

**THIS MANAGED SERVICES AGREEMENT** is made the ----  
----- (the "**Commencement Date**").

**BETWEEN:**

- (1) **SOLSOFT Technology Ltd** a limited company incorporated under the laws of England with registered number 04621028 whose registered office is at Jacobs Building, Berkeley Place, Clifton, Bristol BS8 1EH ("**SOLSOFT**"); and
- (2) ("**Customer**").

**RECITALS:**

- A. SOLSOFT provides certain services comprising the management and operation of computer services, and various consultancy and development services, and SOLSOFT is willing to provide such services, on the terms and conditions of this Agreement.
- B. The Customer requires certain of these services, and wishes to procure the same from SOLSOFT, and SOLSOFT wish to supply the same to the Customer, on the terms and conditions of this Agreement.

**TERMS AGREED:**

1. **Definitions**

- 1.1 In this Agreement the following words shall have the following meanings:

"Affiliates" means in relation to either party those persons Controlled by, Controlling, or under common Control with such party;

"Agreement" means the Clauses of this agreement, the SLA and the Order Contracts (including the service description documents forming part of each Order Contract) as amended in writing from time to time by the parties in accordance with Clause 5.4;

"Breach of Duty" means negligence, including without limitation the breach of any (i) obligation arising from the express or implied terms of a contract to take reasonable care or exercise reasonable skill in the performance of the contract or (ii) common law duty to take reasonable care or exercise reasonable skill (but not any stricter duty);

"Charges" means the charges for the Services, as set out in an Order Contract;

"Confidential Information" means all information of a confidential nature including the relationship of the parties, the existence and terms of this Agreement, prices and all other information whether of a technical or business nature or otherwise relating in any manner to the business or affairs of the other party which either party may receive or have received in connection with this Agreement whether in whole or in part and regardless of the medium by which such information is supplied;

"Control" means the possession by any persons or nominee(s) directly or indirectly of the power to direct or cause the direction of the management of another person;

"SOLSOFT Equipment" has the meaning given to it in Clause 7.1.1;

"SOLSOFT System" means the hardware, software and systems which are used by SOLSOFT to provide the Services to the Customer, excluding any hardware, software and systems at any Customer site (for the avoidance of doubt, the Equipment shall not be part of the SOLSOFT System);

"Intellectual Property Rights" means patents, inventions, know-how, trade secrets and other confidential information, registered designs, copyrights, database rights, design rights, rights affording equivalent protection to copyright, database and design rights, semi-conductor topography rights, trade marks, service marks, logos, domain names, business names, trade names, moral rights and all registrations or application to register any of the aforesaid items, rights in the nature of any of the aforesaid items in any country or jurisdiction, rights in the nature of unfair competition rights and rights to sue for passing off;

"Liability" means liability in or for breach of contract, Breach of Duty, misrepresentation, restitution or any other cause of action whatsoever relating to or arising under or in connection with this Agreement, including liability expressly provided for under this Agreement or arising by reason of the invalidity or unenforceability of any term of this Agreement (and for the purposes of this definition, all references to "this Agreement" shall be deemed to include any collateral contract);

"Order Contract" means each separate contract formed between SOLSOFT and the Customer for the provision of Services pursuant to the ordering procedure set out in Clause 3;

"Order Form" means the SOLSOFT form for the ordering of services pursuant to this Agreement;

"Service Levels" means the minimum performance levels specified in the SLA at which the Services are to be carried out by SOLSOFT;

"Services" means the services to be provided by SOLSOFT under this Agreement, such services being set out in one or more Order Contracts from time to time;

"SLA" means the separate SOLSOFT service level agreement referencing this Agreement;

"Successor Service Provider" means any entity who provides the Customer services of the same or similar nature to the Services in immediate or proximate succession to SOLSOFT;

"Transfer Regulations" means the law implementing in any jurisdiction the European Council Directive 2001/23/EEC on the approximation of laws of European member states relating to the safeguarding of employees' rights in the event of transfer of undertakings, businesses or parts of undertakings or businesses, as amended from time to time; and

"Year" means, in respect of this Agreement, a period of 365 days (or 366 days in a leap year) commencing on the Commencement Date and any anniversary thereof, and in respect of any Order Contract, means a period of 365 days (or 366 days in a leap year) commencing on the Services Start Date for such Order Contract and any anniversary thereof.

