

TERMS & CONDITIONS

THIS AGREEMENT IS BETWEEN:

Sitemorse (UK Sales) Ltd ("Sitemorse") a UK registered company, registration number 08451256, registered office being 48 Charlotte Street, London W1T 2NS,

AND

[Insert name of Client], a company registered in [country], with registered number [insert] and having its registered office at [insert address].

IT IS AGREED BETWEEN THE PARTIES THAT:

1. Definitions

In this Agreement the following terms shall have the following meanings:

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| 'Agreement' | means the Terms and Conditions and the Schedules, together; |
| 'Authorised Users' | means employees, consultants or contractors of the Client who have been expressly authorised by the Client to receive a password in order to access the Services online; |
| 'Bug' | means an unwanted or unintended property of the Solution that can be reproduced and causes the Solution to malfunction but does not affect the availability of the Solution; |
| 'Business Day' | means Monday to Friday excluding any national holiday in the UK; |
| 'Business Hours' | Means 9 – 5pm in the UK; |
| 'Customer' | means any commercial, industrial or residential entities or persons to whom the Client provides its services; |
| 'Company' | means [insert name]; |
| 'Confidential Information' | means any and all information in any form whatsoever relating to the Company or the Client, or the business, prospective business, finances, technical process, computer software (both source code and object code), IPR or finances of the Company or the Client (as the case may be), or compilations of two or more items of such information, whether or not each individual item is in itself confidential, which comes into a party's possession as a result of this Agreement or provision of the Solution or Services, and which the party regards, or could reasonably be expected to regard, as confidential and any and all information which has been or may be derived or obtained from any such information; |
| 'Consequential Loss' | means pure economic loss, losses incurred by any Client or other third party, losses arising from business interruption, loss of business revenue, goodwill or anticipated savings, losses whether or not occurring in the normal course of business, costs of procuring substitute goods or product(s) or wasted management or staff time; |
| 'Current Version' | means the version of the Solution available to the Client on the Effective Date or subsequently any new version which replaces it during the Term; |
| 'Client Data' | means all data imported into the Solution or Services or generated by the Solution or Services that constitutes personally identifiable information of a Client, Customer or Authorised User; |
| 'Client' | means [insert name]; |
| 'Disaster' | means the hosting centre where the Solution is hosted becomes unusable, with little chance of a short term recovery; |
| 'Disclosure Request' | means a request under the Freedom of Information Act 2000 or similar |

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| | legislation, including without limitation the Environmental Information Regulations 2004 or the Data Protection Act 1998 for a party to disclose Confidential Information, including for the avoidance of doubt a request to disclose whether or not such information is actually held by a party; |
| ‘Documentation’ | means the training materials and user manuals relating to the use of the Services, as well as any additional documentation that the Company specifically creates for the Client or otherwise provides to the Client to assist in the correction of any issue with the Services; |
| ‘Effective Date’ | means the date stated on the Order Form; |
| ‘Emergency Maintenance’ | means maintenance, upgrades, Updates, repairs to hardware and software related to resolving immediate problems causing instability in the Solution; |
| ‘Feedback’ | means feedback, innovations or suggestions created by Authorised Users regarding the attributes, performance or features of the Services; |
| ‘Fees’ | means the fees set out in the Order Form payable by the Client during the Term of this Agreement, plus any Other Fees added to this Agreement during the Term; |
| ‘Force Majeure’ | means anything outside the reasonable control of a party, including but not limited to acts of God, fire, storm, flood, earthquake, explosion, accident, acts of the public enemy, war, rebellion, insurrection, sabotage, epidemic, quarantine restriction, labour dispute, labour shortage, power shortage (including where the Company ceases to be entitled to access the Internet for whatever reason, server crashes, deletion, corruption, loss or removal of data) transportation embargo, failure or delay in transportation, any act or omission (including laws, regulations, disapprovals or failure to approve) of any government or government agency; |
| ‘Functional Description’ | means the description of the Solution set out in Schedule 3 of this Agreement; |
| ‘Illegal Content’ | means any data or content which is defamatory, or constitutes a breach of the IPR or legal rights of any third party; |
| ‘Incident’ | means a malfunction of the Solution which can be reproduced, is not a Bug and whose root cause is found in the hosting service, network, hardware or third party software components; |
| ‘Initial Term’ | means a fixed period of 36 months starting from the Effective Date; |
| ‘IPR’ | means all copyrights, patents, utility models, trademarks, service marks, registered designs, moral rights, design rights (whether registered or unregistered), technical information, know-how, database rights, semiconductor topography rights, business names and logos, computer data, generic rights, proprietary information rights and all other similar proprietary rights (and all applications and rights to apply for registration or protection of any of the foregoing) as may exist anywhere in the world; |
| ‘Order Form’ | means the signed order form set out in Schedule 1 of this Agreement; |
| ‘Other Fees’ | means any additional fees payable by the Client during the Term of this Agreement set out in any subsequent order form signed by the parties and added to this Agreement after the Effective Date. The amount of such additional fees shall be calculated on a Time and Materials Basis unless stated otherwise in such order form; |
| ‘Other Services’ | means any additional services to be provided to the Client during the Term of this Agreement set out in any subsequent order form signed by the parties and added to this Agreement after the Effective Date; |
| ‘Planned Maintenance’ | means maintenance, upgrades, Updates, installation of new versions and repairs which are non-critical and not urgent, to hardware and |

