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**SOFTWARE LICENCE, MAINTENANCE AND HOSTING**

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## Schedule

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- (1) **VERTICAL SYSTEMS LIMITED** incorporated and registered in England and Wales with company number 01741340 whose registered office is at 14 Hemmells, Laindon, Essex, SS15 6ED (**Supplier**).
- (2) Customer as detailed on signed contract

## BACKGROUND

The Supplier is willing to license the Licenced Software on the terms and conditions as outlined in this Agreement.

## AGREED TERMS

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### *1 - Interpretation*

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- 1.1 The definitions and rules of interpretation in this clause apply in this agreement.

**Affiliate:** includes, in relation to either party, each and any subsidiary or holding company of that party and each and any subsidiary of a holding company of that party.

**Ancillary Services:** the services set out in Schedule 4 supplied by the Supplier pursuant to an Ancillary Services Order.

**Ancillary Services Order:** means an order for Ancillary Services.

**Bespoke Development Services:** the service as described in Schedule 3.

**Business:** the business of Travel and Tourism carried on by the Customer or any of its Affiliates.

**Business Day:** a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

**Commencement Date:** The date that the master contract page is signed

**Confidential Information:** information of commercial value, in whatever form or medium, which has been kept confidential by the party (or any of its Affiliates) from whom the information originates and which has not come into the public domain during the term of this agreement in breach of any obligation of confidence, including information relating to the Licensed Software or any of its constituent parts, the Source Code relating to the Licensed Software or any such parts, commercial or technical know-how, technology, information pertaining to business operations and strategies, and information pertaining to customers, pricing and marketing.

**Customer Hardware:** the computers and other equipment to be used by the Customer in conjunction with the Licensed Software, as specified in **Error! Reference source not found.**

**Customer Representative:** a person duly authorised by the Customer to act on its behalf for the purposes of this agreement and identified to the Supplier by written notice from the Customer.

**Customer Software:** the software to be used by the Customer in conjunction with the Licensed Software, as specified in Schedule 2.

**Data Protection Law:** all applicable data protection law and regulations in any jurisdiction.

**Defect:** a material error in the Licensed Software that causes it to fail to operate in such a way that has a material impact on the Customer or its Business.

**Dispute Resolution Procedure:** the procedure for dealing with disputes under this agreement as set out in clause 33.

**Fees:** the charges as outlined in The customers data sheet including the Implementation Fee.

**Good Industry Practice:** the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector.

**Goods:** any hardware including but not limited to laptops, computers, printers, telephones and routers supplied by the Supplier to the Customer or any Homeworker or Member for the Customer pursuant to a Goods Order.

**Goods Order:** means an order in the form placed by the Customer and accepted by the Supplier pursuant to clause 2.3.

**Homeworkers:** means a self employed homeworker engaged by the Customer or any of its Affiliates.

**Hosting Services:** the services as described and provided in accordance with Schedule 4.

**Intellectual Property Rights:** all patents, copyrights, design rights, trade marks, service marks, trade secrets, know-how, database rights and other rights in the nature of intellectual property rights (whether registered or not) and all applications for the same which may now or in the future subsist anywhere in the world, including the right to sue for and recover damages for past infringements.

**Licence:** the licence granted

**Licensed Purposes:** bears the meaning given in clause 5.1.

**Licensed Software:** the software to be licensed to the Customer under the terms of this agreement as set out in Schedule 1.

**Licensed Users:** the employees of the Customer and any Homeworkers or Members who use the Software and for the avoidance of doubt the Homeworkers and Members only remain Licensed Users whilst they operate as such under a written and binding agreement with the Customer or any of its Affiliates.

**Manager:** the person appointed by the Customer from time to time to fulfil the role described in clause 9.

**Member:** means a member operating under a managed services arrangement with the Customer and as part of a consortium of the Customer.

**New Release:** means a new release of all or any part of the Licensed Software suitable for use by the Customer in which identified faults have been remedied or to which any modification, enhancement, revision, or update has been made but for avoidance of doubt excluding New Versions and anything comprised in Bespoke Development Services.

**New Versions:** a new version of the Licensed Software released by the Supplier after the Commencement Date which provides additional functionality.

**Normal Working Hours:** the hours of 9 am to 5:30 pm GMT, Monday to Friday (excluding bank holidays), or such reduced hours as the Supplier may in its discretion determine provided it continues to meet the Service Levels.

**Permitted Purposes:** bears the meaning given in clause 12.1.

**Personal Data:** data subject to protection under Data Protection Law in any jurisdiction.

**Service Levels:** the levels of service to be provided by the Supplier as contained in Schedule 8.

**Services:** the services to be provided by the Supplier under this agreement, including the Support Services, the Bespoke Development Services, the Hosting Services and the Ancillary Services.

**Source Code:** the source code of the Licensed Software to which it relates, in the language in which the Licensed Software was written, together with all related flow charts and technical documentation, all of a level sufficient to enable the Customer's development personnel to understand, develop and maintain that Licensed Software.

**Support Manager:** the person appointed by the Supplier from time to time in order to fulfil the role described in clause 9.

**Support Services:** the services to be provided by the Supplier as set out in clause 9 and Schedule 9 of this agreement.

**Support Staff:** those officers, employees, agents or subcontractors of the Supplier or any of its Affiliates connected with this agreement, including those individuals who perform the Supplier's obligations under this agreement.

**Term:** the term means the Initial Term or such further period during which this Agreement continues as described as in clause 21.

**Tools:** any tools and know-how developed and methods invented by the Supplier exclusively in the course of, or as a result of, carrying out the Work.

**Trigger Event :** an event the occurrence of which will entitle the Customer to apply to the Escrow Agent for release of the Source Code of the Software from Escrow in accordance with the Escrow Agreement.

**TUPE:** the Transfer of Undertakings (Protection of Employment) Regulations 2006;

**VAT:** value added tax chargeable under the Value Added Tax Act 1994 and any similar additional tax or any other similar turnover, sales or purchase tax or duty levied in any other jurisdiction.

**Vertical Network:** the arrangement of VPN's and ancillary equipment facilitating the transfer of data between the Supplier, it's customers and its suppliers.

**Work:** all the duties and obligations to be carried out by the Supplier under this agreement.

**Year:** the period of 12 calendar months from the Commencement Date and each consecutive period of 12 months thereafter during the Term.

1.2 A reference to one gender includes a reference to the other genders.

1.3 Words in the singular include the plural and words in the plural include the singular.

1.4 References to "including" or "includes" shall be deemed to have the words "without limitation" inserted after them.

1.5 A reference to a particular law is a reference to it as it is in force for the time being, taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

- 1.6 Holding company and subsidiary mean a "holding company" and "subsidiary" as defined in section 1159 of the Companies Act 2006 and a company shall be treated, for the purposes only of the membership requirement contained in subsections 1159(1)(b) and (c), as a member of another company even if its shares in that other company are registered in the name of (a) another person (or its nominee), whether by way of security or in connection with the taking of security, or (b) its nominee. In the case of a limited liability partnership which is a subsidiary of a company or another limited liability partnership, section 1159 of the Companies Act 2006 shall be amended so that: (a) references in sub sections 1159(1)(a) and (c) to voting rights are to the members' rights to vote on all or substantially all matters which are decided by a vote of the members of the limited liability partnership; and (b) the reference in section 1159(1)(b) to the right to appoint or remove a majority of its board of directors is to the right to appoint or remove members holding a majority of the voting rights.
- 1.7 Except where a contrary intention appears, a reference to a clause, schedule or annex is a reference to a clause of, or schedule or annex to, this agreement.
- 1.8 Clause and schedule headings do not affect the interpretation of this agreement.
- 1.9 Writing or written includes faxes but neither e-mail nor any other form of electronic communication, except where expressly provided to the contrary.
- 1.10 The Schedules and Annexes to this agreement, together with any documents referred to in them, form an integral part of this agreement and any reference to this agreement means this agreement together with the Schedules and all documents referred to in them, and such amendments in writing as may subsequently be agreed between the parties.
- 1.11 If any conflict arises between the terms and conditions of this agreement and any provision of any Schedule, the terms and conditions of this agreement shall prevail.
- 1.12 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors or permitted assigns.

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## 2 - Scope

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- 2.1 The Supplier grants the Licence and shall supply the Licensed Software and the Services to the Customer and its Affiliates in accordance with this agreement.
- 2.2 The Ancillary Services Order constitutes an offer by the Customer to purchase the Ancillary Services specified in it on the terms of this agreement and accordingly the signing and returning of the acknowledgement copy of the Ancillary Services Order by the Supplier shall establish an agreement for the purchase and supply of those services pursuant to the terms of this agreement.
- 2.3 [The Goods Order constitutes an offer by the Customer to purchase the Goods in it on the standard terms of the Supplier attached at Annex F (Standard Terms) and accordingly the signing and returning of the acknowledgement copy of the Goods Order by the Supplier shall establish an agreement for the purchase and supply of those Goods pursuant to the Standard Terms.]
- 2.4 The supply under clause 2 and Fees are subject to the terms and conditions set out in this agreement.