- 1.2 In this Agreement, unless the context otherwise requires;
  - (a) words in the singular include the plural and vice versa and words in one gender include any other gender;
  - (b) a reference to a statute or statutory provision includes any subordinate legislation (as defined in Section 21(1), Interpretation Act 1978) made under it, any repealed statute or statutory provision which it re-enacts (with or without modification), and any statute or statutory provision which modifies, consolidates, re-enacts or supersedes it;
  - (c) a reference to any party includes its successors in title and permitted assigns, a reference to a "person" includes any individual firm, body corporate, association or partnership, government or state (whether or not having a separate legal

- personality), and a reference to a Clause is to a clause of this Agreement;
- (d) the table of contents and the heading of Clauses are for convenience only and shall not affect the interpretation of this Agreement;
  - (e) any undertaking under this Agreement not to do any act or thing shall be deemed to include an undertaking not to permit or suffer the doing of that act or thing; and
  - (f) "including" shall mean "including without limitation".

**2. Duration of this Agreement**

This Agreement shall commence on the Commencement Date set out above, and shall continue in full force and effect until the date on which the last Order Contract has been terminated or expires.

**3. Order Contracts**

- 3.1 If the Customer at any time wishes to order Services, it shall follow the procedure set out in this Clause.
- 3.2 The Customer shall submit an Order Form setting out the services it wishes SOLSOFT to provide under this terms of this Agreement. The submission of the Order Form shall constitute an offer from the Customer to SOLSOFT to take such services on the following terms:
  - 3.2.1 the terms of this Agreement;
  - 3.2.2 the SLA; and
  - 3.2.3 to the extent they are not inconsistent with Clauses 3.2.1 and 3.2.2, the relevant description of the services and the charges for such services as set out and in accordance with such Order Form.
- 3.3 SOLSOFT may accept each Order Form by notice in writing to the Customer. If SOLSOFT so accepts, an Order Contract will be formed and the date of the Order Contract shall be the date on which SOLSOFT issues such notice. SOLSOFT reserves the right to refuse to accept any Order Form, without giving reasons.
- 3.4 Unless otherwise specified in the Order Contract, each Order Contract shall commence on the date referred to in Clause 3.3, and shall continue in full force and effect until the day prior to the first (1st) anniversary of the Services Start Date (as defined below) for such Order Contract, unless sooner terminated in accordance with Clause 13 or 14.
- 3.5 Unless terminated in accordance with Clause 3.6 of this Agreement, each Order Contract will renew automatically for successive one (1) year terms (each, a "**Renewal Term**") commencing upon the expiration of the initial one (1) year term and each successive one year term.
- 3.6 If either party does not wish any Order Contract to renew automatically at the end of the initial one (1) year term, or at the end of each Renewal Term, the non-renewing party must notify the other party in writing, not later than three (3) months prior to the expiration of the initial one (1) year term or the end of each Renewal Term.

**4. Survey and Commencement of Services**

- 4.1 Following execution of each Order Contract, SOLSOFT shall conduct a survey of the Customer site(s) at which the Services are to be provided. The Customer shall promptly provide all access to such site(s) reasonably required by SOLSOFT, and all assistance and information reasonably required by SOLSOFT in respect of such site(s), and the cabling, network infrastructure, hardware, software and systems in use

at the site(s) at the commencement of such Order Contract.

- 4.2 Following such survey, SOLSOFT shall prepare a survey report detailing any additional services the Customer requires, and the additional charges payable by the Customer for such services.
- 4.3 The parties will agree an installation plan describing the tasks that each party needs to complete in order to allow for commencement of the Services. The installation plan will include a target date on which SOLSOFT expects to be able to commence provision of the Services. The parties shall comply with their obligations under the agreed installation plan, and SOLSOFT shall use its reasonable endeavours to achieve the target date. The Customer will provide SOLSOFT with all access to site(s), information and assistance reasonably required by SOLSOFT in order to carry out its obligations under the installation plan.
- 4.4 SOLSOFT will certify to the Customer in writing when the Services under Order Contract are ready for use. The date upon which SOLSOFT commences provision of any part of the Services will be the "**Services Start Date**" for that Order Contract.
- 4.5 For the first three (3) working days after the Services Start Date, SOLSOFT may arrange for a member of its or its subcontractor's personnel to attend the site(s) at which the Services are to be provided. This person shall be available to deal with support of and enquiries concerning the Services.
- 4.6 Subject to the Customer complying with its obligations under this Clause 4, and provided the duration of the survey described in this Clause 4 does not exceed three (3) calendar months, SOLSOFT's costs in providing the survey described in this Clause 4 shall be included as part of the installation charge.

**5. The Services**

**5.1 Scope of Services**

SOLSOFT shall, with effect from the Services Start Date, provide the Customer with the Services. The Services will be provided:

- 5.1.1 using the reasonable care and skill of a competent IT services provider;
- 5.1.2 in compliance with the Service Levels set out in the SLA; and
- 5.1.3 in accordance with applicable laws and regulations.

