



**BAILEY SOLUTIONS LIMITED**

**THIS AGREEMENT IS DATED** 2018 **ONLY DATE WHEN AGREED**

**BETWEEN:**

- (1) Bailey Solutions Ltd, a limited liability company incorporated under the laws of England under number 04445779, whose registered office is at Curtis House, 34 Third Avenue, Hove BN3 2PD, United Kingdom (**Supplier, We or Us**);
- (2) [Customer name] a limited company, registered in England and Wales with registered number xxxxx and registered office at xxxxxx (**Customer or You**).

together referred to as the Parties.

**BACKGROUND**

The Supplier has agreed to grant the Customer a non-exclusive licence to accept and use certain computer software programs and related software documentation on the terms and conditions set out in this Contract (Software Product/s).

The Supplier has also agreed to maintain those computer software programs on the terms and conditions set out in this Contract (Support Services).

The Supplier has further agreed to host those computer software programs on the terms and conditions set out in this Contract (Hosted Services Platform)

Delete if the product is on the customer's own servers.

**IT IS AGREED:**

**OUR TERMS AND CONDITIONS OF SUPPLY**

**Definitions:**

The following definitions will apply to the terms and conditions of this Contract:

**Acceptable Use Policy** as described in Schedule 6

**Additional Services** means those additional one-off services listed in Table 2 of Schedule 1, examples may include but limited to data conversion services, training and consultancy.

**Applicable Laws** means applicable legislation, rules or regulations, any form of secondary legislation and applicable case law from time to time and includes, without limitation, industry licences and codes, anti-money laundering requirements and data protection laws, each as applicable to either party.

**Advertised Fee** the current fee for the product or service advertised on the Supplier's website which may be amended from time to time.

**Affiliate** means, in relation to a party, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with, that party from time to time.

**Associate** means: (i) any company, or other person, associated with the Supplier, or (ii) any employee or agent of, or consultant or adviser to, the Supplier, or (iii) any Subcontractor.

**Business Days** Mondays to Fridays except bank holidays in England and Wales.

**Commencement Date** means the date the terms and conditions of this Contract are accepted by the Customer and the Customer signs the Contract;

**Confidential Information** means all information which, in the case of:

- a) the Customer, concerns the business, operation or customers of the Customer, any of the Customer's Affiliates; and
- b) the Supplier, concerns the business, operation or customers of the Supplier or any of its Affiliates,  
whether:
  - c) received by the Recipient directly from the disclosing party or from any other person; or
  - d) generated or compiled by the recipient itself and shall include all summaries, notes, memoranda and any other documents executed by the Recipient to the extent they contain that information,

in each case in any medium or format whatsoever and whether marked "confidential" or not.

**Contract** means these terms and conditions set out herein on pages 1 to 31 together with the Schedules.

**Control** means that a person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other person, whether through the ownership of voting shares, by contract or otherwise, and **Controls** and **Controlled** shall be interpreted accordingly.

**Customer Data** means all data (including, without limitation, Customer Personal Data), information, text, drawings, records, documents and other materials which are embodied in any medium (including, without limitation, any electronic, optical, magnetic or tangible media):

- a) relating to, or created by, the employees, members, partners, consultants, suppliers, customers or clients of, the Customer or any member of the Customer Group; or
- b) supplied to the Customer or any member of the Customer Group in the course of the business of the Customer or any member of the Customer Group, which are supplied to the Supplier by the Customer or any member of the Customer Group or which the Supplier processes, stores or transmits under or in connection with this Contract.

All Customer Data is owned by the Customer.

**Customer Group** means the Customer, each of its Subsidiaries and other undertakings which are from time to time authorised to practise using the Customer's name and any one or more of those undertakings as the context requires.

**Customer Network** means the Customer's IT network that supports the Supplier's Software Products.

**Data Protection Laws** means all Applicable Laws relating to data protection, the processing of personal data and privacy, including without limitation:

- (a) any data protection legislation from time to time in force in the UK including the Data Protection Act 1998 or 2018 or any successor legislation;
- (b) the General Data Protection Regulation (EU) 2016/679; and any other directly applicable European Union regulation relating to privacy;
- (c) the Privacy and Electronic Communications (EC Directive) Regulations 2003 (as may be amended by the proposed Regulation on Privacy and Electronic Communications);

and references to "Data Controller", "Data Protection Impact Assessments", "Data Processor", "Data Subjects", "Personal Data", "Process", "Processed", "Processing", and "Supervisory Authority" have the meanings set out in, and will be interpreted in accordance with, such Applicable Laws.

**Data Security Incident** means:

- (a) a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data transmitted, stored or otherwise Processed; or
- (b) a discovery or reasonable suspicion that there is a vulnerability in any technological measure used to protect any Personal Data that has previously been subject to a breach within the scope of paragraph (a), which may result in exploitation or exposure of that Personal Data; or
- (c) any defect or vulnerability with the potential to impact the ongoing resilience, security and/or integrity of systems processing Personal Data.

**Delivery** means, in relation to the Software Products and any Software Updates or any part of them, their remote installation on the servers of the Customer or the servers of the Hosted Services Platform.

**Delivery Date** means the date on which the software is initially delivered and made accessible to the Customer by the Supplier.

**Digital Content** all content including text, information, data, software, executable code, images, audio, or video material in any medium or form provided by the Supplier to the Customer.

**Executable Code** means computer programs and/or data which can be interpreted and acted upon by a hardware platform/operating system without the need for any external modification.

**Hosted Services Platform** means the supply and maintenance of servers by the Supplier to host the Supplier's Software Products for licensed customers who purchase the Hosted Services Platform, for the avoidance of any doubt this means that when purchased the Customer's Data will be stored on the Hosted Services Platform.

**Indemnified Losses** means all losses, damages, costs and expenses and other liabilities (including, without limitation, legal and other professional fees) incurred by or awarded against the Indemnified Entity in connection with an IPR Claim or which are agreed to be paid by the Indemnified Entity by way of settlement or compromise of an IPR Claim.

**Initial Term** means, notwithstanding the date of execution or commencement of this Contract, the period of **12 months** commencing on the Delivery Date or commencing, where a Trial is exercised, one month after the Delivery Date.

**Intellectual Property Rights** means

- a) copyright, patents, database rights and rights in trademarks, designs, know-how and confidential information (whether registered or unregistered);
- b) applications for registration, and the right to apply for registration, for any of these rights; and
- c) all other intellectual property rights and equivalent or similar forms of protection existing anywhere in the world.

**Licence** is the Software Product licence supplied to the Customer.

**Licence Period** the **12 months** beginning at the end of the Trial Period, where exercised, or in the absence of a Trial Period on the Delivery Date.

**Malware** means anything or any device (including any software, code, file or programme) which may:

- a) prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device;
- b) prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or in part or otherwise); or
- c) adversely affect the user experience, including worms, trojan horses, malicious software, spyware, ransomware, adware, scareware, viruses and other similar things or devices.

**Permitted User** means, in relation to the Customer, any of its employees, partners, directors, contractors, subcontractors, agents or professional advisers from time to time and, where additional licences have been purchased from the Supplier in accordance with the Schedules any of the Customer's Affiliates and any of the employees, directors, contractors subcontractors or professional advisers from time to time of any of the Customer's Affiliates.

**Products and Services** is the collective term for the Software Products, Support Services, Hosted Services Platform and Additional Services specified in Schedule 1.

**Regulatory Body** means any government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled by any Applicable Laws to supervise, regulate, investigate or influence the matters dealt with in this Contract or any other of the Customer's affairs.

**Renewal Period** means the period after the Initial Term has lapsed usually, but not limited to, a month or a year depending on the Subscription Fee paid.

**Security Breach** means any actual loss, unauthorised or unlawful destruction, alteration, or unauthorised disclosure of, or access to the personal data (accidental or otherwise) and/or any other irregularity in processing the personal data.

**Service Hours** means 9.00 am to 17.30 pm (GMT) on Business Days.

**Service Levels** means the service levels, set out in Schedule 2, including, without limitation, the applicable response times;

**Software Documentation** means the searchable online help centre containing articles and/or videos which explain or demonstrate how to use the Software Products;

**Software Products** means the Licence software “packages” sold (or offered for sale) which include use of the Digital Content, as set out in the Schedule 1.

**Software Updates** means any new releases of the Software (including, without limitation, all revision level upgrades and version level upgrades) to be made available to the Customer in accordance with this Contract.

**Source Code** means computer programs and/or data in human-readable form from which the Executable Code of the Software was created, on suitable media in such form that it can be translated or interpreted into that Executable Code together with all technical information and Software Documentation necessary for the use, reproduction, modification, maintenance and enhancement of those programs and/or data.

**Subscription Fee** means the aggregate of fees for the Software Product Licence, the Hosted Services Platform and Support Services, as set out in Schedule 1.

**Supplier** is to be treated as including the Supplier itself, Associates and any of the Supplier's Affiliates, all of whom shall have the benefit of the exclusions and limitations of liability set out in this Contract.

**Support Services** means the Support Services available as set out in the Schedules, examples include but no limited to the provision of Software Updates and Help Desk Services.

**Term:** means the Initial Term and any Renewal Periods.

**Territory** those countries where the Customer and Customer Group are located.

**Trial Period** means the first calendar month following the delivery date, during which the Customer can try the Software Products without charge or obligation to buy.

**Use** means to access and use, install, operate, run, deploy, make available on servers, provide access to or integrate with the Software Products.

## **1. THESE TERMS**

- 1.1 What these terms cover. These are the terms and conditions on which we supply licenced Software Products to you and grant you, the Customer, a non-exclusive licence to access and use certain of our Software Products and related Software Documentation. These terms and conditions additionally cover the Support Services, Hosted Services Platform and Additional Services specified in Schedule 1 and collectively referred to as Products and Services in this Contract.

- 1.2 Why you should read them. Please read these terms carefully before you submit your order to us. These terms tell you who we are, how we will provide the licenced Products and Services to you, how you and we may change or end the Contract, what to do if there is a problem and other important information. If you think that there is a mistake in these terms, please contact us to discuss.

## **2. HOW TO CONTACT US**

- 2.1 **How to contact us.** You can contact us by telephoning our support team at +44 (0)1273 242 958, by emailing us at [support@baileysolutions.co.uk](mailto:support@baileysolutions.co.uk) or writing to us at Curtis House, 34 Third Avenue, Hove, BN3 2PD.
- 2.2 **How we may contact you.** If we have to contact you we will do so by telephone or by writing to you at the email address or postal address you provided to us in your order.
- 2.3 For the avoidance of doubt "writing" includes emails. When we use the words "writing" or "written" in these terms, this includes emails.

