or end-user software; (iii) settings or problems arising from Licensee's internal network including, but not limited to, firewall configuration and bandwidth shaping, local area workstations, or other servers, equipment, and software that have a potential bearing on the local networking environment; (iv) Scheduled Service Downtime; or (v) any action or inaction by the representative or contracted 3rd party on the Licensee platform or infrastructure which results in service interruption. The following definitions shall apply to capitalized terms used in this paragraph: "Network Uptime" includes access to and material functioning of the Hosted Services; "Service Downtime" exists when Licensee is unable to transmit to and receive data from the Hosted Services due to failure of the Hosted Services not functioning properly, for reasons other than Scheduled Service Downtime, and is measured from the time a trouble ticket is opened by Licensee; and "Scheduled Service Downtime" is any interruption of the Hosted Services during which Licensor is performing routine maintenance in order to guarantee optimal performance of the Hosted Services.

(h) Hosted Services Disclaimer. Licensor does not guarantee the privacy, security, authenticity or non-corruption of any information transmitted through the internet or any information stored in any system connected to the internet. Licensor shall not be responsible for any claims, damages, costs or losses whatsoever arising out of or in any way related to Licensee's connection to or use of the internet. Licensor will not be liable to Licensee or to any third party for any claims, expenses, damages, costs or losses whatsoever arising out of or in any way related to: (i) Licensee's use of hardware (including, but not limited to, PDA's, printers, Bluetooth etc.), owned by Licensee or any third party, in conjunction with the Hosted Services or otherwise; or (ii) Licensee's use of the Hosted Services insofar as such services may be used to store, transmit, display, disclose or otherwise use data or information which is considered private, confidential, proprietary or otherwise exempt from public disclosure under applicable law; or (iii) failure of Licensee's network, or failure of Licensee's local wireless service provider network. Licensor will not be liable to Licensee or any third party for any claims, expenses, damages, costs or losses whatsoever arising out of changes in Licensee staffing.

(i) The Hosted Services Subscription is granted exclusively for the purpose of hosting applications purchased by the Licensee from the Licensor or its authorized partners, along with the data generated by such applications, as detailed in the Agreement. Applications obtained from third parties not provided by the Licensor or its authorized partners are not covered under the Hosted Services Subscription and shall not be supported by the Licensor.

15. Licensee Managed Environments and Infrastructure Changes

a) In the event that the Licensee makes any changes to any Licensee managed environments (e.g., on-premise environments) which negatively impacts the performance of the Licensor Software, the Licensor reserves the right to charge the Licensee additional fees for any required Licensor diagnosis and resolution of any issues directly resulting from any such changes and/or temporarily limit or suspend the Licensor Services (including Licensor support services) until such time as the applicable Licensee managed environments are restored to a Licensor Software supportable configuration. Any such Licensee changes may include but are not limited to, Licensee modifications made to Licensee managed environment hardware, network infrastructure, and security configurations. Licensee installed operating system updates, Licensee's installation of any third-party software, plugins, or custom code not approved by the Licensor, and any outages or Licensor Software performance issues caused by Licensee managed infrastructure, including but not limited to network connectivity, firewalls, and server resources.

b) In the event that the Licensee makes any changes to any Licensee managed infrastructure (including but not limited to network connectivity, firewalls, and server resources) which negatively impacts the performance of any Licensor managed environments, the Licensor reserves the right to charge the Licensee additional fees for any modifications to any Licensor managed environments which are required in order to ensure the continued (and non-impacted) availability of the Licensor Software via the Hosted Services.



Optional Provisions

The following Optional Provisions and Definitions have been added to the Agreement as follows:

Additional definition: "Effective Date". This Agreement shall become effective upon the execution and delivery hereof by the parties hereto.

Amendment to Clause 3: Xn Leisure must request and receive written permission from [insert customer name] in order to use its trademark, logo and trade name ("Branding") on any Marketing Materials. Details of the usage and length of time the logos can be used will be agreed by both parties detailed within the written permission document.

Amendment to Clause 14 Confidentiality: With respect to all Confidential Information other than Software and Documentation provided by Licensor, such obligation shall terminate Six (6) years after termination of this Agreement. such a breach, the non-breaching party may seek injunctive relief from a court of competent jurisdiction to pursue those remedies available to it.

This Order Form is only valid and binding on the parties when executed by both parties and is contingent on Licensor and Licensee executing Licensor's form of License Agreement, either in connection herewith or previously. This Order Form is subject to the terms and conditions of such License Agreement. This Order Form will become effective when all the parties have signed it. The date this Order Form is signed by the last party to sign it (as indicated by the date stated or under that party's signature) will be deemed the date of this Order Form.

Xn Leisure Systems Ltd

LICENSEE

Signature:

Signature:

Name:

Name:

Title: Managing Director

Title:

Date:

Date:

The remainder of this page has deliberately been left blank. Terms and conditions and Data Processor Addendum to follow



TERMS AND CONDITIONS

IN WITNESS WHEREOF, the parties agree hereto have caused this Agreement to be executed as of the Effective Date. The parties agree as follows:

1. Rights Granted & Permitted Use

Upon and subject to receipt of payment by Licensor of the applicable initial license, set-up and training fees set out in the Order Form(s), as well as any applicable annual fee, Licensor will grant to Licensee for use in connection with its internal business operations a limited, non-exclusive, non-transferrable license to the Software and Documentation, subject to the Permitted Use and the terms set forth in this Agreement. Licensee's rights to use the Software and Documentation are limited to the Term and subject to the payment of applicable annual fees. Any Updates (provided pursuant to Section 6 (Annual License, Updates and Technical Support)) will form part of the Software and will be subject to rights granted in this Agreement. Licensee may permit its employees, agents and contractors to use the Software for purposes permitted pursuant to this Agreement and Licensee will be responsible for their compliance in accordance with the terms of this Agreement. Licensee may make a reasonable number of copies of the Software for testing, archival and/or back-up purposes, to be used only when the primary copies of the Software are not operational. All legends, trademarks, trade names, copyright marks and other proprietary notices included in the original copies of the Software must be maintained as part of any and all testing, archival, back-up or other copies of the Software made by Licensee. All rights not expressly granted to Licensee hereunder are reserved by Licensor. Licensee acknowledges that the Software may require activation by way of an activation key on initial installation and from time to time based on certain events, including, without limitation, Updates and changes to hardware on which the Software is installed. Licensee acknowledges that the activation keys and internal controls in the Software do not necessarily restrict usage to the Permitted Use and do not necessarily ensure compliance with this Agreement.

2. License Restrictions

Licensee agrees (a) subject to any non-waivable rights Licensee may enjoy under applicable law, not to decompile, disassemble, reverse engineer, or otherwise attempt to derive the Software's source code from the object code; (b) not to modify, enhance, change the data structures for or create derivative works from, the Software, (c) not to rent, lease, sell, sublicense or otherwise transfer the Software to third parties; (d) not to make the Software available in any form to any person other than Licensee's employees, agents and contractors whose job performance requires such access; and (e) to use reasonable care and protection to prevent the unauthorized use, copying, publication or dissemination of the Software. Licensee shall not allow access to the Software by any service bureau, third party outsourcer, or other similar third-party service provider unless Licensor consents to such access in writing.

3. Ownership of Intellectual Property; Customer Input

As between Licensor and Licensee, Licensor retains all title, ownership, and intellectual property rights in and to the Software and Documentation, and all developments by Licensor in connection with this Agreement. Licensee acknowledges and agrees that it is only licensing the right to use Licensor's Software and Documentation and that no sale or other transfer of any title or ownership or any proprietary interest of any kind to such Software or Documentation is contemplated hereunder, other than the sale of the limited licenses as

expressly granted herein. Except as specified in Section 1 (Rights Granted & Permitted Use) or as expressly authorized in writing by Licensor and, subject to any non-waivable rights Licensee may enjoy under applicable law, Licensee shall not allow for any duplicates or reproduction of the Software to be made and, upon the termination of this Agreement, shall promptly (and no later than within thirty (30) days of termination) return to Licensor all originals and copies of the Software or provide validation that the Software has been permanently deleted from all of Licensee's systems and destroyed.

Licensor shall have a royalty-free, worldwide, transferable, sub-licensable, irrevocable, perpetual license to use or incorporate into the Software any Customer Input. Licensor shall have no obligation to make Customer Input an Update. Licensee shall have no obligation to provide Customer Input.

Use of Logo for Promotional and Marketing Materials

Unless indicated otherwise in the applicable Order Form, Licensee provides Licensor with permission to use its trademark, logo and trade name ("Branding") within Licensor's promotional and marketing materials. Licensor is granted no other right to the Branding and acknowledges that it shall not gain any proprietary interest in the same. Licensor is under no obligation to make use of, or to provide compensation for, the right or permission granted by Licensee to the Branding. Licensor shall be the exclusive owner of all right, title, and interest, including copyright in its promotional and marketing materials. The permission to use the Branding may be terminated at any time by Licensee by providing thirty (30) days' written notice to Licensor. Upon such termination, Licensor shall refrain from future use of the Branding; however, Licensor may continue to distribute and use the promotional and marketing materials where Licensee's Branding has been previously printed prior to the notice of termination and where such placements cannot be discontinued or altered without Licensor incurring a penalty.