**5.2 Service Dependencies**

- 5.2.1 The Customer agrees to perform, provide and/or comply with the service dependencies set out in the Order Contract (the "**Service Dependencies**"). SOLSOFT shall not be liable for any failure to provide the Services or to comply with its obligations hereunder to the extent that such failure is as a result of a failure by the Customer to perform, provide and/or comply with the Service Dependencies.
- 5.2.2 The Customer agrees that the service boundaries for the Services are as described or depicted in the the service description documents for each Order Contract. SOLSOFT shall not be liable for any matter or system outside the service boundaries.

**5.3 SLA**

The parties agree that the Service Levels as set out in the

SLA shall serve as the standards for performance by SOLSOFT of the Services pursuant to each Order Contract. The parties agree that SOLSOFT shall be deemed not to have failed to meet any applicable Service Level, and shall not be in breach of any term of this Agreement where such failure results from:

- 5.3.1 any failure or delay by the Customer to make available the use of, or to allow SOLSOFT or its subcontractors prompt access to, any Equipment; or
- 5.3.2 any use or operation of the Services by the Customer or the Customer's personnel or subcontractors otherwise than as contemplated by the description of the Services, or any negligent, reckless or deliberate act of the Customer or the Customer's personnel or subcontractors which impacts adversely on the Services; or
- 5.3.3 any other failure by the Customer to comply with its obligations under this Agreement.

**5.4 Service Variations**

Without prejudice to Clause 26.1, if the Customer wishes to vary any aspect of the Services provided under any Order Contract, it shall submit a written service request to SOLSOFT. SOLSOFT shall not be obliged to agree to any such service request.

**6. The Customer's Obligations**

**6.1 The Customer shall:**

- 6.1.1 not use the Services for any unlawful purposes;
- 6.1.2 comply with any acceptable use policy in respect of the Services that SOLSOFT may publish on its web site from time to time;
- 6.1.3 use the Services in compliance with the service manual agreed between the parties;
- 6.1.4 not knowingly or recklessly send any message or virus which causes or is likely to cause harm to any Equipment, to SOLSOFT or the SOLSOFT System, or to SOLSOFT's other customers or any of those parties' hardware, software or other systems;
- 6.1.5 only use and connect equipment (including Customer-Furnished Equipment) and/or networks to the SOLSOFT System that are approved and comply with all relevant legislation, standards and licence requirements;
- 6.1.6 not install any software, hardware or system, nor transfer any data, information or content to any party which may adversely affect the Equipment, the Services or SOLSOFT's ability to provide the Services;
- 6.1.7 comply with all safety, confidentiality and security requirements of SOLSOFT or any SOLSOFT subcontractor in relation to physical and/or remote access to the Services;
- 6.1.8 perform all tasks and do or provide all things reasonably necessary in order to enable SOLSOFT and/or its subcontractors to perform the Services;
- 6.1.9 comply with this Agreement and any reasonable instructions SOLSOFT and/or its subcontractors give the Customer relating to use of the Equipment and/or the SOLSOFT System;
- 6.1.10 procure access to all appropriate sites for SOLSOFT's or its subcontractors engineers and authorised personnel at agree times. SOLSOFT shall meet the Customer's reasonable requirements concerning the safety of SOLSOFT's people on the Customer's premises and the Customer shall meet SOLSOFT's reasonable requirements concerning the safety of SOLSOFT's people on the Customer's premises; and
- 6.1.11 procure that SOLSOFT has the authority to carry out works to provide the Customer with the Services at any of the Customer's sites at which SOLSOFT is providing the Services.

6.2 The Customer agrees to defend, indemnify and hold harmless SOLSOFT, its officers, employees, affiliates, and their agents and sub-contractors, from and against any and all losses, costs (including reasonable legal costs), damages and expenses arising from third party claims and demands related to the Customer's use of the Services, including but not limited to copyright infringement and all manner of intellectual property claims, defamation claims, claims of publication of obscene, indecent, offensive, racist, unreasonably violent, threatening, intimidating or harassing material, and claims of infringement of data protection legislation, based upon: (a) the content of any information transmitted by the Customer; and/or (b) the use and/or publication of any and all communications or information transmitted by the Customer and always provided that:

- 6.2.1 SOLSOFT promptly notifies the Customer of such claim;
- 6.2.2 SOLSOFT allows the Customer the conduct of such claim;
- 6.2.3 SOLSOFT provides the Customer (at the Customer's expense) reasonable assistance in defending such claim; and
- 6.2.4 the indemnity under this Clause 6.2 shall not apply to the extent that any claim or part of a claim directly results from SOLSOFT's acts or omissions.