## **3. OUR CONTRACT WITH YOU THE CUSTOMER**

- 3.1 How we will accept your order. An order by an authorised representative of the Customer constitutes acceptance of the Supplier's quote by the Customer to purchase Products and Services in accordance with these terms and conditions.
- 3.2 The order shall only be deemed to be accepted when the Supplier issues written acceptance of the order.
- 3.3 Any samples, drawings, descriptive matter or advertising issued by the Supplier, and any descriptions or illustrations contained in the Supplier's catalogues or brochures or on its website, are issued or published for the sole purpose of giving an approximate idea of the licenced Products and Services described in them. They shall not form part of the Contract or have any contractual force.
- 3.4 These terms and conditions apply to the Contract to the exclusion of any other terms and conditions that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 3.5 Any quotation given by the Supplier shall not constitute an offer and is only valid for a period of 30 calendar days from its date of issue.

## **4. OUR PRODUCTS AND SERVICES**

- 4.1 The Supplier is the entire legal and beneficial owner and licensor of Software Product specified at Schedule 1.
- 4.2 The Products and Services specified in Schedule 1 will be delivered on the Supplier's Hosted Services Platform or on the Customer's own servers by the Supplier remotely as part of the price of the package as set out in Schedule 1 and on the terms and conditions set out in this Contract.

- 4.3 The Supplier will maintain the licenced Software Products on the terms and conditions set out in this Contract and as set out below. Such maintenance will include:

- (i) preventative maintenance of the Software Products; and
- (ii) corrective maintenance for errors in the Software Products

delivered as Software Updates which are at no additional cost to the Customer and included as part of the package set out in Schedule 1.

- 4.4 The Supplier further provides the following services:

- (a) Optional Hosted Services Platform as set out at Schedule 5 below to host the Customer's licensed Software Product which includes:
  - (i) Software Updates applied by the Supplier on the Hosted Services Platform.
  - (ii) Regular daily, off-site controlled back up of the System; and
- (b) Optional Hosted Support Services, available to Customers who subscribe to the Hosted Services Platform which includes:
  - (i) a helpdesk to provide support for data issues and questions about how to use the Software Products.
- (c) Optional In-House Support Services available to Customers who install the licensed Software Product on their own servers which includes:
  - (i) a helpdesk to provide support for moving the software, data issues and questions about how to use the Software products; and
  - (ii) Software Updates applied by the Supplier remotely.

## 5. GRANT OF LICENCE AND WORKING WITH BAILEY SOLUTIONS LIMITED

- 5.1 In consideration of the Subscription Fee paid by the Customer to the Supplier for the grant of the licence, the Supplier hereby grants to the Customer a **non-transferable, non-exclusive Licence** to access and use the Digital Content of the Software Product during the Trial Period and the Licence Period in the Territory for the access and use.
- 5.2 The Licence granted to the Customer is strictly limited to, and the Customer shall access and use the Digital Content solely for, its Use and its Members.
- 5.3 The Supplier shall use all reasonable endeavours to deliver the licenced Products and Services to the Customer on or before the Delivery Date however for the avoidance of doubt time shall not be of the essence.
- 5.4 The Customer is entitled to purchase additional usage staff and/or Affiliate licences. The Supplier will activate the additional staff and/or Affiliate usage

licences within two Business Days of receiving the request from the Customer, the Supplier being entitled to submit an invoice immediately for the additional licences for the period from activation to the next anniversary and thereafter in accordance with Schedule 1.

## **6. CUSTOMER'S RIGHTS AND OBLIGATIONS**

- 6.1 The Customer agrees to abide by the following rights and obligations set out below:
- 6.2 Where the Customer is a business, a contract manager will represent the Customer in the day-to-day management and administration of this Contract and in all matters relating to the Services, other than the Subscription Fee, and any amendments to this Contract.
- 6.3 The Supplier will communicate directly with the contract manager in the day-to-day management and administration of this Contract, including, without limitation, in relation to the quality of the Services and the submission and payment of invoices.
- 6.4 Where the Customer subscribes to the Hosted Services Platform, the Customer will need to provide computers, browser software and communication lines, including any public lines to properly access the hosted solution, content or live data.
- 6.5 The Customer acknowledges that any internet use may be insecure and liable to breach. The Customer must put in place reasonable security measures in relation to their business and ensures that the users practice reasonable password security, including changing passwords regularly and keeping passwords secure.
- 6.6 Where the Customer chooses to host the software on their own Customer Network, the Customer will need to provide equipment, software and communication lines, including any public lines to properly access the Customer Network hosted solution, content or data.
- 6.7 Where the Customer chooses to host the software on their own Customer Network, the Customer may make a reasonable number of copies of the licenced Software Product/s for security back-up and normal operational purposes only and on the terms and conditions set out in this Contract. All copies of the Software Product/s are subject to the terms and conditions of this Contract.
- 6.8 The Customer shall not alter, obscure, remove, interfere with or add to any of the trademarks, trade names, markings or notices used on or contained in the Software Products and shall ensure that all those trademarks, trade names, markings and notices are reproduced on all copies of the Software Products made by or on behalf of the Customer in accordance with the Supplier's instructions. The Customer shall ensure that each entity to which the Software Product/s are licensed complies with the terms of this clause 6.8.
- 6.9 The Customer shall not grant sub-licences, in whole or in part, of any of the rights granted under this Contract, or sub-contract any aspects of exploitation of the rights licensed to it, without the Supplier's prior written consent. However, the Customer, if a Company or Partnership, may grant sub-licences to the

Permitted Users within the Territory to access and use the licenced Software Products on terms that prohibit those employees and associates from granting any further sub-licence(s).

- 6.10 In the event that the Customer plans to acquire, merge or otherwise amalgamate with another entity, the Customer will immediately inform the Supplier who will review the position and if appropriate will issue a new licence to the new Customer entity at a revised fee to reflect any changes in the licenced Products and Services to be agreed by both parties.
- 6.11 If the Customer fails to inform the Supplier of such acquisition, merger or other form of amalgamation the licence granted will be deemed to lapse and the Customer will be obliged to pay, for broadening the scope of the licences granted under this Contract to cover the unauthorised use, an amount equal to the fees which the Supplier would have levied (in accordance with its normal commercial terms then current) had it licensed any such unauthorised use on the date when such use commenced and also for any Products and Services for such period of time as the Customer fails to keep the Supplier informed.
- 6.12 The Supplier expressly retains all rights in, or in relation to, the design, code and Digital Content in general that are not expressly granted to Customer under this Contract, and any other rights (whether known now, or created later) and whether or not in the contemplation of the parties at the time of this Contract for its own and/or third-party exploitation.
- 6.13 The Customer may not change, amend or develop the Digital Content in any way without the Supplier's prior written consent.
- 6.14 Both Parties shall comply with all Applicable Laws in performing their obligations and exercising their rights under this Contract.
- 6.15 The Customer shall not and shall procure that any employees and associates and permitted sub-licensees shall not, infringe any moral rights (as defined in Chapter IV of the Copyright, Designs and Patents Act 1988) that subsist in respect of the Digital Content.
- 6.16 Where the Customer chooses to host the Software on their own Customer Network, the Customer shall ensure that the Digital Content is kept secure and in an encrypted form, and shall use the best available practices and systems applicable to the use of the Digital Content on the licenced Software Products to:
  - a) enforce the territorial and use restrictions of this Contract; and
  - b) prevent, and take prompt and proper remedial action against, unauthorised access, copying, modification, storage, reproduction, display or distribution of the Digital Content.
- 6.17 The Customer shall acknowledge that all employees and Associates using the Software Product are bound by all the terms and conditions of access and use of the Digital Content, in particular they agree that:
  - (a) they comply with all Applicable laws in using the Digital Content;
  - (b) they state that the Digital Content being supplied is only for that employee or Associate's personal access and use;

- (c) they prohibit reproduction or distribution of Digital Content that violates applicable law; and
  - (d) they contain a reservation for the Supplier of all Intellectual Property Rights and other rights in the Digital Content;
- 6.18 The Customer may not access and Use the Software Product other than as specified in this Contract without the prior written consent of the Supplier and should the Customer wish to use the Software for a different Use, the Supplier will make the Customer aware of any additional fees prior to approving a change of use.
- 6.19 The Customer has no right (and shall not permit any third party) to copy, adapt, reverse engineer, decompile, disassemble, modify, adapt or make error corrections to the Software in whole or in part except to the extent that any reduction of the Software to human readable form (whether by reverse engineering, de-compilation or disassembly) is necessary for the purposes of integrating the operation of the Software with the operation of other software or systems used by the Customer, unless the Supplier is prepared to carry out such action at a reasonable commercial fee or has provided the information necessary to achieve such integration within a reasonable period, and the Customer shall request the Supplier to carry out such action or to provide such information (and shall meet the Supplier's reasonable costs in providing that information) before undertaking any such reduction.
- 6.20 The Customer may not use any such information provided by the Supplier or obtained by the Customer during any such reduction permitted under clause 6.19 to create any software whose expression is substantially similar to that of the Software nor use such information in any manner which would be restricted by any copyright subsisting in it.
- 6.21 The Customer shall not:
  - a) Subject to clause 6.9, sub-license, assign or novate the benefit or burden of the licence in whole or in part;
  - b) allow the Software to become the subject of any charge, lien or encumbrance; and
  - c) deal in any other manner with any or all of its rights and obligations under this Contract,without the prior written consent of the Supplier.
- 6.22 The Customer shall:
  - a) ensure that the number of persons using the Software does not exceed the number specified in the Schedules;
  - b) pay, for broadening the scope of the licences granted under this licence to cover the unauthorised access and use by the Customer's employees or associates or other persons enabled by the Customer, an amount equal to the fees which the Supplier would have levied (in accordance with its normal commercial terms then current) had it

licensed any such unauthorised access and use on the date when such access and use commenced together with interest at the rate provided for in clause 13.6, from such date to the date of payment.

