

DATED

DD/MM/YYYY

IPLICIT LIMITED (1)

CUSTOMER NAME

**SOFTWARE SERVICES SUBSCRIPTION
AGREEMENT**

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SCHEDULE

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THIS AGREEMENT is dated dd/mm/yyyy

PARTIES

- (1) **Iplicit Limited** incorporated and registered in England and Wales with company number 7194134 whose registered office is at Studio 1, Floor 2 144 Cambridge Heath Road, Bethnal Green, London, E1 5QJ (**Iplicit**)
- (2) The person or incorporated entity whose name and address is set out in Schedule 1 (**Customer**)

BACKGROUND

- (A) IPLICIT has developed certain business software applications which it makes available to subscribers via the internet and via locally installed applications and which the Customer wishes to use.
- (B) IPLICIT has agreed to provide and the Customer has agreed to use and pay for IPLICIT's services subject to the terms and conditions of this agreement.

AGREED TERMS

1. INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply in this agreement.

Authorised Users: those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Services.

Business Day: any day which is not a Saturday, Sunday or public holiday in the UK.

Confidential Information: information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clauses 12.5 and 12.6.

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

Documentation: the documents made available to the Customer by IPLICIT online via www.iplicit.com or such other web address notified by IPLICIT to the Customer from time to time which amongst other things sets out a description of the Services, sets out policies, and provides user instructions for the Services.

Go Live Sign Off Date: the date that IPLICIT has completed the Measures within a Project Plan as specified in an Implementation Notice referred to in clause 2.7.

Implementation Fees: the set-up fees payable by the Customer to IPLICIT as set out in Schedule 2

Implementation Period: the period beginning with the date of this agreement and ending on the day before the Go Live Sign Off Date during which the Implementation Services are performed.

Implementation Services: the performance by Ipllicit of the Measures in accordance with the Project Plan and any additional services which Ipllicit may in its absolute discretion agree to supply to the Customer.

Initial Subscription Term: the initial term for the Authorised users to access the Software pursuant to this agreement beginning with Go Live Sign Off Date.

Measures: the design, build, data migration, testing and other configuration services to be performed and/or delivered by Ipllicit to the Customer to enable use of the Software.

Normal Business Hours: 9.00 am to 5.00 pm local UK time, each Business Day.

Project Plan: the plan at the date hereof, incorporating the Measures and provisions relating to governance and responsibilities of the Parties and training plans and training to be supplied by Ipllicit, a copy of which has been initialled and dated by the Parties and as the same may be varied in writing with the written consent of the Parties from time to time.

Renewal Period: the period set out in Schedule 1.

Services: the provision to the Customer of access to the use of the Software and the Documentation on a subscription basis under this agreement via www.iplicit.com or any other website notified to the Customer by Ipllicit from time to time.

Software: the online and locally installed software application known as “Ipllicit” provided by Ipllicit as part of the Services.

Subscription Fees: the annual subscription fees payable by the Customer to Ipllicit for the User Subscriptions, as set out in Schedule 1.

Subscription Term: has the meaning given in clause 15.1 (being the Initial Subscription Term together with any subsequent Renewal Periods).

Support Services Policy: Ipllicit’s policy for providing support in relation to the Services as made available at www.iplicit.com/policies or such other website address as may be notified to the Customer from time to time.

User Subscriptions: the user subscriptions purchased by the Customer pursuant to the terms of this agreement which entitle Authorised Users to access and use the Services in accordance with this agreement.

Virus: any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

- 1.2 References to clauses and to Schedule 1 are to the clauses and schedule of this agreement; clause headings shall not affect the interpretation of this agreement.

- 1.3 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.
- 1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Words in the singular shall include the plural and vice versa.
- 1.6 A reference to one gender shall include a reference to the other genders.
- 1.7 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.8 A reference to writing or written includes e-mail unless otherwise stated in this agreement.
- 1.9 In this agreement, the word "including" shall mean including without limitation or prejudice to the generality of any description, definition, term or phrase preceding that word, and the word "include" and its derivatives shall be construed accordingly.