4. Implementation, Training and Consulting

If so indicated in the Order Form(s), Licensor will provide to Licensee implementation, training services and/or consulting services to Licensee. Unless otherwise specifically noted in the applicable Order Form, training will be held during weekdays. Licensor's installation and training personnel will have expertise and actual experience in the application area designed for installation at Licensee's site. Licensee acknowledges that Services are scheduled on a first come, first served basis, and shall be mutually agreed upon by Licensor and Licensee subject to Licensor's availability. Should Licensee require rescheduling of confirmed installation and training service appointment, Licensor will make commercially reasonable efforts to accommodate Licensee's request. If Licensee cancels a scheduled and confirmed training session, Licensee will be responsible for Licensor's standard cancellation fees and any other charges as specified in the applicable Order Form. If the parties agree that training will be provided on-site at Licensee's facility, Licensee will: (i) provide and have properly prepared and set up an adequate training room or space; and (ii) at least one (1) week prior to scheduled training, have the hardware loaded with the operating system software and the Software, with all being adequately tested on-site. All travel and related expenses necessitated by training, implementation, and/or consulting services being rendered by Licensor hereunder at Licensee designated sites will be reimbursed by Licensee to Licensor. Such travel and related expenses will include reasonable coach class airfare, transportation to and from Licensee site, lodging, meals and miscellaneous (e.g. tips, tolls, etc.) and may include travel time at Licensor's standard travel rate. Unless otherwise specified in the Order Form, all phases/sessions of training must be completed within



six (6) months from receipt of the Software, or all prepaid training fees will be forfeit. Upon Licensee's request, Licensor will provide further services to train any additional Licensee personnel on the features, operation, and use of the Software, at Licensor's standard price list per diem rates in effect at the time such training is requested by Licensee. Additional services that are required as a result of Licensee's action, inaction or failure to meet its obligations, including delays or wait time caused by issues related to Licensee's hardware and software, shall be billable to Licensee and will be invoiced at Licensor's then-current rates.

5. Licensee Responsibilities

Within a reasonable period of time following the execution of this Agreement, and prior to the commencement of installation of the Software, Licensee shall appoint a member of its staff to act as its project lead. The project lead will serve as the main contact for Licensor's personnel in connection with any installation activities, disseminate information from Licensor to the various departments at Licensee's operation, as applicable and relay any required information to Licensee personnel in a timely manner. If the implementation affects multiple areas of Licensee's operations, then it shall also appoint a team comprised of management level staff from those operational areas involved in the installation to act as its project team. The project lead and/or project team, as applicable, shall have primary responsibility for the coordination and execution of the installation. The project lead and/or the project team shall: (a) have a clear understanding of the general manager's or other top-ranking executive's vision and purchasing decision for the installation of the Software and shall communicate this vision to all levels of Licensee's staff; (b) be familiar with and involved in Licensee's daily operations; (c) be Licensee's primary decision-makers, within their respective areas of operational responsibility, for any policies and procedures which may be involved in the implementation of the Software; (d) report to the general manager or other top-ranking manager as it relates to the responsibilities of installation coordination; (e) ensure that the minimum system requirements set forth in the Order Form(s), related Documentation and/or the applicable exhibit have been met or exceeded; (f) serve as liaison with other third party vendors who are involved in the installation process; and (g) be present during all phases of the installation and training process to include attendance at all designated training classes and ensure attendance of staff at scheduled training sessions.

Licensee shall enter all data required for installation of the Software and shall be responsible for the integrity of such data. Licensor shall not have any liability for any Licensee data, including for data that Licensor personnel may enter in an effort to assist Licensee or any errors made in such efforts to assist Licensee. Licensor reserves the right to refuse to do data entry and Licensee agrees that Licensee is solely responsible for providing sufficient staff to perform any data entry required for the installation of the Software.

Licensee shall assume full responsibility for (i) the content of any database, (ii) the selection and implementation of controls on its access and use of the Software, (iii) the security of stored data and (iv) configuration data associated with the implementation of the Software.

6. Annual License, Updates and Technical Support

During the Term, and in consideration of the Fees being paid by Licensee in accordance with the terms of this Agreement, Licensor will provide, in a timely manner and without additional charge to the annual fee, the following to Licensee:

(a) Annual renewal of the right to "use" under license, as provided in

Section 1 (Rights Granted & Permitted Use), the Software, Documentation, and related materials;

(b) Commercially reasonable efforts to correct any Errors reported to it by Licensee, provided such Errors relate to the proper functioning of the Software and have not been caused by negligence on the part of Licensee, a computer malfunction, Third Party Materials or other causes external to the Software; and further provided that Licensee acknowledges and agrees that not all Errors are capable of being corrected;

(c) Updates to the Software that Licensor makes generally available to its licensees, and Documentation as reasonably necessary for the proper function and continued material conformity of the Software with the applicable Documentation. Licensee agrees to install all Updates to the Software made available by Licensor within ninety (90) days following such availability. If Licensee fails to install any such Update, Licensor reserves the right to stop all implementation, training and support services until Licensee installs such Update. Any programs which provide new functionality or expand the function of the Software and are regarded as New Products by Licensor, and for which Licensor separately charges other customers, are not covered by this Agreement, but may be offered to Licensee for license on terms consistent with this Agreement; and

(d) Access to Licensor's technical support hotline during the hours set out in the applicable Order Form, subject to any other terms and conditions indicated in the applicable Order Form.

Outside of the hours set out in the applicable Order Form, non-emergency telephone support will be charged to Licensee at Licensor's then-current rates and any additional terms and conditions set forth in the Order Form will apply. Licensee acknowledges and agrees that telephone support is intended to address specific problems experienced by Licensee relating to the Software, and is not intended to train Licensee's employees or to support third party products ("Other Assistance"). Licensor will advise Licensee during a telephone support session if Licensor considers such telephone support to constitute Other Assistance. Following such notice, if Licensee wishes for the telephone support session to continue, Licensee will pay for such Other Assistance based on Licensor's then-current rates. In connection with the provision of technical support, Licensor may be required to access Licensee's system to diagnose, and to resolve, certain issues. To the extent Licensee supplies remote access facilities, Licensee will be responsible to ensure such facilities are secure and readily available. Licensee hereby consents and agrees that Licensor may access the Software by way of remote access for such purposes. Unless otherwise provided for in the Order Form, Licensor will not be responsible for providing technical support of Hardware or the related operating system and configuration. Licensee agrees that Licensor will not be responsible for providing Hardware installation specifications (including those regarding cabling, power, space, etc.), or for the installation, operation, maintenance or technical support of Hardware.

Licensor's obligation to provide support is subject to the following conditions:

(i) Licensee uses the Software only in accordance with the terms and conditions of the Agreement; (ii) Software implementation, training, re-implementation, and system audit services must be provided by Licensor's employees or Licensor's Authorized Representatives; (iii) Licensee has not modified or altered the Software;

(iv) Licensee has not authorized independent interfacing of third party components to the Software, or relevant database, particularly third



party components that write to the database, without the express prior written consent of Licensor; (v) the Software, and the equipment on which it operates, is operated in accordance with the Documentation; (vi) the equipment on which the Software operates is in good operating condition; (vii) Licensee implements all Updates on a timely basis and no later than ninety (90) days subsequent to the availability of the Updates; (viii) Licensee obtains, maintains, and updates, as required, third party programs and such other software as is necessary for the proper operation of the Software; and

(ix) Licensee provides reasonable access to its systems (and, if applicable, such access is to be provided in accordance with the specifications set forth in the Documentation and the applicable exhibits) so as to enable Licensor to provide the technical support services, including, but not limited to, by way of telecommunications, internet or other remote access to the server environment in which the Software resides or such other method reasonably acceptable to Licensor. All time and materials expended by Licensor resulting from Licensee's breach of such conditions shall be billed to Licensee at Licensor's standard time and materials rates. Support provided pursuant to this Section relates to the Software and the Updates only. Unless, and only to the extent that, Licensor and Licensee have expressly agreed for Licensor to provide hardware support pursuant to the Order Form, should the problems that arise be the result of hardware malfunction, Licensor will advise Licensee to have the hardware/network repaired. Support resulting from hardware/network problems will be billed to Licensee at Licensor's then-current hourly rates.

7. Interfaces

Software interfaces to third party vendor systems may be available, as indicated in the Documentation. To the extent such third-party vendor system interfaces are available, Licensor shall install the Software interfaces as agreed between the parties on the Order Form. Licensee shall act as a liaison between Licensor and any third-party vendor(s) with which the Software shall interface. Licensee shall have its third-party vendor available at the time that Licensor is scheduled to install the interface and in order to assist with installation, as required by Licensor. Transactions processed by a third-party vendor system may be subject to separate licensing requirements. Licensee acknowledges and agrees that it has the sole obligation to obtain, or cause its third-party vendor to obtain, any and all such licenses.