- 6.23 Where the Customer chooses to host the Software on their own Customer Network, the Customer shall permit the Supplier to inspect and have access to any premises (and to the computer equipment located there) at or on which the Software is being kept or used, and have access to any records kept in connection with this licence, for the purposes of ensuring that the Customer is complying with the terms of this licence, provided that the Supplier provides reasonable advance notice to the Customer of such inspections, which shall take place at reasonable times.
- 6.24 The Customer warrants and represents that its employees and associates using the Hosted Services Platform will not be in breach of the Acceptable Use Policy detailed in Schedule 6 nor any Applicable Laws, codes or regulations including data protection laws.
- 6.25 The Supplier may suspend services with reasonable notice and without liability if:
- a) the Services are used in violation of the Acceptable Use Policy;
  - b) the Customer does not reasonably co-operate in the Supplier's investigation of any suspected violation of the Acceptable Use Policy and does not have good reason for not co-operating;
  - c) there is an attack on the servers or other event for which the Supplier reasonably believes that the suspension of Services is necessary to protect the Customer, the server, the network or the Supplier's other customers; or
  - d) if required by law or regulation or as compelled by a law enforcement or government agency.
- 6.26 The Customer will ensure that the terms of the order and any information provided are complete and accurate.
- 6.27 Both parties will co-operate with each other in all matters relating to the provision of the licenced Products and Services.
- 6.28 The Customer will provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the licenced Products and Services, and ensure that such information is accurate in all material respects.
- 6.29 Where the Customer chooses to host the Software on their own Customer Network, the Customer will prepare the Customer's premises for the supply of the licenced Products and Services.
- 6.30 The Customer will obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the licenced Products and Services are to start.

- 6.31 Where the Customer chooses to host the Software on their own Customer Network, the Customer will keep and maintain Digital Content at the Customer's premises in safe custody at its own risk, maintain the Digital Content in good condition until returned to the Supplier, and not dispose of or use the Digital Content other than in accordance with the Supplier's written instructions or authorisation.

## **7. SOFTWARE UPDATES**

- 7.1 From time to time there may be a release of the Software that corrects faults, adds functionality or otherwise amends or upgrades the Software. The Supplier will provide the Customer with all Software Updates generally made available to its customers. The Supplier warrants that no Software Updates will adversely affect the then existing facilities or functions of the Software. Where the Customer chooses to host the Software on their own Customer Network, the Customer shall install all Software Updates as soon as reasonably practicable after receipt.

## **8. SUPPLIER'S OBLIGATIONS TO THE CUSTOMER**

- 8.1 The Supplier shall supply the licenced Products and Services purchased by the Customer to the Customer in accordance with the terms and conditions set out in this Contract in all material respects.
- 8.2 The Supplier shall use all reasonable endeavours to meet any performance dates agreed by the parties, but any such dates shall be estimates only and time shall not be of the essence for delivery and performance of the licenced Products and Services.
- 8.3 The Supplier shall have the right to make any changes to the licenced Products and Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the licenced Products and Services and the Supplier shall notify the Customer in advance as soon as they are aware of the requirement to make changes.
- 8.4 The Supplier warrants and undertakes to the Customer that:
- (a) the licenced Products and Services will be provided using all reasonable care and skill and in accordance with good industry practice;
  - (b) it shall provide the Support Services in a professional manner, and supply personnel who have the relevant skills and expertise taking into account the nature of the Support Services; and
  - (c) it will provide the Support Services in line with the Service Levels;
  - (d) it has the right to grant the rights and licences hereunder and the Customer's access and use of the Software Products (whether in whole or any part) will not and the Supplier's performance of the Support Services shall not infringe the Intellectual Property Rights of any third party;
  - (e) the Software will be free from installation and material design defects;

- (f) the Software Product is a Commercial off-the-shelf (COTS) product;
- (g) it has full capacity and authority to enter into and to perform this Contract;
- (h) this Contract is executed by a duly authorised representative of the Supplier.

8.5 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

- a) the Supplier shall without limiting its other rights or remedies have the right to suspend performance of the licenced Products and Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
- b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 8.5; and

8.6 the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier limited to the costs of setting up the Software on the hosted platform or on the Customer's own servers, third party hosting costs incurred by the Supplier and data conversion or training services not invoiced by the Supplier.

8.7 The Supplier shall not knowingly introduce or permit the introduction of Malware into the Customer's information technology systems.

8.8 The Supplier warrants, represents and undertakes that it has adopted effective procedures conforming to Good Industry Practice to screen the Software Product for known Malware and that it will use its best endeavours to ensure that no computer Malware have been or will be introduced by the Supplier or any sub-contractor into the Customer's Network.

## 9. DELIVERY AND INSTALLATION OF THE LICENSED SOFTWARE PRODUCT

9.1 The Customer shall be deemed to have accepted the Software Product if:

- a) the Customer continues operational access and use of the licensed Software Product after the Trial Period, where exercised, ceases or the Customer commences access and use the licensed Software Product after the Delivery Date.

## 10. PROVIDING THE SOFTWARE PRODUCT AND SERVICES

10.1 **When we will provide the Products and Services.** During the order process we will let you know when we will provide the Products and Services to you.

- 10.2 **The Software Product is an ongoing Service or a subscription to receive licenced Software Products.** We will supply the Software Products along with any Support Services and Hosted Services Platform purchased by you until either you end the Contract as described in clause 11 or we end the Contract by written notice to you as described in clause 12.
- 10.3 **We are not responsible for delays outside our control.** If our supply of the Products and Services is delayed by an event outside our control, then we will contact you as soon as possible to let you know and we will take all commercially reasonable steps to minimise the effect of the delay. Provided we do this we will not be liable for delays caused by the event, but if there is a risk of substantial delay of longer than one month then you may contact us to end the contract and receive a full refund for any products you have paid for but not received.
- 10.4 **If you do not allow us access to provide the Products and Services.** Where the Customer chooses to host the Software on their own Customer Network, if you do not allow us access to your System network remotely to perform the Services as arranged (and you do not have a good reason for this) we may charge you additional costs incurred by us as a result. If, despite our reasonable efforts, we are unable to contact you or re-arrange access to your servers we may end the Contract and clause 13.4 will apply.
- 10.5 **Your legal rights if we deliver late.** Without prejudice to clause 5.3 you have legal rights if we deliver any Products and Services late. If we miss the delivery deadline for any Products and Services then you may treat the Contract as at an end straight away if the following apply:
- a) we have refused to deliver the Products and Services; or
  - b) delivery within the delivery deadline was essential (taking into account all the relevant circumstances); and
  - c) you told us before we accepted your order that delivery within the delivery deadline was essential.
- 10.6 **Setting a new deadline for delivery.** If you do not wish to treat the Contract as at an end straight away, or do not have the right to do so under clause 10.5, you can give us a new deadline for delivery, which must be reasonable, and you can treat the Contract as at an end if we do not meet the new deadline.
- 10.7 **Ending the Contract for late delivery.** If you do choose to treat the Contract as at an end for late delivery under clause 10.5 or clause 10.6, you can cancel your order for any of the Products and Services or reject Products and Services that have been delivered. If you wish, you can reject or cancel the order for some of those Products and Services (not all of them), unless splitting them up would significantly reduce their value. After that we will refund any sums you have paid to us for the cancelled Products and Services and their delivery.
- 10.8 **What will happen if you do not give required information to us.** We may, acting reasonably, need certain information or data from you so that we can supply the Products and Services to you. If so, this will have been stated in the description of the Products and Services on our website. We will contact you in writing to ask for this information or data and agree a time period for you to deliver this. If you do not give us this information or data within this time period

nor within 7 Business Days of us reminding you, or if you give us incomplete or incorrect information or data, we may either end the Contract (see clause 12.1) or make an additional charge of a reasonable sum to compensate us for any extra work that is required as a result. We will not be responsible for supplying the Products and Services late or not supplying any part of them if this is caused by you not giving us the information or data, we have reasonably requested within the timescales set out above.

**10.9 Reasons we may suspend the supply of Products and Services to you.** We may have to suspend the supply of a Products and Services to:

- a) deal with technical problems or make minor technical changes;
- b) update the product to reflect changes in relevant laws and regulatory requirements;

**10.10 Your rights if we suspend the supply of Products and Services.** We will contact you in advance to tell you we will be suspending supply of the Products and Services, unless the problem is urgent, or an emergency and we shall tell you how long the suspension will last. If we have to suspend the Products and Services for longer than 10 business days in any 12-month period we will adjust the price so that you do not pay for Products and Services while they are suspended. You may contact us to end the Contract for Products and Services if we suspend it, or tell you we are going to suspend it, in each case for a period of more than 30 days and we will refund any sums you have paid in advance for the Products and Services in respect of the period after you end the Contract.

**10.11 We may also suspend supply of the Products and Services if you do not pay.** If you do not pay us for the Products and Services when you are supposed to (see clause 15.4) and you still do not make payment within 14 days of us reminding you that payment is due, we may suspend supply of the Products and Services until you have paid us the outstanding amounts. We will contact you to tell you we are suspending supply of the Software Products and Additional Supporting Services. We will not suspend the Products and Services where you dispute the unpaid invoice (see clause 15.7). We will not charge you for the Products and Services during the period for which they are suspended. As well as suspending the products we can also charge you interest on your overdue payments (see clause 13.6).

## **11. DURATION AND TERMINATION**

**11.1** This Contract will commence on the Commencement Date and shall continue for the Initial Term. Thereafter, this Contract will automatically renew for successive Renewal Periods unless:

- a) either party notifies the other party of termination, in writing, at least 30 days before the end of the Initial Term or any Renewal Period, in which case this Contract will terminate upon the expiry of the Initial Term or Renewal Period; or
- b) otherwise terminated in accordance with the provisions of this Contract.

11.2 Without affecting any other right or remedy available to it, either party may terminate this Contract effective after the notice period has lapsed by giving 30 days written notice to the other party if:

- a) either party wishes to terminate the contract at the end of the Initial Term or 30 days before the end of any Renewal Period for any reason;
- b) the other party fails to pay any amount due under this Contract on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment. For the avoidance of doubt this clause shall not apply where the amount due is the subject of a genuine dispute;
- c) the other party commits a material breach of any other term of this Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
- d) 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;
- e) 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;
- f) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in 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;
- g) 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;
- h) the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
- i) 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;
- j) 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 the other party's assets and such attachment or process is not discharged within 14 days;

- k) 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 13.1(a) to clause 13.1(i) (inclusive);
  - l) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.
- 11.3 Any provision of this Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this Contract shall remain in full force and effect.
- 11.4 Termination or expiry of this Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
- 11.5 On termination of the Contract for any reason:
  - a) all rights granted to the Customer under any Products and Services shall cease; and
  - b) the Customer shall cease all activities authorised by the Licence;
  - c) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices, excluding invoices disputed in good faith, and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
  - d) Where the Customer has chosen to host the Software on their own Customer Network, the Customer shall immediately destroy or return to the Supplier (at the Supplier's option) all copies of the licenced Software Product then in its possession, custody or control and, in the case of destruction, certify to the Supplier that it has done so;
  - e) Where the Customer chooses to host the Software on their own Customer Network, within 30 days from Termination, the Customer shall, at the direction of the Supplier, either destroy or return to the Supplier all copies of the Software Products in its possession or under its control. The Supplier shall then provide an extract of the Customer Data in a SQL database format at no extra charge to the Customer;
  - f) the Supplier shall withdraw all other Support Services and the Hosted Services Platform;
  - g) the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall be unaffected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
- 11.6 **We may withdraw the Products and Services.** We may write to you to let you know that we are going to stop providing the Products and Services. We

will let you know at least 6 months in advance of our stopping the supply of the Software Products and will refund any sums you have paid in advance for Software Products which will not be provided. We will let you know at least 30 days in advance of our stopping the supply of the Products and Services and will refund any sums you have paid in advance for Products and Services which will not be provided.

