CONTRACT REFERENCE [ ]

THIS CONTRACT is made

BETWEEN [ ] of [ ] hereinafter referred to as ‘the Customer’.

AND CommonTime Limited of 15 St Christophers Way, Pride Park, Derby DE24 8JY, England hereinafter referred to as ‘CommonTime’

STRUCTURE OF THIS CONTRACT

This Contract comprises the following parts:-

This Signature Page
Definitions
General Terms and Conditions
Software Licence
Support Terms and Conditions
Professional Services Terms and Conditions
Schedule 1 – Fees, Charges and Payment Schedule
Schedule 2 – Service Level Agreement (SLA)
Schedule 3 – Data Protection

SIGNED:

This Agreement incorporating the parts set out above is made between the Customer and CommonTime.

For and on behalf of the Customer

Name:
Title:.................................................................
.........
Date:.................................................................
.........

For and on behalf of CommonTime

Name:
Title:.................................................................
.........
Date:.................................................................
.........
DEFINITIONS

The following definitions apply to all of these terms and conditions.

"Applicable Data Protection Law" shall mean: (i) prior to 25 May 2018, Directive 95/46/EC of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data; and (ii) on and after 25 May 2018, Regulation 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) and any data protection laws in any European Union Member State including laws implementing such Regulation.

"Contract" means the agreement between CommonTime and the Customer.

"Customer" means the party named as such in the Contract.

"Customer Data" the data inputted by the Customer, Authorised Users, or CommonTime on the Customer's behalf for the purpose of using the Hosted Services or facilitating the Customer's use of the Hosted Services.

"Hosting Fee" is the fee due to CommonTime for the provision of Hosted Services for the Customer.

"Hosted Services" shall mean the hosted services provided to the Customer by CommonTime under the Contract.

"Licence" a licence which allows a user to use the Software

"Licence Fee" is the licence fee due which entitles the Customer to use the Software subject to the terms and conditions.

"Software" means any CommonTime product including any or all of the following products: mDesign; mSuite; CommonTime Infinity; CommonTime Infinity Lite (including in the case of any or all of the products all updates, enhancements, modifications, versions and replacement or amendment products from time to time offered), all applications created using any of the CommonTime Software, all appropriate documentation necessary to enable their proper function and functionality and all other related materials, depending on which product you have purchased.

"Support" shall mean the support services supplied to the Customer by CommonTime under the Contract.

"Support Fees" shall mean the fees payable which entitles the Customer to receive Support

"CommonTime" means the company identified in the Contract and shall include that company's successors and assigns.
SECTION 1 - GENERAL TERMS AND CONDITIONS

The following terms apply to the supply of all Software, Support, Professional Services and other services under this Contract. These Terms and Conditions can only be varied when agreed in writing between both parties and take precedence over any terms and conditions in any Customer documentation including contracts, purchase orders, or any other customer documentation.

1. VALUE ADDED TAX

1.1 All charges are quoted exclusive of Value Added Tax which is payable in accordance with the then current legislation.

2. LATE PAYMENT

2.1 CommonTime reserves the right to charge interest on overdue amounts at the rate of 3% per annum above the base lending rate of NatWest plc, from the date on which the account becomes due until the date of payment before, as well as after, judgement. If a payment is not received on the due date, CommonTime shall notify the customer and give the Customer a further 14 days from the notification to make such a payment. In the event that the payment remains outstanding beyond this period, CommonTime's obligations under the Contract will be suspended until payment has been made in full.

3. CONFIDENTIALITY

3.1 All Software, user guidance, training hand outs and other similar information, and materials which have been, or will be supplied to the Customer by CommonTime in connection with the Contract, or performance thereof, remains the property of CommonTime or its suppliers and consists of confidential and proprietary data whose disclosure to or use by third parties may be damaging.

3.2 The Customer agrees to hold all information, software and materials described in clause 3.1 in the strictest confidence and not to disclose or make available the said information, software or materials to any third party or to its employees except in confidence and then only as is necessary to facilitate performance of the Contract.

3.3 If any unauthorised use or disclosure occurs, the Customer will immediately notify CommonTime and:-

(a) any unauthorised use of the Software shall be a breach of this Licence which shall permit CommonTime to terminate the Licence; and

(b) you agree to assist CommonTime in recovering the Software and preventing their subsequent unauthorized use or dissemination.

4. EMPLOYMENT

4.1 No master and servant, partnership or agency relationship will be deemed to exist between the Customer and any CommonTime personnel.

4.2 Until six months after termination of the Contract, neither party will solicit the employment or services of any personnel of the other party who has been engaged in connection with the Contract. Liquidated damages for breach of this provision will be equal to the gross salary or fees of that person for the first six months of his/her new employment or contract. The parties agree that such sum is a genuine pre-estimate of the costs which the party previously employing or contracting with the individual will incur in finding and training a replacement for that person.
5. LIMIT OF LIABILITY

5.1 Neither party excludes or limits liability to the other party for (i) death or personal injury arising from the first party's negligence or (ii) any breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or (iii) fraud or fraudulent misrepresentation.