**7. Equipment**

**7.1 SOLSOFT Equipment**

7.1.1 SOLSOFT may install equipment at the Customer's premises and connect such equipment to SOLSOFT's System to enable SOLSOFT to provide the Services ("**SOLSOFT Equipment**"). The Customer is entitled to use the SOLSOFT Equipment to receive and be able to use the Services during the term of the relevant Order Contract in accordance with the terms of this Agreement.

7.1.2 The Customer agrees that, save as expressly set out in Clause 7.1.1, all rights, title and interest in all SOLSOFT Equipment shall remain with SOLSOFT and/or SOLSOFT's lessors.

7.1.3 The Customer agrees that it shall:

- (a) keep the SOLSOFT Equipment safe and secure and ensure that is not interfered with by any person that is not authorised by SOLSOFT;
- (b) not move or attempt to move any part of the SOLSOFT Equipment to any other location without SOLSOFT's prior written consent;
- (c) not without the prior written consent of SOLSOFT part with control of, sell or offer for sale, pledge, mortgage, charge, underlet or lend the SOLSOFT Equipment;
- (d) not suffer or permit the SOLSOFT Equipment to be confiscated, seized or taken out of its possession or control under any distress, execution or other legal process, but if the SOLSOFT Equipment is so confiscated, seized or taken, the Customer shall forthwith notify SOLSOFT thereof and shall at its sole expense use its best endeavours to procure an immediate release therefrom and shall indemnify SOLSOFT against all losses, costs, charges, damages and expenses incurred by reason or in respect thereof; and
- (e) not do or permit to be done any act or thing which will or may jeopardise the right, title and/or interest of SOLSOFT or SOLSOFT's lessors in the SOLSOFT Equipment.

7.1.4 Upon termination or expiry of any Order Contract, the Customer shall immediately cease using all relevant SOLSOFT Equipment, and SOLSOFT may by its authorised representatives on reasonable notice retake possession of the relevant SOLSOFT Equipment and for this purpose may enter any premises at which the relevant SOLSOFT Equipment is located.

7.1.5 Risk in the SOLSOFT Equipment shall pass to the Customer on delivery to the Customer's site. The SOLSOFT Equipment shall remain at the sole risk of the Customer at all times during which the SOLSOFT Equipment is in the possession, custody or control of the Customer, until such time as the SOLSOFT Equipment is removed by SOLSOFT or its subcontractors pursuant to this Agreement. During such period the Customer shall keep the SOLSOFT Equipment fully insured against usual risks to a value not less than the full replacement value of such SOLSOFT Equipment.

7.2 Customer-Furnished Equipment

7.2.1 SOLSOFT may agree in writing to provide the Services using equipment which is owned by or otherwise controlled by the Customer. Any such equipment shall be "**Customer-Furnished Equipment**". SOLSOFT shall not be obliged to accept any equipment as Customer-Furnished Equipment. If SOLSOFT agrees to use any Customer-Furnished Equipment, this shall be listed in the relevant Order Contract.

7.2.2 SOLSOFT agrees that all rights, title and interest in all Customer-Furnished Equipment shall remain with the Customer (save the right to use of the Customer-Furnished Equipment subject to the terms and conditions of this Agreement).

7.2.3 The Customer agrees to defend, indemnify and hold harmless SOLSOFT, its officers, employees, affiliates, and their agents and sub-contractors, from and against any and all losses, costs (including reasonable legal costs), damages and expenses arising from third party claims that the Customer was not entitled to allow SOLSOFT and/or its subcontractors to use the Customer-Furnished Equipment to provide the Services to the Customer.

7.3 Other Obligations in respect of Equipment

7.3.1 The SOLSOFT Equipment and the Customer-Furnished Equipment taken together shall be the "**Equipment**".

7.3.2 Without charge or cost to SOLSOFT, the Customer shall provide appropriate equipment space, environment, ducting and electrical power (as may be reasonably specified by SOLSOFT) to allow SOLSOFT to install and maintain the Equipment at the Customer's premises.

7.3.3 SOLSOFT will maintain an assets register, listing all Equipment on the Customer's premises which is used to provide the Services. The Customer shall be entitled to access the latest version of the assets register on reasonable request. In the event of any dispute concerning Equipment, the details set out in the asset register shall be final and binding on the parties, save in the event of manifest error.