## **12. IF THERE IS A PROBLEM WITH THE SOFTWARE PRODUCTS AND ADDITIONAL SUPPORTING SERVICES**

- 12.1 **How to tell us about problems.** If you have any questions or complaints about the Products and Services, please contact us. You can contact us by telephoning our support team at +44 (0)1273 242958, by emailing us at [support@baileysolutions.co.uk](mailto:support@baileysolutions.co.uk) or writing to us at Curtis House, 34 Third Avenue, Hove, BN3 2PD.
- 12.2 **Your obligation to discontinue access and use of rejected Software Products.** If you wish to exercise your legal rights to reject Software Products you must delete all Digital Content from your servers or cease remote access to the Software Products.
- 12.3 **Your obligation to return rejected Goods.** If you wish to exercise your legal rights to reject Goods you must either return them in person to where you bought them, post them back to us or (if they are not suitable for posting) allow us to collect them from you. We will pay the costs of postage, please contact us for a free returns label or collection.

## **13. ANNUAL LICENCE COSTS AND PAYMENT**

- 13.1 **Where to find the cost for the licence.** The cost of the licenced Software Products (which excludes VAT where applicable) will be the cost set out in our Annual Licence Costs Table 1 at Schedule 1 in force at the date of your order unless we have agreed another price in writing. We take all reasonable care to ensure that the cost advised to you is correct. However please see clause 13.3 for what happens if we discover an error in the cost of the licence you order. Set up costs are to be found at Table 2 of Schedule 1.
- 13.2 **We will pass on changes in the rate of VAT.** If the rate of VAT changes between your order date and the date we supply the Software Products, we will adjust the rate of VAT that you pay, unless you have already paid for the product in full before the change in the rate of VAT takes effect.
- 13.3 **What happens if we got the price wrong.** It is always possible that, despite our best efforts, some of the products we sell may be incorrectly priced. We will normally check prices before accepting your order so that, where the product's correct price at your order date is less than our stated price at your order date, we will charge the lower amount. If the product's correct price at your order date is higher than the price stated, we will contact you for your instructions before we accept your order. If we accept and process your order where a pricing error is obvious and unmistakeable and could reasonably have been recognised by you as a mispricing, we may end the Contract and refund you any sums you have paid.

13.4 **When you must pay and how you must pay.** We accept payment with most major credit cards and debit cards via our website and by online bank transfer. When you must pay depends on what Software Product Licence you are buying:

- a) For **Software Product licences**, you must pay for the Licence in advance according to your payment terms usually monthly, quarterly, half-yearly or annually, before we will give you access to any Digital Content. If you signed up for a Trial Period we will give you access to the Digital Content for a period of one month before you start paying in advance.
- b) For **Support Services**, you must pay for the Support Services in advance according to your payment terms usually monthly, quarterly, half-yearly or annually.
- c) For **Additional Services**, you must make an advance payment of 50% of the price of the services, before we start providing them. We will invoice you for the balance of the price of the Additional Services when we have completed them. You must pay each invoice within 30 calendar days after the date of the invoice.

13.5 Fees are subject to annual review by the Supplier with effect from each anniversary of this Contract and such increase shall affect this Contract upon the anniversary of this Contract in the case of annual review and immediately in any other case unless the Customer has notified the Supplier within 30 days of receipt of the invoice of revised Fees that it wishes to terminate the Contract. In such circumstances, the Contract will terminate after 30 days' notice.

13.6 **We can charge interest if you pay late.** If you do not make any payment to us by the due date we may charge interest to you on the overdue amount at the rate of 4% a year above the base lending rate of the Bank of England from time to time. This interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. You must pay us interest together with any overdue amount.

13.7 **What to do if you think an invoice is wrong.** If you think an invoice is wrong please contact us promptly to let us know and we will not charge you interest until we have resolved the issue.

#### **14. OUR RESPONSIBILITY FOR LOSS OR DAMAGE SUFFERED BY YOU**

14.1 All other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into this Contract, any licence granted or any collateral contract, whether by statute, common law or otherwise, are hereby excluded, including the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose [or the use of reasonable skill and care].

14.2 Except as expressly stated in clauses 14.2, 14.5 and 15:

- a) Neither party shall in any circumstances have any liability for any losses or damages, including business losses, which may be suffered by the other party (or any person claiming under or through the other party),

whether the same are suffered directly or indirectly or are immediate or consequential, and whether the same arise in contract, tort (including negligence) or otherwise howsoever, which fall within any of the following categories:

- (i) special damage even if the other party was aware of the circumstances in which such special damage could arise;
  - (ii) loss of profits (whether direct or indirect);
  - (iii) loss of business;
  - (iv) loss of anticipated savings;
  - (v) business interruption;
  - (vi) loss of business opportunity;
  - (vii) loss of goodwill;
  - (viii) loss or corruption of data;
- b) the total liability of the either party, whether in contract, tort (including negligence) or otherwise and whether under or in connection with this Contract or any licence granted hereunder or any collateral contract, shall in no circumstances exceed a sum equal to the Subscription Fee paid by the Customer; and

**14.3 Neither party excludes liability for:**

- a) death or personal injury caused by its negligence or the negligence of its officers, employees, contractors or agents;
- b) fraud or fraudulent misrepresentation;
- c) breach of the obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
- d) any other liability which may not be excluded by law.

**14.4 All dates supplied by the Supplier for the delivery and performance of the licenced Products and Services shall be treated as approximate only. The Supplier shall not in any circumstances be liable for any loss or damage arising from any delay in delivery beyond such approximate dates.**

**15. INTELLECTUAL PROPERTY RIGHTS**

**15.1** The Customer acknowledges that all Intellectual Property Rights in the licensed Software Products and any Software Updates belong and shall belong to the Supplier, and the Customer shall have no rights in or to the licensed Software Products other than the right to access and use it in accordance with the terms of the Licence granted under the terms of this Contract.

**15.2** The Supplier undertakes at its own expense to defend the Customer or, at its option, settle any claim or action brought against the Customer alleging that the possession, access and use of the licensed Software Products, Software

Updates and any related Software Documentation in accordance with the terms of this Licence infringes the UK Intellectual Property Rights of a third party (**Claim**) and shall be responsible for any reasonable losses, damages, costs (including legal fees) and expenses incurred by or awarded against the Customer as a result of or in connection with any such Claim. For the avoidance of doubt, clause 15.2 shall not apply where the Claim in question is attributable to possession, access and use of the Software Products (or any part thereof) by the Customer other than in accordance with the terms of this Contract, access and use of the licensed Software Products in combination with any hardware or software not supplied or specified by the Supplier if the infringement would have been avoided by the access and use of the licensed Software Products not so combined, or access and use of a non-current release of the licensed Software Products.

15.3 If any third party makes a Claim, or notifies an intention to make a Claim against the Customer, the Supplier's obligations under clause 15.2 are conditional on the Customer:

- 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 (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.

15.4 If any Claim is made, or in the Supplier's reasonable opinion is likely to be made, against the Customer, the Supplier may at its sole option and expense:

- a) procure for the Customer the right to continue to access and use the Software (or any part thereof) in accordance under the terms of this Contract;
- b) modify the Software so that it ceases to be infringing;
- c) replace the Software with non-infringing software; or
- d) terminate the Licence immediately by notice in writing to the Customer and refund any of the Subscription Fee paid by the Customer as at the date of termination (less a reasonable sum in respect of the Customer's

access and use of the Software to the date of termination) on return of the Software Products and all copies thereof,

provided that if the Supplier modifies or replaces the Software Products, the modified or replacement Software must comply with the warranties contained in clause 8.4 and the Customer shall have the same rights in respect thereof as it would have had under those clauses had the references to the date of this Contract been references to the date on which such modification or replacement was made.

- 15.5 Clause 15.4 shall not apply to the extent that any claim or action referred to in that clause arises directly or indirectly through the possession or use of any Third-Party Software or through the breach of any additional terms with any Third-Party entered into by the Customer.

## **16. SUPPORT SERVICES**

- 16.1 During the Term the Supplier shall perform the Support Services during the Service Hours in accordance with the Service Levels as defined in Schedule 2.

- 16.2 As part of the Support Services, the Supplier shall:

- a) provide Help Desk Support by means of the following telephone number +44 (0) 1273 242 958 and e-mail address [support@baileysolutions.co.uk](mailto:support@baileysolutions.co.uk) and Twitter account @JustAskBailey
- b) commit appropriate resources to the provision of Support Services;
- c) where Help Desk Support is not provided within the relevant Service Level response time and the Customer escalates its Support Request to an individual of appropriate qualification or experience on the Contact List, provide developers support;
- d) use all reasonable endeavours to correct all Faults notified under paragraph 18.3 (a); and
- e) provide technical support for the Software in accordance with the Service Levels.

- 16.3 The Supplier may reasonably determine that any services not covered by this contract are out-of-scope Services. If the Supplier makes any such determination, it shall promptly notify the Customer of that determination.

- 16.4 The Customer acknowledges that the Supplier is not obliged to provide any Services that are out-of-the-scope of this Contract.

- 16.5 If, during the Term, either:

- a) the Supplier fails, at any time, to communicate or provide to a workaround or resolution to any difficulty or query arising in relation to the Software in accordance with the Service Level; or

- b) there has been a Persistent Failure by the Supplier to meet the Service Level response and completion timescales indicated in Schedule 2 of this Contract;

the Supplier shall be deemed to be in material breach of its obligations under this Contract.

## **17. SUBSCRIPTION FEES**

- 17.1 The provision of Support Services on a remote, off-site basis (such as over the telephone or by e-mail) within the Term shall be included in the Subscription Fees.
- 17.2 The provision of Support Services outside the Term or at the Customer's site or the provision of out-of-scope Services shall be charged for at the applicable rates set out in Schedule 4.

