

DATED _____

(1) << >>

(2) << >>

SOFTWARE MAINTENANCE AGREEMENT

THIS AGREEMENT is made the day of

BETWEEN:

- (1) <<Name of Client>> a company registered in <<Country of Registration>> under number <<Company Registration Number>> whose registered office is at <<Registered Office>> (“the Client”) and
- (2) <<Name of Service Provider>> a company registered in <<Country of Registration>> under number <<Company Registration Number>> whose registered office is at <<Registered Office>> (“the Service Provider”)

WHEREAS:

- (1) The Service Provider is engaged in the business of maintaining and servicing computer software.
- (2) The Client wishes to procure software maintenance services from the Service Provider and the Service Provider agrees to provide software maintenance services under the terms and conditions set out in this Agreement.

IT IS AGREED as follows:

1. Definitions and Interpretation

- 1.1 In this Agreement, unless the context otherwise requires, the following expressions have the following meanings:

“Confidential Information”	means all business, technical, financial or other information created by a Party to this Agreement or exchanged between the Parties in either case throughout the Term of this Agreement;
“Defect”	means any material difference between the actual performance, utility and functionality of the Software and that which can be reasonably expected based upon the manufacturer’s description of the software, taking into account the specifications of the relevant computer systems;
“Services”	means the software maintenance services to be provided to the Client by the Service Provider as defined at Clause 4 of this Agreement;
“Service Fee”	means a fixed sum to be paid monthly by the Client to the Service Provider as set out in Clause 3 of this Agreement;
“Sites”	means the locations at which the Service Provider shall provide the Services as set out in Schedule 2.

“Software”

means the Software as defined in Schedule 1 of this Agreement or replacement software supplied by the Service Provider in their provision of the Services.

“Software Licence”

means the Software Licence on accompanying documentation that sets out the permissions, rights and restrictions in relation to that software.

- 1.2 Unless the context otherwise requires, the following definitions apply in this Agreement to:
- 1.2.1 “writing”, and any other form of communication effecting a transmission or similar means;
 - 1.2.2 a statute or a provision of law, or a provision as amended or re-enacted from time to time;
 - 1.2.3 “this Agreement” is this Agreement and each of the Schedules as amended or re-enacted from time to time;
 - 1.2.4 a Schedule is a schedule to this Agreement;
 - 1.2.5 a Clause or paragraph is a Clause or paragraph of this Agreement as amended or re-enacted from time to time.
- 1.3 The headings used in this Agreement shall have no effect upon the interpretation of this Agreement.
- 1.4 Words imparting the singular shall include the plural and vice versa.
- 1.5 References to any gender shall include the other gender.

2. Term

- 2.1 The Service Provider will provide the Services to the Client at the Sites from <<Insert Date>> until <<Insert Date>> unless and until earlier terminated in accordance with Clause 1.5.
- 2.2 The Term may be renewed for a further period of [months] OR [years] if both Parties so agree in a document signed by both Parties.

3. Fees and Payment

- 3.1 The Service Provider will invoice the Client for the Service Fee of £<< >> for each month or part month commencing on the <<Insert Date>> day of the previous month.
- 3.2 The Client will pay the Service Fee to the Service Provider monthly in advance on the <<e.g. 1st>> day of the month in which the Term in consideration of this Agreement commences in accordance with Clause 2 of this Agreement to provide the Services.
- 3.3 The Service Provider will, on request, provide the Client with a list of the Software to be provided to the Client, and will invoice the Client for such Software at the price payable by the Client to the Service Provider plus << >>% above the VAT inclusive price payable by the Client to the Service Provider.

- pay for such Software. The Service Provider shall invoice the Client for such Services within 30 days of the invoice date.
- 3.4 The Service Provider will send the Client a copy of the Agreement by first class post to the Client at the Client's address set out in the Agreement or by email to the email page of this Agreement unless otherwise agreed by the Client.
- 3.5 All sums specified in this Agreement shall be exclusive of any VAT unless expressly stated otherwise.

