

INSIGHT ON-LINE

Managed Service Agreement

Date of Agreement:

Parties:

(hereinafter called "the Customer")

For the avoidance of doubt, The Customer enters into this agreement for its own benefit and for the benefit of its subsidiary companies and its joint venture companies.

and
Symology Ltd
Vanguard House
Cotswold Park
Millfield Lane
Caddington
Bedfordshire
LU1 4AJ
Registered in England No. 1760502
admin@symology.co.uk
(hereinafter called "the Supplier")

Now it is hereby agreed

1 DEFINITIONS

"Agreement"	means this document, together with the attached Schedules and documents contained therein.
"Fees"	means the charges to be paid by the Customer to the Supplier as set out in Part B and C of Schedule 1.
"Indexed Fees"	means the charges to be paid by the Customer to the Supplier as set out in Part B of Schedule 1.
"Non-Indexed Fees"	means the charges to be paid by the Customer to the Supplier as set out in Part C of Schedule 1.
"Service"	means the service to be provided by the Supplier as set out in Part A of Schedule 1.
"Service Levels"	means the levels of service to which the Supplier is to perform the Service, as defined in the "INSIGHT ON-LINE Service Description" attached in Schedule 2.
"Service Credits"	means a credit from the Supplier to the Customer as a result of failing to achieve the Service Levels defined in Schedule 2.
"Effective Date"	means the date at which the Service shall commence, as defined in Part A of Schedule 1.
"Initial Period"	means the minimum period over which the Service will be

provided, commencing with the Effective Date, as defined in Part A of Schedule 1.

"Software"	means any software, including third-party software, used by the Supplier in the supply of the Service, and which is not licensed directly to the Customer.
"Customer Data"	means all data or information which is supplied by the Customer as part of this Agreement.
"Proposal"	means the proposal submitted by the Supplier to the Customer, as attached in Schedule 3, which shall form part of the definition of Service, except as specified in the Agreement.
"Default"	means a material breach of the obligations in the Agreement.
"Intellectual Property Rights"	shall mean 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 unregistered) and all applications for the same, anywhere in the world.

Headings are explanatory and do not form part of the Agreement.

2 THE SERVICE

2.1 Provision of Service

The Supplier shall provide the Service, in accordance with the Service Levels, and use such of its time, attention and skill as may be necessary for the proper performance of its obligations under this agreement, in consideration of the payment of the Fees by the Customer, and in accordance with the terms and conditions of this Agreement.

Interruptions to the Service not expressly set out in the Service Levels may be necessary, but shall only be made with the prior agreement of the Customer (which agreement will not be unreasonably withheld or delayed) and when the Supplier, in its reasonable opinion, believes it is necessary to improve or maintain the Service or compliance with the Service Levels. The Supplier shall take all necessary steps to minimise the frequency, length and impact of all such interruptions. For the avoidance of doubt, The Supplier shall provide the Service to the Customer's subsidiary and joint venture companies.

2.2 Term of Service

The Service shall take effect on the Effective Date, and shall continue for the Initial Period, unless terminated in accordance with Clause 7.

3 WARRANTIES

The Supplier warrants and undertakes to the Customer that:

- it has the right power, capacity and authority to enter into this Agreement and to perform the Service.
- it has the know-how, qualifications, skills, experience and necessary ability to satisfy its obligations under this Agreement.
- it will inform the Customer forthwith if any problems arise, or upon the occurrence of any events which cause, or are likely to cause difficulty or delay in the performance and/or completion of the Service in accordance with this Agreement (the Supplier using all reasonable endeavours to mitigate any such difficulty or delay).

4 CHARGES, PAYMENT AND CREDITS

4.1 Charges

In consideration of, and subject to the supply of the Service, in accordance with the terms of this Agreement, the Customer shall pay the Fees together with any associated Value Added Tax, added in accordance with prevailing legislation.

4.2 Terms of Payment

The Customer shall pay the Fees in full within 30 days of the end of the month in which a valid invoice is submitted in accordance with this Agreement. The Supplier reserves the right to charge interest on overdue accounts at the rate of two percent over Lloyds plc Bank Base Rate per annum in force from time to time. The invoice shall be deemed to be received at the expiration of 72 hours after being placed in the post (having been correctly addressed).

