

**DATED** \_\_\_\_\_

**(1) << >>**

**(2) << >>**

## **HARDWARE & 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 hardware and software.
- (2) The Client wishes to procure hardware and software maintenance services from the Service Provider and the Service Provider agrees to provide hardware and 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:

<b>“Confidential Information”</b>	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;
<b>“Defect”</b>	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;
<b>“Hardware”</b>	means any and all computer equipment listed in Schedule 1 of this Agreement in addition to new or replacement computer equipment supplied by the Service Provider in their provision of the Services;
<b>“Hardware Services”</b>	means the hardware maintenance services to be provided to the Client by the Service Provider as defined at Clause 4 of this Agreement;
<b>“Services”</b>	means, collectively, the Hardware Services and Software Services;

<b>“Service Fee”</b>	means	monthly by the Client to the Service Provider as set out in Clause 3 of this Agreement;
<b>“Sites”</b>	means	the Service Provider shall provide the Sites as set out in Schedule 3;
<b>“Software”</b>	means	the Software as set out in Schedule 1 of this Agreement or replacement software supplied by the Service Provider in their provision of the Service;
<b>“Software Licence”</b>	means	the documentation accompanying the Software, including all permissions, rights and restrictions of that software; and
<b>“Software Services”</b>	means	the Software Services to be provided to the Client by the Service Provider as defined at Clause 2.1.

- 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 effected by similar means;
  - 1.2.2 a statute or a provision of law, or a provision as amended or re-enacted;
  - 1.2.3 “this Agreement” is the Agreement and each of the Schedules as amended or re-enacted;
  - 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 (other than the Schedules) and a Schedule.
- 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 Service to the Client at the Sites from <<Insert Date>> until <<Insert Date>> unless and until earlier terminated in accordance with Clause 2.2.
- 2.2 The Term may be renewed on the same terms and conditions as set out in this Agreement 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 on the <<Insert Day>> day of the previous month.

- month.
- 3.2 The Client will pay the Service Provider monthly in advance on the <<e.g. 1st>> day of the Term in consideration of the Service Provider's compliance with Clause 2 of this Agreement to provide the Services.
  - 3.3 The Service Provider will, on the day of delivery of new Software or Hardware to the Client, invoice the Client for such Software or Hardware. The value added tax ("VAT") exclusive of the Client to the Service Provider for any such Software or Hardware shall be << >>% above the VAT exclusive price which the Service Provider has paid for such Software or Hardware. The Client will pay for such Software or Hardware within 30 days of the invoice date.
  - 3.4 The Service Provider will send the invoice by first class post to the Client at the Client's address set out in Clause 1.1 on the page of this Agreement unless otherwise agreed by the Parties.
  - 3.5 All sums specified in this Agreement shall be exclusive of any VAT unless expressly stated otherwise.
4. **Hardware Services**
- 4.1 The Hardware Services shall include the following:
    - 4.1.1 Initial commissioning and testing, including installation and configuration;
    - 4.1.2 Installation of network software as required;
    - 4.1.3 Repair of faults in Hardware;
    - 4.1.4 Supply of maintenance services as required;
    - 4.1.5 Preventative maintenance to take place <<Insert number>> times per annum (but not be limited to) testing, cleaning and lubrication. The provision of such maintenance shall be agreed in writing between the Parties;
    - 4.1.6 Corrective maintenance to include replacement of worn or defective parts as may be deemed necessary by the Service Provider.
  - 4.2 Where any Hardware is unavailable which gives rise to the need for the Hardware Services necessarily gives rise to the need for the Hardware Services, the Service Provider shall use reasonable endeavours to get the Hardware working out of the Hardware (but not be limited to) testing, cleaning and lubrication. The provision of such maintenance shall be agreed in writing between the Parties; (whether or not it has been agreed in writing between the Parties) Clause 4.4 shall then apply
  - 4.3 Where, as provided by sub-Clause 4.2, the Hardware is unavailable, the Service Provider shall promptly supply the Hardware until it has completed the relevant work to the Hardware and the Hardware performs all essential functions required by the Client. The Service Provider shall ensure that such hardware performs all essential functions not to exceed those provided by the Client.
  - 4.4 In the event that corrective maintenance is required, the Service Provider shall supply any necessary replacement parts on a change basis without any additional charge. All parts supplied under this Clause shall be new parts. [Any replaced parts that are not new parts shall become the property of the Client.]