4. Services

- 4.1 The Services shall be deemed to include the following:
- 4.1.1 Installation of Software on the Client's computers as directed by the Client at the Site(s), which may include servers, workstations and company-owned equipment.
- 4.1.2 Corrections of Defects in the Software that may be necessary to ensure operation of the Software in accordance with the parameters set out in the documentation relevant to the Software, provided such corrections are permitted under the terms of the Software Licence relating to that Software;
- 4.1.3 Analysis of Software and other relevant information to identify messages, upgrades and other relevant information for the purpose of preventative and / or remedial action in relation to the Software;
- 4.1.4 Periodic updates of Software;
- 4.1.5 Installation of new versions of Software at the sole discretion of the Service Provider.
- 4.2 The Service Provider shall provide the Services in a timely manner and in accordance with prevailing best practice in the industry.
- 4.3 Where any Software is unavailable or fails to operate for a period of time which gives rise to the need for the Services, the Service Provider shall use reasonable endeavours to correct the problem within <<e.g. 8>> hours, whether or not it has used the Services. If the Service Provider does not do so, the reasonable endeavours to do so shall then apply]
- 4.4 [Where, as provided by s. 15 of the Consumer Rights Act 2015, Clause 4.4 applies, the Service Provider shall promptly provide a workaround solution until it has completed the relevant repair or replacement and it will ensure that such solution performs all essential functions of the Software, such functions not to exceed those provided for in the Software].
- 4.5 Where the nature of the Services is such that the Services can only be provided on an on-demand basis (rather than on a scheduled basis), the Service Provider shall provide the Services within the time period >> [hours] OR >> [days] of receipt of notice from the Client that the Services are required.
- 4.6 This Agreement shall not be extended to cover any additional Software that the Client may purchase (whether from the Service Provider or a third party) during the Term. Extensions to the Term shall occur only by agreement in writing between the Parties and may result in an increase in the Service Fees payable to the Service Provider at the discretion of the Service Provider.

SAMPLE

- 4.7 Under no circumstances shall the Service Provider undertake any work that may result in the infringement of any third party's intellectual property rights, but such work to include, but not be limited to the unauthorized copying, distribution, or use of software and the installation of software in any quantity permitted by the relevant Software Licence.
- 4.8 The following are express obligations of the Service Provider and the Service Provider shall only undertake such work and at extra cost to the Client:
- 4.8.1 Rectification of Defects caused by the installation of unofficial upgrades;
 - 4.8.2 Rectification of Defects caused by software that has been modified, installed, or reinstalled by the Client without the prior written approval of the Service Provider;
 - 4.8.3 Installation and maintenance of pre-release software;
 - 4.8.4 Rectification of Defects caused by the installation of beta or other pre-release software;
 - 4.8.5 Data recovery services;
 - 4.8.6 Installation and maintenance of computer equipment that is not owned by the Client.

5. Client's Obligations

- 5.1 The Client will enable the Service Provider to access the Sites at all times during which the Service Provider provides the Services. Such access shall include, but not be limited to, access to electrical infrastructure and outlets, telephones and any other facilities which the Service Provider may require.
- 5.2 The Client will provide the Service Provider with written reports of any and all problems that require remediation. Such reports shall be in the form provided by the Service Provider, or such form is specified, in writing. In such form, such details to include any specific information relating to the problem, such as the date, time, and location of the problem, the Service Provider.
- 5.3 The Client will take all reasonable steps to protect the health and safety of the Service Provider's employees and subcontractors while on any of the Sites.

6. Service Provider's Obligations

- 6.1 The Service Provider will [and shall endeavour to] ensure that it does not:
- 6.1.1 Create any unsafe conditions on the Sites;
 - 6.1.2 Materially interfere with the operation of HVAC systems, lighting, electrical infrastructure, fire protection systems, or safety systems or services; or
 - 6.1.3 Impose any expenses on the Client in connection with its use or operation of the Sites.
- 6.2 The Service Provider will implement the following:

- 6.2.1 Any damage or destruction to any personal; and
- 6.2.2 Any injury to any person resulting from the performance of the Services by the Service Provider, its sub-contractors or their respective personnel.