5.2 Notwithstanding anything to the contrary in the Contract, but subject to clause 5.1 neither CommonTime nor the Customer shall be liable to the other for any of the following (whether or not the party being claimed against was advised of, or knew of, the possibility of such losses) whether arising from negligence, breach of contract or otherwise:

i any indirect, special or consequential losses;

ii any loss of business, data, profits, revenue, goodwill, use, or anticipated savings;

iii any damage suffered by the other party as a result of an action brought by a third party arising from any use, or inability to use, any software or item supplied under this Contract or from any breach of the Contract; or

iv loss or damage to the other party's, or any third party's, data or records.

5.3 Except where liability arises under clause 5.1, CommonTime's entire liability to the Customer for all claims made in respect of or in connection with the Contract whether in contract, for misrepresentation (other than fraudulent misrepresentation), tort (including, but not limited to, negligence), intellectual property infringement or under statute and however and whenever arising shall not exceed the sum total of the fees paid or payable by the Customer to CommonTime in the 12 month period immediately preceding the date of the relevant claim.

5.4 CommonTime’s prices are determined on the basis of the warranties as stated in this Contract and the limits of liability as stated in clause 5.3.

6. COPYRIGHT

6.1 All title, copyright, trademark, database rights and other intellectual and proprietary rights in and to the Software are owned and retained exclusively by CommonTime. The Customer does not own the Software and the Customer obtains only such rights in respect of the Software as are granted by this Licence. Save as set out in this Licence the Customer must not copy, modify or transfer the Software except that it may either (a) make one copy of the Software solely for backup or archival purposes, or (b) transfer the Software to a single hard disk provided the original is kept solely for your use as a backup or for archival purposes. Any copy of the Software must include CommonTime’s copyright notice, is subject to the terms of this Licence and for the avoidance of doubt CommonTime retains all title, copyright, trademark, database rights and other intellectual and proprietary rights in and to the copy of the Software howsoever created.

6.2 Certain parts of the Software have been provided by third party licensors and such third party licensors are intended third party beneficiaries of the agreement with respect to their software notwithstanding clause 17

6.3 Subject to clause 5.3, CommonTime shall indemnify the Customer against any and all actions or claims incurred by the Customer arising out of any actual or alleged infringement of any patent, copyright or trade secret in respect of the Software, supplied under the Contract provided that:

i the action and/or claim does not arise as a result of the unauthorised modification, alteration or adaptation of the Software by the Customer; and

ii the action and/or claim does not arise as a result of the use of the Software in combination with any software or equipment not supplied or approved by CommonTime; and
iii the Customer shall notify CommonTime immediately of any claim or demand made or action brought against the Customer for infringement or alleged infringement of any patent, copyright or trade secret in respect of the Software and shall not make any comment or admission to any third party in respect thereof; and

iv CommonTime shall have conduct of all proceedings or negotiations relating to such allegations or claims and shall deal with the same as it sees fit in its absolute discretion; and

v The Customer shall provide all reasonable assistance to CommonTime in relation to the conduct of such litigation and/or negotiations.

6.4 In the event of any claim against the Customer that the use of Third Party Software infringes the intellectual property rights of any third party, CommonTime shall use all reasonable endeavours to enforce at the Customer’s expense, CommonTime’s rights (if any) against the relevant third party. Subject to the foregoing, CommonTime shall have no further liability in respect of such infringement or alleged infringement.

7. DATA PROTECTION

7.1 Each party shall ensure that in the performance of its obligations under the Contract it complies at all times with Applicable Data Protection Law and their respective obligations as set out in Schedule 3.

7.2 The Customer hereby authorises CommonTime to process any of its data (including any personal data as defined in Applicable Data Protection Law) only to the extent necessary and solely for the purpose of carrying out its obligations under the Contract, including without limitation, when CommonTime is resolving a Support or maintenance problem. Immediately after such use, CommonTime agrees that it shall destroy any copy data created.

8. EXPORT

8.1 The Software is subject to export and import restrictions and must not be used, wholly or in part, in connection with the development, identification or dissemination of chemical, biological or nuclear weapons or the development, production, maintenance or storage of missiles capable of delivering such weapons. This Contract is expressly made subject to any regulations, orders or the restrictions on the export from the UK of the Software or information about such Software which may be imposed from time to time by the UK government. The Customer shall comply with any other laws that may impact your right to export, import or use the Software or related information (including, without limitation, United States and Canadian export laws).

9. TERMINATION

9.1 This Agreement shall commence upon execution and shall continue, unless otherwise terminated in accordance with this Section or as provided elsewhere in this Agreement, or as otherwise agreed by the parties in writing.

9.2 Unless agreed elsewhere in this Agreement, this Agreement is for a minimum of 12 months from the date of the Agreement. Unless either party provides written notice at least 30 days in advance of the annual renewal date the Agreement will renew automatically on an annual basis.