8. Custom Development and Enhancement Requests

This Agreement does not include any programming services for new software development or software modifications. Such work, if negotiated and agreed to between Licensor and Licensee, shall be the subject of a separate agreement for development services between the parties. The fees, payment terms and delivery schedules related to such work shall be as outlined in such agreement for development services, and are independent of Software or services provided under this Agreement. Licensee acknowledges that Licensor is not a contract development organization, but rather Licensor is a software developer that licenses its Software within specified industries. As such, Licensee further acknowledges that the Software is a major and valuable asset of Licensor's business and, as such, Licensor shall have complete control of the design and development of the Software, including Updates to the Software. Therefore, Licensor has the right, and sole discretion, to reject any request for enhancement or modification to the Software by Licensee. Should Licensee require modification of any standard forms incorporated into the Software or design of new forms, any such customization work shall be contracted for separately at Licensor's

then-current rates.

9. Payment Terms

Licensee agrees to pay to Licensor all Fees as set out in the Order Form(s). All Fees are payable in accordance with the terms set out in, and in the currency specified in, the Order Form(s). Unless otherwise indicated on the invoice, all invoices are due upon receipt. Fees stated in the Order Form are exclusive of Taxes. Other than as provided for pursuant to Section 15 (Indemnification), Licensor does not provide credits or refunds for Fees already due or paid. If Licensee wishes to decrease its Permitted Use of the Software, Licensee must notify Licensor sixty (60) days in advance. If Licensee wishes to increase its Permitted Use of the Software, Licensee must notify Licensor in advance and pay any applicable Fees.

Any invoice disputes must be initiated by Licensee in good faith and in writing; Licensee will be entitled to notify Licensor of any invoice dispute by the date that is thirty (30) days following the date of the applicable invoice, after which time the invoice shall be deemed to be accepted by Licensee and will be due and payable in full. If Licensee initiates a dispute with regard to a particular invoice, any undisputed amounts charged on such invoice will continue to be due and payable. Licensor and Licensee agree to use reasonable efforts to address and attempt to resolve any invoice dispute within thirty (30) days after Licensor's receipt of Licensee's notice to Licensor regarding such dispute.

With regard to any undisputed invoiced amount that is not paid when due, Licensor reserves the right to charge, and Licensee agrees to pay, a late payment fee on the unpaid balance from the due date until paid (whether before or after judgment) equal to the lesser of one and one half percent (1.5%) per month, or the maximum amount allowable by law. If it is determined that Licensor properly charged any amount disputed and withheld by Licensee, the late fee will be assessed and paid on the disputed, withheld amount.

Licensee acknowledges that Licensor reserves the right to suspend or interrupt Licensee's use of the Software, cease providing Updates and/or suspend delivery of technical support to Licensee for any period during which any Fees due in accordance with the terms of this Agreement remain unpaid for fifteen (15) days after Licensor provides advanced written notice (including by way of email) of such unpaid Fees to Licensee. In such event, Licensor shall not be precluded from exercising any additional remedies that might be available to it under the terms of this Agreement or otherwise.

10. Taxes; Customs

Licensee will be responsible for paying all Taxes (other than taxes associated with Licensor's net income or Licensor's authority to do business in a particular jurisdiction), as well as for obtaining any necessary permissions related to the importation and use of the Software, Third Party Software and/or Hardware. If Licensor has a legal obligation to pay or collect Taxes for which Licensee is responsible under this Agreement, the appropriate amount shall be computed based on Licensee's address listed in the Order Form and invoiced to and paid by Licensee, unless Licensee provides Licensor with a valid tax exemption certificate authorized by the applicable governmental authority at least five (5) business days prior to the due date of the applicable Licensor invoice. All Fees are payable in full and without reduction or withholding for Taxes. If, for whatever reason, Licensee is required by law to withhold any Taxes from Fees, Licensee shall gross up its payments to Licensor so that Licensor receives Fees in full and free of any such deductions. Licensee shall, upon request of Licensor,



provide to Licensor proof that Taxes have been paid, if such payment is not made to Licensor directly. If Licensor pays any costs or expenses incurred in relation to any import duties, customs, formalities, permissions or other requirements, then Licensee shall promptly reimburse Licensor for all such amounts in full.

11. Hardware Purchase

If Licensee so elects, Licensee shall purchase Hardware at the price indicated in the Order Form or, if at a later date, at the then-current standard prices in effect at the time the order is placed. All Hardware will be shipped F.O.B. origin. Licensee shall be responsible for all Delivery Costs. Payment by Licensee of Delivery Costs shall be due and payable upon its receipt of Licensor's invoice.

12. Title to the Products

Subject to the second paragraph of this Section 13, with respect to Third Party Software and/or Hardware purchased from Licensor by Licensee hereunder (collectively, the "Products"), and in the case of Third Party Software, the media on which such Products are contained and the license thereto, all risk therein shall pass to Licensee upon shipment F.O.B. from the manufacturer's facility. Licensor reserves, and Licensee hereby grants to Licensor, a security interest in all Products sold under this Agreement to secure payment of all applicable Fees until the applicable Fees have been paid in full. A copy of this Agreement may be filed, or Licensor may apply for any registration, or give any notification, in connection with the security interest, with, to or on appropriate authorities or registers in any jurisdiction at any time before or after execution by Licensee including a financing statement in order to perfect and/or register Licensor's security interest in the Products. Licensee agrees to execute and deliver any additional document or instrument and provide all other assistance as Licensor may reasonably request from time to time to establish, perfect, register, give effect to and/or enforce Licensor's security interest in the Products applicable in Licensee's place of business. Licensor shall not, unless any requirement or obligation cannot be lawfully excluded, be obliged to comply with any requirement or obligation of any law in connection with the security interest, including without limitation giving to Licensee any notice of any form or making any disclosure. Licensee shall maintain sufficient insurance and shall bear the responsibility of insurance for Products from the time it leaves the manufacturer's facility until the applicable Fees have been paid in full. For greater certainty, Licensee acknowledges and agrees that Licensor never sells but only licenses the right to "use" its Software, Documentation, and related materials, and that no sale or other transfer of any title or ownership or any proprietary interest of any kind whatsoever in or to such Software, Documentation, or related materials is contemplated hereunder.

Where the governing law of this Agreement is that of England and Wales, then this second paragraph of Section 13 shall apply in place of the first paragraph of Section

13. The legal and beneficial title to the Products, or in the case of Third Party Software, legal and beneficial title to the media, shall remain vested in Licensor and shall not pass to Licensee until the purchase price for such Products has been paid in full and received by Licensor. Until payment in full has been received by Licensor and title to the Products passes: Licensor may require Licensee to deliver up to Licensor all Products in its possession and if Licensee fails to do so promptly, Licensor shall have authority to retake, sell or otherwise deal with and/or dispose of all or any part of the Products; Licensor and its agents and employees shall be entitled for such purpose at any time and without the need to give notice enter upon any property upon which the Products or any part are stored, or upon which Licensor reasonably

believes them to be kept; Licensee shall hold the Products as bailee and store or mark the Products in a manner reasonably satisfactory to Licensor indicating that title to the Products remains vested in Licensor; Licensee shall take all reasonable care of the Products; and Licensee shall insure the Products to their full replacement value, and arrange for Licensor to be noted on the policy of insurance as the loss payee. Irrespective of whether title to the Products remains vested in Licensor, risk in the Products shall pass to Licensee upon delivery.

14. Confidentiality

By virtue of this Agreement, the parties may have access to the other party's Confidential Information. The parties will hold each other's Confidential Information in confidence. With respect to all Confidential Information other than Software and Documentation provided by Licensor, such obligation shall terminate three (3) years after termination of this Agreement. With respect to the Software and Documentation provided by Licensor, such obligation is perpetual. The parties will not make each other's Confidential Information available in any form to any third-party for any purpose except to the extent necessary to exercise its rights under this Agreement and will treat Confidential Information of the other party with the same degree of care with which it would treat its own confidential information of a like nature, and in no case less than a reasonable degree of care. The parties agree that the limitations of liability contained herein shall not apply to any disclosure of Software or Documentation in breach of this provision and that any such breach shall terminate the rights to such Software and Documentation granted to Licensee under this Agreement.

Confidential Information may only be disclosed to those employees or agents who are required to access it in furtherance of this Agreement and who are required to protect such Confidential Information against unauthorized disclosure. Licensor and Licensee shall each implement and enforce policies and contractual obligations with its employees, agents and subcontractors to ensure its employees, agents and subcontractors protect the Confidential Information as required pursuant to this Section 14. It shall not be a breach of this Section 14 if Confidential Information is disclosed pursuant to subpoena or other compulsory judicial or administrative process, provided that the party served with such process promptly notifies, to the extent legally permissible, the other party and provides reasonable assistance so that the other party may seek, at its own cost and expense, a protective order against public disclosure.