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## 3 – Licensed Software

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- 3.1 The Supplier shall provide the Licensed Software under the terms of this agreement.
- 3.2 For the avoidance of doubt the Customer acknowledges that the Licensed Users are only licensed under the terms of this agreement to use the Licensed Software, license is per installed copy.
- 3.3 All releases, fixes, workarounds or other changes to the Licensed Software will not be implemented unless and until approved through the Change Management Process set out in Schedule 11.

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## 4 - Services

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- 4.1 The Supplier agrees:
- (a) to provide the Support Services in accordance with clause 9 of this agreement;
  - (b) to provide the Hosting Services in accordance with Schedule 4;
  - (c) to provide the Bespoke Development Services in accordance with the provisions of Schedule 3; and
  - (d) to supply the Services in accordance with the Service Levels (where applicable).
- 4.2 The Supplier will comply with the PCIDSS standards in carrying out the Services relevant to the same.
- 4.3 The Supplier will comply with its internal disaster recovery procedures detailed in Schedule 10 to this agreement in carrying out the Services.
- 4.4 The Customer shall be responsible for ensuring that each item of Customer Hardware and Customer Software upon which or in conjunction with which the Licensed Software will be used by any of the Licensed Users is installed and is in working order and available to the Supplier.

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## 5 - Software licence

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- 5.1 In consideration of the Fees paid by the Customer to the Supplier the Supplier grants, subject to the terms of this agreement and in particular clause 3.3, the Customer and its Affiliates a non-exclusive, non-transferable right to use the Licensed Software for the Term; and solely for the following purposes:
- (i) any activity in the course of the Business;
  - (ii) the provision of hardware or software facilities management, support, maintenance, development, disaster recovery, back-up, information processing, or other services relating to the Licensed Software;
  - (iii) the use and storage of data within any database comprised in the Licensed Software and the extraction and re-utilisation of data therefrom, and the amendment or merging of the data or database;
  - (iv) use in connection with any associated or interconnected networks, including the internet or intranet; (together, Licensed Purposes).
- 5.2 The Licensed Software may be used only as specified in this agreement and by the number of Licensed Users (which can be varied by the agreement of the parties) referred to in The customers data sheet except as follows:
- (a) the Licensed Software may be used on any replacement for all or any part of the Customer Hardware;
  - (b) if the Customer transfers its business permanently to other sites the Licensed Software may be used at the new sites by the Licensed Users, provided that the Supplier is informed in writing of the change of the site before use of the Licensed Software commences at the new site;
  - (c) if the Customer Hardware becomes inoperable for any reason, the Licensed Software may be temporarily used on backup equipment until the Customer Hardware is repaired, and the Customer may use the Licensed Software for the purpose of testing whether any such backup equipment is suitable for use while the Customer Hardware is inoperable; and
  - (d) if any site becomes temporarily unusable due to flood, fire or similar damage, or an emergency situation, the Licensed Software may be used at an alternative site until that site is again useable, provided that the Customer gives the Supplier notice of such alternative site. If the alternative site is managed by a third party, the third party must have signed a confidentiality undertaking addressed to the Supplier to protect the Supplier's Confidential Information before the Licensed Software is transferred to the alternative site.
- 5.3 The Customer shall ensure that each Licensed User keeps secure his password for the Licensed Software.
- 5.4 The Supplier may audit the number of Licensed Users at any time on giving reasonable notice to the Customer.
- 5.5 The Customer has no right to make, or authorise the making of, any other copies of the Licensed Software.
- 5.6 Except as permitted under clause 5.2, the Customer shall not and shall procure that each of the Licensed Users shall not:
- (a) sub-license, rent, lend, assign or transfer in any other way the Licence or the Licensed Software to any person or allow the Licence or the Licensed Software to become the subject of any charge, lien or encumbrance without the prior written consent of the Supplier; or
  - (b) give access to the Licensed Software through any network of computers to users who are not employees of the Customer (save that the Customer may give access to the Licensed Software to its agents or sub-contractors to assist the Customer with specific IT Projects with the Supplier's prior written consent, such consent not to be unreasonably withheld or delayed).

- 5.7 The Customer may use the Licensed Software with the Customer Software.
- 5.8 The Customer shall not and shall procure that each of the Licensed Users shall not make adaptations or variations of the Licensed Software without the prior consent of the Supplier.
- 5.9 The Customer shall not and shall procure that each of the Licensed Users shall not disassemble, decompile, modify or make error corrections in whole or in part, reverse translate or engineer or in any other manner decode the Licensed Software except as permitted by law. The Customer shall also not and shall procure that each of the Licensed Users shall not use any information provided by the Supplier to create any software which resembles or is substantially similar to the Licensed Software.

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## 6 - Fees

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- 6.1 The Customer shall pay the Fees. The licence fee includes the fee payable for the Support Services and Hosting Services provided hereunder. Any other charges such as for Goods and/or Ancillary Services will be paid by the Customer by the due date stated on the relevant invoice or within 30 days of receipt of the invoice, whichever is later without deduction, set off or counter claim save for amounts properly disputed under clause 6.6.
- 6.2 All sums payable under this agreement are exclusive of VAT or any relevant local sales taxes, for which the Customer shall be responsible.
- 6.3 If any sum is not paid on or before the due date under this agreement, the party in default shall pay the other party interest, at the rate of 4% per annum, above the base rate of Barclays Bank Plc from time to time for the period beginning on the due date and ending with the date on which the sum is paid (and the period shall run after as well as before judgment).
- 6.4 The Customer shall not be obliged to pay any charges or fees to the Supplier for any Services performed, unless the applicable charges and fees are either specified in this agreement or have been agreed between the parties by the Ancillary Services Order process or the Goods order process respectively.
- 6.5 If any invoice is disputed by the Customer acting in good faith, in part only, the Supplier shall issue a credit note in respect of the original invoice and issue an invoice for the part not in dispute. On receipt of such an invoice the Customer shall pay that part of the original invoice which it accepts, while any query concerning a disputed sum is resolved.
- 6.6 In the event that any sum is not paid on the due date therefor the Supplier may on giving not less than 5 Business Days notice in writing to the Customer, suspend the provision of all or any part of the Services to the Customer.

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## 7 – Ownership

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The parties agree that, except as expressly provided to the contrary, this agreement does not transfer ownership of, or create any licences (implied or otherwise), in any Intellectual Property Rights in the Licensed Software or any Tools all of which shall at all times belong to the Supplier.

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## 8 - Escrow

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- 8.1 Immediately after the Commencement Date, the Supplier shall if requested by the Customer enter into a three-party source code escrow agreement in the agreed form (incorporating such amendments as NCC Escrow International Limited (NCC) may reasonably request) with the Customer and NCC in respect of the Licensed Software.
- 8.2 The Supplier and the Customer mutually undertake to sign the Escrow Agreement promptly following signature of this agreement. The Supplier additionally undertakes to procure that the Escrow Agent promptly signs the Escrow Agreement.
- 8.3 The Supplier and the Customer mutually undertake to abide by the terms of the Escrow Agreement and acknowledge that for the purposes of the Escrow Agreement :
- (a) the Source Code in respect of the Licensed Software will constitute the "Material";
  - (b) the Licence, insofar that it relates to the Licensed Software will constitute the "Licence Agreement"; and
  - (c) the Licensed Software will constitute the "Package".



- 8.4 The Trigger Events are:
- (a) termination by the Escrow Agent of the Escrow Agreement, if such termination is occasioned by any breach or default by the Supplier of its obligations under the Escrow Agreement; or
  - (b) the insolvency of the Supplier.
- 8.5 All relevant escrow fees in respect of the Escrow Agreement shall be payable by the Customer.

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## *9 - Support services*

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- 9.1 The Supplier shall supply the Customer with Bug fixes free of charge during the Initial Term.
- 9.2 The Supplier shall notify the Customer promptly in writing of the issue of any New Version, specifying the following:
- (a) the charge for delivery and installation of the New Version;
  - (b) the licence fee payable for the New Version;
  - (c) in what way the New Version differs from the previous version in terms of functionality, performance and compatibility.
- The Customer is not obliged to take New Versions until the end of the Initial Term when it is so obliged. If it does not do so, the Supplier shall be under no further obligation to provide Support Services in relation to the same.
- 9.3 The Supplier shall ensure that the Support Services are available for the Software during Normal Working Hours which shall comprise a telephone help desk to provide second-line technical support (after the Customer's Internal IT Support, who shall be the first line of support for Licensed Users) to Licensed Users of the Licensed Software.
- 9.4 The Support Services shall meet the Service Levels set out in Schedule 8 of this agreement.
- 9.5 The Supplier shall appoint a Support Manager and the Customer shall appoint a Manager who shall be responsible for the co-ordination of all matters relating to the Support Services. All communications, documentation and materials relating to the Support Services shall be sent as appropriate by the Support Manager to the Manager. Each party shall notify the other in writing promptly if there is any change to those appointments.
- 9.6 In addition to its Support Manager, the Supplier shall provide sufficient Support Staff to fulfil its obligations under the terms of this agreement. The Support Staff shall be suitably trained and experienced in the support and maintenance of the Licensed Software.
- 9.8 For the avoidance of doubt the Supplier shall have no obligation to provide the Support Services where faults arise from:
- (a) misuse, incorrect use of or damage to the Licensed Software from whatever cause (other than any act or omission by the Supplier), including failure or fluctuation of electrical power;
  - (b) failure to maintain the necessary environmental conditions for use of the Licensed Software;
  - (c) use of the Licensed Software in combination with any equipment or software not provided by the Supplier or not designated by the Supplier for use with the Licensed Software, or any fault in any such equipment or software;
  - (d) the installation or relocation of the Licensed Software by any other person (other than the Supplier or any person acting under the Supplier's instructions);
  - (e) any change to the Licensed Software not authorised by the Supplier resulting in a departure from the specification for the same;
  - (f) operator error
  - (g) failure in the operation of or configuration of the Customer's data network infrastructure which in any way prevents the communication necessary for the operation of the Licensed Software.