- property of the Service Provider.
- 4.5 This Agreement shall not be extended to cover any additional Hardware that the Client may purchase (or have purchased by a third party) during the Term. Extension of the Agreement to cover such new Hardware shall occur only by written agreement between the Parties and any such increase being at the discretion of the Service Provider.
  - 4.6 The following are expressly excluded from the Hardware Services and the Service Provider will only undertake repairs and at extra cost to the Client:
    - 4.6.1 Repairs to Hardware that is lost, stolen, damaged, abused or damaged deliberately or negligently by a third party;
    - 4.6.2 Repairs to printers and other consumables;
    - 4.6.3 Repairs to Hardware that is damaged as a result of war, terrorism, fire, explosion or natural causes;
    - 4.6.4 Repairs to electrical equipment that is external to the Hardware;
    - 4.6.5 Repairs to equipment that is not included in Schedule 1;
    - 4.6.6 Repairs to Hardware that is not repaired by the Client or requires the prior approval of the Service Provider.
  - 4.9 [If, in its reasonable opinion, the Service Provider considers that any Hardware cannot be repaired economically or is beyond repair, it notifies the Client accordingly, the Client will thereupon not be required to carry out any Service and the Hardware will be deemed to be no longer listed.

## 5. Software Services

- 5.1 The Software Services shall include the following:
  - 5.1.1 Installation of Software on Client computers as directed by the Client at the Site(s), including servers, workstations and company-owned equipment;
  - 5.1.2 Corrections of Defects to ensure operation in accordance with documentation relevant to the Software; provided such corrections are permitted under the Software Licence relating to that Software;
  - 5.1.3 Analysis of Software and other relevant information to determine remedial action in relation to the Software;
  - 5.1.4 Periodic updates of Software;
  - 5.1.5 Installation of new versions of Software at the sole discretion of the Service Provider.
- 5.2 Where any Software is unavailable due to the loss or failure of it which gives

# SAMPLE

rise to the need for the Software Services necessary to ensure the carrying out of the Software Services (unavailability), the Service Provider shall use reasonable efforts to complete all work required within <<e.g. 8>> hours, [but not if it has used reasonable efforts to complete the work within that period (whether or not sub-Clause 5.3 shall then apply)]

5.3 [Where, as provided by sub-Clause 5.3 applies, the Service Provider shall promptly provide a workaround solution until it has completed the relevant work and it will ensure that such solution performs all essential functions of the Client, such functions not to exceed those provided in the Software].

5.4 This Agreement shall not be extended to cover any additional Software that the Client may require the Service Provider or a third party) during the Term. Extension of the Agreement to cover such new services shall occur only by written agreement between the Parties and such increase being at the discretion of the Service Provider.

5.5 Under no circumstances shall the Service Provider undertake any work that may result in the infringement of any third party's intellectual property rights. Such work to include, but not be limited to the unauthorized copying, distribution, or use of Software and the installation of multiple copies of Software on the Client's equipment in a quantity permitted by the relevant Software Licence.

5.6 The following are expressly excluded from the Software Services and the Service Provider shall only undertake such work at the discretion and at extra cost to the Client:

5.6.1 Rectification of Defects caused by the installation of unofficial upgrades;

5.6.2 Rectification of Defects caused by the installation of Software that has been modified, installed, or reinstalled by the Client without the prior written approval of the Service Provider;

5.6.3 Installation and maintenance of pre-release software;

5.6.4 Rectification of Defects caused by the installation of beta or other pre-release software;

5.6.5 Data recovery services;

5.6.6 Installation and maintenance of computer equipment that is not owned by the Client.

## 6. Client's Obligations

6.1 The Client will enable the Service Provider to access the Sites at all times during which the Service Provider requires such access in order to provide the Services. Such access shall include access to HVAC systems, lighting, electrical systems, computer networks, telephones and any other equipment that the Service Provider reasonably requires.

6.2 The Client will provide the Service Provider with detailed 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. Such reports shall include, but not be limited to, the following: such a form that clearly sets out the problem, such

- details to include any specific instructions from the Client to the Service Provider.
- 6.3 The Client will take all reasonable steps to ensure that the health and safety of the Service Provider's employees and sub-contractors while on any of the Sites.