## **18. SUBMITTING SUPPORT REQUESTS AND ACCESS**

- 18.1 The Customer may request Support Services by sending the Supplier a prompt written request for support.
- 18.2 Each written request should include the Software Product in use, the function in use, a description of the problem and the start time of the incident.
- 18.3 The Customer shall provide the Supplier with:
  - a) prompt notice of any Errors as defined in Schedule 2; and
  - b) such output and other data, documents, information, assistance and (subject to compliance with all Customer's security and encryption requirements notified to the Supplier in writing) remote access to the Customer Network, as are reasonably necessary to assist the Supplier to reproduce operating conditions similar to those present when the Customer detected the relevant Fault and to respond to the relevant Support Request.
- 18.4 All Support Services shall be provided from the Supplier's office.
- 18.5 The Customer acknowledges that, to properly assess and resolve requests for support, it may be necessary to permit the Supplier remote access to the Customer Network and installed Software Product via Citrix GoToAssist support application only for the duration of the online support session.
- 18.6 The Customer shall provide such access promptly, provided that the Supplier complies with all the Customer's security requirements and other policies and procedures relating to employees and contractors remotely accessing the Customer's network and installed Software Product.

## **19. SERVICE LEVELS**

- 19.1 The Supplier shall:

- a) prioritise all requests for support based on its reasonable assessment of the severity level of the problem reported; and
- b) respond to all requests for support in accordance with the responses and response times specified in Schedule 2:

## **20. HOW WE MAY USE YOUR PERSONAL DATA**

20.1 We will use and process the personal data you provide to us only:

- a) to supply Products and Services to you;
- b) to process your payment for Software Products and Additional Supporting Services;
- c) if you agreed to this, to inform you about similar Products and Services that we provide, but you may stop receiving these at any time by contacting us;
- d) for the duration of this Contract;
- e) on your documented, reasonable and lawful instructions.

20.2 We will only give your personal data to third parties where the law either requires or with your prior written consent.

## **21. DATA PROTECTION**

21.1 Both Parties will comply with all applicable requirements of Data Protection Laws. This clause 21.1 is in addition to, and does not relieve, remove or replace, a Party's obligations under Data Protection Laws.

21.2 The Parties acknowledge that for the purposes of Data Protection Laws, the Customer is the Data Controller and the Data Processor, and the Supplier is the Data Processor where Customer Personal Data is in the Software Products hosted on the Hosted Services Platform.

21.3 The types of Customer Personal Data to be processed, the categories of Data Subjects and the nature and purpose of such processing are set out in 21.5 and the Customer hereby confirms that it has the right to appoint the Supplier as a processor and, in so doing, to share such personal data with it for the duration of this contract.

21.4 Without prejudice to the generality of clause 21.1 above, the Customer will ensure that it has all necessary appropriate consents (when relying on consent as a lawful ground) and notices in place to enable lawful transfer of the Customer Personal Data to the Supplier for the duration and purposes of this contract..

21.5 The processing of Personal Data to be carried out by the Supplier under this Contract is as follows:

<b>Subject matter</b>	Provision of a hosted library management service including Software Updates, support and
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	maintenance services by the Supplier
<b>Duration</b>	The duration of the Contract
<b>Nature</b>	Continual processing of data via a hosted service, along with incidental and occasional access only in the course of fault replication, diagnosis and rectification related to the Supplier's Software Products & associated services
<b>Purpose</b>	Provision of a hosted service, testing, diagnosis and rectification of software errors and, where required, testing of Software Updates and fixes provided
<b>Type of Personal Data</b>	Names, job titles, business addresses, work email addresses, telephone numbers and user names. Transactions carried out by users, including but not limited to borrowing items, receiving journals on circulation, requesting or authorising the purchase of new titles.
<b>Categories of Data Subjects</b>	Contacts at publishers; the Customer's staff or library members.
<b>Processing Instructions</b>	To provide a hosted service as per this Contract and other instructions agreed between the parties from time to time whether for ad hoc work or otherwise
<b>Processing subcontractor (s)</b>	Acora / Just Computing

21.6 Without prejudice to the generality of clause 21.1 above, the Supplier shall:

- (a) ensure those processing Customer Personal Data are under a confidentiality obligation;
- (b) process that Customer Personal Data only on the written instructions of the Customer unless the Supplier is required by Applicable Laws to otherwise Process that Customer Personal Data. Where the Supplier is relying on laws of a member of the European Union or European Union law as the basis for Processing Personal Data, the Supplier shall promptly notify the Customer of this before performing the Processing required by the Applicable Laws unless those Applicable Laws prohibit the Supplier from so notifying the Customer;
- (c) ensure that it has in place appropriate technical and organisational measures, which it shall notify to the Customer for review, to protect against unauthorised or unlawful Processing of Customer Personal Data and against accidental loss or destruction of, or damage to, Customer Personal Data, appropriate to the harm that might result from the unauthorised or unlawful Processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Customer Personal Data, ensuring confidentiality, integrity, availability and resilience of its

systems and services, ensuring that availability of and access to Customer Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

- (d) not transfer, or permit any third party sub-Processor of the Provider to transfer, any Customer Personal Data outside of the European Economic Area unless the prior written consent of the Customer has been obtained (and the Parties acknowledge that at the date of this contract no such consent has been given and nothing in this contract constitutes such consent) and the following conditions are fulfilled:
  - (i) the Customer or the Supplier has provided appropriate safeguards in relation to the transfer;
  - (ii) the Data Subject has enforceable rights and effective legal remedies;
  - (iii) the Supplier complies with its obligations under the Data Protection Laws by providing an adequate level of protection to any Customer Personal Data that is transferred; and
  - (iv) the Supplier complies with reasonable instructions notified to it in advance by the Customer with respect to the Processing of the Personal Data;
- (e) when requested by the Customer assist the Customer, at the Customer's reasonable cost, in responding to any request from a Data Subject and in ensuring compliance with the Customer's obligations under the Data Protection Legislation with respect to security, breach notifications, Data Protection Impact Assessments and consultations with any Supervisory Authority or regulator;
- (f) The Supplier shall notify the Customer without undue delay when it becomes aware of any accidental, unlawful or unauthorised destruction, loss, alteration, disclosure of, or access to any Confidential Information or personal data provided to Supplier under this Contract, or any unauthorised or unlawful processing of such information or data, and together with such notice provide a written description of all relevant facts and measures taken or proposed to be taken by Supplier to address the issue;
- (g) At the written direction of the Customer delete or return all Customer Personal Data processed by the Supplier on behalf of the Customer unless required by Applicable Law to store the Customer Personal Data;
- (h) On Termination of this contract the Supplier will delete or return (by election of the Customer) delete or return all Customer Personal Data processed by the Supplier on behalf of the Customer;
- (i) maintain and make available to the Customer on request all complete and accurate records and information necessary to demonstrate the Supplier's compliance with this contract and allow for audits by the Customer or the Customer's designated auditor.

- 21.7 Subject to this clause 21.7 and sub-clause 21.6(d) above, the Customer consents to the Supplier appointing the third party sub-Processor(s) named in clause 21.5 of this Contract as a third-party sub-Processor or third-party sub-Processors of Personal Data. The Supplier confirms that it has entered with such third party sub-Processor(s) into a written agreement incorporating terms which provide the same data protection obligations as those set out in this clause 21. As between the Customer and the Supplier, the Supplier shall remain fully liable for all acts or omissions of any third-party sub-Processor appointed by it pursuant to this clause 21.7.

## **22. OTHER IMPORTANT TERMS**

- 22.1 **Transfer this Contract to someone else.** Neither party will, without the prior written consent of the other party assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Contract.
- 22.2 **Dispute Resolution:** Any Dispute shall be referred by either party to the Contract Manager of the Customer and the Board of Directors of the Supplier for resolution (the nominated representatives). If the Dispute is not resolved by agreement in writing between the parties within 14 days after the Dispute having first been referred to the Contract Manager of the Customer and the Board of Directors of the Supplier, the Dispute shall be resolved in accordance with clause 21.3.
- 22.3 **A Dispute may at either party's request be referred to mediation.** The mediation shall be conducted by a single mediator appointed by the parties or, if the parties are unable to agree on the identity of the mediator within 21 days after the date of the request that the Dispute be resolved by mediation, or if the person appointed is unable or unwilling to act, the mediator shall be appointed by the mediation body chosen by the applicant party. The mediation shall be conducted in London or at some other location that is convenient to both parties and in English. Mediation is without prejudice to the rights of the parties in any future proceedings.
- 22.4 **If a court finds part of this Contract illegal, the rest will continue in force.** Each of the paragraphs of these terms operates separately. If any court or relevant authority decides that any of them are unlawful, the remaining paragraphs will remain in full force and effect.
- 22.5 **Even if we delay in enforcing this Contract, we can still enforce it later.** If we do not insist immediately that you do anything you are required to do under these terms, or if we delay in taking steps against you in respect of your breaking this Contract, that will not mean that you do not have to do those things and it will not prevent us taking steps against you at a later date. For example, if you miss a payment and we do not chase you, but we continue to provide the Products and Services, we can still require you to make the payment at a later date.

## **23. WAIVER**

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

## **24. REMEDIES**

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

## **25. ENTIRE CONTRACT**

- 25.1 These terms and conditions, the Licence, the schedules and the documents referred to in this Contract or otherwise referred to herein contain the whole agreement between the parties relating to the subject matter hereof and supersede all prior agreements, arrangements and understandings between the parties relating to that subject matter.
- 25.2 Each party acknowledges that, in entering into these terms and conditions, the Licence and any documents referred to in this Contract, it does not rely on any statement, representation, assurance or warranty (whether it was made negligently or innocently) of any person (whether a party to this licence or not) (**Representation**) other than as expressly set out in the Contract, Licence 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 expressly provided in these terms and conditions and under the terms of the Contract.
- 25.4 Nothing in this clause shall limit or exclude any liability for fraud.

## **26. VARIATION**

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

## **27. SEVERANCE**

- 27.1 If any provision or part-provision of this Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Contract.

- 27.2 If any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

## **28. COUNTERPARTS**

- 28.1 This Contract may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one Contract.

## **29. THIRD-PARTY RIGHTS**

- 29.1 A person who is not a party to this Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract, but this does not affect any right or remedy of a third party which exists, or is available, apart from that Act.
- 29.2 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this Contract are not subject to the consent of any person that is not a party to this Contract.

## **30. NO PARTNERSHIP OR AGENCY**

- 30.1 Nothing in this Contract 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, or authorise any party to make or enter into any commitments for or on behalf of any other party.
- 30.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

## **31. FORCE MAJEURE**

- 31.1 Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for 2 weeks, the party not affected may terminate this Contract by giving 28 days' written notice to the affected party.

## **32. NOTICES**

- 32.1 **Any notice given to a party under or in connection with this contract shall be in writing and shall be:**
- a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or

- b) sent by email to our main email address.

**32.2 Any notice shall be deemed to have been received:**

- a) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
- b) if sent by pre-paid first-class post or other next working day delivery service, at 10.00 am on the second Business Day after posting or at the time recorded by the delivery service.
- c) if sent by email, at 9.00 am on the next Business Day after transmission.