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| | software; |
| ‘Release’ | means a modification in the functionality of the Solution which results in a change in the version number as set out in the SLA; |
| ‘Renewal Term’ | means each period of XX months after expiry of the Initial Term; |
| ‘Schedules’ | means the Order Form, SLA and Functional Description together; |
| ‘Services’ | means the hosting, maintenance and support services set out in the SLA plus any Other Services added to this Agreement during the Term; |
| ‘SLA’ | means the service level agreement set out in Schedule 2 of this Agreement; |
| ‘Solution’ | means the software application [insert name] described in more detail in the Functional Description (Schedule 3); |
| ‘Subscription Fee’ | means the fee set out in the Order Form payable for the Services and Solution during the Term; |
| ‘Term and Conditions’ | means this Agreement excluding the Schedules; |
| ‘Term’ | means the Initial Term plus any Renewal Term(s) together; |
| ‘Time and Materials Basis’ | means the Company’s standard daily consultancy rates set out in the Order Form; |
| ‘Travel Fees’ | means all reasonable costs associated with any travel and subsistence expenses incurred by the Company (or its employees, permitted subcontractors or agents) in performing its obligations under this Agreement. |
| ‘Updates’ | means any new or updated applications services or tools (including any software programmes) made available by the Company as part of the Solution or Services during the Term. |

2 Services and Solution

- 2.1 The Client engages the Company and the Company agrees to provide the Solution and Services in accordance with the terms of this Agreement from the Effective Date for the Term.
- 2.2 If the Client wishes to purchase additional Services after the Effective Date, such Services shall be set out in one or more additional Order Forms, which will be signed by both parties and incorporated into this Agreement.

3 Licence to use the Solution and Services

- 3.1 Subject to the Client’s payment of the Fees, the Client and Authorised Users and Customers are granted a non-exclusive, non-transferable licence to use the Solution and Services (including any associated IPR and Confidential Information) from the Effective Date for the Term for the purposes of testing the website and intranet sites hosted on the Client’s own network. Such licence permits the Client to make copies of software or other information necessary for the Client to receive the Solution and Services via the Internet. No additional implied rights are granted beyond those specifically mentioned in this clause 3.1.
- 3.2 All IPR and title to the Solution, Services and Documentation (save to the extent these incorporate any Client Data, Client IPR or third party owned item) shall remain with the Company and/or its licensors and subcontractors and no interest or ownership in the Solution, Services, Documentation, IPR or otherwise is transferred to the Client under this Agreement. Notwithstanding the Client’s statutory rights, no right to modify, adapt, or translate the Solution or Services or create derivative works from the Solution or Services is granted to the Client. Nothing in this Agreement shall be construed to mean, by inference or otherwise, that the Client has any right to obtain source code for the software comprised within the Solution or Services.
- 3.3 Disassembly, decompilation or reverse engineering and other source code derivation of the software comprised within the Solution or Services is prohibited. To the extent that the Client is granted the right by law to decompile such software in order to obtain information necessary to render the Solution or Services interoperable with other software the Company will provide access to any relevant source code or information provided that the Client makes a written

request identifying the relevant details of the Solution or Services with which operability is sought and the nature of the information needed. The Company has the right to impose reasonable conditions including but not limited to the imposition of a reasonable fee for providing such access and information.