2. IMPLEMENTATION

- 2.1 Ipllicit shall perform the Implementation Services set out in Schedule 2 the Project Plan.
- 2.2 The Customer shall provide Ipllicit with:
 - (a) such personnel assistance as may be reasonably requested by Ipllicit from time to time;
 - (b) access to Customer Data;
 - (c) security access information;
 - (d) access to software interfaces to the Customer's other business applications;
 - (e) access to usual office facilities at the Customer's business premises including a work area with access to communications, a rest area, eating washing and sanitary facilities, and an area for training of the Customer's staff; and,
 - (f) all other necessary co-operation and access to such information as may be required by Ipllicit in order that Ipllicit may render the Implementation Services.
- 2.3 On completion of the Measures Ipllicit shall serve a notice on the Customer confirming that the Customer shall be able to access the Software online (**Implementation Notice**). The Implementation Notice shall state the date of the Go Live Sign Off Date for the purposes of this agreement.

- 2.4 If the Customer is not able to access the Software after receiving the Implementation Notice by reason of a technical failure in the performance of the Implementation Services, it shall give Iplcitic a detailed description of any such inability in writing within 5 working days of receiving the Implementation Notice (an **Error Notice**).
- 2.5 With respect to any technical failure identified by the Customer in an Error Notice or otherwise agreed by Iplcitic and for which Iplcitic is responsible, the Go Live Sign Off Date stated in the Implementation Notice shall not apply and Iplcitic shall use reasonable endeavours to correct any such technical failure within a reasonable time and on completion of any corrective work shall submit a further Implementation Notice to the Customer, stating the revised Go Live Sign Off Date and the provisions of this clause 2.4 shall then apply again.
- 2.6 If the Customer is not able to access the Software after receiving the second Implementation Notice, it shall serve an Error Notice on Iplcitic and the processes set out in clauses 2.4 and 2.5 shall apply again. If Iplcitic is unable to correct any technical failure identified by the Customer in such further Error Notice or otherwise agreed by Iplcitic and for which Iplcitic is responsible after three attempts, either party may terminate this agreement without further liability to the other party.
- 2.7 If the Customer does not provide an Error Notice within the period of 5 working days described above, or if the technical failure is not one for which Iplcitic is responsible, the Go Live Sign Off Date as stated in the Implementation Notice shall be deemed accepted for the purpose of this agreement.

3. ACCESS TO THE SOFTWARE

- 3.1 In consideration of the Subscription Fees Iplcitic grants to the Customer from and including the Go Live Sign Off Date a non-exclusive, non-transferable, revocable right to permit the number of Authorised Users set out in Schedule 1 and any additional User Subscriptions purchased pursuant to clause 4 to use the Services during the Subscription Term only for the Customer's internal business operations subject to the restrictions set out in this clause 2 and the other terms and conditions of this agreement.
- 3.2 In relation to the Authorised Users, the Customer undertakes to Iplcitic that:
- (a) the maximum number of Authorised Users that it authorises to access and use the Services shall not exceed the number of User Subscriptions it has purchased from time to time;
 - (b) it will not allow or suffer any User Subscription to be used by more than one individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the Services and/or Documentation;

- (c) it shall permit Ipllicit to audit the Customer's use of the Services in order to establish number of Authorised Users;
- (d) if any of the audits referred to in clause 3.2(c) reveal that the Customer has underpaid Subscription Fees to Ipllicit, then without prejudice to Ipllicit's other rights, the Customer shall pay to Ipllicit an amount equal to such underpayment as calculated in accordance with the prices set out in Schedule 1 as revised from time to time in accordance with clause 10.5, plus interest thereon calculated in accordance with clause 10.2(c), payable pursuant to the direct debit mandate to be provided by the Customer within 14 days of the date of Ipllicit's invoice; and
- (e) it shall not cancel the direct debit for the Subscription Fees without first giving at least 7 days' notice to Ipllicit of its intention so to do.