The parties recognize and agree that monetary damages are an inadequate remedy for breach of the obligations set forth in this Section 14 and further recognize that any breach would result in irreparable harm to the non-breaching party. In the event of such a breach, the non-breaching party may seek injunctive relief from a court of competent jurisdiction to pursue those remedies available to it.

15. Indemnification

Licensor will indemnify, defend and hold Licensee Indemnified Parties harmless from, at its expense, any action brought against Licensee Indemnified Parties by a third party based upon a claim that Licensee's use of the Software within the scope of these Terms and Conditions and the Order Form(s) infringes a United States, Canadian, United Kingdom, European Union, Australian or New Zealand patent or copyright issued to or held by a third party, or misappropriates a trade secret of such third party; provided that Licensee notifies Licensor promptly in writing of such claim, provides Licensor with the sole control and authority to defend or settle such action or claim, and gives Licensor the authority, information and assistance necessary to settle or defend such claim.



In the event a claim of infringement is made, or Licensor believes that such a claim is likely to be made, then Licensor shall at its expense: (a) procure the right for Licensee to continue using the Software; (b) replace or modify the Software so that it becomes non-infringing, without materially decreasing the functionality of the Software; or (c) if neither (a) or (b) above is commercially practical, then at Licensor's sole option, terminate this Agreement upon three (3) months written notice, and either issue to Licensee a credit equal to, or promptly refund to Licensee, the annual fee for the then-current annual period, less an appropriately prorated amount for use, reflecting the number of months during which Licensee enjoyed uninterrupted use of the Software during that annual period.

Notwithstanding the foregoing, Licensor shall have no obligation to defend Licensee or to pay any costs or legal fees for any action, claim or settlement, based upon: (a) use of a version of the Software that was not, at the time that the claim arose, the current unaltered version of the Software provided by Licensor hereunder, including, without limitation, failure of Licensee to install Updates containing modifications to make the Software non-infringing; (b) combination, operation, integration or interfacing of the Software with Third Party Materials, other than Third Party Materials or Third Party Software with which the Software was intended to operate as specified in the Documentation associated with the Software if such claim would not have arisen but for such combination, operation, integration or interfacing (regardless of whether or not Licensor has advised Licensee that such use would likely result in a claim of infringement by a third party); (c) use of the Software in a manner other than as authorized by the Documentation, the Order Form(s) or these Terms and Conditions; (d) Licensor's compliance with the designs, plans, or specifications furnished by or on behalf of Licensee; (e) modifications to the Software by any person other than Licensor or its authorized agents or subcontractors; or (f) Licensee's failure to accept any procured right to continue using the Software.

THE FOREGOING STATES LICENSOR'S SOLE AND EXCLUSIVE LIABILITY AND THE SOLE AND EXCLUSIVE REMEDY OF LICENSEE INDEMNIFIED PARTIES WITH RESPECT TO ANY CLAIM OF INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS OR PROPRIETARY RIGHTS OF ANY THIRD PARTY.

Licensee shall defend, indemnify and hold harmless Licensor Indemnified Parties from and against any and all third party claims, actions, causes of action, liabilities, damages, costs and expenses, including reasonable legal fees, arising from or related to the exclusions (a) through (f) set out in the third paragraph of this Section 15.

16. Warranties; Disclaimer of Warranties

Licensor warrants the Software will operate substantially in accordance with the specifications set forth in the Documentation when delivered to Licensee for a period of ninety (90) days after the Go-Live Date provided that the Software is used on the computer hardware equipment and with third party software programs which meet Licensor's minimum requirements as set forth in the Order Form(s) or exhibit, as applicable. Licensee's exclusive remedy and Licensor's sole liability for breach of this warranty shall be for Licensor to use commercially reasonable efforts to correct such Errors. Without limitation, Licensor shall have no liability to Licensee or any third party arising out of Licensee's failure to back-up the Software and the related data.

Licensor hereby represents that it has the authority of each manufacturer or producer of Hardware and Third-Party Software which are, if applicable, subject to this Agreement to sell the same to Licensee.

Licensee acknowledges that Licensor is not the manufacturer or producer and therefore makes no warranties, conditions, representations or guarantees, express or implied, concerning Hardware or Third-Party Software, as applicable. So far as possible, Licensor hereby assigns to Licensee the manufacturer's and producer's warranties, if any, applicable to the Hardware and Third-Party Software, and Licensee hereby accepts such assignment and agrees that its sole remedies are included thereunder. Licensor makes no representations regarding the validity or enforceability of any such manufacturer's or producer's warranty.

EXCEPT FOR THE WARRANTIES PROVIDED IN THIS SECTION 16 AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SOFTWARE, THIRD PARTY SOFTWARE AND HARDWARE, AS APPLICABLE, ARE PROVIDED "AS IS" AND "WITH ALL FAULTS", AND LICENSOR DISCLAIMS ALL OTHER WARRANTIES, REPRESENTATIONS, GUARANTEES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTY AND CONDITION OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE OR THE USE OF REASONABLE SKILL AND CARE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, LICENSOR MAKES NO EXPRESS OR IMPLIED WARRANTIES, REPRESENTATIONS, GUARANTEES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, THE USE OF REASONABLE SKILL AND CARE, NON-INFRINGEMENT, SATISFACTORY QUALITY, ACCURACY, FREEDOM FROM ERROR OR THAT THE SOFTWARE, THIRD PARTY SOFTWARE, SUPPORT, MAINTENANCE OR HARDWARE WILL MEET ALL OF LICENSEE'S REQUIREMENTS. LICENSOR MAKES NO EXPRESS OR IMPLIED WARRANTIES, REPRESENTATIONS, GUARANTEES OR CONDITIONS WITH RESPECT TO ANY THIRD-PARTY SOFTWARE OR THIRD-PARTY SERVICES PROVIDED WITH OR AS PART OF THE SOFTWARE, HARDWARE OR RELATED SERVICES. LICENSOR'S LIMITED WARRANTIES DO NOT APPLY TO ANY SOFTWARE WHICH HAS BEEN MODIFIED OR ALTERED IN ANY MANNER BY ANYONE OTHER THAN LICENSOR OR ITS AUTHORIZED AGENT. SOME STATES OR JURISDICTIONS MAY NOT ALLOW THE EXCLUSION OF CERTAIN OR ANY EXPRESS OR IMPLIED WARRANTIES, REPRESENTATIONS, GUARANTEES OR CONDITIONS, SO THE ABOVE EXCLUSION MAY NOT APPLY TO LICENSEE. IN THAT EVENT, SUCH WARRANTIES, REPRESENTATIONS, GUARANTEES OR CONDITIONS ARE LIMITED IN DURATION TO THE WARRANTY PERIOD TO THE EXTENT LEGALLY PERMISSIBLE.

Nothing in this Agreement excludes, restricts, or modifies any right or remedy, or any guarantee, representation, warranty, condition or other term, implied or imposed by any applicable law which cannot lawfully be excluded or limited. This may include any consumer law which contains guarantees that protect the purchasers of goods and services in certain circumstances. If any guarantee, representation, warranty, condition or other term is implied or imposed concerning this Agreement under any consumer law or any other applicable law and cannot be excluded (a "Non-Excludable Provision"), and Licensor is able to limit Licensee's remedy for a breach of the Non-Excludable Provision, then the liability of Licensor for breach of the Non-Excludable Provision is limited to one or more of the following, at Licensor's option: (a) in the case of goods, the replacement of the goods or the supply of equivalent goods, the repair of the goods, the payment of the cost of replacing the goods or of acquiring equivalent goods, or the payment of the cost of having the goods repaired; or (b) in the case of services, the supplying of the services again, or the payment of the cost of having the services supplied again.

The parties agree that it is Licensee's responsibility to determine whether the Software is suitable for Licensee's requirements. No other terms, conditions, representations, warranties or guarantees, whether



written or oral, express or implied, will form a part of this Agreement or have any legal effect whatsoever.