7.4 Equipment Purchase

7.4.1 If the Customer wishes to purchase equipment, SOLSOFT will use reasonable endeavours to procure the agreed equipment. However, SOLSOFT may alternatively introduce the Customer to an appropriate manufacturer or reseller. The Customer acknowledges that SOLSOFT is not primarily an equipment reseller, and that any equipment it may purchase pursuant to any such introduction shall be purchased directly from the relevant manufacturer or reseller, and not from SOLSOFT.

8. Software

8.1 SOLSOFT Standard Software

8.1.1 SOLSOFT may as part of the Services provide the Customer with the right to use certain software. Such software is that which is listed in the relevant Order Contract, and shall be "**SOLSOFT Standard Software**" for the purposes of this Agreement. SOLSOFT may as part of the Services provide the Customer with, or procure the provision to the Customer of, support services in respect of the SOLSOFT Standard Software.

8.1.2 The use of SOLSOFT Standard Software is subject to compliance with the licence terms provided with such software. The Customer is entitled to use SOLSOFT Standard Software on the Equipment during the term of the relevant Order Contract, subject to compliance with such terms, this Agreement, and any restrictions specified in or referenced by the relevant Order Contract (including any maximum number of Customer users).

8.1.3 The Customer shall indemnify SOLSOFT from and against all claims, liabilities, proceedings, costs, damages, losses, or expenses (including legal expenses) incurred by SOLSOFT caused by, or in any way connected with, the Customer's misuse of any SOLSOFT Standard Software, or the unauthorised use of any SOLSOFT Standard Software by the Customer or any third party (whether through the Customer's use of the SOLSOFT Standard Software, breach of this Agreement or any other negligent or wrongful act of the Customer), except to the extent that any such damage, loss, liability or expense arises from SOLSOFT's breach of this Agreement or its wilful misconduct.

8.1.4 Upon termination or expiry of the relevant Order Contract, the Customer shall immediately cease to use all SOLSOFT Standard Software, and shall promptly return to SOLSOFT all such software together with its associated documentation. The Customer acknowledges that it will need to make alternative arrangements if it wishes to be able to continue using such software.

8.2 Third Party Software

8.2.1 There may be other software used by the Customer in respect of which SOLSOFT agrees to provide limited support under an Order Contract ("**Third Party Software**"). Third Party Software shall be listed in the relevant Order Contract.

8.3 Support Services

8.3.1 SOLSOFT will install and fully support the SOLSOFT Standard Software, according to the support terms set out in the SLA and/or the relevant Order Contract.

8.3.2 Save as expressly set out in this Clause, SOLSOFT shall not be responsible for installation (including installation of updates, new versions and bug-fixes) or support or maintenance of Third Party Software. SOLSOFT's support obligations for such software shall be limited to contacting the relevant software vendor to report any fault with the relevant Third Party Software.

8.3.3 Notwithstanding that SOLSOFT may agree to provide the above support services in respect of Third Party Software, SOLSOFT does not guarantee that the Third Party Software will be interoperable with, or that it will not adversely affect, any SOLSOFT Standard Software, any Equipment, the SOLSOFT System and/or the Services. SOLSOFT shall have no liability to the extent that the Third Party Software has any adverse impact on any SOLSOFT Standard Software, any Equipment, the SOLSOFT System and/or the Services, and the Customer shall pay SOLSOFT's reasonable costs in remedying any such adverse impact.

**9. Charges and Payment Terms**

9.1 The Charges are as set out in the Order Contract. The Charges shall remain fixed during the term of the Order Contract, unless otherwise agreed in writing by the parties from time to time in accordance with Clause 5.4. Increasing or reducing the number of seats/devices shall also be subject to the terms of Clause 5.4.

9.2 Upon commencement of each Order Contract, SOLSOFT shall be entitled to invoice the Customer for and the Customer shall pay the installation charge set out in the Order Contract. After the Services Start Date for each Order Contract, SOLSOFT shall be entitled to invoice the Customer for and the Customer shall pay the recurring monthly per seat/device charge for the agreed number of seats/devices as set out in the relevant Order Contract. The Customer shall be invoiced for the recurring monthly per seat/device charges monthly in arrears.

9.3 Other SOLSOFT products and services, including consultancy services, may be purchased by the Customer from time to time at the prices set out in SOLSOFT's then-current standard UK list price for such products and/or services.

9.4 All SOLSOFT charges herein will be exclusive of Value Added Tax ("VAT"). The Customer shall pay VAT on all sums due under this Agreement at the rate and in the manner prescribed by law from time to time.

9.5 The Customer shall pay all invoices (whether disputed or not) under this Agreement within thirty (30) days of the date of the invoice.