- 3.4 Unless otherwise specified in this Agreement, the Solution and Services are provided and may only be used in conjunction with (i) the Client's existing systems and applications in order to facilitate the Client's transactions with its Customers; (ii) providing access to Services solely to Clients and Authorised Users; and (iii) access and use of the Documentation as necessary to enable use of the Services. The Client may not (i) lease, loan, resell, assign, licence, distribute or otherwise permit access to the Solution and Services; or (ii) use the Solution or Services to provide ancillary services related to the Solution or Service; or (iii) permit access to or use of the Solution or Services by or on behalf of any third party, except as permitted in this Agreement. The Company reserves the right to electronically monitor the Client's use of the Solution and Services.
- 3.5 The Client assigns all rights, title and interest in any Feedback to the Company. If for any reason such assignment is ineffective, the Client shall grant the Company a non-exclusive, perpetual, irrevocable, royalty free, worldwide right and licence to use, reproduce, disclose, sub-licence, distribute, modify and exploit such Feedback without restriction.
- 3.6 The Client is not allowed to remove any proprietary marks or copyright notices from the Solution or Services.
- 3.7 The Client shall retain sole ownership of all rights, title and interest in and to Client Data and its pre-existing IPR.
- 3.8 The Client grants the Company a non-exclusive, non-transferable revocable licence to display the Client's name, logo and trademarks, as designated and/or amended by the Client from time to time and as required in the creation of correspondence, documentation and website front ends in the provision of the Services.
- 3.9 The Company may take and maintain technical precautions to protect the Solution and Services from improper or unauthorised use, distribution or copying.

4 Term and Termination

- 4.1 This Agreement shall commence on the Effective Date for the Initial Term, unless terminated earlier in accordance with the provisions of this Agreement. The Agreement shall renew for successive Renewal Terms upon expiry of the Initial Term or any Renewal Term unless either party gives written notice to the other of its intention not to renew the Agreement at least 90 days prior to the expiry of the Initial Term or any Renewal Term.
- 4.2 The Company may terminate this Agreement or the provision of any Services with immediate effect if the Client has used or permitted use of the Solution and Services other than in accordance with this Agreement.
- 4.3 The Client may terminate this Agreement with immediate effect if the Company is prohibited under applicable law, or otherwise from providing the Solution or Services.
- 4.4 Either party may terminate this Agreement immediately, with cause, if the other party (i) ceases or threatens to cease or carry on business; or (ii) is unable to pay its debts or enters into compulsory insolvency or voluntary liquidation; or (iii) convenes a meeting of its creditors or has a receiver, manager or similar official appointed in respect of its assets; (iv) or has an administrator, receiver, manager or similar official appointed; or (v) is affected by a similar event under the law of any other jurisdiction; or (vi) a Force Majeure event lasts for more than 28 days.
- 4.5 Either party may terminate this Agreement for material breach of any term by giving the breaching party written notice. However, where the breach is capable of remedy, provided that the breach is specified and remedy of the breach is requested, the notice shall only be effective if the breaching party fails to remedy the breach within 10 days of receipt of the notice.
- 4.6 Termination of this Agreement for any reason shall not affect the accrued rights of the parties arising under this Agreement and in particular without limitation the right to recover damages against the other. Clauses 3. (Licence), 4. (Term and Termination), 6. (Fees and Invoicing), 7. (Payment Terms), 8. (Confidential Information), 9. (Data Protection) 11. (Liability), 12.

(Indemnities), 14. (Assignment and Relationship between the Parties) and 16. (Miscellaneous) shall survive the expiry or termination of this Agreement and shall remain in force and effect.

- 4.7 Upon termination of this Agreement the Company shall immediately cease providing the Solution and Services to the Client and all licences granted hereunder shall terminate. The Client shall promptly pay the Company all unpaid Fees. The Company will return all Client Data stored in the Company's database. Such data shall be returned in its then current format, free of charge. If the Client requires the data to be returned in a different format the Company reserves the right to charge for this additional service on a Time and Materials Basis. Provided that this Agreement has not been terminated due to the Client's breach of contract, the Company will provide reasonable assistance and information to enable the Client Data to be transitioned to a new platform. Such assistance will be charged for on a Time and Materials basis.