3.3 The Customer shall use its best endeavours not to access, store, distribute or transmit any Viruses, nor access, store, distribute or transmit any material during the course of its use of the Services that is unlawful or which facilitates or promotes unlawful conduct or activity including material that is harmful, threatening, defamatory, obscene, sexually explicit, harassing, intimidating, or which causes or may cause damage or injury to any person or property and Ipllicit reserves the right, without liability or prejudice to its other rights and obligations, to disable the Customer's access to any material that breaches the provisions of this clause.

3.4 The Customer shall not:

- (a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties:
 - (i) and except to the extent expressly permitted under this agreement, attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or
 - (ii) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or
- (b) access all or any part of the Services in order to build or assist in any way with the building of a product or service which competes with and/or is similar to the Services; or
- (c) use the Services to provide services to third parties; or
- (d) subject to clause 21.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services or any part of them available to any third party except the Authorised Users, or
- (e) attempt to obtain, or assist third parties in obtaining, access to the Services, other than as provided under this clause 2.

3.5 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and, in the event of any such unauthorised access or use, shall promptly notify Ipllicit of such access and the circumstances relating to such access.

4. ADDITIONAL USER SUBSCRIPTIONS

4.1 The Customer may, from time to time during the Subscription Term and with the consent of Ipllicit, purchase additional User Subscriptions in excess of the number of users set out in Schedule 1 at the then prevailing fees set by Ipllicit in accordance with clause 10.5 and Ipllicit shall promptly grant access to the Services to such additional Authorised Users in accordance with the provisions of this agreement.

4.2 If such additional User Subscriptions are purchased by the Customer, such fees shall be pro-rated for the remainder of the Subscription Term.

5. SERVICES

5.1 Ipllicit shall, during the Subscription Term, provide the Services to the Customer on and subject to the terms of this agreement.

5.2 Ipllicit shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for:

- (a) planned maintenance carried out during the maintenance window of 10.00 pm to 2.00 am UK time; and
- (b) unscheduled maintenance performed outside Normal Business Hours, provided that Ipllicit has used reasonable endeavours to give the Customer at least 5 Normal Business Hours' notice in advance.

5.3 Ipllicit will, as part of the Services and at no additional cost to the Customer, provide the Customer with Ipllicit's standard customer support services during Normal Business Hours in accordance with Ipllicit's Support Services Policy in effect at the time that the Services are provided (available at www.iplicit.com/policies). The Customer may purchase enhanced support services separately at Ipllicit's then current rates.

6. CUSTOMER DATA

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

6.2 Ipllicit shall follow its archiving procedures for Customer Data as set out in its Back-Up Policy available at www.iplicit.com/policies or such other website address as may be notified to the Customer from time to time, as such document may be amended by Ipllicit in its sole discretion from time to time. In the event of any loss

or damage to Customer Data, the Customer's sole and exclusive remedy shall be for Ipllicit to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by Ipllicit in accordance with the archiving procedure described in its Back-Up Policy. Ipllicit shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party.

- 6.3 Ipllicit shall, in providing the Services, comply with its Privacy and Security Policy relating to the privacy and security of the Customer Data available at www.iplicit.com/policies or such other website address as may be notified to the Customer from time to time, as such document may be amended from time to time by Ipllicit in its sole discretion.
- 6.4 If Ipllicit processes any personal data on the Customer's behalf when performing its obligations under this agreement, the parties record their intention that the Customer shall be the data controller and Ipllicit shall be a data processor and in any such case:
- (a) the Customer acknowledges and agrees that the personal data may be transferred or stored outside the EEA or the country where the Customer and the Authorised Users are located in order to carry out the Services and Ipllicit's other obligations under this agreement;
 - (b) the Customer shall ensure that the Customer is entitled to transfer the relevant personal data to Ipllicit so that Ipllicit may lawfully use, process and transfer the personal data in accordance with this agreement on the Customer's behalf;
 - (c) the Customer shall ensure that the relevant third parties have been informed of, and have given their consent to, such use, processing, and transfer as required by all applicable data protection legislation;
 - (d) Ipllicit shall process the personal data only in accordance with the terms of this agreement and any lawful instructions reasonably given by the Customer from time to time; and
 - (e) each party shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the personal data or its accidental loss, destruction or damage.