9.2 Each party shall have the right, without prejudice to its other rights or remedies, to terminate all or part of this Agreement immediately by written Notice to the other party if such party:

- is in material breach of any of its obligations and either that breach is incapable of remedy or such party shall have failed to remedy that breach within 30 days after receiving written notice requiring it to remedy that breach; or
- becomes insolvent or an order is made or a resolution passed for its liquidation, bankruptcy, administration, winding-up or dissolution or a receiver, manager, liquidator, administrator, trustee or similar officer is appointed over all or any substantial part of the assets of such party or such party enters into or proposes any composition or arrangement with its creditors generally or presents a petition for suspension of payments; or

- if any creditor of that party attaches or takes possession of all or any substantial or material part of such party’s assets and the same are not released or discharged within 10 days.

9.3 The provisions included in Clauses 3, 5 and 6 shall survive termination of this Contract.

10. **FORCE MAJEURE**

10.1 Neither party shall be liable for failure to perform its obligations under the Contract if such failure results from circumstances beyond the party's reasonable control. If such a period shall apply for a limited period of time, and it is agreed that the performance of the Contract shall continue thereafter, all previously agreed delivery dates shall be extended by no less than the length of the delay.

11. **ASSIGNMENT**

11.1 Neither Party may assign, novate or subcontract the Contract or otherwise transfer any of its rights or obligations under the Contract without the prior written consent of the other Party, such consent not to be unreasonably withheld.

12. **GENERAL**

12.1 Any modifications or amendment to the Contract must be made in writing and signed by an authorised signatory of each party.

12.2 No failure or delay on the part of CommonTime to exercise any right or remedy under this Agreement shall be construed or operated as a waiver thereof nor shall any single or partial exercise of any right or remedy as the case may be. CommonTime’s rights and remedies provided in this Agreement are cumulative and are not exclusive of any rights or remedies provided by law.

13. **SEVERANCE**

13.1 The provisions of the Contract shall be deemed to be severable and any invalidity of any provision shall not effect the validity of the remaining provisions of the Contract, and the parties shall use reasonable endeavours to agree an appropriate substitute provision.

14. **NOTICES**

14.1 Any notices to be given under this Contract shall be in writing and served on either party at their registered office, unless either party notifies the other of a change of address for service. Service of notices must be made by facsimile transmission, in which case service shall be effective immediately upon transmission, or by first class post, in which case, service shall be effective on the second working day after posting.

15. **NO PARTNERSHIP OR AGENCY**

15.1 Nothing in this Agreement is intended to or shall operate to create a partnership or joint venture of any kind between the parties or to authorise either party to act as agent of the other and neither party shall have authority to act in the name of or on behalf of the other party save as set out in the terms of this Agreement.
16. **ENTIRE AGREEMENT**

16.1 The parties agree that these Terms and Conditions (together with any other terms and conditions expressly incorporated in the Contract) represent the entire agreement between the parties and supersede all other proposals, agreements, statements, representations or warranties (whether written, e-mail or oral) made by or between the parties relating to the subject matter of the Contract, and that no statements or representations made by either party have been relied upon by the other in agreeing to enter into the Contract.

16.2 Each party unconditionally waives any rights it may have to claim damages against the other on the basis of any statement made by the other (whether made carelessly or not) not set out or referred to in the Contract (or for breach of any warranty given by the other not set out or referred to) unless such statement or warranty was made or given fraudulently.

17. **THIRD PARTY RIGHTS**

17.1 The Contract shall not create any rights that shall be enforceable by anyone other than the parties to the Contract or any person to whom it is lawfully assigned.

18. **LAW**

18.1 This Agreement shall be governed by and construed in accordance with English law. The Parties irrevocably agree that the courts of England are to have exclusive jurisdiction to settle any dispute which may arise out of or in connection with this Licence and the documents to be entered into pursuant to it. The Parties irrevocably submit to the jurisdiction of such courts and waive any objection to proceedings in any such court on the ground of venue or on the ground that the proceedings have been brought in an inconvenient forum. This sub-clause is for the benefit of CommonTime and shall not limit its right to take proceedings in any other court of competent jurisdiction.
SOFTWARE LICENCE AGREEMENT – TERMS AND CONDITIONS

The following terms and conditions in addition to the General Terms and Conditions apply to the supply of all Software and Hosted Services by CommonTime under this Contract.

19. GRANT OF LICENCE

19.1 CommonTime agrees to grant the Customer, subject to the number of licences purchased, a non-exclusive, non-transferable, limited license to use the Software.

19.2 Subject to any Licencing restrictions included in this Agreement (including within Schedule 1), the Customer is licensed by CommonTime to use the object code of the Software on computer systems owned, by the Customer or any member of the Customer’s corporate group, including the Customers majority owned subsidiaries, any parent company having a majority owned interest in the Customer and such parent’s majority owned subsidiaries.

19.3 The Customer must ensure that the number of users of the Software is never greater than the number of Licences purchased.