7. Warranty

- 7.1 The Service Provider warrants that the Services supplied under this Agreement will be carried out with care and skill by personnel whose qualifications and experience are adequate for the tasks to which they are allocated.
- 7.2 Except as expressly provided in this Agreement, no warranty, condition, undertaking or term, expressed or otherwise, as to the satisfactory quality, fitness for purpose or otherwise of the Services is given on behalf of the Service Provider, and all such warranties, conditions, undertakings or terms are hereby excluded.
- 7.3 The Client agrees that its sole remedy in the event of any non-conformance with any warranty or other provision of this Agreement shall be that the Service Provider (or through a third party) will remedy such non-conformance within a reasonable time, and if, in the Service Provider's opinion, it is unable to remedy such non-conformance, then the Client shall refund the Service Fee for the month in which the Service Provider's claim, were supplied, if the Client has not terminated the Agreement.
- 7.4 The Service Provider does not warrant that problems can and will be corrected but the Service Provider shall make reasonable endeavours to correct problems so long as they are not replicable or otherwise identifiable by the Service Provider.
- 7.5 The Client must promptly notify the Service Provider of any non-conformance to the above warranties in writing within the remedy set out in sub-Clause 7.3, and in any event within the time specified in the Agreement.

8. Liability

- 8.1 [The Service Provider will not be liable for any liability and professional negligence insurance cover of the Client shall be connected with this Agreement to a minimum value of £<<e.g. 1,000,000>> and the Service Provider shall on request provide evidence of such insurance to the Client as to the relevant certificates of insurance which remain in force. The Service Provider shall make commercial efforts to pursue claims under such insurance.]
- 8.2 The Service Provider will not be liable for any personal injury or death caused by the Service Provider or its personnel in connection with the performance of the Services, whether or not by defects in any Software or other product supplied by the Service Provider pursuant to this Agreement.
- 8.3 The Service Provider will not be liable for any direct damage to tangible property caused by the Service Provider or its personnel in connection with the performance of the Services, whether or not by defects in any Software or other product supplied by the Service Provider pursuant to this Agreement.

- performance of the Service Software or other product s Agreement. The Service Pro limited to £<<e.g. 500,000>>
- 8.4 In no event will the Service any express term of this Ag condition or other term, or a negligence or other duty at c
- 8.4.1 loss of or damage to
- 8.4.2 loss of use of data;
- 8.4.3 loss of use of Softwa
- 8.4.4 interruption to busine
- 8.4.5 loss of income or rev
- 8.4.6 loss of profit, contrac opportunity, or goodwill;
- 8.4.7 loss of anticipated sa
- 8.4.8 any indirect, special damage, costs, expenses or other claims, whe re reasonably foreseeable or actually foreseen
- arising from any act or omis performance of its obligation
- 8.5 Except as provided above in tangible property, and below Service Provider's maximum otherwise for any cause wha of remedial services or other
- 8.5.1 [the sum for which insurance cover purs
- 8.5.2 a sum equivalent to Service Provider for the subject of the C same amount for necessarily incurred and/or services.
- 8.6 The Parties acknowledge Clause 8 are reasonable in t
- 8.7 These limitations shall appl form of action, whether und or any other form of action.
- 8.8 Nothing in this Agreement Provider's liability for death c negligence, or for fraud c Provider.
- 8.9 For the purposes of this cla sub-contractors and supplie
- 8.10 The employees, sub-contrac have the benefit of the limits
- ent or by defects in any Provider pursuant to this er this sub-Clause shall be ries of connected events.
- son of any breach by it of t of any implied warranty, misrepresentation, or any
- der in connection with the
- ury, death and damage to ent misrepresentation, the under this Agreement or form of the additional cost e greater of:
- r carries comprehensive
- the point of claim to the or other products that are ges limited to 25% of the directly, reasonably and ning alternative products
- tations contained in this stances.
- ll apply regardless of the tort, including negligence,
- clude or limit the Service by the Service Provider's entation by the Service
- 'er' includes its employees,
- Service Provider shall all ty set out above in terms

of the Contracts (Rights of Termination)