5 Interfaces

- 5.1 If the Order Form or Functional Description includes the provision of interfaces or integrations to any third party provider or system to the Client, the Company shall make all reasonable efforts to ensure the successful operation of the interface or integration. However the successful operation of any interface or integration is dependent upon the technical set up of the third party systems, and the Client accepts that (i) the Company cannot be held liable for any failures in the operation of the interface or integration; or (ii) that the services offered on the third party system will be complete or available on the same terms as those set out in these Terms and Conditions.
- 5.2 In the event of an issue arising with the effective operation of an interface or integration the Company will use all reasonable efforts, in line with the business impact on the Client, to resolve the issue at the earliest opportunity.
- 5.3 The Client acknowledges that (i) it is responsible for ensuring that it has paid and instructed the third party to co-operate with the Company; and (ii) the Company has no liability whatsoever to the Client for any problems with any interface or integration resulting from actions or omissions of the Client or the third party.

6 Fees and Invoicing

- 6.1 The Company shall invoice the Client the Fees in the amounts set out in the Order Form.
- 6.2 All invoices shall be issued in pounds Sterling. All Fees exclude any Value Added Tax legally payable on the date of the invoice, which shall be paid by the Client in addition, where applicable.
- 6.3 Travel Fees, incidental costs and other expenses shall be invoiced in addition to the Fees in arrears, as and when they arise.
- 6.4 All Fees shall be invoiced as set out in the Order Form or any subsequent order form.
- 6.5 Fees are fixed for the Initial Term of the Agreement. After the Initial Term, the Company may increase the Fees by no more than 3% above the UK Retail Price Index for each Renewal Term.
- 6.6 The Solution may only be used on the machine(s) on which it is installed by the Company. The Client shall annually confirm in writing that no copies have been made and used elsewhere. If the Company subsequently discovers that copies have been made and used on other machines the Client shall pay the Company a Subscription Fee for each additional copy retrospectively.

7 Payment Terms

- 7.1 The Client shall pay the Fees within 30 days of receipt of any invoice, unless specified otherwise in the Order Form. **(TO INCLUDE THE X PAYMENTS TO BE MADE IN HERE AS WELL)**
- 7.2 Payment shall be made without prejudice to any claims or rights which the Client may have against the Company. If the Client believes that any invoice is incorrect, it must notify the Company in writing within 30 days of the invoice date.

- 7.3 Where payment of Fees is late on two consecutive occasions, the Company reserves the right to suspend the provision of the Solution and Services, by giving the Client 14 days written notice and shall be entitled to charge interest on overdue Fees at the applicable statutory rate.
- 7.4 The Company reserves the right to recover any costs and reasonable legal fees it incurs in recovering overdue payments.

8 Confidential Information

- 8.1 Each party may use the Confidential Information of a disclosing party only for the purposes of this Agreement. Each party must keep confidential all Confidential Information of a disclosing party except to the extent (if any) that the recipient of any Confidential Information is required by law or any regulatory, governmental or other authority with relevant powers to which either party is subject (except in relation to Disclosure Requests which shall be subject to clauses 8.5 and 8.6 below) to disclose the Confidential Information.
- 8.2 A receiving party may disclose the Confidential Information of the disclosing party to those of its employees and agents who need to know the Confidential Information for the purposes of this Agreement, but only if the employee or agent is bound by confidentiality undertakings equivalent to those set out in this Agreement.
- 8.3 Both parties agree to return (or destroy) all documents, materials or data containing Confidential Information to a disclosing party without delay upon completion of the Services or termination or expiry of this Agreement.
- 8.4 The obligations of confidentiality under this Agreement do not extend to information that (i) was rightfully in the possession of the receiving party before the negotiations leading to this Agreement; (ii) is, or after the Effective Date, becomes public knowledge (otherwise than as a result of a breach of this Agreement); or (iii) is required by law to be disclosed.
- 8.5 If either party receives a Disclosure Request such party shall (i) promptly consult with and take into account any comments from the other party prior to making any disclosure; and (ii) work with the other party to ensure that any exemptions or other legitimate means of preventing disclosure or limiting disclosure are used to the fullest extent possible.
- 8.6 The parties acknowledge and agree that without prejudice to the general confidentiality provisions in this clause 8 and without limitation, all information falling within the definition of Confidential Information as set out in clause 1 of this Agreement and any information which is supplied by the disclosing party to the receiving party pursuant to this Agreement or the negotiation thereof is (i) Confidential Information the disclosure of which by the receiving party would be an actionable breach of confidence; or (ii) a trade secret of the disclosing party; and (iii) information, the disclosure of which would be likely to prejudice the commercial interests of the disclosing party or of any other person.