19.4 For the purposes of this Licence, the Software is considered “in use” on a computer or other device when it is loaded into temporary memory (i.e. RAM) or installed into the permanent memory (e.g. hard disk, CD-ROM or other storage device) of that computer or other device. A copy installed on a network server for the sole purposes of distribution to other computers or devices is not “in use”.

20. FEES AND PAYMENT

20.1 The software is licensed subject to payment of the fees set out in Schedule 1 and in accordance with this Clause 20. For the avoidance of doubt where the Software is licensed under a software subscription or annual licence the right to continue to use the Software is dependent on the continued payment of the licence payments.

20.2 The license fee is payable on signature of this Agreement unless otherwise agreed in writing by CommonTime. All other sums due under this Agreement will be paid within 30 days of the receipt of invoice, or on the due date for payment if earlier. Unless expressly otherwise stated, all charges under this Agreement are exclusive of VAT and any other taxes duties or levies and such amounts will be paid in addition by you at the then prevailing rates.

20.3 You must notify CommonTime in writing within 5 days of receipt if an invoice if you consider the invoice to be incorrect or invalid for any reason.

20.4 CommonTime has the right to vary the fees set out in Schedule 1 annually, from the date of this Agreement and shall give you no less than 30 days notice of any change.

21. OTHER RESTRICTIONS

21.1 The Customer may not rent, lease, licence, sub-licence, share, assign, pledge, transfer or otherwise dispose of the Software on a temporary or permanent basis without the prior written consent of CommonTime consent will not be unreasonably withheld. However the Software may be used, subject to the terms of this Agreement, by any member of the Customer’s corporate group, including the Customers majority owned subsidiaries, any parent company having a majority owned interest in the Customer and such parent's majority owned subsidiaries. The Customer shall be responsible for ensuring that the other members of its corporate group comply
with the terms of the Contract and shall indemnify CommonTime against any breach of the Contract by other members of its corporate Group. The Customer must notify CommonTime within 5 working days of the use of the Software by any other member of the Customer's corporate group.

21.2. The Customer may not translate, modify or reverse engineer, decompile or disassemble the Software or incorporate it, in whole or in part, into other Software, create derivative works based on the Software, except to the extent expressly permitted to do so by this Agreement and/or the law applicable to this Agreement.

22. WARRANTY

22.1. LIMITED WARRANTY. CommonTime warrants that the Software will perform substantially in accordance with its accompanying printed and/or electronic documentation, minor interruptions or errors excluded. The warranty period (“Warranty Period”) is ninety (90) days from the date of this Contract. The warranty is void if the failure of the Software has resulted from (a) accident, neglect, abuse, misuse or misapplication; (b) acts or omissions by persons other than CommonTime or (c) other causes related to software not provided by CommonTime.

22.2. CUSTOMER REMEDIES. CommonTime’s entire liability and the Customers exclusive remedy shall be the replacement of the Software that does not meet the warranty in clause 22.1 provided that the Customer supplies CommonTime with a copy of proof of licence or valid receipt. Any replacement Software will be warranted for the remainder of the original warranty period or thirty (30) days, whichever is longer.

22.3. NO OTHER WARRANTIES. The warranty given in clause 22.1 is made in lieu of any other warranties, representations, indemnities or guarantees of any kind, including but not limited to implied warranties of merchantability, satisfactory quality or fitness for a particular purpose or ability to achieve a particular result, with respect to the Software.

23. HOSTED SERVICES

23.1 Where the Customer chooses to use CommonTime Hosted Services, use of the services is subject to payment of the Hosting Fees set out in Schedule 1. CommonTime reserves the right to suspend use of the Hosted Services in the case of the non-payment of any outstanding fees under this Agreement.

23.2 CommonTime shall, provide the Hosted Services to the Customer on and subject to the terms of this Agreement and shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for periods of maintenance which will be normally be performed outside business hours., CommonTime will use reasonable endeavours to give the Customer at least 7 days notice in advance of any maintenance.

23.3 CommonTime undertakes that the Hosted Services will be performed with reasonable skill and care in accordance with CommonTime hosted service documentation. This undertaking shall not apply to the extent of any non-conformance which is caused by use of the Hosted Services contrary to CommonTimes instructions, or modification or alteration of the Hosted Services by any party other than CommonTime or CommonTime’s duly authorised contractors or agents. If the Hosted Services do not conform with the foregoing undertaking, CommonTime will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in this clause

23.4 Notwithstanding the foregoing, CommonTime does not warrant that the Customer's use of the Services will be uninterrupted or error-free; or that the Hosted Services, documentation and/or the
information obtained by the Customer through the Hosted Services will meet the Customer's requirements; and is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Hosted Services and documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

23.5 The Customer shall not access, store, distribute or transmit any viruses, or any material during the course of its use of the Hosted Services that, is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive, facilitates illegal activity, depicts sexually explicit images, promotes unlawful violence, is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or in a manner that is otherwise illegal or causes damage or injury to any person or property, and CommonTime reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any material that breaches the provisions of this clause.