9. Termination

- 9.1 The Service Provider shall be entitled to terminate this Agreement in the event that:
- 9.1.1 The Client fails to pay the Service Provider for a period exceeding << [number] days and fails or refuses to do so following the expiry of the period, or from the Service Provider requesting such payment or
 - 9.1.2 The Client demands the termination of the Services and which are not covered by the Agreement.
- 9.2 The Client shall be entitled to terminate the Agreement in the event that:
- 9.2.1 The Service Provider fails to provide the Services to the Client on >> consecutive occasions within a period of << [number] days to render the required Services in accordance with the terms of this Agreement;
 - 9.2.2 The Service Provider causes, or is likely to cause, damage, are, damaging the Client's computer systems and data.
- 9.3 Either Party has the right to terminate the Agreement immediately if the other:
- 9.3.1 commits a material breach of the Agreement, unless such breach is capable of remedy, in which case the right to terminate immediately will be exercisable if the Party in breach fails to remedy the breach within 14 days after a written notice is received;
 - 9.3.2 goes into bankruptcy (or is deemed to have done so for the purposes of the Insolvency Act 1986) or is wound up, or is reconstructed or amalgamated) or if it transfers any part of its assets.
- 9.4 In the event of termination of the Agreement by the Client, all payments required under this Agreement shall be immediately payable.
- 9.5 Any and all obligations of the Parties arising from the Agreement shall survive termination and expiry of this Agreement.

10. Confidentiality

- 10.1 Each Party undertakes that it shall keep confidential all information disclosed to it by sub-Clause 10.2 or as authorised in writing by the other Party, at all times during the continuance of this Agreement and for a period of [number] years after its termination, in relation to Confidential Information:
- 10.1.1 keep confidential all Confidential Information;
 - 10.1.2 not disclose any of that Confidential Information to any other person;
 - 10.1.3 not use any of that Confidential Information for any purpose other than as contemplated by the Agreement;
 - 10.1.4 not make any copies of that Confidential Information or part with possession of

- 10.1.5 ensure that none of its directors, employees, agents or advisers does any act or omission which, if done by the First Party, would be a breach of the provisions of sub-clause 10.1.4 above.
- 10.2 Either Party ("First Party") may not disclose Confidential Information to the other Party to:
- 10.2.1 disclose any Confidential Information to:
 - 10.2.1.1 any sub-contractor of the First Party;
 - 10.2.1.2 any government, regulatory or regulatory body; or
 - 10.2.1.3 any employee or officer of the First Party or of any of the entities referred to in 10.2.1.2 above;
- to such extent only as is necessary for the purposes contemplated by this Agreement, or as may be required by law, in each case subject to the condition that the Confidential Information is confidential and that the disclosure is to any person or entity referred to in 10.2.1.2 above or any employee or officer of the First Party or of any of the entities referred to in 10.2.1.2 above and submitting to the other Party a written undertaking, as nearly as practicable in the circumstances, to keep the Confidential Information confidential for the purposes for which the disclosure is made.
- 10.2.2 use any Confidential Information for any purpose, or disclose it to any other person or entity, other than as permitted by this Agreement, or as may be required by law, provided that in doing so the First Party does not disclose any Confidential Information which is not already in the public domain.
- 10.3 The provisions of this Clause shall be in full force and effect in accordance with their terms, notwithstanding anything to the contrary in any other agreement for any reason.

11. Notices

- 11.1 All notices under this Agreement shall be in writing.
- 11.2 Notices shall be deemed to have been received by the other Party:
- 11.2.1 when delivered, if delivered by hand, or by recorded delivery mail, or by any other means of delivery, or
 - 11.2.2 when sent, if transmitted by electronic means, or by any other means of transmission, or
 - 11.2.3 on the fifth business day after the date of posting, if mailed by national ordinary mail, postage paid, or
 - 11.2.4 on the tenth business day after the date of posting, if mailed by airmail, postage prepaid.
- in each case addressed to the other Party at the address or e-mail address notified to the other Party.