32.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

**33. MODERN SLAVERY ACT**

**33.1 The Supplier represents and warrants that at the date of this Contract:**

- a) to the best of its knowledge:
  - (i) it is in no way complicit with, involved in and/or associated with slavery and/or human trafficking; and/or
  - (ii) no suppliers or providers of goods and/or services to the Supplier is in any way complicit, involved in and/or associated with slavery and/or human trafficking;
- (a) neither it nor any of its officers, employees or other persons associated with it:
  - (i) has been convicted of any offence involving slavery and/or human trafficking; and
  - (ii) having made reasonable enquiries, so far as it is aware has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and/or human trafficking.

33.2 The Supplier understands that if it is established that these statements are false, that this will be deemed to be a repudiatory breach of this Contract which will allow the Customer to terminate this Contract with immediate effect. In the event of such termination the Customer will be entitled to all and any damages associated with and/or arising out of that termination.

**34. GOVERNING LAW AND JURISDICTION**

34.1 This Contract 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.

- 34.2 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 Contract or its subject matter or formation (including non-contractual disputes or claims).
- 34.3 The Customer irrevocably appoints [NAME of [ADDRESS with EMAIL ADDRESS and TEL NUMBER] as its agent to receive on its behalf in England or Wales service of any proceedings under clause 33.2. Such service shall be deemed completed on delivery to such agent (whether or not it is forwarded to and received by the Customer and shall be valid until such time as the Supplier has received prior written notice from the Customer that such agent has ceased to act as agent. If for any reason such agent ceases to be able to act as agent or no longer has an address in England or Wales, the Customer shall forthwith appoint a substitute acceptable to the Supplier and deliver to the Supplier the new agent's [NAME of [ADDRESS with EMAIL ADDRESS and TEL NUMBER] within England and Wales. [Only include this clause for overseas customers]

**SIGNATORIES**

**SIGNED by**

**For Customer xxx**

.....

**Position:**

**Date:**

**SIGNED by**

**Penny Bailey**

**Managing Director**

**Bailey Solutions Limited**

.....

**Date:**

## SCHEDULE 1: ANNUAL COSTS

Table 1 – Subscription Fee for Software Products, Support Services and Hosted Services Platform

Digital Content	Payment Terms	Quantity	Price per unit	Total Price per term
<p>[Product/Package]</p> <p>Includes:</p> <p>System usage licence per annum</p> <ul style="list-style-type: none"> <li>▪ Catalogue</li> <li>▪ Loans</li> <li>▪ OPAC enterprise site licence for service users</li> <li>▪ 1 admin usage licence (s)</li> <li>▪ Acquisitions and Finance</li> <li>▪ Serials</li> <li>▪ Interlibrary Loans</li> <li>▪ Hosted Services Platform</li> <li>▪ Hosted Support Services</li> <li>▪ In-house Support</li> <li>▪ 1,000 records</li> </ul> <p>○</p>	<p>In advance for 12 months</p> <p>Payable</p> <p>Monthly</p> <p>Quarterly</p> <p>Half-yearly</p> <p>Annually</p>	One	£00.00	£00.00
[Product] additional 1,000 records	<p>In advance for 12 months</p> <p>Payable</p> <p>Monthly</p> <p>Quarterly</p> <p>Half-yearly</p> <p>Annually</p>	One	£00.00	£00.00
00GB digital storage	<p>In advance for 12 months</p> <p>Payable</p> <p>Monthly</p> <p>Quarterly</p> <p>Half-yearly</p> <p>Annually</p>	One	£00.00	£00.00
[Product] additional admin usage licences	<p>In advance for 12 months</p> <p>Payable</p>	One	£00.00	£00.00

	Monthly Quarterly Half-yearly Annually			
Hosted Platform Services	In advance for 12 months Payable Monthly Quarterly Half-yearly Annually	One	£00.00	£00.00
Test Hosted Services Platform	In advance for 12 months Payable Monthly Quarterly Half-yearly Annually		£00.00	£00.00
Hosted Support Services	In advance for 12 months Payable Monthly Quarterly Half-yearly Annually		£00.00	£00.00
In-house Support Services	In advance for 12 months Payable Monthly Quarterly Half-yearly Annually		£00.00	£00.00
Subtotal per term				£00.00
Annual total				£00.00

Table 2 – One-off costs for Additional Services

Item	Payment Terms	Quantity	Price per unit	Total Price per term
Training	50% in advance Balance invoiced on completion	One	£00.00	£00.00
Consultancy	50% in advance Balance invoiced on completion	One	£00.00	£00.00
Data Conversion	50% in advance Balance invoiced on completion	One	£00.00	£00.00
Technical Services	50% in advance Balance invoiced on completion	One	£00.00	£00.00
Travel expenses	Invoiced on completion	One journey	£00.00	£00.00
Total				£00.00

## SCHEDULE 2: SERVICE LEVELS

### A. Definitions

In this Schedule, the following definitions shall apply:

**Error Category** means the relevant category of error (i.e. Priority 1, Priority 2, Priority 3, Priority 4, Priority 5 or Priority 6) specified in the table below;

**Priority 1(Critical problem)** means an **urgent problem**: the Software Product fails to operate in accordance with the Software Documentation in any respect or for one or more users are unable to access or find the system unusable or there are severe restrictions in the operation of the Software that prevents the performance of any productive work;

**Priority 2 (Key problem)** means a **serious problem**: a major function is severely impacted with no work around is experiencing a problem that can be replicated, which causes a severe loss of functionality; or it means a means a **problem**: an important function is experiencing an intermittent problem, or a common operation is failing consistently with no work-around;

**Priority 3 (Minor problem)** means **minor problems**: all other errors especially those with a workaround or temporary fix, or a known or newly discovered minor bug or feature of the software that in no way affects the operational functionality of the software and will normally be fixed in a patch or new release of software;

**Priority 4 (Requirement)** means **requirements** of the Customer previously agreed by the Supplier as deliverable in the software and which will normally be included in a new release of the software;

**Priority 5 (Request for modification)** means a modification request to improve an existing feature of the software that in no way affects the operational functionality of the software and will normally be included in a new release of software. This type of report will be closed as a Helpdesk issue and logged as a modification request with the relevant developer of the software;

**Priority 6 (Suggestion)** means a request for a new feature or function in the software that the Supplier will consider for inclusion in a new release of the software at its own discretion. This type of report will be closed as a Helpdesk issue and logged as a new feature or function request with the relevant developer of the software;

**Work-Around or Temporary Fix** – means a temporary fix or work-around for the error in accordance with Good Industry Practice and which allows the Customer to operate the current release without substantial degradation in performance. A temporary fix can include with the permission of the Customer changing back to the previous version of software, patch or alternate design approach. In the event the Customer does not accept a roll-back to the previous version then the Service Level will be re-negotiated for that one event;

**Permanent Resolution** – means the permanent resolution of the error in accordance with Good Industry Practice and which restores the current software, to full performance in accordance with the Software Documentation.

## B. Service Levels

The Service Levels in respect of the Services will be as follows:

Error category	Priority Level	Response time	Fix or report back deadline	Logged?
First line support questions	High	Within 7 hours	N/A	No
Priority 1	Urgent	Response within 60 minutes with estimated delivery time	Between 30 minutes and 3 Business Days depending on the severity of the problem	Yes
Priority 2	High	Response within 3 hours with estimated delivery time	“Quick fix” or report delivered within 5 Business Days	Yes
Priority 3	Medium	Response within 7 hours with estimated delivery time	Delivered with the next version release	Yes
Priority 4	Medium	Agreed at outset	Delivered when the modular area is next re-worked in a future release.	Yes
Priority 5	Not urgent		Delivered when the modular area is next re-worked in a future release. Release notes will include details of modifications and new features.	Yes

Priority 6	Not urgent		Delivered when the modular area is next re-worked in a future release. Release notes will include details of modifications and new features.	Yes
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Response times indicated are for communications successfully received within Service Hours on business days.

The "Fix or report back deadline" of a Priority 1-6 is the period from the time that the relevant issue and / or incident has been reported to the Supplier to the point of its resolution and "resolution" means in relation to a Priority 1-6 either:

- (a) the Customer has been provided with a Permanent Resolution or the root cause of the issue and / or incident has been removed and the Software and Support Services are being provided in accordance with this Contract; or
- (b) the Customer has been provided with a Work-Around or Temporary Fix in relation to the issue and / or incident deemed acceptable by the Customer (acting reasonably).

The "Response Time" means the period between the time that the Customer reports or is deemed to have reported an issue and / or incident using the contact details in clause 2.1 of this Contract and the Supplier responding during the initial call or following the issue and / or incident being logged via email or twitter.

The nature and urgency of correction of the problem shall be agreed between the Supplier and the Customer, and the relevant Error category / Priority Level shall be assigned to its resolution, during the Customer's initial call to the Supplier or when the Supplier responds to the Customer following the Customer logging the problem via email or twitter. The Supplier shall assess and resolve the problem in accordance with the Response Time and Fix or report back deadlines in the table above.

Response times and Fix or report back deadlines shall be measured and elapse during Service Hours only.

In the event that the Supplier becomes aware that it will (or is likely to) fail to achieve a Response time or Fix or report back deadline in the above table, the Supplier shall promptly notify the Customer's employee, officer or contractor who reported the issue and the Customer's IT Director of the fact of the delay, summarise the reasons for it and advise when the Supplier believes the issue will be fixed and keep such Customer personnel abreast of any further delays.

## **C SUPPORT SERVICES**

### **1. PROVISION OF SOFTWARE UPDATES**

#### **1.1 The Supplier shall:**

- a) promptly notify the Customer of all Software Updates issued by the Supplier to users of the Software or software substantially similar to the Software after the Commencement Date;
- a) upon written request from the Customer, promptly supply the Customer with any of the Software Updates described in the preceding subparagraph and shall install the Update and perform all necessary customisation and configuration to ensure that the Software continues to operate as it did prior to the Update, at the cost to the Customer described in paragraph (b) of Schedule 4 of this Contract.

#### **1.2 Each Update requested by the Customer shall be tested prior to Delivery to the Customer to ensure that the Update does not have any adverse impact on the operation of the Software as it existed prior to the Update and the incorporation of the Update does not cause the Supplier to breach any of the warranties set out in the Software Licence.**

#### **1.3 The Supplier shall deliver with each Update, adequate Release Notes containing an explanation of the purpose of the Update, details of the effect of the Update on the existing Software and instructions on the access and use of the Update, including written notification of any necessary amendments to operating manuals or other Software Documentation issued by the Supplier pursuant to the Software Licence.**

### **2. HELP DESK SERVICE**

- 2.1 The Supplier shall, during the Service Hours, provide the personnel of the Customer or any of the Customer's Affiliates with any technical advice and assistance by telephone and through a web-based portal as such personnel may from time to time reasonably request, to resolve any technical faults with the Software. Customers may place an unlimited number of calls to the helpdesk for technical faults.