## 7. Service Provider's Obligations

- 7.1 The Service Provider will perform the Services in a timely manner and in accordance with prevailing best practice in the industry.
- 7.2 Where the nature of the Services requires that the work takes place 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, unless otherwise agreed.
- 7.3 The Service Provider will [endeavour to] ensure that it does not:
- 7.3.1 Create any unsafe conditions on the Sites;
  - 7.3.2 Materially interfere with the operation of HVAC systems, lighting, electrical infrastructure, fire protection systems, or safety systems or services; or
  - 7.3.3 Impose any expenses in connection with its use or operation of the Sites.
- 7.4 The Service Provider will indemnify the Client for the following:
- 7.4.1 Any damage or destruction to the Client's property or personal; and
  - 7.4.2 Any injury to any person resulting from the performance of the Services by the Service Provider, its sub-contractors or their representatives.

## 8. Warranty

- 8.1 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.
- 8.2 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 the part of the Service Provider, and all such warranties, conditions, undertakings or terms are hereby excluded.
- 8.3 The Client agrees that its sole remedy in the event of any non-conformance with the Services is that the Service Provider will remedy such non-conformance (by itself or through a third party) and if, in the Service Provider's opinion, it is unable to remedy such non-conformance, the Service Provider will refund the Service Fee for the month in which the non-conformance was first identified, subject of such claim, were the non-conformance immediately terminate.]
- 8.4 The Service Provider does not warrant that all problems can and will be corrected but the Service Provider will use reasonable endeavours to

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correct problems so long as they are identifiable by the Service Provider

replicable or otherwise

- 8.5 The Client must promptly notify the Service Provider of any non-conformance with the above warranties in writing, and the Service Provider shall provide the remedy set out in sub-Clause 8.3, and in any event

## 9. Liability

- 9.1 [The Service Provider will maintain, for the duration of this Agreement, maintain employer's liability, third party negligence insurance covering liabilities arising out of or connected with this Agreement to a minimum value of £<<e.g. 1,000,000>> and will provide the Client with a copy of any of its relevant certificates of insurance. The Service Provider shall on request provide insurance to the Client as to the relevant certificates of insurance remain in force. The Service Provider undertakes to make all reasonable commercial efforts to pursue claims under such insurance

- 9.2 The Service Provider will not be liable for personal injury or death caused by the Service Provider or in connection with the performance of the Service Provider or by defects in any Hardware, Software or other equipment supplied by the Service Provider pursuant to this Agreement.

- 9.3 The Service Provider will not be liable for direct damage to tangible property caused by the Service Provider in connection with the performance of the Service Provider or by defects in any Hardware, Software or other equipment supplied by the Service Provider pursuant to this Agreement. The Service Provider's total liability under this sub-Clause shall be limited to the amount of connected events.

- 9.4 In no event will the Service Provider be liable for any express term of this Agreement, or any implied warranty, condition or other term, or any negligence of other duty at common law, or any breach by it of any implied warranty, condition or other term, or any misrepresentation, or any

9.4.1 loss of or damage to

9.4.2 loss of use of data;

9.4.3 loss of use of Hardware

9.4.4 interruption to business

9.4.5 loss of income or revenue

9.4.6 loss of profit, contractual

9.4.7 loss of anticipated savings

9.4.8 any indirect, special or other claims, whether or not reasonably foreseeable or actually foreseen

arising from any act or omission in connection with the performance of its obligation

- 9.5 Except as provided above in sub-Clause 9.4, the Service Provider shall not be liable for personal injury, death and damage to tangible property, and below



Service Provider's maximum liability for any cause whatsoever for remedial services or other

under this Agreement or otherwise for any cause whatsoever, in the form of the additional cost of remedial services or other, whichever is the greater of:

9.5.1 [the sum for which the Service Provider carries comprehensive insurance cover pursuant to

the point of claim to the Service Provider for any claim, plus damages limited to the additional costs directly, plus the Client in obtaining

9.5.2 a sum equivalent to the value of the Service Provider for any claim, plus damages limited to the additional costs directly, plus the Client in obtaining alternative products and

the point of claim to the Service Provider for any claim, plus damages limited to the additional costs directly, plus the Client in obtaining alternative products and

9.6 The Parties acknowledge that the limitations contained in this Clause 9 are reasonable in the circumstances.

the point of claim to the Service Provider for any claim, plus damages limited to the additional costs directly, plus the Client in obtaining alternative products and