17. Limitation of Liability

EXCEPT FOR LIABILITY ARISING (i) FROM LICENSEE'S BREACH OF SECTION 2 (LICENSE RESTRICTIONS) AND ANY DISCLOSURE BY LICENSEE OF SOFTWARE OR DOCUMENTATION IN BREACH OF SECTION 14 (CONFIDENTIALITY), (ii) UNDER SECTION 15 (INDEMNIFICATION) OR (iii) FOR PERSONAL INJURY, DEATH, FRAUD OR FRAUDULENT MISREPRESENTATION:

(A) LICENSOR'S ENTIRE LIABILITY UNDER THIS AGREEMENT OR IN ANY WAY RELATED TO THE SOFTWARE, THE THIRD PARTY SOFTWARE, THE HARDWARE OR ANY RELATED SERVICES WILL BE LIMITED TO DIRECT DAMAGES IN AN AMOUNT EQUAL TO THE FEES PAID BY LICENSEE TO LICENSOR PURSUANT TO THIS AGREEMENT DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO THE CLAIM; AND

(B) NEITHER PARTY WILL BE LIABLE FOR:

(i) ANY SPECIAL, PUNITIVE, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING FROM OR RELATED TO THIS AGREEMENT OR IN ANY WAY RELATED TO THE SOFTWARE, THE THIRD PARTY SOFTWARE, THE HARDWARE OR ANY RELATED SERVICES; OR

(ii) ANY LOSS OF REVENUE, PROFITS, GOODWILL OR DATA, OR DATA USE (INCLUDING AS A RESULT OF A VIRUS), BUSINESS INTERRUPTION, FAILURE TO REALIZE AN EXPECTED SAVING, CORRUPTION OF DATA, OR CLAIMS AGAINST THEM BY ANY THIRD PARTY,

EVEN IF THE PARTIES ARE ADVISED, OR MAY REASONABLY SUPPOSED TO HAVE BEEN AWARE, OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE.

SUCH LIMITATIONS WILL APPLY REGARDLESS OF HOW THE CLAIM ARISES, WHETHER ARISING BASED ON CONTRACT, TORT, NEGLIGENCE, OR OTHERWISE AND WILL APPLY TO ALL ORDER FORMS, SCHEDULES, ADDENDA, AGREEMENTS AND ATTACHMENTS RELATED TO THIS AGREEMENT.

THE FOREGOING LIMITATIONS OF LIABILITY ALLOCATE THE RISKS BETWEEN LICENSOR AND LICENSEE AND FORM A MATERIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES. LICENSOR'S PRICING REFLECTS THIS ALLOCATION OF RISK AND THE LIMITATION OF LIABILITY SPECIFIED HEREIN.

18. Term and Termination

(a) **Term.** The initial term of this Agreement will commence on the Effective Date and will continue thereafter for the period as set out in the Order Form(s) ("Initial Term") unless terminated earlier by Licensor or Licensee in accordance with the terms of this Agreement. This Agreement will automatically renew for additional one (1) year periods (or for periods of the length specified in the applicable Order Form) (each being a "Renewal Term" and, collectively, with the Initial Term, the "Term") unless either party provides the other party with ninety (90) days written notice prior to the conclusion of the Initial Term or the Renewal Term, as applicable. All terms and conditions hereof shall remain in effect during any Renewal Term, except as the parties otherwise expressly agree to in writing.

(b) **Failure to Pay Annual Fee.** In the event that Licensee fails to pay the applicable annual fees when due, Licensor reserves the right to elect to take one of the following courses of action (without limiting Licensor's other available remedies): (i) notify Licensee that this

Agreement will immediately expire (or has expired) effective as of the expiration of the then-current annual license period; or (ii) allow this Agreement to renew for another renewal period, in which event, the applicable annual license fees for such renewal period will continue to be payable; provided, however, that if Licensor does not affirmatively notify Licensee that alternative (i) or (ii) has been selected, then alternative (ii) will apply.

(c) **Early Termination.** Licensee understands that Licensor has undertaken significant implementation and investment costs which are intended to be amortized over the Initial Term of this Agreement. In consideration of the costs and the pricing structure acknowledged and accepted in the Order Form(s), Licensee agrees to pay liquidated damages if Licensee elects early termination during the Initial Term. The liquidated damages for such early termination will be the value of the Fees for the remainder of the Initial Term, along with any outstanding fees for additional modules and services ordered but not yet paid for by Licensee since the date of this Agreement. These liquidated damages are due and payable in a lump sum on the date of termination of the Agreement. Licensee acknowledges that the actual damages likely to result from a breach of the Initial Term by Licensee are difficult to ascertain and that the foregoing liquidated damages are intended to represent estimated actual damages and are not intended as a penalty.

(d) **Termination by Licensor.** Subject to Section 18(b) (Failure to Pay Annual Fee), Licensor has the right to terminate the license granted under this Agreement if Licensee is in default of any term or condition of this Agreement, and fails to cure such default within thirty (30) days after receipt of written notice of such default. Without limitation, it will be deemed a Licensee default under this Agreement if Licensee fails to pay any amount when due hereunder. Licensor may terminate this Agreement immediately if: (i) Licensee breaches Section 2 (License Restrictions); or (ii) Licensee becomes insolvent, a receiver, administrator, controller or a liquidator is appointed to Licensee, Licensee assigns any of its property for the benefit of creditors or any class of them or any proceedings have been commenced by or against Licensee under any bankruptcy, insolvency or similar laws.

(e) **Termination by Licensee.** Licensee has the right to terminate this Agreement if Licensor is in default of any term or condition herein and fails to cure such default within thirty (30) days after receipt of written notice of such default or if Licensor becomes insolvent or any proceedings are to be commenced by or against Licensor under any bankruptcy, insolvency or similar laws.

(f) **Effect of Termination.** Upon termination of this Agreement for any reason, any and all amounts owed to Licensor pursuant to this Agreement will be immediately due and payable, and all license rights granted to Licensee hereunder will be immediately revoked and terminated. Following the termination of this Agreement, the Sections titled "Ownership of Intellectual Property; Customer Input," "Payment Terms," "Taxes; Customs," "Confidentiality," "Indemnification," "Warranties; Disclaimer of Warranties," "Limitation of Liability," "Audit," "Governing Law" and "General" will continue in full force and effect in accordance with their terms. Within ten

(10) days following termination, Licensee will cease using and will securely destroy or return to Licensor all copies of the Software, Documentation and any applicable copies thereof in accordance with Section 3 (Ownership of Intellectual Property; Customer Input; Data) and confirm the same to Licensee in writing by a duly authorized officer.



19. Audit

During the Term, Licensee shall maintain complete and accurate books, records, policies, and procedures (collectively “Books and Records”) sufficient to confirm Licensee’s compliance with these Terms and Conditions and the Order Form(s), including without limitation compliance with Permitted Use, and payment of Fees to Licensor. During the Term and for a period of one (1) year thereafter, Licensee shall permit Licensor (or an independent representative engaged by Licensor), upon thirty (30) days prior written notice, to audit (each an “Audit”) Licensee’s Books and Records and deployment of the Software to the extent reasonably necessary to verify Licensee’s compliance with the terms, conditions, and restrictions of this Agreement, at such times during Licensee’s regular business hours as Licensor may reasonably request. Licensor may exercise its right to audit no more frequently than one (1) time each calendar year. If any Audit should disclose any underpayment of Fees, Licensee shall promptly pay Licensor such underpaid amount (whether before or after judgment), together with interest thereon at a rate of one and one-half percent (1.5%) per month during which each such amount was owed and unpaid, or the highest interest rate allowed by law, whichever is lower. If the amount of such underpayment exceeds five percent (5%) of amounts otherwise payable, then Licensee shall reimburse Licensor for Licensor’s reasonable and customary audit expenses. The rights and obligations set forth in this Section 19 shall survive termination or expiration of the Term (as such term is defined in Section 18(a)) for a period of one (1) year from such termination or expiration.

20. Assignment

Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the other party’s prior written consent (not to be unreasonably withheld); provided, however, either party may assign this Agreement in its entirety (including all schedules and Order Forms), without the other party’s consent in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. Notwithstanding the foregoing, if a party is acquired by, sells substantially all of its assets to, or undergoes change of control in favor of, a direct competitor of the other party, then such other party may terminate this Agreement with immediate effect upon written notice. Any purported assignment in violation of this section shall be void and of no effect. Any permitted assignee shall assume all assigned obligations of its assignor under the Agreement.

21. Governing Law

The law that will apply to any question of interpretation regarding this Agreement, any question of the existence of this Agreement, or a lawsuit arising out of or in connection with this Agreement, and which courts have jurisdiction over any such lawsuit, depend on the country of incorporation or organization, as applicable, of Licensee, and will be determined as follows:

Licensee Country of Incorporation:	Governing Law:	Courts Having Jurisdiction:
The United States of America, Mexico or a Country in Central or South America or the Caribbean	The laws of the State of New York and the federal laws of the United States applicable in that state.	New York City, New York
Canada	The laws of the Province of Ontario and the laws of	Toronto, Ontario

Licensee Country of Incorporation:	Governing Law:	Courts Having Jurisdiction:
	Canada applicable in that province.	
The United Kingdom or Another Country in Europe, the Middle East or Africa	The laws of England and Wales.	England and Wales
Australia or a Country in Asia or the Pacific Region	The laws of the State of New South Wales and the laws of the Commonwealth of Australia applicable in that state.	Sydney, Australia

Each party agrees to the applicable governing law above without regard to choice or conflicts of law rules, and, subject to the availability of injunctive relief pursuant to Section 14 (Confidentiality) and to Section 22 (Dispute Resolution), to the jurisdiction of the applicable courts above. The parties exclude the operation of the United Nations Convention on Contracts for the International Sale of Goods.