### **3. CORRECTIVE MAINTENANCE**

- 3.1 On receipt of a notification from the Customer or its nominee (whether by telephone, email, fax or through any method of web-based notification agreed between the parties from time to time) of an Error in the Software, the Supplier shall ensure that:
  - a) correction of the fault or error is commenced by remote diagnostics as soon as possible and in any event within the relevant response time specified in the Service Levels; and

- b) the correction is completed promptly and in any event within the relevant fix, report back deadline or resolution time specified in the Service Levels.
- 3.2 The Supplier will be responsible for gathering and reporting of all error requests and will report to the Customer on response times on a monthly basis to the Customer's Contract Manager.
- 3.3 If the Customer discovers that the Software Documentation does not provide adequate or correct instruction for the proper use of any function or facility set out in the Software Documentation, the Customer shall give the Supplier written notice of the fault in question. The Supplier shall promptly correct the fault and provide the Customer with appropriate amendments to the Software Documentation.
- 3.4 The Supplier shall maintain a detailed written record, in a form to be agreed between the parties, of all maintenance work carried out by the Supplier under this Contract. That record shall be completed immediately following the performance by the Supplier of the relevant maintenance work and made available to the Customer on request.
- 3.5 **The Subscription Fees do not include:**
  - a) cure of equipment defects or repairs to, or the supply of, consumable items such as discs or tapes; or
  - b) correction of faults or errors in the Software resulting from:
    - (i) changes to the Software except for changes arising from any Software Updates installed pursuant to this Contract or other changes implemented by, or with the approval (not to be unreasonably withheld or delayed) of, the Supplier; or
    - (ii) access and use of the Software in a manner which does not comply with the requirements of the Software Documentation.
- 3.6 If the Customer requests corrective maintenance in any of the circumstances set out in paragraph 3.5, the Supplier shall provide them with the written consent of the Customer and shall charge for them at the rates set out in the Rate Card in Table 2, Schedule 1.
- 4. ADDITIONAL TERMS IN RESPECT OF HELPDESK AND CORRECTIVE MAINTENANCE**
  - 4.1 The Customer should submit all support issues and questions by telephone, email or post. The Customer should send emails to support@baileysolutions.co.uk. Emails submitted to individual named personnel will not have guaranteed response times, as individuals are not always available.
  - 4.2 The Customer will provide knowledgeable IT support personnel to process database scripts, replace web pages and deliver the administrator interface. The Supplier cannot be liable for fixes which are not applied by the Customer's IT support within a reasonable time frame.

- 4.3 The Customer will submit a copy of their database within a reasonable time frame when requested by the Supplier if the error appears to be related to data specifics for that Customer. AND / OR the Customer will permit remote access sessions by prior arrangement using GoToAssist Citrix technology or similar to access the Customer's computer or server on which the Customer is experiencing a problem. Data will be treated in strictest confidence.
- 4.4 The Supplier will provide sufficient phone lines and staff so that support phone calls are answered in person within 8 rings. If, at exceptionally busy times, there are insufficient personnel to answer the phones, the call will be put through an answer machine. The Supplier will ensure that this occurs in less than 5% of the month's contracted Service Hours. Outside of the contracted Service Hours, phone calls will be put through to an answer machine and picked up when the office is next open.
- 4.5 The Supplier will assign a member of staff to monitor support emails during the contracted Service Hours.
- 4.6 The Supplier will maintain a database of support issues that need technical intervention, and record the Error Category / Priority Level, the customer who reported the issue, the modular area, and the deadline (if applicable).
- 4.7 The Supplier will supply a report from the support database detailing the support issues and progress on them.
- 4.8 The Supplier will hold regular User Group meetings or make contact via the email forums to help determine development priorities.
- 4.9 The Supplier will log all requests for modification and new features in the support database. The Supplier will use its discretion in deciding whether or not to include requests for modifications and new functions in future releases.
- 4.10 The Supplier will send release notes with each release detailing modifications and new features included in that release to all registered users.

## **SCHEDULE 3: SECURITY POLICY**

### **1. SECURITY MEASURES**

The Customer's systems, assets and resources must not in any way be adversely impacted by the failure of the Supplier to comply with the Customer's security requirements. The Supplier shall maintain security measures agreed between the Customer and the Supplier at all times without exception. The Supplier shall notify the Customer of any proposed changes to the hardware, software or procedures that will affect the security of the Customer Data. Contract must be given by the Customer before any change is implemented.

### **2. CONFIDENTIALITY**

Without limiting the provisions of clause 21 of this Contract, the Supplier shall not disclose (other than in accordance with this Contract) any Customer Data to a third party and shall take appropriate security measures to prohibit unauthorised access to Customer Data. Agreed procedures in maintaining security measures must be adhered to, including but not limited to:

- a) printed documents (must be stored securely and destroyed by shredding);
- b) restriction on employee remote access to email or other web-based sites onto or through which information can be uploaded or otherwise transferred; and
- c) prohibiting copies being made to removable media, including CDs, floppy disks and USB devices. This includes laptops that are taken off-premises.

The Supplier shall implement security measures that meet accepted standards of good practice ISO 27001 for the hardware, software used and internal procedures to provide the Service to the Customer.

### **3. SECURITY INCIDENTS**

Any security incident potentially impacting the confidentiality, integrity or availability of the Customer Data must be reported as soon as possible and not later than within 48 hours to the Customer's principle contact and to the Supplier's Head of Technical Support as soon as possible and not later than within 48 hours of the incident.

### **4. STORING CUSTOMER DATA**

Copies or backups of Customer Data on the Supplier's internal servers must not take place. Save that the Supplier may retain data relating to the Supplier's reporting and training obligations under this Contract.

The Customer Data shall not be retained on any system for longer than is necessary for the performance of the Services. The Supplier must take steps to ensure that information is not retained unnecessarily on any computer servers.

## 5. SCREENING OF PERSONNEL

Prior to engaging any employees, and permitted agents, consultants or contractors in the provision of the Services, the Supplier shall, in accordance with Good Industry Practice and to the extent permitted by applicable law and regulations, undertake appropriate background verification checks on such persons or entities, with a view to ensuring that such persons or entities are suitable to be engaged in the provision of the Services, having regard to the nature of the Services and the Customer information to which such persons or entities will have access in the course of providing the Services.

## 6. USER IDS

The Customer may be issued with user identification and authentication containing a unique identifier ("**User ID**"). The Supplier acknowledges that User IDs and any passwords are unique, and the Supplier shall ensure that its employees, and permitted agents, consultants and contractors do not share their allocated User ID or passwords with any other individual.

## 7. ACCESS RIGHTS

The Supplier shall review access rights of its employees, and permitted agents, consultants and contractors at regular intervals to ensure that only those of its employees, and permitted agents, consultants and contractors who are engaged in the provision of the Services have access rights to any Customer Data or Customer information technology systems, and then only to the extent required in the context of the particular work undertaken by the relevant employee, permitted agent, consultant or contractor. The Supplier shall ensure that such access rights are immediately removed from any individuals or entities who cease to be employed by the Supplier or otherwise cease to be engaged by the Supplier in the provision of the Services.

## 8. INFORMATION SECURITY POLICY

Not later than 1 month after the Commencement Date, the Supplier shall have prepared an information security policy consistent with the requirements of this Schedule 3 and clearly defining all information security responsibilities of the Supplier (the **Supplier Information Security Policy**) and shall have had the Supplier Information Security Policy approved by the senior management of the Supplier. The Supplier shall communicate the Supplier Information Security Policy to all employees, and permitted agents, consultants and contractors of the Supplier engaged in the provision of the Services immediately following approval of the Supplier Information Security Policy by senior management of the Supplier or, in the case of employees, and permitted agents, consultants and contractors who are engaged in the provision of the Services after that time, prior to those employees, and permitted agents, consultants and contractors becoming so engaged. The Supplier shall ensure that the Supplier Information Policy is reviewed regularly to ensure that it remains appropriate in the context of the provision of the Services by the Supplier and the Supplier will ensure that the Supplier Information Security Policy is promptly updated to reflect any additional information security requirements notified by the Customer from time to time. The Supplier shall promptly provide a copy of the Supplier Information Policy to the Customer upon request from the Customer.

**9. ACCESS CONTROL TO PROGRAM SOURCE CODE**

To the extent that the Supplier has access to program source code in connection with the provision of the Services, the Supplier shall take employ all such measures as are reasonably necessary to protect that source code (including taking such steps in that regard as the Customer may reasonable require from time to time).

**10. SECURITY**

The Supplier will ensure that all hard drives and other storage media used in connection with the provision of the services will be disposed of in a manner that guarantees the confidentiality of any data stored on those media. The Supplier shall provide destruction certificates for waste disposal of Confidential Information of the Customer.

## **SCHEDULE 4: CHARGES FOR ADDITIONAL SERVICES**

### **1. ENHANCEMENTS OR INTEGRATION WORK**

- 1.1 If the Customer requests that the Supplier develops and/or deploys an Enhancement or Integration with Third Party Applications on its behalf, the Supplier shall, as soon as reasonably practicable, provide the Customer with a reasonable estimate in relation to the cost of that development and/or deployment. The Supplier shall report on the feasibility of the requested work and reserves the right to reasonably refuse requests for Enhancement or Integration Work. The Supplier shall have the final decision on whether to include Enhancements in the standard Software Product. If the Customer:
- a) accepts that estimate, the Supplier shall develop and/or deploy that Enhancement or Integration Work (as the case may be) within the relevant timetable agreed by the parties (both acting reasonably); or
  - b) rejects that estimate, this shall (at the election of the Customer) constitute a Dispute which shall be resolved in accordance with Clause 24.

**Enhancement** means is a request for a modification or improvement of existing functionality in the Software Product or a suggestion for a new feature to be added to the Software Product that is not in the Supplier's timetabled development programme for the Software Product.

**Integration Work** is technical work required to make the Software Product integrate with an application external to the Software Product for the benefit of the Customer.

### **2. CHARGES**

#### **2.1 THE CHARGES FOR THE ADDITIONAL SERVICES SHALL COMPRISE:**

- a) Such Additional Services as consultancy, technical services, data conversion services, training services or on-site support days may be purchased at hourly or day rates published on the Supplier's website. A current services rate card may be requested by contacting us. All day rates are for 7 hours spent by the Supplier's personnel properly working on the Additional Services, excluding lunch, coffee breaks and travel to and from the premises where the Additional Services are supplied on the Customer's premises.
- b) The Supplier shall maintain a detailed written record, in a form to be agreed between the parties, of all Additional Services carried out by the Supplier under this Contract. That record shall be completed immediately following the performance by the Supplier of the relevant Additional Services and made available to the Customer on request.