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## *10 - Supplier Personnel*

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- 10.1 The Supplier alone shall be responsible for the supervision, direction, control, wages, taxes, national insurance and benefits of the Support Staff. The Supplier assumes full responsibility for their acts and omissions and acknowledges that they are not employees or agents of the Customer.
- 10.2 During the term of this agreement and for a period of six months after its termination neither party shall, without the prior written consent of the other, solicit, or permit any Affiliate to solicit, the employment of any person who is employed by the other party in the course of developing, supplying, maintaining or supporting the Licensed Software or any part of it.

- 11.1 During the Term, the Customer shall not and shall procure that no Employee, Homeworker or Member shall, without the Supplier's prior written approval, allow any person other than a representative of the Supplier to modify, repair or maintain any part of the Licensed Software.
- 11.2 The Customer shall co-operate with the Supplier in any manner reasonably required by the Supplier in order to carry out the Work, including provision of information and data, making available suitably qualified employees and contractors of the Customer and, subject to the Supplier's compliance with the Customer's reasonable security requirements:
- (a) provide access to the Customer's systems and those of its Employees, Homeworkers and Members for the purpose of carrying out diagnostics and correction of Defects, provided that system access shall be direct or remote, at the Supplier's option, and that, in the latter case, such access will be subject to the Supplier's compliance with any additional requirements for security and encryption techniques or software which may from time to time be specified by the Customer;
  - (b) provide such further access for the Support Staff to any site(s) as is necessary to carry out the Supplier's obligations under this agreement. The Customer shall obtain for the Supplier all permissions necessary to obtain such access;
  - (c) when the Support Staff are working on any site(s), provide facilities and supplies reasonably required by the Supplier, such as power and computer consumables; and for the avoidance of doubt the Supplier shall not be obliged to visit Staff, Homeworkers and Members places of business for the purpose of carrying out its obligations under this agreement.
- 11.3 The Customer shall, at no cost to the Supplier, provide the equipment necessary at any site(s) and at the Homeworkers and Members places of business to enable the access referred to in clause 11.2.
- 11.4 The Customer shall and shall ensure that its Employees, Homeworkers and Members ensure that appropriate environmental conditions are maintained for the Licensed Software and/or any Goods and that the Licensed Software and/or any Goods are operated in a proper manner by the Customer's Employees, Homeworkers and Members .
- 11.5 The Customer shall and shall procure that its Employees, Homeworkers and Members:
- (a) co-operate with the Supplier in performing the Support Services and any Ancillary Services and provide any assistance or information as may reasonably be required by the Supplier, including in relation to the diagnosis of any faults;
  - (b) report faults promptly to the Supplier
- 11.6 The Customer shall appoint an individual to serve as primary contact with the Supplier for the purpose of the provision of the Support Services and any Ancillary Services and a deputy to that individual, and shall notify the Supplier of the names of those individuals promptly on their appointment.
- 11.7 For the avoidance of doubt the Customer shall inform the Supplier as soon as is reasonably practicable of any support or assistance it requires under this agreement.
- 11.8 The Customer shall comply as soon as reasonably practicable with all the Supplier's reasonable requests for information or assistance to enable the Supplier to comply with its obligations under this agreement.
- 11.9 The Customer is responsible for managing its own network (including its email) and ensuring that its network (including its email) and that of any of its Homeworkers or Employees, Members is fully operational during the continuance of this agreement and properly configured to allow data traffic to be passed to allow the operation of the Licensed Software in accordance with the Supplier's obligations in respect of the same under this agreement. For the avoidance of doubt in the event that the network (and/or its email) is not so fully operational or properly configured for whatever reason or that the arrangements with third party [providers of view data or tour operators] are not maintained in place for whatever reason and such results in the Supplier being in breach of any of its obligations under this agreement, the Supplier shall not be deemed to be in breach of such obligations.
- 11.10 The Customer acknowledges that save as set out in clause 11.11 it is responsible for the connection of it or any Employee, Homeworker or Member to the Vertical Network via a VPN or by any broadband connection and the Supplier cannot be responsible for any connectivity problems of the Customer, its Employee, Homeworkers and Members or any breach of the Supplier's obligations under this agreement arising out of or in connection with any such connectivity problems.
- 11.11 The Supplier is responsible for the communications connections between any location and the Vertical Network, if the communications connection is supplied by Vertical Systems, subject to the SLA for this said product.
- 11.12 The Supplier shall not be deemed to be in breach of its obligations under this agreement to the extent that such arises from or in connection with a failure or default by the Customer or its employees, officers, Homeworkers, Members or agents of any of the Customer's obligations under this agreement and/or any use of the Licensed Software on any hardware (other than the Customer Hardware) without the Supplier's express written consent.

- 12.1 Each party undertakes not to use the other party's Confidential Information otherwise than in the exercise and performance of its rights and obligations under this Agreement (Permitted Purposes).
- 12.2 In relation to the Customer's Confidential Information:
- (a) the Supplier shall treat as confidential all Confidential Information of the Customer supplied under this agreement. The Supplier shall not divulge any such Confidential Information to any person except to its own employees and then only to those employees who need to know it for the Permitted Purposes. The Supplier shall ensure that its employees are aware of, and comply with, this clause 12;
  - (b) the Supplier may provide any subcontractor relating to the Services with such Customer Confidential Information as it needs to know for the performance of the Services, provided that such sub-contractor has first entered into a written obligation of confidentiality owed to the Supplier in terms similar to clause 12.2(a) (which the Supplier shall ensure is adhered to);
  - (c) this clause 12.2 shall remain in full force and effect in the event of any termination of the Licence or this agreement;
  - (d) the Supplier undertakes to ensure that the persons mentioned in clause 12.2(b) or 12.2(c) are made aware, before the disclosure of the Customer's Confidential Information, that the same is confidential and that they owe a duty of confidence to the Customer and will ensure they comply with this clause 12.
- 12.3 In relation to the Supplier's Confidential Information:
- (a) the Customer shall and shall procure that each of the Homeworkers and Members shall treat as confidential all Supplier Confidential Information contained or embodied in the Licensed Software, or otherwise supplied to the Customer during the performance of this agreement;
  - (b) the Customer shall not and shall procure that each of the Homeworkers and Members shall not, without the prior written consent of the Supplier, divulge any part of the Supplier's Confidential Information to any person other than:
    - (i) the Customer Representative; and
    - (ii) other employees of the Customer or any of its Affiliates who need to know it;
  - (c) the Customer may provide any subcontractor relating to the Services with such Supplier Confidential Information as it needs to know for the Licensed Purposes, provided that such subcontractor has first entered into a written obligation of confidentiality owed to the Customer in terms similar to clause 12.3 (b) (which the Customer shall ensure is adhered to);
  - (d) the Customer undertakes to ensure that the persons mentioned in clause 12.3(b) or clause 12.3(c) are made aware, before the disclosure of any part of the Supplier's Confidential Information, that the same is confidential and that they owe a duty of confidence to the Supplier and will ensure they comply with this clause 12.
- 12.4 The restrictions imposed by clause 12.1, clause 12.2 and clause 12.3 shall not apply to the disclosure of any Confidential Information which:
- (a) is now in or hereafter comes into the public domain otherwise than as a result of a breach of this clause 12;
  - (b) before any negotiations or discussions leading to this agreement was already known by the receiving party (or, in the case of the Customer, any of its Affiliates) and was obtained or acquired in circumstances under which the receiving party was (or, in the case of the Customer, the Customer and its Affiliates were) not bound by any form of confidentiality obligation;
  - (c) is required by law or regulation to be disclosed to any person who is authorised by law or regulation to receive the same (after consultation, if practicable, with the disclosing party to limit disclosure to such authorised person to the extent necessary).
- 12.5 Each party shall notify the other party if any of its staff connected with the provision or receipt of the Services becomes aware of any unauthorised disclosure of any Confidential Information and shall afford reasonable assistance to the other party, at that other party's reasonable cost, in connection with any enforcement proceedings which that other party may elect to bring against any person.
- 12.6 The Supplier may not refer to the Customer or this agreement in any publicity or advertising material without first obtaining the Customer's written consent such consent not to be unreasonably withheld or delayed. For the avoidance of doubt the parties will agree a form of announcement for the Supplier to use on the Commencement Date.
- 12.7 This clause 12 shall remain in full force and effect in the event of any termination of this agreement.

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### 13 - Data protection

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- 13.1 The Supplier warrants that, to the extent it processes any Personal Data on behalf of the Customer;
- (a) it shall act only on instructions from the Customer; and
  - (b) it has in place appropriate technical and organisational security measures against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data.
- 13.2 In this clause 13, Personal Data has the meaning given in the Data Protection Act 1998.