9 Data Protection

- 9.1 Each party undertakes to comply with its obligations under relevant applicable data protection laws, principles and agreements.
- 9.2 To the extent that personal data is processed using the Solution and Services, the parties acknowledge that the Company is a data processor and the Client is a data controller and the parties shall comply with their respective statutory data protection obligations. The Company agrees that it will only process personal data on behalf of, and in the name of, the Client.
- 9.3 The Client shall ensure that the personal data, which it supplies or discloses to the Company, has been obtained fairly and lawfully and that it will obtain all necessary approvals from persons whose data is being processed and registrations with authorities to permit the Company to transfer personal data to third parties pursuant to its obligations under this Agreement.
- 9.4 The Company confirms that it (i) merely acts as a data processor; (ii) will only process data in accordance with the instructions of the data controller; and (iii) has taken, as well as its subcontractors, licensors and hosts, sufficient technical and organisational measures to safeguard personal data.
- 9.5 If a third party alleges infringement of its data protection rights, the Company shall be entitled to take measures necessary to prevent the infringement of a third party's rights from continuing.

10 Representations and Warranties

- 10.1 Each party warrants and represents that (i) it has full corporate power and authority to enter into this Agreement and to perform the obligations required hereunder; and (ii) its execution and performance of its obligations under this Agreement does not violate or conflict with the terms of any other agreement to which it is a party;
- 10.2 The Company warrants to the Client that it has the right to licence the Solution and Services.
- 10.3 The Company warrants and represents that the Services shall be performed with reasonable skill and care and in a professional manner in accordance with good industry practice and that the Services will comply with the SLA.
- 10.4 The Company warrants to the Client that the Solution will operate to provide in all material respects the facilities and functions implemented by the Company as set out in the Functional Description. If there is a breach of this warranty, the Company shall use reasonable commercial endeavours, to correct any material defect or to replace the defective Solution. Notwithstanding the aforesaid, the Company shall only be obliged to remedy any material defect if (i) the Client notifies the Company in writing immediately upon discovering the defect; and (ii) following the Company's examination of the Solution, it is established that such a defect exists.
- 10.5 The warranties in clauses 10.2 to 10.4 inclusive shall not cover deficiencies or damages relating to (i) any third party components not provided by the Company; or (ii) any third party provided connectivity necessary for the provision or use of the Solution and Services; or (iii) compliance with third party software or products, non-Company programmes or data used in combination with the Solution or Services except as set out in this Agreement, or (iv) a failure of the Solution to conform with the Functional Description caused by the use or operation of the Solution by the Client with an application or in an environment other than that set out in this Agreement; or (v) modifications made to the Solution not carried out by the Company.
- 10.6 The Client warrants that it rightfully owns the necessary user rights, copyrights and ancillary copyrights and permits required for it to fulfil its obligations under this Agreement.
- 10.7 The Client warrants and represents that it shall maintain reasonable security measures (as may change over time) covering, without limitation, confidentiality, authenticity and integrity to ensure that the access to the Solution and Services granted under this Agreement is limited as set out under this Agreement. In particular the Client shall treat any identification, password or username or other security device for use of the Solution and Services with due diligence and care and take all necessary steps to ensure that they are kept confidential, secure and are used properly and are not disclosed to unauthorised persons. Any breach of the above shall be immediately notified to the Company in writing.
- 10.8 The Client warrants and represents to the Company that it shall respect all applicable laws and regulations, guidelines, codes of practice, governmental orders and court orders, which relate to this Agreement.
- 10.9 Except as expressly stated in this Agreement, all warranties and conditions, whether express or implied by statute, common law or otherwise (including but not limited to satisfactory quality and fitness for purpose) are excluded to the fullest extent permitted by law. No warranty is made regarding the results the Client can achieve from using the Solution and Services or that the Solution and Services will operate uninterrupted or error free.