### **3. EXPENSES**

The Charges described in this Schedule are exclusive of reasonable expenses. The Customer shall reimburse the Supplier for any additional reasonable expenses incurred by the Supplier, occurred in connection with the performance of the Services, to be invoiced at the same time as the Additional Services Charges. Reasonable additional expenses may include reasonable travel expenses for on-site services including taxi fares where necessary, subsistence, photocopying and any chargeable downloads from the internet as may be required by the Customer. Expenses are where possible to be agreed with the Customer before they are incurred.

**SCHEDULE 5: HOSTED SERVICES PLATFORM REMOVE EVERYTHING FROM  
THIS POINT FORWARD IF NOT HOSTED  
REMOVE EVERYTHING IN BLUE IF PRODUCT IS ENQUIRE OR SLLS**

1. Where the Customer has purchased the Hosted Services Platform as indicated in Schedule 1, for the duration of this Contract the Supplier and its Associates will provide a Hosted Services Platform comprising:
  - a) initial set-up including installation and branding;
  - b) unique Customer Domain Name;
  - c) Microsoft SQL Server database on a shared SQL Server;
  - d) publication of the web software interface on a shared web server;
  - e) installation of the admin interface on a shared application server;
  - f) use of Microsoft Access runtime software for the number of licences indicated in Schedule 1 of this Contract; and
  - g) Citrix user connections for the number of licences indicated in Schedule 1 of this Contract.
  
2. For the duration of this Contract the Supplier and its Associates will perform the following services:
  - a) automated backups will be performed nightly to remote hosted servers and encrypted in transit and at rest.
  - b) management and maintenance of the application, database and web servers; and
  - c) applying the Supplier's upgrades to the Supplier's Software.
    - i. The Supplier and its Associates will perform the Services for the duration of this Contract with the Service Levels detailed in Schedule 2 and with reasonable care and skill.
    - ii. The Supplier and its Associates will use reasonable efforts to ensure that the Hosted Services Platform remains virus free for the duration of this Contract and will provide daily virus checks.
    - iii. The Supplier and its Associates may relocate your database or server within the datacentre as required for the efficient running of the datacentre facilities and to meet data security requirements. The Supplier and its Associates may make changes to the provision of the Services, URLs and your IP addressed and may establish new procedures for the use of the Services. In each case the Supplier will give the Customer two week's advance notice and use

all reasonable endeavours to minimise the effect that such change will have on the Customer's use of the Services.

- iv. The Supplier reserves the right to change the Hosted Services Platform subcontractor and in each case the Supplier will give the Customer one month's notice and use all best endeavours to minimise the effect that such change will have on the Customer's use of the Services.
  - v. The Supplier may provide third party software and/or services and may also provide product support for them.
  - vi. If this Schedule 5 indicates that the Supplier will use Microsoft software to provide the services, the Customer is bound by the Licence terms as defined by the Microsoft software policy and the Customer agrees that each end user also agrees to those terms.
  - vii. If this Schedule 5 indicates that the Supplier will use Citrix software to provide the services, the Customer is bound by the Licence terms as defined by the Citrix Microsoft software policy and the Customer agrees that each end user also agrees to those terms.
  - viii. The Customer agrees that the use of third-party products is in accordance with their standard contracts is at the Customer's sole risk and the Supplier is not responsible in any way with their performance, features or failures.
- 3. The Supplier will use reasonable and commercially prudent endeavours to ensure that when the Hosted Services are not undergoing scheduled or unscheduled maintenance, the services will be available 99.7% of the time in each month.
  - 4. The Supplier will not carry out scheduled maintenance services during normal business hours.

## **SCHEDULE 6 ACCEPTABLE USE POLICY**

### **1. TERMS**

- 1.1 This acceptable use policy (AUP) sets out the terms between you and us under which you may access our website [www.justsimplyhosted.com](http://www.justsimplyhosted.com) (our site). This AUP applies to all users of, and visitors to, our site, as well as those visitors who sign up to our Services.
- 1.2 Your visit to, or use of, our site means that you accept, and agree to abide by, all the policies in this AUP.
- 1.3 We may change the AUP to reflect changes in law, regulation or accepted industry practice by posting any changes on our site. It will be your responsibility to check our website frequently for updates, as they are legally binding on you.
- 1.4 We will determine, in our discretion, whether there has been a breach of this AUP through your use of our site. When a breach of this AUP has occurred, we may take such action as we deem appropriate, including:
  - d) Immediate, temporary or permanent withdrawal of your right to use our site;
  - e) Issue of a warning to you;
  - f) Legal proceedings against you for reimbursement of all costs on an indemnity basis (including, but not limited to, reasonable administrative and legal costs) resulting from the breach;
  - g) Further legal action against you; and/or
  - h) Facilitates any activity or conduct that is or may be Disclosure of such information to law enforcement authorities as we reasonably feel is necessary.

If you have any questions about this AUP, please contact us at [support@baileysolutions.co.uk](mailto:support@baileysolutions.co.uk)

### **2. INTERNET ABUSE**

- 2.1 You may not use our network to engage in illegal, abusive, or irresponsible behaviour, including:
  - a) unauthorised access to or use of data, services, systems or networks, including any attempt to probe, scan or test the vulnerability of a system or network or to breach security or authentication measures without express authorisation of the owner of the system or network;

- b) monitoring data or traffic on any network or system without the authorisation of the owner of the system or network;
- c) interference with service to any user, host or network including, without limitation, mail bombing, flooding, deliberate attempts to overload a system and broadcast attacks;
- d) use of an Internet account or computer without the owner's authorisation;
- e) collecting information by deceit, including, but not limited to Internet scamming (tricking other people into releasing their passwords), password robbery, phishing, security hole scanning, and port scanning;
- f) use of any false, misleading or deceptive TCP-IP packet header or any part of the header information in an e-mail or a newsgroup posting;
- g) use of the service to distribute software that covertly gathers information about a user or covertly transmits information about the user;
- h) any activity or conduct that is likely to result in retaliation against our network;
- i) any activity or conduct that is likely to be in breach of any applicable laws, codes or regulations including data protection;
- j) introducing intentionally or knowingly into the Service any virus or other contaminating program or fail to use an up to date virus-scanning program on all material downloaded from the Services;
- k) sending unsolicited e-mails ("spam");
- l) misrepresenting yourself as other computer networks and users; or
- m) any activity or conduct that unreasonably interferes with our other customers' use of our site or Services.

### **3. SECURITY**

- 3.1 You must take reasonable security precautions when visiting or using our site.
- 3.2 Where you are using a password to access our site, passwords should consist of at least 7 mixed alpha and numeric characters with case variations. You should not permit a common word to be used as a password. You must protect the confidentiality of your password, and you should change your password regularly.

#### **4. BULK COMMERCIAL E-MAIL**

- 4.1 You warrant and represent that your access and use of our site or Services will not contravene relevant direct marketing and unsolicited email legislation. You acknowledge that we do not monitor your access and use of our site or services.

#### **5. VULNERABILITY TESTING**

- 5.1 You may not attempt to probe, scan, penetrate or test the vulnerability of a Just Simply Hosted system or network or to breach our security or authentication measures, whether by passive or intrusive techniques without our prior written consent.

#### **6. NEWSGROUP, CHAT FORUMS, OTHER NETWORKS**

- 6.1 You must comply with the rules and conventions for postings to any bulletin board, chat group or other forum in which you participate, such as IRC and USENET groups including their rules for content and commercial postings. These groups usually prohibit the posting of off-topic commercial messages, or mass postings to multiple forums.
- 6.2 You must comply with the rules of any other network you access or participate in using our services.

#### **7. OFFENSIVE CONTENT**

- 7.1 You may not publish, display or transmit via our network and equipment any content that we reasonably believe:
- a) constitutes or encourages child pornography or is otherwise obscene, sexually explicit or morally repugnant;
  - b) is excessively violent, incites violence, threatens violence, or contains harassing content or hate speech;
  - c) is unfair or deceptive under the consumer protection laws of any jurisdiction, including chain letters and pyramid schemes;
  - d) is defamatory or violates a person's privacy;
  - e) creates a risk to a person's safety or health, creates a risk to public safety or health, compromises national security, or interferes with an investigation by law enforcement bodies;

- f) improperly exposes trade secrets or other confidential or proprietary information of another person;
  - g) is intended to assist others in defeating technical copyright protections;
  - h) infringes another person's trade or service mark, patent, or other property right;
  - i) is discriminatory in any way, including by way of sex, race, or age discrimination;
  - j) defamatory, pornographic, obscene, indecent, abusive, offensive or menacing;
  - k) involves theft, fraud, drug-trafficking, money laundering or terrorism;
  - l) is otherwise illegal or solicits conduct that is illegal under laws applicable to you or to us; and
  - m) is otherwise malicious, fraudulent, or may result in retaliation against us by offended viewers.
- 7.2 Content "published or transmitted" via our network or equipment includes Web content, e-mail, bulletin board postings, chat, and any other type of posting, display or transmission that relies on the Internet.

## **8. COPYRIGHTED MATERIAL**

- 8.1 You may not access and use our network or equipment to download, publish, distribute, or otherwise copy in any manner any text, music, software, art, image or other work protected by copyright law unless:
- a) you have been expressly authorised by the owner of the copyright of the work to copy the work in that manner; and
  - b) you are otherwise permitted by copyright law to copy the work in that manner.

## **9. OTHER**

- 9.1 You must have valid and current information on file with the domain name registrar for any domain hosted on our network. We will ensure that any subdomain that we supply will be registered with our domain name registrar and will have an SSL certificate.
- 9.2 Where you are using our Services, you may only use IP addresses agreed with you by our staff.

- 9.3 You may not take any action which directly or indirectly results in any of our IP space being listed on any abuse database.

## **10. CONSEQUENCES OF VIOLATION OF AUP**

- 10.1 You are strictly responsible for the access and use of our site or our Services in breach of this AUP, including access and use by any users to whom you make our site or Services available, including unauthorised access and use caused by your negligence. You agree to indemnify us and keep us indemnified against all damages losses and costs (including legal costs) and expenses of any nature incurred by us as a result of your breach, or a breach by a user to whom you make our site or Services available, of any provision of this AUP.

## **11. DISCLAIMER**

- 11.1 We are under no duty, and by this AUP are not deemed to undertake a duty, to monitor or police your activities and we disclaim any responsibility for any misuse of our network.