9.6 If any payment is not made within thirty (30) days of receipt of an invoice for such payment then SOLSOFT may, without prejudice to its other rights, charge simple daily interest equivalent to an annual rate of 4% above the base rate of Barclays Bank plc from time to time on sums owing from the date when payment was due (being thirty (30) days after the date of invoice on disputed amounts determined to be due) until the date that SOLSOFT receives payment of all sums outstanding including accrued interest. No interest shall be payable on any disputed amounts that are ultimately found (by a final court of competent jurisdiction) not to be payable.

9.7 All amounts payable under this Agreement shall be paid in full without set-off deduction or other withholding of any amount which may be due to the Customer.

9.8 If the Customer disputes part or all of any invoice, it shall notify SOLSOFT in writing as soon as is reasonably possible identifying clearly the disputed part of an invoice and the reasons why it is challenged.

**10. Changes in Laws and Regulations**

Each party shall perform its obligations in compliance with all relevant legislation, regulations, codes of practice, guidance and other requirements of any relevant government or governmental or regulatory agency (together the "Rules"). In the event that SOLSOFT demonstrates that a change in any of the Rules after the execution of the Agreement increases the cost to SOLSOFT of providing the Services in accordance with the Service Levels, the Charges for the relevant Order Contract shall be increased by an equitable amount reflecting such increase, save to the extent that any change in the Rules affects the entirety of SOLSOFT's business operations.

**11. Exclusion of Warranties and Limitations of Liability**

11.1 Nothing in this Agreement shall exclude or limit SOLSOFT's Liability for (i) death or personal injury caused by Breach of Duty; (ii) the tort of deceit, or any act of fraud; (iii) any breach of any obligations implied by Section 12 Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982; or (iv) any other Liability to the extent that such Liability cannot be excluded or limited by law.

11.2 Subject to Clause 11.1, SOLSOFT shall have no Liability for any of the following losses or damage: loss of revenue; loss of actual or anticipated profits (including profits on contracts); loss of anticipated savings or the use of money; loss of opportunity; loss of goodwill; loss of reputation; loss of or damage to or corruption of data; or any indirect or consequential loss or damage, howsoever caused. Any such Liability is excluded whether it is foreseeable, known, foreseen or otherwise.

11.3 Save as provided in Clause 11.1 and without prejudice to Clauses 11.2, SOLSOFT's total aggregate Liability in relation to any single event or series of related events shall be limited to 125% of the Charges paid to SOLSOFT in the 12 months immediately prior to the date that such event or the first of such series of events occurred. If such date occurs during the first Year of this Agreement, such total aggregate Liability shall be calculated by using the actual Charges paid and/or payable up to such date, divided by the number of calendar days since the Commencement Date, multiplied by 365 (or 366 in the case of a leap year).

11.4 Without prejudice to Clause 11.2, and save as provided in Clauses 11.1 and 11.3, SOLSOFT's total aggregate Liability for all claims under this Agreement shall be limited to the aggregate Charges paid to SOLSOFT under this Agreement during the previous two Years.

11.5 Save as provided in Clause 11.1, SOLSOFT shall have no Liability to the Customer for any claim brought more than two years after the first accrual of the cause of action which the relevant circumstances or events have given rise to.

11.6 The terms of this Agreement are in lieu of all other conditions, warranties or other terms concerning the supply or purported supply of, failure to supply or delay in supplying the Services and any goods which are

provided or supplied in the course of performing the Services, which might but for this Clause 11.6 have effect between SOLSOFT and the Customer or would otherwise be implied into or incorporated into this Agreement or any collateral contract, whether by statute, common law or otherwise, all of which are hereby excluded (including, without limitation, the implied conditions, warranties or other terms as to satisfactory quality and fitness for purpose).

11.7 The service credits set out in the SLA shall be the Customer's sole and exclusive remedy in respect of any failure to meet the Service Levels.

**12. Force Majeure**

Neither party shall be in breach of any obligation of this Agreement or any Order Contract if it is prevented, hindered or delayed from performing such obligation by any matter or circumstance beyond its reasonable control.

**13. Termination for Convenience**

13.1 The Customer shall be entitled to terminate each Order Contract at its convenience in accordance with the terms of this Clause 13. This Clause 13 is without prejudice to the termination rights set out in Clause 14.