11 Liability

- 11.1 The parties do not exclude or limit their liability to each other for fraud, death or personal injury caused by their negligent act or omission or wilful misconduct.
- 11.2 The parties shall not be liable for any Consequential Loss arising out of or related to this Agreement or in tort (including negligence or breach of statutory duty), misrepresentation or however arising, even if the party was advised of the possibility of such damages.
- 11.3 The parties shall not be liable for any loss of profits (whether categorised as direct or indirect) arising out of or related to this Agreement, whether based on contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, even if a party was advised of the possibility of such damages.
- 11.4 Subject to clauses 11.1 to 11.3 inclusive the Company's total liability to the Client in aggregate (whether in contract, tort or otherwise) for any and all claims relating to or arising under this

Agreement or based upon any claim for indemnity or contribution shall be limited to the total Fees (excluding all taxes) paid by the Client to the Company during the 12 month period prior to the date on which any such claim arose. If the duration of the Agreement has been less than 12 months, such shorter period as applicable.

- 11.5 The Client shall be liable for any breaches of this Agreement caused by the acts, omissions or negligence of any Authorised Users or Clients who access the Services and Solutions as if such acts, omissions or negligence had been committed by the Client itself.
- 11.6 The Client shall not raise any claim under this Agreement more than 1 year after (i) the discovery of the circumstances giving rise to a claim; or (ii) the effective date of termination or expiry of this Agreement.
- 11.7 The parties acknowledge and agree that in entering into this Agreement, each had recourse to its own skill and judgement and has not relied on any representation made by the other, their employees or agents.

12 Indemnities

- 12.1 The Company, at its own expense, shall (i) defend or at its own option settle any claim brought against the Client by a third party on the basis of an infringement of any IPR by the Solution or Services (excluding any claim deriving from any Client provided item); and (ii) pay any final judgment entered against the Client on such issue or any settlement thereof, provided that: (a) the Client notifies the Company promptly of each such claim; (b) the Company is given sole control of the defence and/or settlement; and (c) the Client fully co-operates and provides all reasonable assistance to the Company in the defence or settlement.
- 12.2 If all or part of the Solution or Services becomes, or in the opinion of the Company may become, the subject of a claim or suit of infringement, the Company shall at its own expense and sole discretion (i) procure for the Client the right to continue to use the Solution or Service or the affected part thereof; (ii) replace the Solution or Service or affected part with another suitable non-infringing service or software; (iii) modify the Solution or Services or affected part to make the same non-infringing.
- 12.3 The Company shall have no obligations under clauses 12.1 and 12.2 above to the extent that a claim is based on (i) the combination, operation or use of the Solution or Services with other services or software not provided by the Company if such infringement would have been avoided in the absence of such combination, operation or use; or (ii) use of the Solution or Services in any manner inconsistent with this Agreement; or (iii) the negligence or wilful misconduct of the Client.
- 12.4 The Client shall indemnify and hold the Company and its employees, sub-contractors or agents harmless from and against any costs, losses, liabilities and expenses, including reasonable legal costs arising from any claim relating to or resulting directly or indirectly from (i) any claimed infringement or violation by the Client, an Authorised User or a Client of any IPR with respect to use of the Solution or Services outside of the scope of this Agreement; or (ii) use by the Company of any Client Data or Customer or Customer provided item, in particular storage or publication on the Internet of any Illegal Content; or (iii) any access to or use of the Solution or Services by an Authorised User, a Customer or a third party; (iv) breaches of data protection law or regulations resulting from the Company processing data on behalf of and in accordance with the instructions of the Client, an Authorised User or a Customer; and (v) any breach of this Agreement by an Authorised User or a Customer. Furthermore, the Company shall be entitled to take reasonable measures in order to prevent Illegal Content from being published on the Internet and breaches of third party rights from continuing.
- 12.5 Subject to clauses 12.1 to 12.4 inclusive, each party ("the first party") indemnifies and undertakes to keep indemnified the other party, its officers, servants and agents ("the second party") against any costs or expenses (including the cost of any settlement) arising out of any claim, action, proceedings or demand that may be brought, made or prosecuted against the second party by any person arising out of or as a consequence of an unlawful or negligent act or omission of the first party, its officers, servants or agents in any way connected with this Agreement whether arising from and failure by the first party to comply with the terms of this Agreement or otherwise. This indemnity extends to and includes all costs, damages and expenses (including legal fees and expenses) reasonably incurred by the second party in defending any such action, proceeding claim or demands.