4.3 Price Increases

The Supplier will adjust the Indexed Fees annually on the anniversary of the Effective Date. The adjustment will be set to the percentage change in the Retail Prices Index for the last 12 months, as published by the Office for National Statistics (All Items – Series CZBH).

The Supplier will not adjust the Non-Indexed Fees during the Initial Period.

Any additional services to be provided to the Customer by the Supplier may result in additional Fees, as agreed between the Customer and the Supplier.

4.4 Service Levels

If at any time on or after the Effective Date the Supplier fails to provide the Service in accordance with the Service Levels the Supplier shall without prejudice to the Customer's other rights and remedies:

- as and by way of an agreed bona fide adjustment in the Fees in recognition of the reduced value of the Service to the Customer as a consequence of such failure, credit the Customer with the "Service Credits" (if defined) payable in respect of such failure.
- arrange additional resources as are necessary to perform the Service in accordance with the Service Levels as early as practicable thereafter and at no additional charge to the Customer.

4.5 Suspension of Service

The Supplier shall be entitled to suspend all or part of the service if at any time the Fees or part thereof are due but unpaid for 14 days after the date the Supplier issues a written notice to the Customer, informing it that it has failed to pay the pursuant to clause 4.2 of this agreements.

The Supplier shall be entitled to suspend all or part of the service if at any time the customer is deemed not to be complying with their responsibilities defined within the Service Description in a material manner.

Where appropriate, the Supplier reserves the right to raise additional, reasonable charges relating to any costs incurred in resuming provision of the Service for which the Customer shall be liable. No additional charges will be raised if suspension occurs due to a dispute, which is successfully resolved in favour of the Customer.

5 USE OF SOFTWARE AND CUSTOMER DATA

5.1 Intellectual Property Rights

During the term of the Service, the Supplier grants to the Customer a non-exclusive, non-transferrable right to use the Software insofar as that is necessary to the Customer receiving the full benefit of the Service, on the understanding that the intellectual property rights of the Software remain with the Supplier or, in the case of third-party software, with the third-party supplier from which it is licensed. On termination of the Agreement, for any reason, the Customer's right to use the Software is terminated forthwith. The Supplier warrants that it is empowered to grant a license of the Software in the terms of this Agreement.

5.2 Indemnity

The Supplier shall indemnify the Customer against all claims, demands, actions, costs and damages, directly arising from or incurred by reason of any infringement of any intellectual property rights in connection with the provision of the Service, except where such infringement is caused by the Customer. The Supplier's liability in respect of this Clause 5.2 shall be unlimited and the limit of liability specified in Clause 6 below shall not apply.

The Customer shall indemnify the Supplier against all claims, demands, actions, costs and damages, directly arising from or incurred by reason of any infringement of any intellectual property rights in connection with the provision of the Service, except where such infringement is caused by the Supplier and save where such infringement arises by reason of the Customer receiving the Service and/or exercising its rights set out herein. The Customer's liability in respect of this Clause 5.2 shall be unlimited and the limit of liability specified in Clause 6 below shall not apply.

5.3 Customer Data

The Supplier acknowledges that the Customer Data shall at all times remain the sole property of the Customer, and all rights which may subsist in the Customer Data remain with the Customer. The Supplier and Customer shall each take all reasonable precautions (having regard to the nature of their respective obligations under this Agreement) to preserve the integrity of the Customer Data, and to prevent any corruption or loss occurring. On termination of the Agreement for any reason, the Supplier shall provide the Customer with the Customer Data in its entirety, in a suitable transferable form, subject to the Customer paying reasonable costs of the Supplier for providing such data in the required form.

5.4 Data Protection

The Supplier and Customer each warrant that they will duly observe their obligations under the General Data Protection Regulations which arise in connection with the Service, including all statutory obligations which apply by law from time to time.

5.5 Confidentiality

Both Supplier and Customer shall keep confidential and shall not disclose any information or documents provided by the other that relates to their products, customers, business, accounts, finance or contractual arrangements, or other dealings transactions or affairs, including the Service, for ten years from the termination of the Service unless such disclosure is necessary to perform the Service, or the information or documents come into the public domain otherwise than through a breach of this Agreement or such disclosure is necessary for compliance with statutory or regulatory (including stock exchange) requirements.