7. THIRD PARTY PROVIDERS

The Customer acknowledges that the Services may enable or assist it to access the website content of, correspond with, and purchase products and services from, third parties via third-party websites and that it does so solely at its own risk. Ipllicit makes no representation or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by the Customer, with any such third party. Any contract entered into and any transaction completed via any third-party website is between the Customer and the relevant third party, and not Ipllicit. Ipllicit recommends that the Customer refers to the third party's website terms

and conditions and privacy policy prior to using the relevant third-party website. Ipllicit does not endorse or approve any third-party website nor the content of any of the third-party website made available via the Services.

8. IPLICIT'S OBLIGATIONS

- 8.1 Ipllicit undertakes that the Services will be performed substantially in accordance with the Documentation and with reasonable skill and care.
- 8.2 The undertaking at clause 8.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to Ipllicit's instructions, or modification or alteration of the Services by any party other than Ipllicit or Ipllicit's duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, Ipllicit will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 8.1. Notwithstanding the foregoing, Ipllicit:
- (a) does not warrant that the Customer's use of the Services will be uninterrupted or error-free; or that the Services or the information obtained by the Customer through the Services will meet the Customer's requirements; and
 - (b) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 8.3 This agreement shall not prevent Ipllicit from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this agreement.
- 8.4 Ipllicit warrants that it has all necessary licences, consents, and permissions necessary for the performance of its obligations under this agreement.

9. CUSTOMER'S OBLIGATIONS

- 9.1 The Customer shall:
- (a) provide Ipllicit with:
 - (i) all necessary co-operation in relation to its use of the Services and its rights and obligations under this agreement; and
 - (ii) all necessary access to such information as may be required by Ipllicit;

in order to enable Ipllicit to provide or monitor the use of the Services, including but not limited to Customer Data, security access information and configuration services;

- (b) pay the Subscription Fees (quarterly, in advance) and any excess storage fees (in the month they are incurred) by direct debit;
- (c) comply with all applicable laws and regulations with respect to its activities under this agreement;
- (d) carry out all other Customer responsibilities set out in this agreement in a timely and efficient manner;
- (e) ensure that the Authorised Users use the Services in accordance with the terms and conditions of this agreement and shall be solely responsible for any Authorised User's breach of this agreement;
- (f) ensure that Authorised Users are properly trained and sufficiently competent to a level that is appropriate to their usage of the Services;
- (g) ensure that the latest version of Ipllicit's locally installed software applications that has been made available to them is installed on all computers used to access the Services;
- (h) obtain and shall maintain all necessary licences, consents, and permissions necessary for Ipllicit, its contractors and agents to perform their obligations under this agreement, including without limitation the Services;
- (i) ensure that its network and systems comply with the relevant specifications provided by Ipllicit from time to time;
- (j) be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to Ipllicit's data centres; and
- (k) be solely responsible for all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

9.2 In the event of any failure or delays in the Customer's compliance with its obligations under this agreement, Ipllicit may adjust any agreed timetable, delivery schedule or amounts payable and/or may suspend the Customer's rights to access the Services as reasonably necessary to procure compliance by the Customer of its obligations.

10. CHARGES AND PAYMENT

10.1 The Subscription Fees for the Initial Subscription Term shall be due upon the Go Live Sign Off Date and for any Renewal Period on the first day of the Renewal Period but provided the Customer is not in breach of this agreement the Customer may pay the Subscription Fees to Ipllicit due for the Initial Subscription Term and for any Renewal Period by equal quarterly instalments in advance.