24. CUSTOMER DATA

24.1 The Customer shall own all right, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.

24.2 CommonTime shall follow its archiving procedures for Customer Data. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for CommonTime to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by CommonTime in accordance with its archiving procedure. CommonTime shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by CommonTime to perform services related to Customer Data maintenance and back-up).

25. AUDIT RIGHTS

25.1 The Customer is required to keep reasonable records relating to the use of the Software and its compliance with the licence granted herein. A chartered or certified public accountant selected by CommonTime may, upon reasonable notice and during normal business hours, but no more often than once a year, inspect the Customers records to confirm compliance with this Licence.

25.2 The Customer agrees that CommonTime shall have the right after supplying undertakings as to confidentiality to audit any computer system on which the Software are installed in order to verify compliance with this Licence. Where CommonTime is providing Hosted Services the Customer authorises CommonTime to audit the number of users on the system.

25.3 The costs of the audit will be borne by CommonTime except in the case where the Customer is found to have more users operating the Software than it has purchased in which case the Customer will bear the costs of any audit. Any shortfall in licences identified by the audit will be invoiced on completion of the audit.

26. TERM

26.1 Upon termination the Customer agrees to destroy all copies of the Software in any form and to provide a written undertaking to CommonTime that it does not hold any versions of the Software. The media on which such copies resided will after destruction of the copies residing on them revert to the Customer.
27. SUPPORT

27.1 Technical support in the use of the Software is available from CommonTime or our authorised resellers or business partners.

28. GENERAL

28.1 The Customer acknowledges and agrees that any breach of the terms of this Software Licence Agreement by the Customer could cause injury to CommonTime and damages would not be adequate remedy. In the event of a breach or threatened breach by the Customer CommonTime shall be entitled to apply for injunctive relief in any Court of competent jurisdiction. The Customer shall indemnify CommonTime against all costs, claims, demands and liabilities arising directly or indirectly out of a breach of this Licence. Nothing contained in this Licence shall be construed as prohibiting CommonTime from pursuing any other remedies available to it for a breach or threatened breach of this Licence.
The following terms and conditions in addition to the General Terms and Conditions apply to the supply of all Support Services by CommonTime under this Contract.

29. PROVISION OF SUPPORT

29.1 In consideration of the obligations of the Customer in the Contract, CommonTime agrees to provide Support to the Customer in accordance with the terms outlined below and the provisions of Schedule 2 – Service Level Agreement.

30. VERSIONS

30.1 Support is only guaranteed for product versions that are no more than 18 months old at the date of the support request. Support for earlier versions will be provided, where possible, on a reasonable efforts basis.

31. FEES

31.1 Provision of support is subject to payment of the Support Fees. The Support Fees are due within 30 days of the invoice and a failure to pay may lead to a suspension of support services.

31.2 CommonTime reserves the right to alter the Support Fees but shall not do so more than once per year. CommonTime will notify the Customer in writing of any price changes. The new price will only be billed on the anniversary of this Contract.

32. COMMONTIME’S RIGHT TO REFUSE SUPPORT

32.1 CommonTime reserves the right to refuse to diagnose and rectify a fault resulting from:

- the improper use, operation or neglect of the Software;
- the modification of the Software or their merger (in whole or in part) with any other software;
- the use of the Software on equipment not complying with CommonTime’s minimum equipment requirements;
- the failure by the Customer to implement recommendations in respect of solutions to faults previously advised by CommonTime;
- any repair, adjustment, alteration or modification of the Software by any person other than CommonTime or an authorised CommonTime Business Partner without CommonTime’s prior consent;
- the use of the Software for a purpose for which they were not designed; or
- improper provision or configuration of infrastructure upon which the Software depend, including, but not limited to, firewalls, operating systems and networks.

If the Customer requests services in respect of any of the above matters, CommonTime shall be entitled to charge an additional Fee, subject to the agreement of the Customer.
33. CUSTOMER’S OBLIGATIONS

33.1 The Customer agrees that it will:

- ensure that the Software are installed and maintained by competent trained employees only;

- not alter or modify the Software or Documentation in any way whatever nor permit the Software to be combined with any other programs to form a combined work;

- not request, permit or authorise anyone other than CommonTime or an authorized CommonTime Business Partner to provide any maintenance services in respect of the Software or Documentation;

- co-operate fully with CommonTime’s personnel in the diagnosis of any error or defect in the Software or Documentation;

- make available to CommonTime free of charge all information, facilities and services reasonably required by CommonTime to enable it to perform the services including without limitation computer runs, memory dumps, printouts, data preparation, office accommodation, typing and photocopying;

- provide such telecommunication facilities as are reasonably required by CommonTime for testing and diagnostic purposes at the Customer’s expense; and

- ensure in the interests of health and safety that CommonTime’s personnel, while on the Customer’s premises for the purposes of this Agreement, are at all times accompanied by a member of the Customer’s staff familiar with the Customer’s premises and safety procedures.

34. WARRANTY

34.1 CommonTime warrants that the support services will be provided with reasonable skill and care, in accordance with normal industry practice and in a timely, workmanlike and effective manner. In the event of a breach of the warranty, CommonTime shall at no additional cost to the Customer repeat such support services until they comply with the warranty.