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### 14- Anti-bribery

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- 14.1 The Supplier shall:
- (a) comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (Relevant Requirements);
  - (b) promptly report to the Customer any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with the performance of this agreement.
- 14.2 Breach of this clause 14 shall be deemed a material breach, which is irredeemable

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### 15 – Export

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- 15.1 Neither party shall and the Customer shall ensure that no Homeworker, Employee or Member shall export, directly or indirectly, any technical data acquired from the other party under this agreement (or any products, including software, incorporating any such data) in breach of any applicable laws or regulations (Export Control Laws), including United States export laws and regulations, to any country for which the government or any agency thereof at the time of export requires an export licence or other governmental approval without first obtaining such licence or approval.
- 15.2 Each party undertakes and the Customer shall ensure that each Homeworker, Employee and Member undertakes:
- (a) contractually to oblige any third party to whom it discloses or transfers any such data or products to make an undertaking to it in similar terms to the one set out above; and
  - (b) if requested, to provide the other party with any reasonable assistance, at the reasonable cost of the other party, to enable it to perform any activity required by any competent government or agency in any relevant jurisdiction for the purpose of compliance with any Export Control Laws.

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### 16 - Warranties

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- 16.1 The Supplier warrants and represents that:
- (a) it has the right to license all Intellectual Property Rights in and to the Licensed Software to the Customer;
  - (b) the Licensed Software, does not infringe the Intellectual Property Rights of any third party;
  - (c) it will perform the Support Services in a timely, reliable and professional manner, in conformity with Good Industry Practice by a sufficient number of competent Support Staff with appropriate skills, qualifications and experience, and has and will at all times have the ability and capacity to meet such requirements;
  - (d) it is in compliance with, and will perform the Support Services in compliance with, all applicable law and regulations;
  - (e) the Customer will receive good and valid title to all deliverables (if any) in connection with the Support Services, free and clear of all encumbrances and liens of any kind.

- 16.2 The sole remedies for breach of the warranties in clause 16.1(a) and clause 16.1(b) are set out in clause 17.
- 16.3 The warranties set out in clause 16.1 are in lieu of all other express or implied warranties or conditions, including implied warranties or conditions of satisfactory quality and fitness for a particular purpose, in relation to this agreement.
- 16.4 The Supplier shall not be obliged to rectify any particular Defect if attempts to rectify such Defect other than normal recovery or diagnostic procedures have been made by the Customer's personnel or third parties without the permission of the Supplier.
- 16.5 The Supplier shall not be liable under the warranty in clause 16.1(c) if it can demonstrate that any failure of the Licensed Software to comply with such warranty was wholly caused by unauthorised modifications made to the Licensed Software by, or on behalf of, the Customer.
- 16.6 The Supplier's obligations in respect of the Support Services shall not cover any part of the Licensed Software which has been materially modified by anyone other than the Supplier, except with the Supplier's express prior written permission.
- 16.7 Each party warrants that it has full capacity and authority, and all necessary licences, permits and consents to enter into and perform this agreement and that those signing this agreement are duly authorised to bind the party for whom they sign.
- 16.8 The warranties set out in this clause 16 shall not apply to the extent that any failure of the Licensed Software to perform is caused by any software or hardware provided by the Customer (other than the Customer Software or Customer Hardware) from time to time.
- 16.9 If any unauthorised modifications of the Licensed Software are undertaken, or the Licensed Software is used or installed by any third party not authorised by the Supplier, the warranties set out in this clause 16 shall not apply.

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### *17 - Intellectual Property Rights indemnity*

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- 17.1 The Supplier shall indemnify the Customer against all liabilities, costs, expenses, damages and losses and legal and other reasonable professional costs and expenses) suffered or incurred by the Customer arising out of or in connection with any claim made against the Customer for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with use of the Licensed Software, or receipt of the benefit of the Services.
- 17.2 If any third party makes a claim, or notifies an intention to make a claim, against the Customer which may reasonably be considered likely to give rise to a liability under this indemnity (a Claim), the Customer shall:
- (a) as soon as reasonably practicable, give written notice of the Claim to the Supplier, specifying the nature of the Claim in reasonable detail;
  - (b) not make any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of the Supplier (such consent not to be unreasonably conditioned, withheld or delayed);
  - (c) give the Supplier and its professional advisers access at reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of the Customer, so as to enable the Supplier and its professional advisers to examine them and to take copies (at the Supplier's expense) for the purpose of assessing the Claim; and
  - (d) subject to the Supplier providing security to the Customer to the Customer's reasonable satisfaction against any claim, liability, costs, expenses, damages or losses which may be incurred, take such action as the Supplier may reasonably request to avoid, dispute, compromise or defend the Claim.
- 17.3 The Supplier shall have no liability for any claim of infringement of Intellectual Property Rights:
- (a) caused solely by the Customer's use of the Licensed Software in combination with software not supplied or approved in writing by the Supplier (other than the operating system of any Computer Hardware, provided that the Supplier was notified of the identity of this operating system before this agreement was entered into); or
  - (b) resulting from any unauthorised modification of the Licensed Software made by, or on behalf of, the Customer.
- 17.4 If use of the Licensed Software or receipt of the benefit of the Services becomes or, in the opinion of qualified legal counsel, is likely to become, the subject of a successful claim under clause 17.2, the Supplier may:
- (a) replace all or part of the Licensed Software with functionally equivalent software or documentation without any charge to the Customer;
  - (b) modify the Licensed Software as necessary to avoid such claim, provided that the Licensed Software (as amended) functions in substantially the same way as the Licensed Software before modification;
  - (c) procure for the Customer a licence from the relevant claimant to continue using the Licensed Software;

and in the case of clause 17.4(a) or clause 17.4(b) only, the Supplier shall reimburse the Customer and its Affiliates all reasonable additional costs and expenses that they are required to incur in order to obtain software and hardware required to interact with such modified or replaced software and documentation, and additional services from third parties, all of which would not have been incurred if the Licensed Software had been non infringing.

- 17.5 If:
- (a) the Licensed Software is determined in a court of law to be infringing;
  - (b) the Supplier is advised by a barrister of at least ten years' call that use or possession by the Customer or any of its Affiliates of the Licensed Software in accordance with this agreement is likely to constitute infringement of a third party's rights; or
  - (c) if an injunction or similar order is granted in connection with any claim within the scope of clause 17.1 which prevents or restricts the use or possession by the Customer or any of its Affiliates of the Licensed Software in accordance with this agreement;
- and the Supplier is unable, after best efforts, to procure for the Customer the right to continue using the Licensed Software, or to provide the Customer with functionally equivalent non-infringing software, this agreement and the Licence will be terminated without prejudice to the Customer's right to seek further remedies, including damages, for any loss or damage arising out of such termination.
- 17.6 If a payment due from the Supplier under this clause is subject to tax (whether by way of direct assessment or withholding at its source), the Customer shall be entitled to receive from the Supplier such amounts as shall ensure that the net receipt, after tax, to the Customer in respect of the payment is the same as it would have been were the payment not subject to tax.

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### *18 - Limitation of liability*

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- 18.1 Subject to any express contractual terms of this agreement, in no event shall the Customer or the Supplier be liable to the other party for:
- (a) depletion of goodwill or similar losses;
  - (b) loss of anticipated savings;
  - (c) loss of profits;
  - (d) loss of business;
  - (e) loss of corruption of data or information;
  - (f) loss of goods; or
  - (g) loss of use,
- For the avoidance of doubt neither party shall be liable to the other for indirect, special, punitive or consequential losses.
- 18.3 Nothing in this agreement shall limit or exclude the liability of either party for death or personal injury resulting from negligence, fraud, fraudulent misrepresentation, breach of any of the obligations under the Sale of Goods Act 1979 or the Supply of Goods and Services Act 1982, which may not be excluded by contract.
- 18.4 For the avoidance of doubt the Customer agrees that in respect of any loss or liability under any provision of this agreement, it will and will procure that its Homeworkers and Members will take steps to mitigate its loss and it shall not be entitled to claim against the Supplier where the Supplier has rectified the breach promptly and not later than within 5 Business Days of the breach at no cost or loss to the Customer.

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### *19 - Insurance*

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On signature of this agreement, the Supplier shall provide to the Customer written confirmation if required from its insurers that it has in force an insurance policy sufficient to provide cover as required by law or in respect of any foreseeable liability which may arise in connection with this agreement including professional indemnity or errors and omissions cover of not less than £1,000,000 per claim or series of related claims per year. The Supplier shall, at its own expense, maintain such policy in force for the term of this agreement and seven years thereafter, and shall provide a certificate of insurance from its insurers of such policy to the Customer at least once during each year of the term of this agreement and, in addition, as reasonably requested by the Customer. Such certificate shall also confirm that the insurance policy may not be cancelled before the expiry of a 30 day notification period and the Supplier will notify the Customer immediately in writing of any such notice of termination.