- 10.2 If Ipllicit has not received a quarterly payment instalment within 14 days after the due date, and without prejudice to any other rights and remedies of Ipllicit, including the right to terminate this agreement:
- (a) Ipllicit may, without liability to the Customer, suspend the Customer's account and its access to all or part of the Services and Ipllicit shall be under no obligation to provide any of the Services while any of the Subscription Fees remain unpaid;
 - (b) The whole of the Subscription Fees and any excess storage fees shall become immediately due and payable; and
 - (c) interest shall accrue on such due amounts at an annual rate equal to 5% over the then current base lending rate of HSBC Bank Plc at the date the relevant invoice was issued, commencing on the due date and continuing until fully paid, whether before or after judgment.
- 10.3 All amounts and fees stated or referred to in this agreement:
- (a) shall be payable in Euros;
 - (b) are, subject to clause 14.4(b), non-cancellable and non-refundable;
 - (c) are exclusive of value added tax, which shall be payable in addition at the appropriate rate.
- 10.4 If, at any time whilst using the Services, the Customer exceeds the amount of disk storage space specified in the Schedule 1, Ipllicit shall charge the Customer, and the Customer shall pay, Ipllicit's then current excess data storage fees. Ipllicit's excess data storage fees current as at the Go Live Sign Off Date are set out in Schedule 1.
- 10.5 Ipllicit shall be entitled to review and increase the fees payable in respect of User Subscriptions and any additional User Subscriptions purchased pursuant to clause 4.1 and/or the excess storage fees payable pursuant to clause 10.4 from time to time without notice to the Customer but subject always to clause 10.6 and provided that any annual increase shall not exceed 5% above RPI from the period beginning with the Go Live Sign Off Date or, if later, the date of any previous review.
- 10.6 Subject to clause 4.1 (pursuant to which the Customer and Ipllicit agree that the Subscription Fees payable for additional Authorised Users approved by Ipllicit prior to the end of the Initial Subscription Term or during a Renewal Period shall be payable at the then prevailing rate for additional Authorised Users), any increase in Subscription Fees following any revisions of the same shall be payable only with effect on and from the commencement of a Renewal Period and Schedule 1 shall be deemed to have been amended accordingly.

11. PROPRIETARY RIGHTS

- 11.1 The Customer acknowledges and agrees that Ipllicit and/or its licensors own all intellectual property rights in the Software, Services. Except as expressly stated

herein, this agreement does not grant the Customer any rights to, or in, patents, copyrights, database right, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licences in respect of the Services or the Documentation. Nothing in this agreement shall operate to prevent Ipllicit from making use of know-how acquired, principles learned or developed or experienced gained during the performance of this agreement in future contracts with third parties or the Customer.

- 11.2 Ipllicit confirms that it has all the rights in relation to the Services that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this agreement.
- 11.3 Ipllicit may modify the Services from time to time and at any time provided that if any modification materially adversely affects the functionality of the Services, Ipllicit will give notice to the Customer of the modification as soon as it becomes aware of the issue.
- 11.4 The Customer shall not without the prior consent of Ipllicit:
 - (a) market, exploit or make any documentation, services or software available to another person or permit another person to use the Software, Services or Documentation;
 - (b) use any Documentation, Services or Software on behalf of or for the benefit of another person or company;
 - (c) delete, remove or in any way obscure Ipllicit's proprietary notices on the Software or Documentation;
 - (d) alter or modify the Software or Documentation;
 - (e) combine the Software with or incorporate it in any other programmes; or
 - (f) attempt to do any of the foregoing or permit others to do so.
- 11.5 The intellectual property rights of Ipllicit held in any Software, Documentation, Services or any other software is and will remain at all times Ipllicit's property or that of Ipllicit's licensors.

12. CONFIDENTIALITY

- 12.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this agreement. A party's Confidential Information shall not be deemed to include information that:
 - (a) is or becomes publicly known other than through any act or omission of the receiving party;
 - (b) was in the other party's lawful possession before the disclosure;
 - (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure;

- (d) is independently developed by the receiving party, which independent development can be shown by written evidence; or
 - (e) is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.
- 12.2 Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this agreement.
- 12.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this agreement.
- 12.4 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.
- 12.5 The Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitute Ipllicit's Confidential Information.
- 12.6 Ipllicit acknowledges that the Customer Data is the Confidential Information of the Customer.
- 12.7 This clause 12 shall survive termination of this agreement, however arising.