13.2 The Customer shall not be entitled to terminate any Order Contract at its convenience during the first Year of such Order Contract. Thereafter, the Customer shall be entitled to terminate the Order Contract at its convenience subject to:

- 13.2.1 the Customer giving SOLSOFT not less than six months' written notice of the date that such termination shall be effective; and
- 13.2.2 payment by the Customer of the applicable termination charge as set out below (in respect of which SOLSOFT shall be entitled to issue an invoice at any time after receipt of the notice referred to in Clause 13.2.1):

Date termination notified to SOLSOFT	Termination Charge
During Year 2 or any subsequent Year of the Order Contract	100% of the total amounts paid or payable to SOLSOFT under the Order Contract during the immediately preceding Year.

**14. Termination for Cause**

14.1 No Order Contract may be terminated by either party for cause other than in accordance with Clause 14.2, 14.3 or 14.4.

14.2 Each Order Contract may be terminated by either party by giving written notice to the other party if the other is in material breach of any of the terms and conditions of this Agreement (which, for purposes of this provision, shall include failure to make payment for the provision of the Services set out in the relevant Order Contract) provided that, where such breach is capable of remedy, the other party has been advised in writing of the breach and of the innocent party's intention to terminate for such breach unless remedied and the other party has not remedied it within forty-five (45) days of such advice.

14.3 Either party may, by giving written notice thereof to the other party, terminate any Order Contract immediately in the event of:

- 14.3.1 the other party passing a resolution for its winding up or the making by a court of competent jurisdiction

of an order for the winding up of the other party or the dissolution of the other party;

- 14.3.2 the making of an administrative order in relation to the other party or the appointment of a receiver or an administrative receiver over, or the taking possession or sale by an encumbrancer of, any of the other party's assets;
- 14.3.3 the other party making an arrangement or composition with its creditors generally or making an application to a court of competent jurisdiction for protection from its creditors generally; or
- 14.3.4 the other party ceasing to carry on a material part of its business or disposing of all its assets or a substantial part of its assets.

14.4 If any matter or circumstance described in Clause 12 prevents, hinders or delays such party performing any obligation for a continuous period of more than thirty (30) days, either party shall be entitled to terminate the affected Order Contract immediately upon giving written notice to the other.

14.5 The termination or expiry of this Agreement shall not affect any provision of this Agreement which is expressed to survive or operate in the event of the termination or expiry of this Agreement and shall not prejudice or affect the rights of either party against the other in respect of any breach of this Agreement prior to termination.

**15. Consequences of Termination of this Agreement**

15.1 On termination of an Order Contract (other than termination due to the Customer's default), SOLSOFT shall at the Customer's request provide reasonable support and assistance to the Customer to facilitate the transfer of the affected Services to a new supplier of services. SOLSOFT will use reasonable endeavours to provide this assistance as soon as reasonably practicable and with minimum disruption. SOLSOFT reserves the right to charge the Customer for any such assistance on a time and materials basis at its then-current rates.

15.2 The terms of Clauses 7.1.4 and 8.1.4 shall apply to the use of SOLSOFT Equipment and SOLSOFT Standard Software by the Customer respectively.

15.3 Termination or expiry of any Order Contract shall not affect any accrued rights or obligations or those intended to be of a continuing nature or to come into force upon termination or expiry.

**16. Audit**

16.1 The Customer shall grant to SOLSOFT and its authorised agents (who shall be reasonably acceptable to the Customer and who shall in any event not be competitors of the Customer) the right of access at all reasonable times to carry out an audit of the Customer's compliance with its obligations under this Agreement (including its use of the Services). The Customer shall provide all reasonable assistance at all times during the currency of this Agreement for the purposes of allowing SOLSOFT to obtain such information as is necessary to achieve this objective.

16.2 SOLSOFT shall give reasonable notice of the exercise of its rights under Clause 16.1. SOLSOFT shall give the Customer the opportunity to review and comment upon the results of any audit carried out pursuant to this Clause 16.1.

**17. Employees**

SOLSOFT and the Customer intend that the Transfer Regulations will not apply in relation to or as a result of the start, implementation, operation or termination of this Agreement or any of its provisions or the subsequent provision of the Services or any similar services by the Customer or a Successor Service Provider. Should however it be found or alleged that the Transfer Regulations do so apply, then the Customer shall indemnify and keep indemnified SOLSOFT against all and any losses, damages, fines, actions, proceedings, costs (including legal costs), penalties, compensation, awards, orders, expenses and liabilities connected with or arising from any claim arising out of or in connection with such finding or allegation by, on behalf of or in respect of any person employed or engaged or formerly employed or engaged by the Customer or in respect of any fact or matter concerning or arising from the employment, engagement or termination of employment or engagement of such a person, whether before or after the commencement of this Agreement.