9.7 These limitations shall apply regardless of the form of action, whether under contract, tort, including negligence, or any other form of action.

the point of claim to the Service Provider for any claim, plus damages limited to the additional costs directly, plus the Client in obtaining alternative products and

9.8 Nothing in this Agreement shall include or limit the Service Provider's liability for death or personal injury by the Service Provider's negligence, or for fraud or intentional misrepresentation by the Service Provider.

the point of claim to the Service Provider for any claim, plus damages limited to the additional costs directly, plus the Client in obtaining alternative products and

9.9 For the purposes of this clause, the Service Provider includes its employees, sub-contractors and suppliers.

the point of claim to the Service Provider for any claim, plus damages limited to the additional costs directly, plus the Client in obtaining alternative products and

9.10 The employees, sub-contractors and suppliers of the Service Provider shall all have the benefit of the limitations of the Contracts (Rights of Termination) Regulations 2002.

the point of claim to the Service Provider for any claim, plus damages limited to the additional costs directly, plus the Client in obtaining alternative products and

## 10. Termination

10.1 The Service Provider shall be entitled to terminate this Agreement in the event that:

the point of claim to the Service Provider for any claim, plus damages limited to the additional costs directly, plus the Client in obtaining alternative products and

10.1.1 The Client fails to pay the Service Provider for a period exceeding << and fails or refuses to do so following the expiry of the period for requesting such payment.

the point of claim to the Service Provider for any claim, plus damages limited to the additional costs directly, plus the Client in obtaining alternative products and

10.1.2 The Client demands the Service Provider for a period exceeding << and fails or refuses to do so following the expiry of the period for requesting such payment.

the point of claim to the Service Provider for any claim, plus damages limited to the additional costs directly, plus the Client in obtaining alternative products and

10.2 The Client shall be entitled to terminate this Agreement in the event that:

the point of claim to the Service Provider for any claim, plus damages limited to the additional costs directly, plus the Client in obtaining alternative products and

10.2.1 The Service Provider fails to provide the Services to the Client within a period of << consecutive occasions and fails or refuses to do so following the expiry of the period for requesting such payment.

the point of claim to the Service Provider for any claim, plus damages limited to the additional costs directly, plus the Client in obtaining alternative products and

10.2.2 The Service Provider fails to provide the Services to the Client within a period of << consecutive occasions and fails or refuses to do so following the expiry of the period for requesting such payment.

the point of claim to the Service Provider for any claim, plus damages limited to the additional costs directly, plus the Client in obtaining alternative products and

10.3 Either Party has the right to terminate this Agreement immediately if the other:

the point of claim to the Service Provider for any claim, plus damages limited to the additional costs directly, plus the Client in obtaining alternative products and

10.3.1 commits a material breach of the Agreement, unless such breach is capable of remedy, in which case the Service Provider shall terminate immediately will

the point of claim to the Service Provider for any claim, plus damages limited to the additional costs directly, plus the Client in obtaining alternative products and

- be exercisable if the  
14 days after a written
- 10.3.2 goes into bankruptcy  
for the purposes  
amalgamation) or if  
any part of its assets
- 10.4 In the event of termination  
required under this Agreement
- 10.5 Any and all obligations of the  
continue beyond the termination  
shall survive termination under

remedy the breach within

entary or compulsory (save  
porate reconstruction or  
in respect of the whole or

y the Client, all payments  
d immediately payable.

expressly or by their nature  
poration of this Agreement

## 11. Confidentiality

- 11.1 Each Party undertakes that  
authorised in writing by the  
continuance of this Agreement  
relation to Confidential Information
- 11.1.1 keep confidential all  
11.1.2 not disclose any of the  
11.1.3 not use any of that Confidential  
as contemplated by a  
11.1.4 not make any copies  
any of that Confidential  
11.1.5 ensure that none of  
advisers does any act  
of the provisions of s
- 11.2 Either Party ("First Party") may
- 11.2.1 disclose any Confidential  
11.2.1.1 any sub-contractor  
11.2.1.2 any government  
11.2.1.3 any employee  
aforementioned
- to such extent only as  
this Agreement, or as  
First Party first informs  
Information is confidential  
such body as is mentioned  
employee or officer of  
other Party a written  
as practicable in the  
Information confidential  
the disclosure is made
- 11.2.2 use any Confidential  
disclose it to any other  
this Agreement, or  
knowledge through

y sub-Clause 11.2 or as  
, at all times during the  
[5 years] after its termination in

tion;

on to any other person;

or any purpose other than  
of this Agreement;

or part with possession of

, employees, agents or  
Party, would be a breach  
11.4 above.