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## 20 – Assignment

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- 20.1 This agreement is personal to the parties and neither party shall assign, transfer, mortgage, charge, subcontract, declare a trust of or deal in any other manner with any or all of its rights and obligations under this agreement without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed) save that the Customer may assign to a Customer Affiliate (Assignee) on providing written notice to the Supplier provided that if such Assignee does not make any payment due to the Supplier under this agreement the Customer will or will procure that the Customer or another Customer Affiliate with equivalent financial standing to it will guarantee the due and punctual payment of any payment due to the Supplier under this agreement and as principal obligor will indemnify the Supplier in full and on demand against all and any losses or liabilities it suffers or incurs arising out of the failure of any Assignee to comply with its obligations under this agreement.
- 20.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.
- 20.3 Notwithstanding clause 12, a party assigning any or all of its rights under this agreement may disclose to a proposed assignee any information in its possession that relates to this agreement or its subject matter, the negotiations relating to it and the other party which is reasonably necessary to disclose for the purposes of the proposed assignment, provided that no disclosure pursuant to this clause 20.3 shall be made until notice of the identity of the proposed assignee has been given to the other party.

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## 21 – Duration

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This agreement including the provision of the Services shall, commence on the Commencement Date and shall (unless terminated earlier in accordance with clause 22) end 3 years from the commencement date (the Initial Term) provided always that either party has given not less than 3 calendar months written notice to the other to expire 3 years after the commencement date. If no such notice is given, this agreement including the provision of the Services shall continue for periods of 12 calendar months unless and until terminated by either party giving not less than 3 calendar months written notice to the other to expire on the annual renewal date.

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## 22 – Termination

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- 22.1 Without prejudice to any rights that have accrued under this agreement or any of its rights or remedies, either party may at any time terminate this agreement and/or the Support Services with immediate effect by giving written notice to the other party if:
- (a) the other party commits a material breach of any term of this agreement (and a material breach will include any failure to pay any amounts due under this agreement which have not been paid within 30 days of its due date) and (in other circumstances if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
  - (b) the other party repeatedly breaches any of the terms of this agreement or the Supplier has materially breached the Service Levels in such a material manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement.
  - (c) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
  - (d) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
  - (e) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
  - (f) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party;
  - (g) a floating charge holder over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;

- (h) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
  - (i) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
  - (j) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 22.1(c) to clause 22.1(i) (inclusive);
  - (k) the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business.
- 22.2 Either party may terminate this agreement in accordance with clause 31.
- 22.3 On termination of this agreement, the Customer shall and shall procure that each employee, Homeworker and Member shall either return to the Supplier or, at the Supplier's option, destroy all material copies of the Licensed Software, and shall ensure that any copies of the Licensed Software on hard discs or other storage means associated with any computer equipment owned or controlled by the Customer or any Homeworker or Member are permanently deleted.
- 22.4 On termination, the Customer shall pay all outstanding invoices as at termination, in accordance with the provisions of this agreement, together with any interest due (if any).
- 22.5 Other than as set out in this agreement, neither party shall have any further obligation to the other under this agreement after its termination.
- 22.6 Any provision of this agreement which expressly or by implication is intended to come into or continue in force on or after termination of this agreement.
- 22.7 Termination of this agreement, for any reason, shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination.
- 22.8 Notwithstanding its obligations in this clause 22, if a party is required by any law, regulation, or government or regulatory body to retain any documents or materials containing the other party's Confidential Information, it shall notify the other party in writing of such retention, giving details of the documents and/or materials that it must retain.

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### *23 – Waiver*

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No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

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### *24 - Remedies*

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Except as expressly provided in this agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

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### *25 - Entire agreement*

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- 25.1 This agreement and any documents referred to in this agreement constitute the whole agreement between the parties and supersedes any previous arrangement, understanding or agreement between them relating to the subject matter of this agreement.
- 25.2 Each party acknowledges that, in entering into this agreement and the documents referred to in it does not rely on any statement, representation, assurance or warranty (Representation) of any person (whether a party to this agreement or not) other than as expressly set out in this agreement or those documents.
- 25.3 Each party agrees that the only rights and remedies available to it arising out of or in connection with a Representation shall be for breach of contract as provided in this agreement.



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## 26 - Variation

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No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

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## 27 - Severance

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- 27.1 If any court or competent authority finds that any provision of this agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this agreement shall not be affected.
- 27.2 If any invalid, unenforceable or illegal provision of this agreement would be valid, enforceable and legal if some part of it were deleted, the parties shall negotiate in good faith to amend such provision such that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the parties' original commercial intention.

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## 28 – Counterparts

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This agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this agreement, but all the counterparts shall together constitute the same agreement.

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## 29 - Third-party rights

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- 29.1 Subject to clause 29.2, the Customer may enforce the terms of this agreement under and the Contracts (Rights of Third Parties) Act 1999 but for the avoidance of doubt the Homeworkers, Employees and Members may not.
- 29.2 It is agreed that it is intended to confer a benefit on the Customer and its Affiliates by making the Licensed Software and Support Services available to them in accordance with this agreement, provided that the rights of such Affiliates under this agreement shall only be enforceable by the Customer on their behalf. The Customer will owe no duty to enforce such rights and it may conduct or compromise any relevant proceedings as it sees fit.
- 29.3 For the avoidance of doubt the Customer hereby warrants, represents and undertakes to the Supplier that it will procure that [its Affiliates and] the Homeworkers, Employees and Members will comply in full with any obligations applicable to it pursuant to this agreement.
- 29.4 Except as expressly provided in clause 29.1 a person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement, but this does not affect any right or remedy of a third party which exists, or is available, apart from that Act.
- 29.5 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this agreement is not subject to the consent of any person that is not a party to this agreement.

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## 30 - No partnership or agency

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- 30.1 Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, nor authorise any party to make or enter into any commitments for or on behalf of any other party, except as expressly authorised by the Customer or the Supplier (as the case may be).
- 30.2 The Supplier shall, subject to any express restrictions imposed under this agreement, have complete control of the Work and shall efficiently and competently direct and supervise its employees, agents and subcontractors who are carrying out the Work.

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### 31 - Force majeure

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- 31.1 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 results from events, circumstances or causes beyond its reasonable control, and in such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations, provided that if the period of delay or non-performance continues for 30 days or more, the party not affected may terminate this agreement by giving 10 Business Days written notice to the other party.
- 31.2 If termination occurs under clause 31.1, all sums paid to the Supplier by the Customer under this agreement shall be refunded to the Customer, except that the Supplier shall be entitled to payment on a quantum merit basis for all work done before termination, provided that the Supplier takes all reasonable steps to mitigate the amount due.

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### 32 – Notices

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- 32.1 Any notice required to be given under this agreement, shall be in writing and shall be delivered personally, or sent by pre-paid first-class post or recorded delivery or by commercial courier, to each party required to receive the notice, or as otherwise specified by the relevant party by notice in writing to each other party.
- 32.2 Any notice shall be deemed to have been duly received:
- (a) if delivered personally, when left at the address and for the contact referred to in this clause;
  - (b) if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting; or
  - (c) if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.
- 32.3 A notice required to be given under this agreement shall not be validly given if sent by e-mail.
- 32.4 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

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### 33 - Dispute resolution

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- 33.1 Any dispute which may arise between the parties concerning this agreement shall be determined as provided in this clause 33
- 33.2 For the purpose of this clause 33, a dispute shall be deemed to have arisen when one party serves on the other a notice in writing stating the nature of the dispute.
- 33.3 Unless this agreement has already been terminated by the date of the notice of dispute, the Supplier shall, in every case, continue with the Work with all due diligence regardless of the nature of the dispute and the Customer shall continue to make payments (excluding any disputed sums) in accordance with the terms of this agreement.
- 33.4 In relation to a dispute, after service of the notice of dispute, the following procedure shall be followed by the parties (all periods specified in this clause 33.4 shall be extendable by mutual agreement):
- (a) within 14 (fourteen) days after service of the notice of dispute, the Customer's Operations Development Manager and the Supplier's Project Manager shall meet to attempt to settle the dispute;
  - (b) if no settlement results from the meeting specified in clause 33.4 (a) the matter shall be escalated to the Customer's Operations Development Manager and the Supplier's Support Manager who within 14 days of the matter being escalated to them shall meet to attempt to settle the dispute;
  - (c) if no settlement results from the meeting specified in clause 33.4 (b) days the matter shall be escalated to the Customer's Director of Sales Operations and the Supplier's Technical Director and Operations Director who within 14 days of the matter being escalated to them shall meet to attempt to settle the dispute; and
  - (d) if no settlement results from the meeting specified in clause 33.4(c), for the following 28 days the parties shall attempt to settle the dispute by mediation by an independent mediator, with costs to be shared equally between the parties.
- 33.5 If no settlement is reached under clause 33.4:

- (a) if the dispute is of a technical nature concerning the interpretation of the Specification or any similar or related matter then such dispute shall be referred for arbitration. The arbitrator's decision shall (in the absence of clerical or manifest error) be final and binding on the parties and his fees for so acting shall be borne by the parties in equal shares unless he determines that the conduct of either party is such that such party should bear all of such fees;
- (b) in the case of a dispute over purely legal issues, or where disposition of the legal issues would dispose of all other issues in dispute, the matter shall be brought before the English High Court as soon as possible, and the parties agree to co-operate in the speedy conduct of such legal proceedings; and
- (c) in any other case, the dispute shall be determined by the English High Court and the parties submit to the exclusive jurisdiction of such court for such purposes.