34.2 The Customer acknowledges and agrees that the Software is standard software that has not been designed and produced to the individual requirements of the Customer, that the Customer was responsible for their selection and accordingly the limitations and exclusions of liability contained in this Contract are reasonable in all the circumstances.
PROFESSIONAL SERVICES AGREEMENT

The following terms and conditions in addition to the General Terms and Conditions apply to the supply of all Professional Services by CommonTime.

35. PROVISION OF PROFESSIONAL SERVICES

35.1 In consideration of the obligations of the Customer in the Contract, CommonTime agrees subject as hereinafter provided to provide Professional Services to the Customer. Unless otherwise agreed in writing all Professional Services will be undertaken on a time and materials basis and unless otherwise agreed in writing, any delivery dates specified by CommonTime are approximate only and time shall not be of the essence for delivery.

35.2 Where Professional Services are undertaken on a fixed price basis the scope of the work will be agreed in advance by the parties. Any additional work performed outside the agreed scope will be chargeable in addition to the fixed price. Additional fees will also be chargeable if any delay is caused by the Customer.

35.3 CommonTime will assign appropriately qualified personnel to perform the Service and will use all reasonable endeavours to minimise changes of personnel so assigned.

35.4 The Customer will give to CommonTime promptly on request such information and facilities as CommonTime reasonably requires for the provision of the Service including but not limited to:

- the provision of the appropriately skilled resources reasonably required by CommonTime.
- the provision of information reasonably requested by CommonTime so as not to delay CommonTime’s activities
- the provision of appropriate computer environments
- ensuring that CommonTime’s personnel have suitable access, to the Customer’s environments
- provision of suitable office accommodation for CommonTime personnel

36. PROFESSIONAL SERVICES FEES

36.1 Unless agreed otherwise between the parties in writing all Professional Services will be invoiced on order and due within 30 days of the date of invoice.

36.2 The charges for Professional Services, unless otherwise stated, are for work performed between the hours of 0900 and 1700 daily, excluding Saturdays, Sundays. Any Professional Services provided outside such hours will incur additional charges, including travelling time, in accordance with CommonTime’s standard rates therefore in force from time to time.

36.3 The Customer shall reimburse CommonTime for all reasonable travelling, accommodation and subsistence expenses incurred in the course of providing Professional Services.

36.4 CommonTime may, from time to time, modify the charges for Professional Services in line with the then current prices of CommonTime.
37. **CUSTOMER COVENANTS**

37.1 The Customer agrees to perform in a timely and professional manner all its obligations set out in the Contract or any document incorporated into the Contract or any subsequent obligations in relation to the Contract that have been agreed between the parties in writing.

38. **WARRANTY**

38.1 CommonTime warrants that all work performed hereunder will be performed in a professional, workmanlike manner in accordance with general industry standards for like services. Any work not performed in accordance with this warranty will be rectified at no additional charge to the Customer.

38.2 CommonTime’s obligations under the above warranty shall be its sole warranty and it shall have no other warranty obligations whatsoever whether in contract, or otherwise as regards the quality or fitness for purpose of the Professional Services and all other warranties and terms in respect thereof whether express or implied, statutory or otherwise are hereby excluded save to the extent that the same are not capable of exclusion at law.
SCHEDULE 1 – PRICING SCHEDULE

[COMMERCIAL TERMS]
# SCHEDULE 2 – SERVICE LEVEL AGREEMENT

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<th>Support Services Description</th>
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<tbody>
<tr>
<td><strong>Nominated Client Contacts</strong></td>
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<td><strong>Contact Name</strong></td>
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<th><strong>Hours of Cover</strong></th>
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<tr>
<td>9:00am – 5:00pm (UK Time)</td>
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<td>Monday to Friday</td>
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<td>Excludes local public holidays and other holiday days that are declared in advance by CommonTime</td>
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<th><strong>Procedure</strong></th>
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<td><strong>Level One</strong></td>
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<td>In the first instance, unless otherwise agreed, support will be provided through the Customer’s own systems administrators and/or helpdesk. Provision of this Level One support should be by persons with a thorough working knowledge of the relevant Software. They are also expected to perform basic troubleshooting. In the event that this Level One support is unable to resolve the problem, they will endeavour to provide the end user with a workaround and will then escalate the problem to Level Two. All problems escalated to Level Two must be accompanied by a full problem description (including equipment being used, product software versions being used and the Version of Windows and SQL Server being used) together with information about steps already taken to attempt to resolve the problem and a complete set of the relevant logs.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Level Two</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Level Two support will be provided by CommonTime’s Support Center. Level One support will escalate problems to Level Two support. Level Two support staff will only accept problems from Nominated Customer Contacts. CommonTime’s Level Two support will use its best efforts to respond in accordance with the Response Times. Each incident will be classified by the Customer as being of Low, Normal, High or Urgent severity according to the impact that the problem is having on the Customer’s business. CommonTime reserves the right to review and modify the severity classification and, if it reduces the severity, will inform the Customer of the reasons for doing so. Urgent problems must be reported by phone in addition to being submitted via the web or by email.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Level Three</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Level Three support will also be provided by CommonTime and will utilize CommonTime’s own escalation procedure to ensure that the appropriate people and resources are applied in order to find or develop a suitable workaround or solution for a problem that cannot be resolved by Level Two support. Problems not resolved by Level Two within the Escalation Time will automatically be escalated to Level Three. When a problem is escalated, a Problem Manager will be assigned. The Problem Manager will own the problem through to its resolution and will act as the focal point for all communications with the Customer.</td>
</tr>
</tbody>
</table>
### Severity Levels