13. INDEMNITY

- 13.1 The Customer shall defend, indemnify and hold harmless Ipllicit against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Services and/or Documentation, provided that:
- (a) the Customer is given prompt notice of any such claim;
 - (b) Ipllicit provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
 - (c) the Customer is given sole authority to defend or settle the claim.
- 13.2 Ipllicit shall defend the Customer, its officers, directors and employees against any claim that the Services or Documentation infringes any United Kingdom copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:
- (a) Ipllicit is given prompt notice of any such claim;
 - (b) the Customer provides reasonable co-operation to Ipllicit in the defence and settlement of such claim, at Ipllicit's expense; and

- (c) Iplicit is given sole authority to defend or settle the claim.
- 13.3 In the defence or settlement of any claim, Iplicit may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this agreement on 20 Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.
- 13.4 In no event shall Iplicit, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:
- (a) a modification of the Software, Services or Documentation by anyone other than Iplicit, its agents or subcontractors; or
 - (b) the Customer's use of the Software, Services or Documentation in a manner contrary to the instructions given to the Customer by Iplicit; or
 - (c) the Customer's use of the Software, Services or Documentation after notice of the alleged or actual infringement from Iplicit or any appropriate authority.
- 13.5 The foregoing and clause 14.4(b) states the Customer's sole and exclusive rights and remedies, and Iplicit's (including Iplicit's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

14. LIMITATION OF LIABILITY

- 14.1 This clause 14 sets out the entire financial liability of Iplicit (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer:
- (a) arising under or in connection with this agreement;
 - (b) in respect of any use made by the Customer of the Services or any part of them; and
 - (c) in respect of any representation, statement or tortious act or omission (including negligence) arising under or in connection with this agreement.
- 14.2 Except as expressly and specifically provided in this agreement:
- (a) the Customer assumes sole responsibility for results obtained from the use of the Services by the Customer, and for conclusions drawn from such use. Iplicit shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Iplicit by the Customer in connection with the Services, or any actions taken by Iplicit at the Customer's direction;

- (b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this agreement; and
- (c) the Services are provided to the Customer on an "as is" basis.

14.3 Nothing in this agreement excludes the liability of Ipllicit:

- (a) for death or personal injury caused by Ipllicit's negligence; or
- (b) for fraud or fraudulent misrepresentation.

14.4 Subject to clause 14.2 and clause 14.3:

- (a) Ipllicit shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business or opportunity, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this agreement; and
- (b) Ipllicit's total aggregate liability in contract (including in respect of the indemnity at clause 13.2), tort (including negligence or breach of statutory duty howsoever arising), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this agreement shall be limited to the total Subscription Fees paid for the User Subscriptions during the 12 months immediately preceding the date on which the claim arose.

15. TERM AND TERMINATION

15.1 The right for the Customer's Authorised Users to access the Software granted by this agreement shall, unless otherwise terminated as provided in this clause 15, commence on the Go Live Sign Off Date and shall continue for the Initial Subscription Term and, thereafter, this agreement shall be automatically renewed for successive periods of 12 months (each a **Renewal Period**), unless:

- (a) either party notifies the other party, in writing, at least 60 days before the end of the Initial Subscription Term or any Renewal Period, that automatic renewal will not apply, in which case this agreement shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Period; or
- (b) otherwise terminated in accordance with the provisions of this agreement;

and the Initial Subscription Term together with any subsequent Renewal Periods shall constitute the **Subscription Term**.

15.2 Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate this agreement with immediate effect without liability to the other if:

- (a) the other party commits a material breach of any of the terms of this agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or
- (b) an order is made or a resolution is passed for the winding up of the other party, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order in relation to the other party; or
- (c) an order is made for the appointment of an administrator to manage the affairs, business and property of the other party, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the other party, or notice of intention to appoint an administrator is given by the other party or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or
- (d) a receiver is appointed of any of the other party's assets or undertaking, or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the other party, or if any other person takes possession of or sells the other party's assets; or
- (e) the other party makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way; or
- (f) the other party ceases, or threatens to cease, to trade; or
- (g) the other party takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.

15.3 Subject to clause 15.4, the Customer may at any time during the Implementation Period and prior to the Go Live Sign Off Date serve on Ipllicit a notice of not less than 10 working days to terminate all its rights pursuant this agreement.