ther Party to:

e First Party;

y or regulatory body; or

st Party or of any of the

urposes contemplated by  
each case subject to the  
condition that the Confidential  
the disclosure is to any  
11.2.1.2 above or any  
ing and submitting to the  
son in question, as nearly  
to keep the Confidential  
for the purposes for which

Party for any purpose, or  
only that it is at the date of  
at date becomes, public  
provided that in doing so

- the First Party do not constitute part of that Confidential Information which is
- 11.3 The provisions of this Clause shall remain in force in accordance with their terms, notwithstanding any termination or agreement for any reason.
12. **Notices**
- 12.1 All notices under this Agreement shall be in writing.
- 12.2 Notices shall be deemed to have been received by the other Party:
- 12.2.1 when delivered, if delivered by hand, by a messenger (including overnight delivery) or by recorded delivery mail, at the address of the recipient, at any time of the day or night, on any day of the week, including public holidays, or
- 12.2.2 when sent, if transmitted by electronic mail, at the time of successful transmission.
- 12.2.3 on the fifth business day after the date of posting, if mailed by national ordinary mail, postage paid.
- 12.2.4 on the tenth business day after the date of posting, if mailed by airmail, postage prepaid.
- in each case addressed to the Party at the address notified to the other Party.
13. **Relationship of Parties**
- Nothing in this Agreement shall create, a partnership, the relationship of principal and agent, or an employment relationship between the Service Provider and the Client.
14. **Assignment**
- Neither Party shall assign, transfer or otherwise make over to any third party the benefit and/or the obligations of this Agreement without the prior written consent of the other, such consent shall be withheld.
15. **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, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, or any other event, whether or not similar to any event, which is beyond the reasonable control of the Party in question.
16. **Severance**
- The Parties agree that, in the event that any provision of the provisions of this Agreement is found to be unlawful, the provision shall be unenforceable by any court or

other authority, that / those provisions of this Agreement and that the remainder shall be valid and enforceable.

## 17. Entire Agreement

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

17.2 Neither Party shall be entitled to vary the Agreement, understanding or arrangement not expressly contained in the Agreement, save for any representation made fraudulently.

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

## 18. 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 claim that it will waive any subsequent breach of the same or a

## 19. 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.

## 20. [Dispute Resolution (ADR and Arbitration)]

20.1 The parties shall attempt to resolve any dispute arising out of or relating to this Agreement through negotiations by their duly authorised representatives who have the authority to settle such disputes.

20.2 If negotiations under sub-Clause 20.1 fail, then, within 21 days of receipt of a written invitation to negotiate, the parties will attempt to resolve the dispute in good faith through the Alternative Dispute Resolution ("ADR") procedure.

20.3 If the ADR procedure under sub-Clause 20.2 fails, then, within 28 days of the initial invitation to negotiate, 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 an arbitrator.

20.4 The seat of the arbitration shall be England and Wales. The arbitration shall be governed by the Arbitration Act 1996 and the Rules for Arbitration as agreed by the parties. In the event that the parties are unable to agree 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 an arbitrator.

- decision on rules that may be applicable to the dispute.
- 20.5 Nothing in this Clause 20 shall prevent either party or its affiliates from applying to a court for interim relief.
- 20.6 The parties hereby agree that arbitration shall be the final method of dispute resolution under this Agreement and shall be final and binding on both parties.

21. **Law and Jurisdiction**

- 21.1 This Agreement shall be governed by the law of England and Wales.
- 21.2 [Any dispute between the Parties to this Agreement shall fall within the exclusive jurisdiction of the courts of England and Wales.]

**IN WITNESS WHEREOF** this Agreement has been signed 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>>  
for and on behalf of <<Service Provider's Name>>

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

**Hardware**  
<<Insert Details of Hardware>>

SC

S  
A  
M  
P  
L  
E

**Software**  
<<Insert Details of Software>>

SC

S  
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L  
E

## Sites

<<Insert Details of Sites>>

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