<table>
<thead>
<tr>
<th>Severity</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Low</td>
<td>Cosmetic or other low priority issue</td>
</tr>
<tr>
<td>Normal</td>
<td>Product malfunction or failure – either (a) does not significantly impact normal use of Product or (b) workaround is available</td>
</tr>
<tr>
<td>High</td>
<td>Product malfunction or failure which affects normal use of Product. No workaround is available</td>
</tr>
<tr>
<td>Urgent</td>
<td>Product malfunction or failure which significantly impacts business operation. No workaround available</td>
</tr>
</tbody>
</table>

### Response Times

<table>
<thead>
<tr>
<th>Severity</th>
<th>Response Time</th>
<th>Escalation Time</th>
<th>Target Resolution Time</th>
</tr>
</thead>
<tbody>
<tr>
<td>Low</td>
<td>7 working days</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>Normal</td>
<td>3 working day</td>
<td>N/A</td>
<td>Next Scheduled Update</td>
</tr>
<tr>
<td>High</td>
<td>1 working day</td>
<td>2 working day</td>
<td>4 working days</td>
</tr>
<tr>
<td>Urgent</td>
<td>4 hours</td>
<td>1 working day</td>
<td>2 working days</td>
</tr>
</tbody>
</table>

Please note: where a time is stated in hours this may equate to more than one day due to the hours of cover.

A resolution is defined as either a fix or a workaround that is acceptable to the Customer. A resolution may require the Customer to apply a patch or upgrade to a later version.

### Methods of Support

Only the nominated Customer Contacts may contact CommonTime Support. The Customer can contact CommonTime support via:

- **Website**: https://support.commontime.com
- **Email**: support@commontime.com
- **Telephone**:
  - USA toll free: 866-253-7987
  - UK lo-call: 0845 641 0767
  - Europe/Rest of World: +44 1332 542 098

To change the nominated Customer Contact, the Customer must inform CommonTime in writing of the new Customer Contact's name, position and email address.

### Software Updates

The Customer is entitled to download and upgrade to all current and future releases of the CommonTime software. Software named above provided maintenance cover is still valid.

### Self-Help Facilities

The Customer will have access to patches, release notes, FAQs, the CommonTime Knowledgebase and Forums.
SCHEDULE 3 – DATA PROTECTION

Definitions: In this Schedule 3, the terms "controller", "processor", “data subject”, "personal data", "processing" (and “process”) and “special categories of personal data” shall have the meanings given in Applicable Data Protection Law.

1. Relationship of the parties: The Customer appoints CommonTime as a processor to process the personal data that is the subject of this Agreement and as more particularly described in Annex A (the “Data”).

2. Customer obligations: The Customer acknowledges it is a controller for the Data and agrees to comply with obligations as controller under Applicable Data Protection Law. The Customer shall ensure that the Customer is entitled to transfer the Data to CommonTime or to grant CommonTime access to such Data so that CommonTime may lawfully use, process and transfer the Data in accordance with this Agreement on the Customer's behalf. The Customer shall ensure that the relevant third parties have been informed of, and where required by Applicable Data Protection Law, have given their consent to, such use, processing, and transfer.

3. Purpose limitation: CommonTime shall process the Data as a processor as documented in and necessary to perform its obligations under this Agreement as more particularly described in Annex A (the “Permitted Purpose”), except where otherwise required by any European Union (or any European Union Member State) law applicable to the Customer and in which case CommonTime shall inform the Customer prior to such processing unless CommonTime is prohibited by law from doing so. CommonTime shall inform the Customer if in its opinion an instruction of the Customer infringes Applicable Data Protection Law.

4. International transfers: CommonTime shall not transfer the Data (nor permit the Data to be transferred) outside of the European Economic Area (“EEA”) unless it has taken such measures as are necessary to ensure the transfer is in compliance with Applicable Data Protection Law. Such measures may include (without limitation) transferring the Data to a recipient in a country that the European Commission has decided provides adequate protection for personal data, to a recipient that has achieved binding corporate rules authorisation in accordance with Applicable Data Protection Law, or to a recipient that has executed standard contractual clauses adopted or approved by the European Commission.

5. Confidentiality of processing: CommonTime shall ensure that any person that it authorises to process the Data (including CommonTime’s staff, agents and subcontractors) (an “Authorised Person”) shall be subject to a duty of confidentiality (whether a contractual duty or a statutory duty), and shall not permit any person to process the Data who is not under such a duty of confidentiality.