13 Security

- 13.1 The Company shall permit the Client to specify which Authorised Users or Clients may access the Services and Solution through its standard application security options.
- 13.2 The Client, Authorised Users and Customers must ensure that each password is only used by the user to which it has been assigned. The Client is responsible for any and all activities that occur under the Client's account and via the Client's passwords. The Client will immediately notify the Company if the Client becomes aware of any unauthorised use of the Client's account, the Client's passwords or breach of security known to the Client. The Company shall have no liability for any loss or damage arising from the Client's failure to comply with these requirements.
- 13.3 The Company may suspend access to the Solution and Services, or portion thereof, at any time, if in the Company's sole reasonable discretion, the integrity or security of the Services or Solution is in danger of being compromised by acts of the Client, Authorised Users or Customers. Where possible, the Company shall give the Client 24 hours written notice, before suspending access to the Services and Solution, giving specific details of its reasons.

14 Assignment and Relationship between Parties

- 14.1 No party may assign, transfer or subcontract its rights under this Agreement without the prior written consent of the other party, such consent shall not be unreasonably withheld, however the Company shall be entitled to assign the Agreement to any company in the Company's group of companies or to any entity which acquires a controlling interest in the Company.
- 14.2 The Company and the Client are independent contractors and nothing in this Agreement will be construed as creating an employer-employee relationship.
- 14.3 Nothing contained in this Agreement is intended to be enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any third party.

15 Contacts

- 15.1 The Client shall provide a designated application support contact who will be responsible for and have sufficient information to respond to support questions.
- 15.2 The Client shall provide a designated billing contact with all relevant contact information to respond to billing and payment questions regarding the Services.

16 Miscellaneous

- 16.1 Should a provision of this Agreement be invalid or become invalid then the legal effect of the other provisions shall be unaffected. A valid provision is deemed to have been agreed which comes closest to what the parties intended commercially and shall replace the invalid provision. The same shall apply to any omissions.
- 16.2 Except with respect to the Client's obligation to pay the Fees, if a party is wholly or partially unable to comply with its obligations under this Agreement due to Force Majeure, then that party's obligation to perform in accordance with this Agreement will be suspended for the duration of the Force Majeure. As soon as practicable after an event of Force Majeure arises, the party affected by Force Majeure must notify the other party of the extent to which the notifying party is unable to perform its obligations under the Agreement.
- 16.3 In the event of any inconsistency between the contents of the Terms and Conditions, the Order Form, the SLA and the Functional Description, the Terms and Conditions shall prevail followed by the Order Form, the SLA and then the Functional Description. If after the Effective Date any subsequent order form is signed by the parties and added to this Agreement during the Term and there is a conflict between the terms of such subsequent order form, its attachments and the Terms and Conditions, the Terms and Conditions shall prevail over the terms of the subsequent order form and its attachments, unless specifically stated otherwise in the order form.
- 16.4 This Agreement constitutes the whole agreement and understanding between the parties and supersedes all prior agreements, representations, negotiations and discussions between the parties relating to the subject matter thereof.

- 16.5 Amendments to, or notices to be sent under this Agreement, shall be in writing and shall be deemed to have been duly given if sent by registered post or acknowledged fax to a party at the address given for that party in the Order Form.
- 16.6 Neither party shall make any public statement, press release or other announcement relating to the terms or existence of this Agreement, or the business relationship of the parties, without the prior written consent of the other party. Notwithstanding the aforesaid the Company may use the Client's name and trade marks (logo only) to list the Client as a client of the Company on its website and in other marketing materials and information.

17 Dispute Resolution

- 17.1 The parties will use their respective reasonable efforts to negotiate in good faith and settle any dispute that may arise out of or in relation to this Agreement and any breach of it.
- 17.2 If any such dispute cannot be settled amicably through ordinary negotiations of the sales directors of each party, the dispute shall be escalated in writing to the chief technology officer of the Company and the chief financial officer of the Client who shall in good faith try and resolve the dispute. If the dispute or difference is not resolved within 14 days of the dispute being escalated the parties shall then be entitled to pursue their claim in accordance with clause 18 below.

18 Governing Law and Jurisdiction

- 18.1 This Agreement shall be governed by the laws of England and Wales. The courts of England shall have exclusive jurisdiction for the settlement of all disputes arising under this Agreement.

Schedule ONE

Order form

Schedule TWO

SLA

Schedule THREE

Functional Description