12. **Relationship of Parties**

Nothing in this Agreement shall create, a partnership, the relationship of principal and agent, or an employee between the Service Provider and the Client.

13. **Assignment**

Neither Party shall assign, transfer or in any other manner make over to any third party the benefit and/or the rights under this Agreement without the prior written consent of the other, such consent shall be withheld.

14. **Force Majeure**

Neither Party to this Agreement shall be liable for any failure or delay in performing their obligations where such failure or delay is caused by a cause that is beyond the reasonable control of that Party. Such causes are not limited to: power failure, Internet Service Provider failure, storms, earthquakes, acts of terrorism, civil unrest, fire, flood, war, pestilence, governmental action or any other event, whether or not similar to an event, which is beyond the reasonable control of the Party in question.

15. **Severance**

The Parties agree that, in the event that any provision of the provisions of this Agreement is found to be unlawful, unenforceable by any court or other authority, that / those provisions shall be severed from the remainder of this Agreement and that the remainder of the Agreement shall be valid and enforceable.

16. **Entire Agreement**

16.1 This Agreement contains the entire understanding between the Parties and supersedes all prior oral or written agreements, understandings or arrangements relating to the subject matter of this Agreement.

16.2 Neither Party shall be entitled to rely on any oral agreement, understanding or arrangement not expressly stated in this Agreement, save for any representation made fraudulently.

16.3 Unless otherwise expressly stated in this Agreement, this Agreement may be varied or amended by the duly authorised representatives of the Parties.

17. **No Waiver**

No failure or delay by the Service Provider in exercising any of its rights under this Agreement means that it has waived its right to rely on the fact that it will waive any subsequent breach of the same or any other provision of this Agreement.

18. **Non-Exclusivity**

The relationship between the Parties is and shall remain non-exclusive. Both parties are free to enter into similar relationships with other parties.

19. **[Dispute Resolution (ADR and Arbitration)]**

- 19.1 The parties shall attempt to resolve any dispute arising out of or relating to this Agreement through negotiation by their duly authorized and appointed representatives who have the authority to settle such disputes.
- 19.2 If negotiations under sub-Clause 19.1 fail, the parties will attempt to resolve the matter within 21 days of receipt of a written invitation to negotiate. The parties will attempt to resolve the dispute in good faith through Alternative Dispute Resolution ("ADR") procedure.
- 19.3 If the ADR procedure under sub-Clause 19.2 fails, the matter shall be referred to arbitration by either party within 28 days of the initial invitation to negotiate or if either party will not participate in the ADR procedure.
- 19.4 The seat of the arbitration shall be England and Wales. The arbitration shall be governed by the Rules for Arbitration as agreed by the parties. In the event that the parties are unable to agree on the Rules for Arbitration, either party may, upon giving notice to the other party, apply to the President or Deputy President of the Chartered Institute of Arbitrators for the appointment of arbitrators and for any decision on rules that may be applicable.
- 19.5 Nothing in this Clause 19 shall prevent either party or its affiliates from applying to a court for interim relief.
- 19.6 The parties hereby agree that the arbitration shall be the final and binding method of dispute resolution under this Agreement for both parties.]

20. **Law and Jurisdiction**

- 20.1 This Agreement shall be governed by the law of England and Wales.
- 20.2 [Any dispute between the Parties arising out of or relating to this Agreement shall fall within the exclusive jurisdiction of the courts of England and Wales.]

IN WITNESS WHEREOF this Agreement has been signed and the day and year first before written

SIGNED by

<<Name and Title of person signing for Client>>
for and on behalf of <<Client's Name>>

In the presence of
<<Name & Address of Witness>>

SIGNED by

<<Name and Title of person signing for Service Provider's Name>>
for and on behalf of <<Service Provider's Name>>

In the presence of
<<Name & Address of Witness>>

S
A
M
P
L
E

Software
<<Insert Details of Software>>

SC

S
A
M
P
L
E

Sites

<<Insert Details of Sites>>

SC

S
A
M
P
L
E