If either party becomes aware of any breach of this Clause 5 by any of its personnel or other third-party it shall promptly notify the other party.

The provisions of this Clause 5 shall survive the date of expiry or termination of this Agreement (for whatever reason).

6 LIABILITY

6.1 Limits of Liability

The Supplier's liability to the Customer for any claim for breach of contract, negligence, breach of statutory duty or otherwise shall be limited as follows:

- For any claim for personal injury or death caused by the Supplier's negligence, no limit shall apply.
- For any other claim, the Supplier's liability to the Customer shall in no event exceed 50% of the Fees which are payable by the Customer for the Service during the year of the Agreement in which the loss occurs.

The Supplier shall not be liable for:

- errors and defects at a level customarily and reasonably acceptable in the computer trade, or where the Customer might reasonably have been expected to have used its own skill, judgement, knowledge and experience as a non-specialist in all matters relating to the Services to avoid or mitigate damage (it being recognised that computer software and associated manuals contain defects).
- any claims or losses to the extent that such claims or losses arise from the negligence of the Customer or improper use of the Service.
- faults arising from information provided by the Customer.
- for any damage resulting from a fault in the Software, if such damage would not have resulted had the Customer followed reasonable instructions given by the Supplier.
- any loss or damage if the Customer does not notify the Supplier thereof within a reasonable time from when the Customer knew, or ought to have known of the same, giving sufficient details to enable the Supplier to locate, reproduce or rectify the fault.

Neither party shall be liable to the other for loss of profits, loss of business, or consequential loss or damage of any kind arising under or outside of this Agreement.

Neither party excludes or limits liability to the other party which by law it cannot exclude or limit.

The customer acknowledges that the service provided is not intended for holding data where its loss, unauthorised disclosure or unavailability has been assessed by the customer or any independent assessor as having a Business Impact Level (as defined by CESG) of greater than BIL 2. Symology Ltd. disclaims any express or implied warranty of fitness for such use.

7 TERMINATION

7.1 Reasons for Termination

During the Initial Period, either party may terminate the Agreement if:

- the other party passes a resolution, or a Court order is made, that it or its parent company should be wound up, other than for the purpose of a bona-fide reconstruction or amalgamation, or the other party is unable to pay its debts within the meaning of the Insolvency Act 1986, or any similar event occurs.
- the other party is in Default, and the defaulting party has failed to remedy the Default within 14 working days of written notice to the defaulting party, specifying the Default and requiring its remedy.

In addition to the above, the Customer may terminate the Agreement with immediate effect in the event that a total systems outage lasting for more than 48 hours occurs as a direct result of a Supplier failure. In such an event, the Customer shall be entitled to a refund of the Fees on a pro rata basis for the period from the date of termination to the next anniversary of the Effective Date. If data is not available to be provided to the customer as set out in clause 5.3 then the Supplier will provide a copy of the data from the most recent backup.

7.2 Consequences of Termination

Termination of the Agreement for any reason shall be without prejudice to any rights or remedies a party may be entitled to at law or under the Agreement.

Any outstanding Fees shall remain due and payable by the Customer to the Supplier in respect of any Service properly provided in accordance with the Agreement. The Customer will not be entitled to claim for any refund of the Fees.

If requested by the Customer, both parties shall work together to draw up an exit plan within four weeks of notice of termination having been served. The plan will cover the transition of the Service back to the Customer or to a replacement supplier, and the Supplier will render all reasonable assistance to the Customer, if requested, to the extent necessary to effect an orderly hand-over of the Service to the Customer or nominated third-party, such that the Service can be carried on with a minimum of interruption and inconvenience to the Customer. All services provided by the Supplier to this end shall be chargeable at the Supplier's standard rates, applicable at that time.

Each party shall, at the request of the other party and at the other party's expense, return all equipment, records, documentation, data, software, and information, confidential or otherwise, which are owned by the other party.

8 ENTIRE AGREEMENT

This Agreement embodies the entire agreement between the Customer and the Supplier in relation to the Service. Any amendments to this Agreement during its term will be expressly agreed in writing between the parties.