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### *34 - General*

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The Customer warrants represents and undertakes to the Supplier that it will procure that each of the Customer Affiliates will comply in full with any obligation applicable to it referred to in this agreement.

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### *35 - Governing law and jurisdiction*

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- 35.1 This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales..
- 35.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

This agreement has been entered into on the date stated on the signed contract page.

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***Schedule 1***

***Licensed Software***

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Please refer to your signed contract page

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Customer Hardware & Software

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PC/ Laptop Minimum Specification

If you wish to use or purchase your own PC/ laptop, please find below details of the minimum and recommended requirements for the equipment:

**Recommended Specification**

Windows 7 Pro (Professional)

Intel I5 Process (or AMD equivalent)

4GB RAM

500GB Hard disk Minimum

2GB Free Hard disk space

Java Installed

As @ October 2013, IE8 is required but Vertical recommend that you keep updated with the latest version of Internet Explorer.

**Minimum Specification**

Microsoft Windows 7 Professional

Intel I3 Process (or AMD equivalent)

4 GB RAM

100GB Hard Disk Minimum

2GB Free Hard disk space

Java Installed

As @ October 2013, IE8 is required but Vertical recommend that you keep updated with the latest version of Internet Explorer.

OR

Other Suitable Specifications

Windows 10 Pro (Professional) or Windows 8.1 Pro

Processor : Intel Processor

Memory : 4GB

Hard Disk : 500GB

N.B. if your PC or Laptop only has the minimum specification, the licensed software (when launched) can be operated however it may have a slower running speed. We have therefore provided you with the recommended specification for optimum performance.

- Classic Tarsc, Magic & Athena (and the new V-Suite CRM & Search software) are NOT supported by IPAD, Apple Mac or touch screens.
- Classic Tarsc, Magic & Athena will not work on any Netbooks.

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### Schedule 3

#### Bespoke Development Services

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From time to time the Customer and the Supplier may agree Bespoke Development Services for the purpose of developing bespoke software (Bespoke Software).

The parties shall adhere to the following procedure in respect of the development of Bespoke Software.

**Step 1** The Customer shall submit to the Supplier a business requirements document (the BR Document) outlining the functionality and the support services for the same required by the Customer.

**Step 2** Within 28 days of the Supplier receiving the BR Document the Supplier shall submit a functional and technical specification (Bespoke Specification) for the Customer's approval.

In relation to the Bespoke Specification the Supplier shall provide the Customer with a detailed quote of the price for such Bespoke Software and any support services required.

**Step 3** Following a review of the Bespoke Specification the Customer shall either confirm:-

1. that it no longer requires the Bespoke Software.
2. that it requires amendments to the Bespoke Specification by the Supplier which will be subject to approval by the Customer.
3. acceptance of the Bespoke Specification.

**Step 4** Once the Customer has confirmed that it is in agreement with the Bespoke Specification the parties shall agree a Bespoke Software Implementation Plan (Bespoke Software Implementation Plan) which will detail the parties obligations to each other in relation to the Bespoke Specification and the Bespoke Software availability.

Prior to the commencement of the development of the Bespoke Specification the Customer shall pay 50% of the price (plus VAT thereon) for the Bespoke Software.

**Step 5** Prior to the installation of any Bespoke Software the parties will adhere to agreed acceptance testing procedures.

**Step 6** Within one month of the Supplier delivering the Bespoke Software to the Customer the Customer shall pay the remaining 50% of the price (plus VAT thereon) for that Bespoke Software.

Any support charges agreed between the parties for support services to be provided for that Bespoke Software will be charged as agreed between the parties.

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## Schedule 4

### Ancillary Services

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The Ancillary Services include the following:-

- (a) integration of XML download and transactions relating to the same for the Fees specified on your data sheet
- (b) tape matching for the Fees specified on your data sheet
- (c) text messaging for the Fees specified on your data sheet
- (d) merchant set up and transactions relating to the same for the Fees specified on your data sheet
- (e) the supply of an engineer visit at a time to be agreed between the parties for the Fees specified on your data sheet
- (f) adding flex logons to the merchant system for the Fees specified on your data sheet
- (g) remote software removal for the Fees specified on your data sheet;
- (h) remote new shop set ups or moves for the Fees specified on your data sheet

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*The customers data sheet*

*Fees*

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Full fees can be found on your customer data sheet

**Licensed Software Fees**

Licensed software is per installed copy of the said software

The Licensed Software Fees shall be invoiced in equal monthly instalments in advance on the Commencement Date of this contract and shall be paid by the Customer within 30 days of date of invoice.

**Implementation Fees**

The Implementation Fees shall be invoiced upon receipt of the signed contract and are payable in advance of any work being carried out by the supplier.

**Ancillary Service Fees**

These Fees shall be invoiced by the Supplier within 5 Business Days of each calendar month for the preceding month and shall be paid by the Customer within 30 days of date of invoice.



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*Schedule 6*

*Address for notices*

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Customer: The Company Secretary.

Supplier: Vertical Systems Limited, 14 Hemmells, Laindon, Essex, SS15 6ED

**1. LICENSED SOFTWARE**

All of the Licensed Software is to be hosted.

**2. HOSTING SET-UP**

The set-up phase of the Hosting Services includes those services provided by the Supplier or its contracted third parties to design, install, configure and test the Hosting Services, as well as the hosting facility and internet connectivity.

**3. INSTALLATION AND CONFIGURATION**

The Supplier shall procure, install and configure the hosting equipment to provide access to the Supplier Software. This includes the rack mounting of servers and related equipment, installation of system and database software components, configuration of clustering and cross-connects, installation of the Services including the Licensed Software and loading of Customer data.

**4. FACILITY**

The hosting equipment shall be installed in a rack-mounted configuration inside a professional hosting facility designed for such use. The facility shall be equipped with access security, climate control, and managed power supply with UPS and generator back-up.

**5. CONTINUING HOSTING SERVICES**

The continuing Hosting Services provided by the Supplier or its contracted third parties, which allow for availability of the Licensed Software, include internet connectivity (as detailed in paragraph 1 of this Schedule above) load distribution management, security services, monitoring, back-up, release management and change control, and administration services.

**6. SECURITY SERVICES**

The Supplier shall provide security services as follows:

- (a) facility access shall be limited to the authorised personnel of the Supplier and contracted third-party personnel;
- (b) the facility shall be monitored 24 hours a day, seven days a week through closed circuit video surveillance and shall require security credentials for access; and
- (c) data access security shall be provided through managed firewall services with security on all web pages, a private network path for administration and SNMP monitoring, and fully hardened servers.

**7. MONITORING SERVICES**

The Supplier shall provide, 24 hours a day and seven days a week, monitoring of the computing, operating and networking infrastructure to detect and correct abnormalities. This includes environmental monitoring, network monitoring and database monitoring, firewall monitoring, and intrusion detection.

**8. BACK-UP AND RECOVERY SERVICES**

The Supplier shall develop the back-up schedule, perform scheduled back-ups, provide routine and emergency data recovery. The back-up schedule shall include at least weekly full back-ups and daily incremental back-ups. In the event of data loss, the Supplier shall provide recovery services to try to restore the most recent back-up.

**9. RELEASE MANAGEMENT AND CHANGE CONTROL**

The Supplier shall provide release management and change control services to ensure that versions of servers, network devices, storage, operating system software and utility and application software are audited and logged, and that new releases, patch releases and other new versions are implemented as deemed necessary by the Supplier to maintain the Hosting Services.

**10. ADMINISTRATION SERVICES**

These services include the installation and administration of additional hardware, operating system and other software, and other resources as necessary to maintain the Hosting Services

**1. Introduction**

- 1.1 The purpose of this Schedule 8 is to detail the Service Levels agreed between the
- 1.2 The Service Level Agreement set out in Section 4 of this Schedule 8 will come into effect on the Commencement Date.
- 1.3 Any changes to the Service Levels requires agreement in writing between the parties.

**2. Monitoring**

- 2.1 The Customer shall monitor the performance of the Supplier against the Service Levels, If the customer feels that the performance is a concern they should contact their account manager immediately for investigation.
- 2.3 The Supplier shall not be in breach of any Service Level to the extent such is caused or arises:-
- (a) either directly or indirectly as a result of an act, omission or default by the Customer, its employees, agents, Homeworkers, Members or subcontractors upon which the ability of the Supplier to comply with the Service Levels may be effected; or
  - (b) out of a event Force Majeure; or
  - (c) either directly or indirectly as a result of the Customers failure to comply with any of its obligations under this agreement this agreement.
- 2.4 Service Level failures which are caused either directly or indirectly as a result of an act, omission or default by the Customer, its employees, Homeworkers, Members, agents or subcontractors will not entitle the Customer to exercise any rights of termination it may have under this agreement.

**3. Service & Performance Reviews**

A service & performance review meeting will be conducted on request by the customer between the Customer and the Supplier.