22. Dispute Resolution

Upon any dispute, controversy or claim between the parties, each of the parties will designate a representative from senior management to attempt to resolve such dispute. The designated representatives will negotiate in good faith in an effort to resolve the dispute over a period of thirty (30) days. If the dispute is not resolved in this thirty (30) day period, a party may submit the dispute to binding arbitration. Licensee shall select an arbitrator from a list of three (3) arbitrators to be provided by Licensor to Licensee, each of which shall be skilled in the legal and business aspects of the software industry. The parties agree that the arbitrator’s fee shall be shared equally between the parties and that each party shall be responsible for its costs, legal and otherwise, in relation to the arbitration, unless the arbitrator decides that the circumstances justify an award of costs. The arbitration shall be conducted in the English language and shall take place in accordance with arbitration rules and in the location set forth in the below chart, depending on the country of incorporation or organization, as applicable, of Licensee:

Licensee Country of Incorporation:	Applicable Arbitration Rules:	Location of Arbitration:
The United States of America, Mexico or a Country in Central or South America or the Caribbean	The laws of the State of New York and the federal laws of the United States applicable in that state.	New York City, New York
Canada	The laws of the Province of Ontario and the laws of Canada applicable in that province.	Toronto, Ontario
The United Kingdom or Another Country in Europe, the Middle East or Africa	The laws of England and Wales.	England and Wales
Australia or a Country in Asia or the Pacific Region	The laws of the State of New South Wales and the laws of the	Sydney, Australia



Licensee Country of Incorporation:	Applicable Arbitration Rules:	Location of Arbitration:
	Commonwealth of Australia applicable in that state.	

The foregoing provision shall not limit the ability of a party to seek injunctive relief.

General.

(a) Export Compliance. The Software, Products and related services, and derivatives thereof may be subject to export laws and regulations. Each party represents that it is not named on any U.S. government denied-party list. Licensee shall not permit access or use of the Software or Products in a U.S.- embargoed country, EU-embargoed country, or United Nations-embargoed country or in violation of any other applicable embargo, export law or regulation.

(b) Anti-Corruption. Licensee has not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from any of Licensor's employees or agents in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction. If Licensee learns of any violation of the above restriction, Licensee will use reasonable efforts to promptly notify Licensor.

(c) Modifications. This Agreement may not be modified except in writing signed by both parties.

(d) Subcontractors. Licensor reserves the right to make use of subcontractors to provide services and to use such means as Licensor, in its sole discretion, considers appropriate. Licensor's use of subcontractors shall not relieve it of its obligations under this Agreement.

(e) Independent Contractor. The relationship of the parties established by this Agreement is that of independent contractors. This Agreement does not establish an agency, joint venture or partnership relationship between Licensor and Licensee. Licensor and its personnel, agents, Licensors, and Licensor's Authorized Representatives are acting as independent contractors and not as employees or agents of Licensee. Nothing in this Agreement will be construed to permit either party to bind the other or to enter into obligations on behalf of the other party.

(f) Non-Solicitation. During the Term of this Agreement and for a period of one

(1) year following the termination of this Agreement, each party hereto agrees not to solicit, recruit or employ any employee of the other party without the prior written consent of the Chief Executive Officer, President or Director of the other party. For purposes of this section, the terms "employee," shall include any person with such status at any time during the six (6) months preceding any solicitation in question. For the avoidance of doubt, the foregoing restriction shall not apply to the following forms of solicitation (and resulting employment): (i) a party using general bona fide solicitations directed at the public or industry participation in general in publications or internet resources not specifically targeted at employees of the other party, or employing any person who responds to such solicitations;

(ii) using search firms, or hiring any persons solicited by such search firms, so long as such firms are not advised by a party to solicit employees of the other party; or (iii) soliciting any person who has left the employment of the other party prior to the date of this Agreement.

(g) Severability. If any provision contained herein or part thereof is determined to be void or unenforceable in whole or in part by a court of competent jurisdiction, such invalid provision or part thereof shall be deemed not to affect or impair the validity or enforceability of any other provision or part thereof contained herein, all of which remaining provisions or parts thereof shall be and remain in full force and effect.

(h) Headings. The headings and subheadings contained herein are inserted for convenience of reference only and shall in no way be construed to be interpretations of terms.

(i) Notices. All notices under this Agreement shall be in writing and shall be deemed to have been given upon: (i) personal delivery; (ii) the third business day after being sent by pre-paid recorded post; or (iii) the second business day after sending by facsimile with telephonic confirmation of receipt. Notices to Licensor shall be sent to the address shown in the introductory paragraph of this Agreement addressed to Licensor's signatory of this Agreement. Notices to Licensee shall be sent to the address shown in the introductory paragraph of this Agreement addressed to Licensee's signatory of this Agreement. Each party may modify its recipient of notices by providing notice pursuant to this Agreement.

(j) Waiver. No delay by either party in enforcing any of the terms or conditions of this Agreement will affect or restrict such party's rights and powers arising under this Agreement. No waiver of any term or condition of this Agreement will be effective unless made in writing. The waiver by any party of a breach of this Agreement does not constitute a waiver of a repeat of the same breach or of other breach of rights or obligations under this Agreement.

(k) Entire Agreement. This Agreement constitutes the entire Agreement between the parties with respect to the subject matter of this Agreement and supersedes all proposals, oral and written, and all previous negotiations and communications between the parties and their representatives with respect to the subject matter of this Agreement. Each party acknowledges that, in entering into this Agreement, it does not rely on any statement, representation, assurance or warranty (whether it was made negligently or innocently) of any person (whether a party to this Agreement or not) other than as expressly set out in this Agreement.

(l) Third party rights. A person who is not a party to this Agreement shall not have any rights to enforce any term of this Agreement.

(m) Force Majeure. Neither party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control provided that the party affected by such failure or delay gives the other party prompt written notice of the cause and uses commercially reasonable efforts to correct such failure or delay within a reasonable period of time.

(n) Counterparts. This Agreement may be executed in two or more counterparts, each of which together shall be deemed an original, but all of which together shall constitute one and the same instrument. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a Portable Document Format (PDF), or by using a web-based e-signature platform such as DocuSign or Echosign, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or ".pdf" signature page or e-signature was an original thereof.

23. Definitions and Interpretation.



The definitions and rules of interpretation in this Section shall apply to this Agreement.

(a) The following capitalized terms shall have the meanings ascribed to them in this section:

“Affiliate”	Includes any entity or association controlled by, controlling or under common control with a party and for the purposes of this definition, the term “control” shall mean (i) the ownership of more than fifty percent (50%) of the voting shares of the subject entity or association; (ii) the right or power, directly or indirectly, to elect or remove directors; or (iii) the right or power to control management.
“Audit”	Has the meaning set out in Section 19.
“Branding”	Has the meaning set out in Section 4.
“Books and Records”	Has the meaning set out in Section 19.
“Confidential Information”	All tangible or intangible information and materials, in any form or medium, including, but not limited to, all of the following, whether or not patentable: information that is clearly designated or identified as confidential by appropriate letter or by a proprietary stamp or legend; all information disclosed orally or visually, or other form of tangible information without an appropriate letter or a proprietary stamp or legend, if it would be apparent to a reasonable person familiar with the party’s business and industry in which it operates, that such information is of a confidential nature; Software and the Documentation; documentation and other information related to hardware specifications, components lists, suppliers and the like; any scientific or technical design, drawing, process, technique or procedure; trade secrets; information related to business plans, forecasts, sales and marketing plans, Licensees, pricing and finances; Licensee data contained in the Software databases; the conduct of the other party in performing this Agreement; and the terms and conditions of this Agreement. Confidential Information will not include information that: (i) is or becomes generally known to the public through no act or omission of the other party; (ii) was in the other party’s lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (iii) is lawfully disclosed to the other party by a third- party without restriction on disclosure; or (iv) is independently developed by or for the other party without use of or reference to the other party’s Confidential Information, as evidenced by files from the time of such independent development.
“Customer Input”	Suggestions, enhancement requests, recommendations or other feedback provided by Licensee, its employees, contractors and agents relating to the operation or functionality of the Software.
“Delivery Costs”	Costs related to the delivery of Hardware or Third-Party Software, including insurance, packaging, shipping, freight and other delivery-related costs.
“Documentation”	Licensor-supplied related hard-copy or electronically reproducible technical and user documents associated and provided with the Software.
“Error”	Reproducible error of the Software which prevents the use of the Software as described in the specifications set forth in the Documentation.
“Fees”	License fees, implementation and training fees, annual license and maintenance fees, amounts payable in respect of Hardware and all other fees due hereunder.
“Go-Live Date”	The date on which Licensee first uses the Software to process its daily business relative to the functions that the Software automates.
“Hardware”	Hardware products produced by third party manufacturers which Licensor buys from such manufacturers or distributors for resale to its licensees (to the extent available), including, but not limited computer hardware and point of sale devices.
“Initial Term”	Has the meaning set out in Section 18(a).
“Licensee Indemnified Parties”	Licensee and its Affiliates and any of their respective officers, directors, employees, agents, successors and permitted assigns.
“Licensee Sites”	The physical location or address where Licensee utilizes the Software for the Permitted Use, as set out on the applicable Order Form(s).
“Licensor Indemnified Parties”	Licensor and its Affiliates and any of their respective officers, directors, employees, agents, successors and permitted assigns.
“Licensor Authorized Representatives”	Licensor’s authorized representatives who, by written authorization from Licensor, may have authorization to sell, install, or provide training in respect of the Software.