9 LAW

This Agreement shall be construed in accordance with English Law and the parties hereto agree to submit to the exclusive jurisdiction of the Courts of England and Wales.

10 FORCE MAJEURE

If an act constituting force majeure persists for 60 days or more, the party not claiming such an act comprises a force majeure may give notice to the other to terminate the Agreement affected by the force majeure act without penalty or other liability (except for the Customer's ability to pay the Supplier's invoices and for invoiced work properly carried out at the date of termination) and will not be held liable for their failure to perform their obligations. Should the Supplier or Customer for any reason beyond its control be unable to fulfil its obligations under this Agreement, then no liability shall arise therefrom.

11 ASSIGNATION

Neither party shall be entitled to sub-contract, transfer, assign or otherwise dispose of the Agreement and/or all or any of its rights and/or obligations hereunder (in whole or in part) without the prior consent of the other.

12 DISPUTES

The parties hereto shall make every reasonable effort to settle amicably between themselves any dispute or difference arising out of this Agreement. In the event of the parties being unable to settle such dispute or difference between themselves the same shall be referred to the English Courts who shall have exclusive jurisdiction to determine disputes arising from this agreement, although either party may elect to first refer the matter to a mediator. The non-referring party shall cooperate with such referral. Failing resolution of the dispute by mediation, the dispute may be referred by either party for final decision to The English Courts.

13 NOTICES

All notices which are required to be given hereunder shall be in writing and shall be sent to the address of the recipient party, as defined in the Agreement. All notices may be delivered personally or by first class pre-paid letter or by email and in the absence of evidence of earlier receipt shall be deemed to have been served if by hand when delivered, if by first class post forty-eight (48) hours after posting, and if by email twenty four (24) hours after sending (and subject to not receiving a failed transmission report).

In witness whereof the duly authorised representatives of the parties have set their respective hands.

Signed:

Signed:

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Name:

Name:

.....

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Title:

Title:

.....

..

Date:

Date:

.....

..

For and on behalf of

"the Customer"

For and on behalf of

Symology Ltd

"the Supplier"

SCHEDULE 1 - G Cloud 10

PART A

The "Service": Cloud-based Software-as-a-Service, in accordance with the Service Description, to cover Street Works operations for Local Authority Works Promoters within England and Wales. This solution provides comprehensive functionality for Highway Authority Works Promoters. Works may be initiated and progressed through the appropriate life cycle, allowing Highway Authority Works Promoters to fully comply with the works noticing requirements of the Traffic Management Act 2004 (TMA). Both Street Works Notices and Permits are handled in a single database, as are all historical versions of the EToN specifications.

The scope of the service shall be for the purpose of operations within the Customer's existing business and geographic areas. Use of the Product by third parties shall be permitted, solely for the purpose of operations on behalf of the Customer.

Effective Date: [TBD]

Initial Period: 1 Year

PART C

The Non-Indexed Fees to be paid to the Supplier by the Customer are as described in the associated proposal document named in the form "G10 INSIGHT <service name> Proposal.pdf" where <service name> is replaced with the name of the appropriate service.

SCHEDULE 2 – SERVICE DESCRIPTION

The Service Description is as set out in the attached document titled "G10 INSIGHT <service name> Proposal.pdf" where <service name> is replaced with the name of the appropriate service.

SCHEDULE 3 – SYMOLOGY PROPOSAL

The proposal is as set out in the associated proposal document named in the form "G10 INSIGHT <service name> Proposal.pdf" where <service name> is replaced with the name of the appropriate service.

SCHEDULE 4 – HOSTING CENTRES

Symology's Cloud Editions operate within a dual hosted active/passive model with full data replication facilities between the two sites. Both sites are configured to the same level of capability and in normal circumstances customers will be split evenly between the two sites. Each site will be capable of accommodating the customers from the other site in the event of a worst-case scenario.

The hosting centres are Gyron, in Hemel Hempstead, and Virtus (provided by CoreTx), in Slough. Further details of each of these Hosting Centres can be provided on request.

SCHEDULE 5 – SERVICE PLAN

The Service Plan is as set out in the attached document titled "G10 INSIGHT <service name> Proposal.pdf" where <service name> is replaced with the name of the appropriate service.