The purpose of the service & performance review meeting is to:

- Review the performance of the service provided by the Supplier for the review period. Highlight any significant changes in service usage and provide recommendations for changes to the service.
- Identify any fault trends, with recommendations for corrective action.
- Review change requests initiated, and to agree any billing implications.
- Discuss and action any complaints or escalations occurring over the previous month.
- Report & update on current service improvement plans and agree future initiatives or actions.
- Provide information on new service or modification of existing services.
- Determine Customer satisfaction level via a satisfaction survey.
- Report on Planned/Unplanned Outages.
- Review orders provisioned over the previous period.
- Review aged debt ensuring any issues are handled in a timely manner.
- Provide order tracker to assist in the maintenance of accurate records.

#### 4. Service Level Agreement

##### The Performance Metrics

###### 4.1 Helpdesk Telephone Response

The Supplier Helpdesk response will be measured for all incidents logged at the Supplier from the Customer or the Supplier's other customers via telephone:

Component	Performance Metric
Incoming calls to Supplier Helpdesk	95% of all incoming calls answered with 4 minutes.
Abandoned calls	No greater than 10% of all calls abandoned

###### 4.4 Incident and Problem Management Response and Resolution Times:

Times are measured from the time when the call is logged with the information as required by the Supplier to the time when the call has been assigned to a support group and/ or to the time when customer has agreed a suitable fix or workaround has been delivered.

**Initial Supplier Response** is a measured Performance Metric that will be reported against. This will be measured when either the incident is resolved or has been assigned to a support group to investigate.

**Frequency of Updates** is a guideline that will not be statistically measured.

**Target Fix Time** is a Performance Metric that will be measured and reported against.

Severity Rating	Initial Supplier Response	Frequency of Updates	Target Fix Time
<b>One</b>	All logged calls responded to within 15 Minutes	30 Minutes	All calls resolved or work around provided within 1 Hour
<b>Two</b>	All calls logged responded to within 2 Hours	4 Hours	All calls resolved or work around provided within 2 Business Days
<b>Three</b>	All calls logged responded to within 8 Hours	24 Hours	All calls resolved or workaround provided within 5 Business Days

**1 Introduction**

- 1.1 The Supplier shall provide support and maintenance services for its supplied Licensed Software.
- 1.2 The Supplier shall not be responsible under this agreement for LAN/ WAN connectivity between the Customer's premises, branches and any Customer hosted servers.

**2 Helpdesk Support**

- 2.1 The Supplier shall provide the Customer with a helpdesk telephone number and e-mail address for the purposes of the Customer reporting any query to the Supplier in relation to the Licensed Software.
- 2.2 The Supplier shall ensure that the Supplier Helpdesk shall be available to answer incoming calls of the Customer during the Supplier Helpdesk hours as specified below and the Supplier shall ensure that all queries are logged using a call management tool that is adequate to provide a call reference number, logging information and otherwise to monitor and manage queries in accordance with this agreement.

Helpdesk hours:

Day	Core Hours	Emergency contact hours
Monday to Friday	09:00 – 17:30	
Saturday		10:00 – 16:00
Sunday & Bank Holidays		

- 2.3 On receiving a call the helpdesk analyst shall request the Customer to provide the following information:

- (a) Customer contact name and contact details;
- (b) Details of system to which query relates;
- (c) Description of query with reasonable evidence to support the call;
- (d) Customer's reference number;
- (e) Severity Rating of query.

and the Supplier shall provide the following information back to the Customer:

- (f) Supplier incident reference number;
- (g) Details of support group to handle the query;

- 2.4 During the initial logging call or in resolving the query, the Supplier shall obtain such information or verification as it may require directly from the end user, and until such information is provided the call shall not be logged for the purpose of calculating the Performance Metrics referred to in Schedule 8.

- 2.5 Following the logging of any query, the Supplier shall investigate, update the Customer upon, develop and test (on the Supplier's Replica Environment, where appropriate, and which the Supplier shall maintain to replicate the Customer's live IT system environment from time to time) a fix, workaround and or such other appropriate solution to the query (**Proposed Solution**) in accordance with the applicable response, update and fix time Performance Metrics referred to in Schedule 8.

- 2.6 Generally the Supplier shall provide Support Services via remote network access. The Supplier shall be required to comply with all the Customer's security and confidentiality. However, where remote access is not appropriate, the Supplier shall provide Support Services on site at the applicable Customer premises subject to charges detailed in the customers data sheet.
- 2.7 In the event that the Supplier discovers a fault, the Supplier Helpdesk will notify the customer within the applicable Performance Metrics referred to in Schedule 8 depending on the Severity Rating and the Customer and the Supplier shall exchange the details specified in paragraph 2.3 of this Schedule 9. The Supplier shall thereafter deal with the fault in the same manner as required in respect of queries raised by the Customer.
- 2.8 The Customer shall designate queries with a Severity Rating based upon the following descriptions:
- (a) Severity One
- Total loss of the Licensed Software; The Licensed Software cannot be operated by more than 5% of Users. Business or a key process cannot continue;
- If there is any file corruption diagnosed in the Licensed Software. However, the Customer may agree to reduce the Severity Rating if the Supplier can show that business is unaffected and an immediate fix is not necessary;
- A complete application or database cannot be accessed;
- There is a major effect on the correct movement of money. (e.g.) credit card authorisation etc;
- Or any other query of similar business impact.
- (b) Severity Two
- Deterioration of service that will affect business if not corrected;
- Tickets invoices or any other Customer documentation job has failed if in the reasonable opinion of the Customer this has a detrimental effect on business;
- Results of processing are incorrect and adversely affect subsequent processing;
- More than ten bookings cannot be printed and or modified and or progressed;
- Problem that requires significant amount of user effort to circumvent for what should be a standard function;
- Or any other query of similar business impact,
- (c) Severity Three
- Poor service with little or no impact on the business;
- One booking cannot be printed, and or modified and or progressed;
- A function is not performing as it should be, but is working;
- Results of processing are incorrect, but do not affect subsequent processing;
- A problem causes little or no impact to the Customer's business;
- Incorrect data in the database that will not affect business processes process;
- Or any other query of similar business impact.
- A user query having no impact on the Customer's business which may include "how to" questions. The Customer may request the Supplier to list and refresh end user training documentation from time to time to address this type of query.
- 2.9 In relation to queries of a Severity Rating One (or Two, on request by the Customer), the Supplier will provide the Customer with root cause analysis (**RCA**). Upon request from the Customer, the Supplier shall provide RCA on lower severity queries. The Supplier shall provide RCA reports within 5 working days of a problem resolution which shall address the underlying cause of the problem giving rise to the query, provide details of the resolution and provide an analysis of the problem with regards to future occurrence. The RCA report will contain:

- (a) Supplier incident number
- (b) Time/ date incident occurred and was resolved.
- (c) Brief description of the query
- (d) Actions taken to resolve/ circumvent the problem
- (e) Problem RCA and conclusions
- (f) Actions to be taken including RFC details if a change is required, and lead time for any recommended work (not to be undertaken except with agreement of the Customer).

### 3 Documentation

3.1 For each Release or other fix, workaround or solution of the Supplier released into the Customer's system, the Supplier shall provide the Customer with the following minimum documentation:

- (a) A fix number
- (b) Description of the query
- (c) Date/ time logged
- (d) Description of major business processes affected
- (e) Description of the fix/ resolution
- (f) Description of the preventative measures going forward
- (g) Details of any changes to technical specifications
- (h) Details of any process changes
- (i) Details and any required Training Documentation

### 4 Advice and Management

#### 4.1 Service Reviews

- (a) The Supplier will be required to attend Service reviews upon request by the customer.

The Supplier will also be required to attend:

- an Annual Strategic Review Meeting if required
- High Severity Meetings as and when required

#### **Availability Management**

Availability Management is concerned with optimising the availability of the Licensed Software.

The Supplier will be responsible for monitoring and maintaining the availability of the licensed software, the disciplines are as follows:

- The Supplier Helpdesk ensures that a service is restored in a timely manner in accordance with the Performance Metrics referred to in Schedule 8.
- Incident Management ensures that errors are rectified (reactive) and prevented (proactive).
- Supplier Technical support groups identify opportunities for increasing the reliability and resilience of infrastructure components.
- Supplier Systems Management is used to pro-actively monitor the availability of infrastructure components.

Availability management within the Supplier shall be the responsibility of the Supplier's Technical Services department reporting to the Technical Director & Operations Director.



- 4.2 The Supplier shall discuss and provide such advice and information that may be reasonably required by the Customer in respect of decisions or agreeing requests for additional services.

## **5 Escalation Procedure**

- 5.1 During any Severity Rating One or Two incident the designated Supplier Service Manager will communicate directly with the customer or designated escalation point, as described in paragraph 2.5 of this Schedule. Details on incident progress will be communicated via telephone or email. This process will continue until the customer or designated Customer escalation point is satisfied a fix or acceptable workaround has been implemented.

Incidents will be communicated through the relevant channels.

During a Severity One or Two incident the customer should expect to communicate with the Supplier at the appropriate management level, however occasionally for efficiency the customers escalation point may choose to communicate directly with the Product Support Analyst, or Support Engineer managing the incident.