“New Product”	Any new feature, module or enhancement to the Software that Licensor markets and licenses for additional fees separately from Updates.
“Order Form”	A separate document provided by Licensor, agreed to by the parties to, and governed by, this Agreement, by which Licensee orders licenses and services. Additional Order Forms executed by the parties with respect to additional licenses, Products and services will form part of this Agreement.
“Other Assistance”	Has the meaning set out in Section 7.
“Permitted Use”	The quantity or extent of a license to the Software or particular modules thereof, as specified in the Order Form. The Order Form may specify that the license is measured by number of Users, number of Workstations or limited to specific Licensee Sites.
“Products”	Has the meaning set out in Section 13.
“Software”	The (i) machine-readable instructions and data, (ii) components, files, and modules, (iii) audio-visual content (such as images, text, recordings or pictures) and (iv) related licensed materials, such as activation keys, as applicable, as further described in the Order Form(s), as well as any Updates.
“Taxes”	Any local, state, provincial, federal or foreign taxes, levies, duties or similar governmental assessments of any nature, including, but not limited to, value-added taxes, excise, use, goods and services taxes, consumption taxes or similar taxes, export and import fees, customs duties and similar charges, in each case, associated with the Software, Third Party Software and/or Hardware, imposed upon the Fees or otherwise arising out of, or in connection with, the transactions contemplated by this Agreement.
“Term”	Has the meaning set out in Section 18(a).
“Third Party Materials”	Any software, hardware, data, or other materials or products not provided by Licensor.
“Third Party Software”	Software owned by third party producers which Licensor distributes or resells to its licensees.
“Updates”	The latest updates, modifications, improvements to the Software, including corrections of Errors, which relate to the operating performance but do not change the basic functionality of the Software.
“User”	A person or machine that utilizes the Software for the Permitted Use, as authorized pursuant to an Order Form, as applicable.
“Workstation”	A personal computer or device providing equivalent functionality which is capable of executing the Software and which is linked to a computer network from which the Software is accessible, as authorized pursuant to an Order Form, as applicable.

- (b) Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- (c) Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- (d) A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this Agreement under that statute or statutory provision.
- (e) Any words following the terms including, include, in particular, or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

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DATA PROCESSOR ADDENDUM

1. DEFINITIONS

- 1.1 The terms “process/processing”, “data subject”, “processor”, “controller”, “personal data”, “personal data breach”, and “data protection impact assessment” shall have the same meaning ascribed to them in Data Protection Laws;
- 1.2 “Addendum” means this Data Processor Addendum;
- 1.3 “Customer” means the Customer or Licensee under the Main Agreement;
- 1.4 “Data Protection Laws” means in relation to any Protected Data (a) the EU’s General Data Protection Regulation (Regulation (EU) 2016/679) (“GDPR”); (b) the version of the GDPR transposed into UK law pursuant to the European Union (Withdrawal) Act 2018 and the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019/419; (c) the Data Protection Act 2018; (d) any other applicable law relating to the processing, privacy and/or use of personal data; and (e) any laws that replace, extend, re-enact, consolidate or amend any of the foregoing;
- 1.5 “EEA” means the European Economic Area;
- 1.6 “Main Agreement” means the license or services agreement into which this Addendum is incorporated;
- 1.7 “Protected Data” means the data described in Annex 1 (*Details of Processing of Personal Data*) and any other personal data processed by the Supplier (or a Sub-processor) on behalf of the Customer pursuant to or in connection with the Main Agreement;
- 1.8 “Services” means the services described in the Main Agreement;
- 1.9 “Standard Contractual Clauses” means the standard contractual clauses for the transfer of personal data to processors established in third countries (i) in the case of transfers from the EEA, as approved by the European Commission in Implementing Decision (EU) 2021/914, and / or (ii) in the case of transfers from the UK, the international data transfer agreement (IDTA) or the international data transfer addendum to the said European Commission’s standard contractual clauses, or any set of clauses approved by the European Commission or the UK ICO which amends, replaces or supersedes any of these;
- 1.10 “Sub-processor” means any processor (including any affiliate of the Supplier) appointed by the Supplier (or by any Sub-processor) to process Protected Data on behalf of the Customer;
- 1.11 “Supervisory Authority” means (a) an independent public authority which is established by a Member State pursuant to Article 51 GDPR; and (b) any similar regulatory authority responsible for the enforcement of Data Protection Laws;
- 1.12 “Supplier” means the Supplier or Licensor under the Main Agreement.

2. PROCESSING OF PROTECTED DATA

- 2.1 The parties agree that the Customer is the controller and that the Supplier is the processor for the purposes of processing Protected Data.
- 2.2 Each party shall at all times in relation to the processing of Protected Data comply with Data Protection Laws.
- 2.3 The Supplier shall only process Protected Data for the purposes of the provision of the Services and for the specific purposes in each case as set out in Annex 1 (*Details of Processing of Personal Data*) to this Addendum and shall not process, transfer, modify, amend or alter the Protected Data or disclose or permit the disclosure of the Protected Data to any third party other than in accordance with the Customer's documented instructions (whether in the Main Agreement or otherwise) unless required to do so by applicable law to which the Supplier is subject; in such case the Supplier shall inform the Customer of that legal requirement before processing, unless that law prohibits such information on important grounds of public interest.
- 2.4 The Supplier shall immediately inform the Customer if, in its opinion, an instruction pursuant to the Main Agreement or this Addendum infringes Data Protection Laws.
- 2.5 The Customer warrants to and undertakes with the Supplier that all data subjects of the Protected Data have been or will be provided with appropriate notices and information to establish and maintain for the relevant term the necessary legal grounds under Data Protection Laws for transferring the Protected Data to the Supplier to enable the Supplier to process the Protected Data in accordance with this Addendum and the Main Agreement.

3. PROCESSOR PERSONNEL

- 3.1 The Supplier shall treat all Protected Data as strictly confidential and shall inform all its employees, agents, contractors and Sub-processors engaged in processing the Protected Data of the confidential nature of such Protected Data.
- 3.2 The Supplier shall take reasonable steps to ensure the reliability of any employee, agent, contractor and Sub-processor who may have access to the Protected Data, ensuring in each case that access is limited to those persons or parties who need to access the relevant



Protected Data, as necessary for the purposes set out in section 2.1 above in the context of that person's or party's duties to the Supplier.

3.3 The Supplier shall ensure that all such persons or parties involved in the processing of Protected Data are subject to:

3.3.1 confidentiality undertakings or are under an appropriate statutory obligation of confidentiality; and

3.3.2 user authentication processes when accessing the Protected Data.

4. SECURITY

4.1 The Supplier shall implement appropriate technical and organisational measures to ensure a level of security of the Protected Data appropriate to the risks that are presented by the processing, in particular from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Protected Data transmitted, stored or otherwise processed.

5. SUB-PROCESSING

5.1 Subject to section 5.4, the Supplier shall not engage any Sub-processor to process Protected Data other than with the general written authorisation of the Customer.

5.2 As at the date of the Main Agreement or (if later) implementation of this Addendum, the Customer hereby authorises the Supplier to engage those Sub-processors set out in Annex 2.

5.3 The Supplier shall inform the Customer of any intended changes concerning the addition or replacement of other Sub-processors, thereby giving the Customer the opportunity to object to such changes.

5.4 With respect to each Sub-processor, the Supplier shall:

5.4.1 carry out adequate due diligence on each Sub-processor to ensure that it is capable of providing the level of protection for the Protected Data as is required by this Addendum including without limitation sufficient guarantees to implement appropriate technical and organisational measures in such a manner that Processing will meet the requirements of Data Protection Laws and this Addendum;

5.4.2 include terms in the contract between the Supplier and each Sub-processor which are equivalent to those set out in this Addendum, and shall supervise compliance therewith;

5.4.3 remain fully liable to the Customer for any failure by each Sub-processor to fulfil its obligations in relation to the Processing of any Protected Data.

6. DATA SUBJECT RIGHTS

6.1 The Supplier shall without undue delay, and in any case within three (3) working days, notify the Customer if it receives a request from a data subject under any Data Protection Laws in respect of Protected Data, including requests by a data subject to exercise the data subject's rights under Data Protection Laws, and shall provide full details of that request.

6.2 Taking into account the nature of the processing of Protected Data, the Supplier shall assist the Customer by appropriate technical and organisational measures, insofar as this is reasonably possible, to enable the Customer to comply with any such request by a data subject to exercise data subject rights under Data Protection Laws.