6. Security: CommonTime shall implement appropriate technical and organisational measures as identified in Annex B to protect the Data (i) from accidental or unlawful destruction, and (ii) loss, alteration, unauthorised disclosure of, or access to the Data (a "Security Incident").

7. Security incidents: Upon becoming aware of a confirmed Security Incident, CommonTime shall inform the Customer without undue delay and shall provide all such timely information and cooperation as the Customer may reasonably require in order for the Customer to fulfil its data breach reporting obligations under (and in accordance with the timescales required by) Applicable Data Protection Law. CommonTime shall further take all such measures and actions as are reasonably necessary to remedy or mitigate the effects of the Security Incident and shall keep the Customer updated on all material developments in connection with the Security Incident.
8. **Sub-processing**: CommonTime shall not subcontract any processing of the Data to a third party subcontractor ("Sub-processor") without the prior written consent of the Customer. The Customer hereby consents to CommonTime engaging third party Sub-processors to process the Data provided that: (i) CommonTime provides at least 10 days’ prior notice of the addition or removal of any Sub-processor (including details of the processing it performs or will perform), which may be given by posting details of such addition or removal at the following URL: www.commontime.com/gdpr (ii) CommonTime imposes data protection terms on any Sub-processor it appoints that protect the Data to the same standard provided for by this Schedule 3; and (iii) CommonTime remains fully liable for any breach of this Schedule 3 that is caused by an act, error or omission of its Sub-processor. The Customer may object to CommonTime’s appointment or replacement of a sub-processor prior to its appointment or replacement, provided such objection is based on reasonable grounds relating to data protection. In such event, CommonTime will either not appoint or replace the sub-processor or, if this is not possible, the Customer may suspend or terminate this Agreement (without prejudice to any fees incurred by the Customer prior to suspension or termination).

9. **Cooperation and data subjects' rights**: CommonTime shall provide reasonable and timely assistance (including by appropriate technical and organisational measures) to the Customer at the Customer’s expense (to enable the Customer to respond to: (i) any request from a data subject to exercise any of its rights under Applicable Data Protection Law (including its rights of access, correction, objection, erasure and data portability, as applicable); and (ii) any other correspondence, enquiry or complaint received from a data subject, regulator or other third party in connection with the processing of the Data. In the event that any such request, correspondence, enquiry or complaint is made directly to CommonTime, CommonTime shall promptly inform the Customer providing full details of the same.

10. **Data Protection Impact Assessment**: If CommonTime believes or becomes aware that its processing of the Data is likely to result in a high risk to the data protection rights and freedoms of data subjects, it shall promptly inform the Customer and provide the Customer with all such reasonable and timely assistance as the Customer may require in order to conduct a data protection impact assessment and, if necessary, consult with its relevant data protection authority.

11. **Deletion or return of Data**: Upon termination or expiry of this Agreement, CommonTime shall (at the Customer’s election) destroy or return to the Customer all Data (including all copies of the Data) in its possession or control (including any Data subcontracted to a third party for processing). This requirement shall not apply to the extent that CommonTime is required by any European Union (or any European Union Member State) law to retain some or all of the Data.

12. **Audit**: The Customer acknowledges that CommonTime is regularly audited against ISO27001 standards by independent third party auditors. Upon request, CommonTime shall supply a summary copy of its audit reports to the Customer, which reports shall be kept confidential by the Customer. CommonTime shall also respond to any written audit questions regarding compliance with its obligations under this Schedule 3 submitted to it by the Customer, provided that the Customer shall not exercise this right more than once a year.
Annex A

Data Processing Description

This Annex A forms part of the Agreement and describes the processing that the processor will perform on behalf of the controller.

Controller

The controller is (please specify briefly the controller’s activities relevant to the processing):

[TBC e.g. The Customer is an online retailer that .....]

Processor

The processor is (please specify briefly the processor's activities relevant to the transfer):

CommonTime is a provider of enterprise applications and associated support services.

Data subjects

The personal data to be processed concern the following categories of data subjects (please specify):

[TBC – This will be a A natural person (living individual) whose personal data is processed by a controller or processor e.g. customers, employees, contacts. - state type of people]

Categories of data

The personal data to be processed concern the following categories of data (please specify):

[TBC – describe the personal data that will be processed. Personal data is any information relating to an identified or identifiable natural person ('data subject'); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier e.g. name, address, IP address, device identifiers, location data.]

Special categories of data (if appropriate)

The personal data to be processed concern the following special categories of data (please specify):

[TBC. Special categories of personal data is defined under GDPR as data revealing racial or ethnic origin, political opinions, religious or philosophical belief, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation.]

Processing operations

The personal data will be subject to the following basic processing activities (please specify):

[TBC Describe what CommonTime will be doing with the data on behalf of the Customer. Processing (under GDPR) means any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means. This could include e.g. collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by]
transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of personal data – could be hosting, processing, investigating.]