- 5.2 If the Customer is unhappy with the Supplier's performance of the Support Services, this will be brought up in the regular service review meeting or exceptionally by a letter from the Customer to the Supplier's Customer Service Manager. The following situations will automatically be raised:

- (a) Severity One incidents not fixed or circumvented within 24 hours
- (b) Severity Two incidents not fixed or circumvented within 48 hours
- (c) More than two Severity One problems outstanding at any time
- (d) Demonstrable damage to the Customer business
- (e) Ongoing demonstrated performance issues
- (f) Failure of any Performance Metric

- 5.3 Whenever escalation of a query has taken place, the Supplier will provide the Customer with a formal written response from the Supplier's Technical Director & Operations Director, describing what steps are to be taken to correct the situation and a daily status report from the Operations Director until the problem is corrected.

## **6 Goods Provisions**

- 6.1 The Supplier shall sell and the Customer purchases the Goods in accordance with the terms of this agreement. Where the Supplier is permitted to do so, it will pass on the benefit of any manufacturer's warranty in relation to the Goods supplied.

- 6.2 The Supplier shall receive the Goods at its premises, configure the Goods for use with the Licensed Software and deliver the Goods to the Customer's premises at the rates set in The customers data sheet.

## **7 Ancillary Services**

- 7.1 The Supplier shall procure and the Customer accepts the Ancillary Services in accordance with the terms of this Agreement.

- 7.2 Where necessary, the Supplier shall perform a site assessment to ensure suitability of the proposed location and installation the Ancillary Services at the proposed site.

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*Suppliers Internal Disaster Recovery Procedures*

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The Suppliers disaster recovery procedures are designed to enable it to respond positively and effectively when disruption occurs, ensuring that the required information and communications technology and Services are resilient and can be recovered to predetermined levels within appropriate timescales.

Testing will take place on an annual basis on or around the anniversary date of the agreement. Testing will be a full-scale walkthrough, simulating one of the major failure scenarios.

Each day, full snapshots are taken of the System, multiple historical versions of these daily snapshots are stored on physical disk in the Supplier's primary data centre, and are then archived off onto backup tape for historical use.

The most recent snapshot once complete is replicated to the Supplier's secondary site in London. This site hosts a virtual server that is already prepared for the eventuality that any kind of disaster recovery is needed, and is updated with the data from the snapshot each day.

If there is a major outage at the primary site, then a manual startup process of the system at the secondary site can be started, alongside a change in the DNS setup for your system to point any end-user traffic to the secondary backup site.

Any data and charges applied to the live platform during the time window after the daily snapshot is replicated up to the secondary site would be lost.

Due to the above restriction, a system failover would normally only take place once all parties have been informed and an agreement to do so has been reached.

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Change Management Process

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All Releases, fixes, workaround or other changes or solutions to queries must not be implemented until approved in accordance with the Change Management Process. The purpose of the Change Management Process is:

- To ensure a proper balance between the need for change and the potential detrimental impact of changes
- Increase visibility and communication of changes to both business and staff
- Reduce adverse impact of change on the IT service from improved impact and risk assessment
- Improve productivity of users through less disruption and higher quality services
- Improve productivity of personnel through less need to repair faulty changes
- Increase Service improvements through the analysis of management information from change data
- Any change to the live (production) environment must be authorised by the Change Management team, in accordance with the Change Management Process.

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Terms

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Request For Change (RFC) - Formal request for a Change by the Supplier. A RFC includes details of the proposed change and can be recorded on paper or electronically.

Customer Change Request (CCR) – This is the same as a RFC, but will be initiated by the Customer and will need to be assessed for any charges that they may incur. For the avoidance of doubt if such constitutes a development of Bespoke Software the parties agree that they shall follow the provisions of Schedule 3.

Change - Addition, change or deletion of anything that may affect services. "Anything" is usually the physical or software infrastructure, but also includes changes to documentation, processes, service catalogue, etc.

Change Advisory Board (CAB) - A group of people that advise the Change Manager in the assessment, priority settings and schedule of Changes.

Change Manage –A representative nominated by the Supplier will be deemed to be as the Change Manager for any RFC or CCR respectively.

Emergency Change Advisory Board (ECAB) - A subgroup of the CAB that are required to approve any emergency changes. The Supplier's ECAB consists of the board members.

Change Schedule - A Schedule that lists all the approved Changes and their scheduled implementation date.

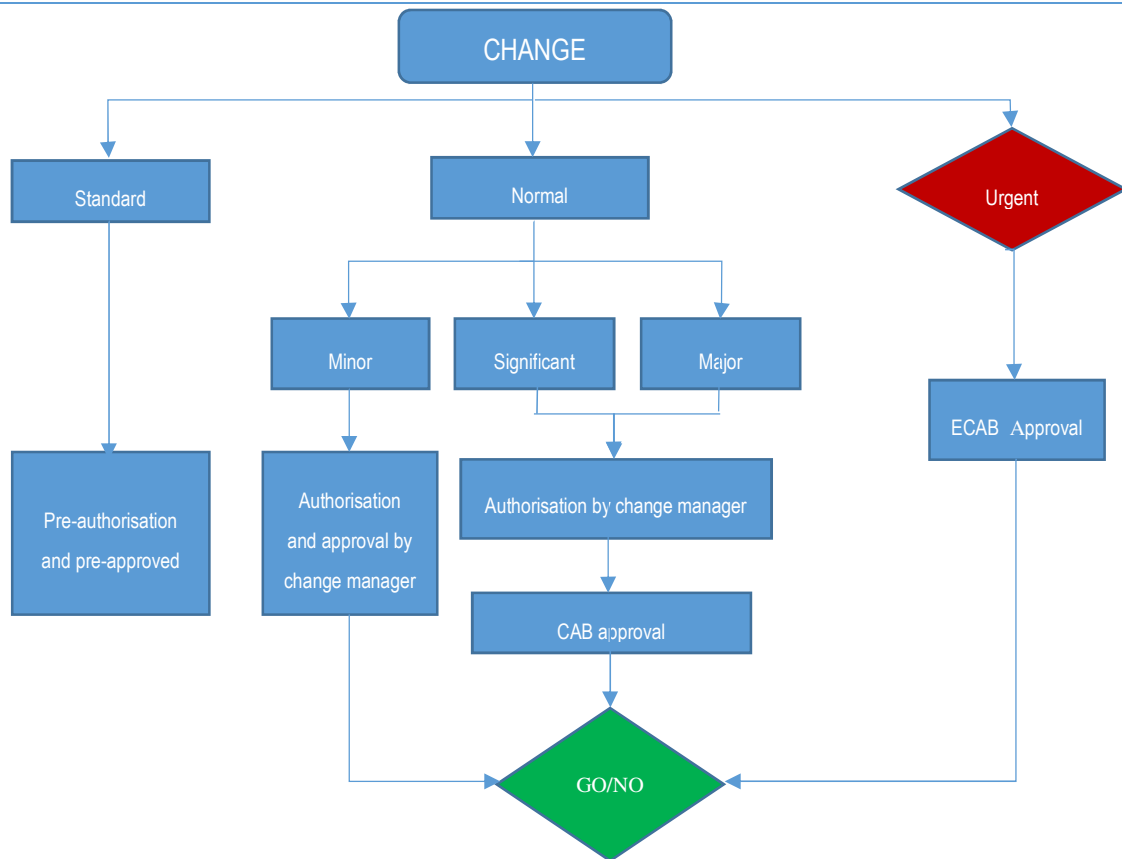
Change Classification - There are three (3) types of Change:

- Standard Change: A standard Change is a Change that is pre-approved by the Change Manager, evaluated low-risk, relatively common and performed according to a procedure or work instructions.
- Normal Change: Change that is not a standard change, or an urgent change; it follows a pre-defined workflow within the Change Management process. It is divided into 3 categories, which are evaluated according to the impacts, risks, benefits, and costs: minor, significant, major; a different level of authorisation may be applied depending on the Change category
- Urgent Change: An urgent Change is a Change that must be implemented as soon as possible. Essentially, it will follow the same normal change procedure with a few exceptions: ECAB may be invoked if the CAB is not available, testing can be reduced, documentation of the Change and configuration data will be delayed (but not neglected).

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### Change Classification flow

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### Process Activities

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1. Record the RFC or CCR - The creation and registration of the Change can come from different sources for improvements / fixes. The request will usually be internal and will be a RFC. If the request is made by the Customer it will be a CCR and will need to be passed to the Supplier for an assessment of any costs associated with the request. The Change Manager will consider the request.
2. Validate and assess the request – The Change Manager will need to validate and assess the request using the required technical team manager for assistance. This will include impacts, risks assessment, benefits, fallback and any costs associated. The Change Manager will be responsible for all communication with the Customer for approval of work or any associated costs and time lines. At this time the technical team should inform the Change Manager of the Change Classification for the Change so that they can invoke the CAB or ECAB approval process, if required.
3. Coordinate the implementation - Implementation actions of approved changes must be submitted to the technical teams and to the users involved in testing. This will be done in the form of a change schedule. Changes must be thoroughly tested. The fallback procedure should be defined and provided to the Service Desk and all involved parties.
4. Review and closing - If the Change is successful, it can be closed. If the Change is unsuccessful the Change Management or the CAB will make a decision on the next course of action, this may be a new Change or a modification to the existing Change. Upon closing, the Change Manager ensures that the documentation of the change is complete and includes the result of the change review

For the avoidance of doubt, other than in the case of a Standard Change or a Change essential for maintenance of the Services, which the Supplier shall be entitled to effect of its own volition, all Changes must be mutually agreed between the Customer and the Supplier.