7. INCIDENT MANAGEMENT

7.1 In the case of a personal data breach involving Protected Data, the Supplier shall without undue delay notify the personal data breach to the Customer providing the Customer with sufficient information which allows the Customer to meet any obligations to report a personal data breach under Data Protection Laws. Such notification shall as a minimum:

7.1.1 describe the nature of the personal data breach, the categories and numbers of data subjects concerned, and the categories and numbers of Protected Data records concerned;

7.1.2 communicate the name and contact details of the Supplier's data protection officer or other relevant contact from whom more information may be obtained;

7.1.3 describe the likely consequences of the personal data breach; and

7.1.4 describe the measures taken or proposed to be taken to address the personal data breach, including, where appropriate, measures to mitigate its possible adverse effects.

7.2 The Supplier shall fully co-operate with the Customer and take such reasonable steps as are directed by the Customer to assist in the investigation, mitigation and remediation of each personal data breach, in order to enable the Customer to (i) perform a thorough investigation into the personal data breach, (ii) formulate a correct response and to take suitable further steps in respect of the personal data breach in order to meet any requirement under Data Protection Laws.



- 7.3 The Supplier's obligation to report a personal data breach and assist the Customer under this Section will not be construed as an acknowledgment by the Supplier of any fault or liability with respect to the personal data breach.
- 7.4 The parties agree to coordinate and cooperate in good faith on developing the content of any related public statements or any required notices for the affected persons. The Supplier shall not inform any third party without first obtaining the Customer's prior written consent, unless notification is required by law to which the Supplier is subject, in which case the Supplier shall to the extent permitted by such law inform the Customer of that legal requirement, provide a copy of the proposed notification and consider any comments made by the Customer before notifying the personal data breach.
8. DATA PROTECTION IMPACT ASSESSMENT
- 8.1 The Supplier shall, at the Customer's request, taking into account the nature of processing and the information available to the Supplier, provide reasonable assistance to the Customer with any data protection impact assessments and any consultations with any Supervisory Authority of the Customer as may be required in relation to the processing of Protected Data by the Supplier on behalf of the Customer.
9. DELETION OR RETURN OF PROTECTED DATA
- 9.1 Upon request made by the Customer within thirty (30) days of the earlier of: (i) cessation of processing of Protected Data by the Supplier; or (ii) termination of the Main Agreement, the Supplier shall return all Protected Data to the Customer. After such thirty (30) day period, the Supplier shall, at Customer's election, delete all Protected Data or return all Protected Data to the Customer.
- 9.2 If the Customer does not make an election within such thirty (30) day period, the Supplier shall securely dispose of Protected Data and delete all copies of it (except to the extent that any applicable law requires the Supplier to retain a copy of such Protected Data) and Customer acknowledges that the Supplier will have no obligation to maintain or provide such Protected Data.
10. AUDIT RIGHTS
- 10.1 The Supplier shall make available to the Customer on request all information necessary to demonstrate compliance with this Addendum and Data Protection Laws.
- 10.2 The Supplier shall permit the Customer or another auditor mandated by the Customer during normal working hours and on reasonable prior notice to inspect, audit and copy any relevant records, processes and systems in order that the Customer may satisfy itself that the provisions of Data Protection Laws and this Addendum are being complied with.
11. INTERNATIONAL TRANSFERS OF PROTECTED DATA
- 11.1 The Supplier shall not (permanently or temporarily) process the Protected Data nor permit any Sub-processor to (permanently or temporarily) process the Protected Data in a country outside of the UK or the EEA without an adequate level of protection, other than in respect of those recipients in such countries listed in Annex 3 (*Authorised Transfers of Protected Data*), unless authorised in writing by the Customer in advance.
- 11.2 When requested by the Customer, the Supplier shall promptly enter into (or procure that any relevant Sub-processor of the Supplier enters into) Standard Contractual Clauses in respect of any processing of Protected Data in a country outside of the UK or the EEA without an adequate level of protection.
12. LIABILITY
- 12.1 The disclaimers and limitations and exclusions of liability set out under the Main Agreement shall apply also to this Addendum.
13. COSTS
- 13.1 The Customer shall pay any reasonable costs and expenses incurred by the Supplier in meeting the Customer's requests made under this Addendum.
14. MISCELLANEOUS
- 14.1 Any obligation imposed on the Supplier under this Addendum in relation to the processing of Protected Data shall survive any termination or expiration of the Main Agreement.
- 14.2 With regard to the subject matter of this Addendum, in the event of any conflict or inconsistency between any provision of the Main Agreement and any provision of this Addendum, the provision of this Addendum shall prevail. In the event of any conflict or inconsistency between the Main Agreement or this Addendum and the Standard Contractual Clauses, the Standard Contractual Clauses shall prevail.



ANNEX 1: DETAILS OF PROCESSING OF PERSONAL DATA

This Annex 1 includes certain details of the processing of personal data as required by Article 28(3) GDPR.

Subject matter and duration of the processing of personal data

The subject matter of this Data Processor Addendum pertains to the processing of personal data for the purposes of managing and supporting activities related to staff and leisure users (members), including but not limited to membership administration, access to gym facilities, and associated services.

The duration of personal data processing shall be limited to the period during which staff and leisure users maintain active membership or continue to access the site and its services.

In the event of inactivity, defined as no membership or use of services for a consecutive period of 24 months, all personal data associated with the inactive individual will be permanently deleted or anonymized, in accordance with applicable data protection laws and best practices

The nature and purpose of the processing of personal data

The processing of personal data involves activities such as collection, storage, management, and deletion of data for the purpose of administering memberships, granting access to leisure services, supporting member engagement, and fulfilling legal obligations. Personal data is processed to ensure efficient service delivery, maintain safety standards, and support communication with members and staff

The types of personal data to be processed

The types of personal data to be processed under this Addendum include the following:

1. Personal Information:
 - Name
 - Address
 - Date of Birth (DOB)
 - Age
 - Contact Information (e.g., phone number, email address)
 - Identification Details (e.g., membership ID or photograph)
2. Membership Information:
 - Membership status and type
 - Membership start and end dates
 - Membership history
3. Service Use Information:
 - Records of gym and facility usage
 - Participation in classes or programs
 - Activity and attendance logs
4. Transactional Data:
 - Payment history
 - Invoices and receipts
 - Records of purchases (e.g., merchandise or services)

No financial or card payment details are stored as part of the processing activities. All payment transactions are processed through secure, third-party payment gateways that handle financial data independently.

The categories of data subject to whom the personal data relates

The personal data to be processed under this Addendum relates to the following categories of data subjects:

1. Leisure Users (Members):
 - Individuals holding active or inactive gym memberships.
 - Trial members or individuals using guest passes.
2. Staff:
 - Employees, contractors, or volunteers engaged in the operation of the gym or its associated services.
3. Former Members and Staff:
 - Individuals who were previously members or staff but whose personal data is retained for a limited period due to legal, contractual, or operational requirements.
4. Service Users:
 - Individuals participating in specific gym services, classes, or events without full membership (e.g., one-time event attendees).

**ANNEX 2: AUTHORISED SUB-PROCESSORS**

Sub-Processors	Location of Service Centre(s)
ANS Group Ltd	UK
Cloud Direct	UK
SW Direct	UK
SysGroup	UK
Microsoft	UK
Capita	UK
Civica	UK
Cardstream	UK
Verifone	UK
Worldpay	UK
Flywire	UK
Power2	UK
Fitronics	Ireland
Harlands	UK
DFC	UK
Paygate	UK
London & Zurich	UK
4Global	UK
Cascade	UK

ANNEX 3: AUTHORISED TRANSFERS OF CONTROLLER PERSONAL DATA

Sub-Processors	Location of Service Centre(s)	Processing Undertaken
Capita	UK	Online Payment Details (Basket, Price)
Civica	UK	Online Payment Details (Basket, Price)
Cardstream	UK	Online Payment Details (Basket, Price)
Verifone	UK	Device Payment Details (Price)
Worldpay	UK	Online Payment Details (Basket, Price)
Flywire	UK	Online Payment Details (Basket, Price)
Power2	UK	Contact Details
Fitronics	Ireland	Personal Details, Membership Data
Harlands	UK	Personal Details, Membership Data
DFC	UK	Personal Details, Membership Data
Paygate	UK	Personal Details
London & Zurich	UK	Personal Details, Bank Details, Membership Data
4Global	UK	Personal Details, Member Data, Site Data, Membership Data, Booking Data
Cascade	UK	Personal Details, Membership Data, Financial Data, Venue Data



This Addendum effectively made day of the “Effective Date”), between:

XN LEISURE SYSTEMS LTD.
Xn Leisure Systems Limited
Stables 1 Howbery Park
Wallingford
Oxfordshire.
OX10 8BA.

within the United Kingdom (“Licensee”) with its principal place of business at:

Signature:

Signature:

Name:

Name:

Title: Managing Director

Title:

Date:

Date:

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