15.4 Upon serving a notice to terminate this agreement pursuant to clause 15.3 the Customer shall be liable to pay to Ipllicit the Implementation Fees and shall pay the same within 10 days of Ipllicit's invoice.

15.5 The Customer may terminate this agreement upon giving written notice to Ipllicit of not less than 3 months accompanied by payment of the outstanding Subscription Fees due for the remainder of the Subscription Term.

15.6 On termination of this agreement for any reason:

- (a) all licences granted under this agreement shall immediately terminate;
- (b) each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party;
- (c) Ipllicit may destroy or otherwise dispose of any of the Customer Data in its possession unless Ipllicit receives, no later than ten days after the Go Live Sign Off Date of the termination of this agreement, a written request for the

delivery to the Customer of the then most recent back-up of the Customer Data. Ipllicit shall use reasonable commercial endeavours to deliver the back-up to the Customer within 30 days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable fees and expenses incurred by Ipllicit in returning or disposing of Customer Data;

- (d) the accrued rights of the parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, shall not be affected or prejudiced; and
- (e) all unpaid invoices from Ipllicit shall become immediately due and payable.

16. DISPUTE RESOLUTION

All disputes between the parties arising out of or relating to this agreement or the breach, termination or validity thereof shall be referred by either party in writing, first to each party's managing director. The managing directors shall meet and attempt to resolve the dispute within a period of thirty (30) days from the date of referral of the dispute to them. This clause shall not restrict the ability of either party to apply for interim or injunctive relief.

17. FORCE MAJEURE

Ipllicit shall have no liability to the Customer under this agreement if it is prevented from or delayed in performing its obligations under this agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of Ipllicit or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of Ipllicits or sub-contractors, provided that the Customer is notified of such an event and its expected duration.

18. WAIVER

- 18.1 A waiver of any right under this agreement is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and to the circumstances for which it is given.
- 18.2 Unless specifically provided otherwise, rights arising under this agreement are cumulative and do not exclude rights provided by law.

19. SEVERANCE

- 19.1 If any provision (or part of a provision) of this agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.
- 19.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

20. ENTIRE AGREEMENT

- 20.1 This agreement, and any documents referred to in it, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover.
- 20.2 Each of the parties acknowledges and agrees that in entering into this agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this agreement or not) relating to the subject matter of this agreement, other than as expressly set out in this agreement.

21. ASSIGNMENT

- 21.1 The Customer shall not, without the prior written consent of Ipllicit, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.
- 21.2 Ipllicit may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.

22. NO PARTNERSHIP OR AGENCY

Nothing in this agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

23. THIRD PARTY RIGHTS

This agreement does not confer any rights on any person or party (other than the parties to this agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

24. NOTICES

- 24.1 Any notice required to be given under this agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in this agreement, or such other address as may have been notified by that party for such purposes, or may be sent to the other party by email, in the case of the Customer, to an email mailbox associated with the Customer's account under this agreement and in the case of Ipllicit to the mail box address set out in Schedule 1.
- 24.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by email shall be deemed to have been received at the time of transmission or, if the time of transmission is not in Normal Business Hours, then at 9am on the first business day following transmission.

25. GOVERNING LAW AND JURISDICTION

- 25.1 This agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by, and construed in accordance with, the law of England.
- 25.2 The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

26. VARIATION

Save as expressly provided in this agreement, no amendment or variation of this agreement shall be effective unless in writing and signed by a duly authorised representative of each of the parties to it.

This agreement has been entered into on the date stated at the beginning of it.

Schedule 1
Subscription Fees

Customer name Registered address	
Company No.	
Implicit mailbox address for notices	accounts@iplicit.com
Initial Subscription Term:	36 months from the Go Live Sign Off Date
Renewal Period:	12 months
Full Users:	X users £y per annum
Mobile Users:	x users at £y per annum
Licensed storage:	5 GB

Schedule 2
Implementation and data migration Fees

Not applicable

Signed for and on behalf of
Iplicit Limited
by Ian Andrews

.....
Director

⇐ *sign here*

Signed for and on behalf of
Customer name
by Contact name

.....
Director

⇐ *sign here*