**18. Subcontracting and Assignment**

18.1 SOLSOFT is entitled to subcontract any part of its obligation to provide the Services to any of its Affiliates or competent third parties. SOLSOFT shall remain liable to the Customer for the performance of any subcontracted obligation.

18.2 Neither party shall assign or transfer any of its rights or obligations under this Agreement without the written consent of the other party, save that SOLSOFT shall be entitled to assign or transfer any of its rights or obligations under this Agreement to a SOLSOFT Affiliate on written notice to the Customer.

**19. Notices**

19.1 Unless provided otherwise in this Agreement all legal notices shall be in writing, and shall identify the Order Contract to which they relate. Notices may be validly delivered by hand (valid service occurring immediately on delivery), by first class pre-paid mail (valid service deemed to occur two (2) days after posting in UK) or by fax (valid service deemed to occur on receipt by the sender of a successful transmission report).

19.2 Notices shall be sent:

19.2.1 to SOLSOFT at SOLSOFT Technology Ltd, Jacobs Building, Berkeley Place, Clifton, Bristol BS8 1EH, marked for the attention of the Head of Legal (fax number 08450730931); and

19.2.2 to the Customer using the details provided by the Customer from time to time, or if no details have been provided, at the address at the first page of this Agreement marked for the attention of the Head of Legal.

19.3 A party may amend its contact details for notices at any time by notifying the other party of such changes in writing.

**20. Entire Agreement, Representations and Hierarchy**

20.1 Without prejudice to Clauses 20.2 and 20.2 below, this Agreement constitutes the entire agreement and understanding between the parties, and supersedes any and all other previous agreements, arrangements and/or understandings (whether written or oral) regarding SOLSOFT's obligations and liabilities in respect of the supply or purported supply of, the failure to supply or any delay in supplying the Services.

20.2 Save as provided in Clauses 20.2 and 20.2, the Customer shall have no remedy in respect of any representation (whether written, oral or otherwise)

made to it upon which it relied on entering into this Agreement ("**Misrepresentation**") and SOLSOFT shall have no Liability to the Customer other than pursuant to the express terms of this Agreement. Nothing in this Agreement shall exclude or limit SOLSOFT's Liability for any Misrepresentation made by SOLSOFT knowing that it was untrue. Nothing in this Agreement shall exclude SOLSOFT's Liability for any fundamental Misrepresentation, including any misrepresentation as to a matter fundamental to the maker's ability to perform its obligations under this Agreement, but such Liability shall be subject to the limits set out in Clauses 11.3 and 11.4.

20.3 The Customer acknowledges and agrees that no representations were made prior to the entering into of this Agreement and that, in entering into this Agreement, it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to this Agreement or not) other than as expressly set out in this Agreement.

20.4 In the event of any inconsistency or ambiguity between any one component of this Agreement and any other the following document hierarchy shall apply:

20.4.1 Clauses 1 to 28 of this Agreement shall take precedence over

20.4.2 the SLA, which shall take precedence over

20.4.3 the Order Contracts.

**21. Confidentiality**

21.1 Each party undertakes to the other that it shall maintain and treat in confidence all Confidential Information.

21.2 Clause 21.1 shall not apply to any Confidential Information which:

21.2.1 is in or comes into the public domain other than by default of the recipient party; or

21.2.2 is or has already been independently generated by the recipient party; or

21.2.3 is lawfully received by the recipient from a third party on an unrestricted basis; or

21.2.4 is in the possession of or is known by the recipient party prior to the date of this Agreement, to the extent that such recipient party is not bound by any existing obligation or confidentiality in respect of such information to the other party hereto.

21.3 Nothing in this Clause 21 shall prohibit or restrict either party disclosing any Confidential Information to the extent to which the same is required to be disclosed by law, regulation or pursuant to an order of a competent authority.

21.4 On termination of this Agreement for whatever reason the recipient party shall return to the disclosing party (or, at the discretion of the disclosing party, destroy) all copies of Confidential Information of the other party which it has in its possession.

21.5 The provisions of this Clause 21 shall survive the termination or expiry of this Agreement for a period of five years.

**22. Publicity**

22.1 Save for SOLSOFT being entitled to name the Customer as a SOLSOFT customer neither party shall publish or use any advertising, sales promotions, press releases or other publicity which uses the name, logo, trademarks or service marks of the other without prior written approval of the other.

**23. Intellectual Property Rights and Indemnities**

23.1 Title in all Intellectual Property Rights existing prior to the Commencement Date shall be the absolute property of and shall remain vested in the party that owned such rights immediately prior to that date. Each party acknowledges that it shall not acquire title or any rights or interest (except as expressly set out in this Agreement) in the other party's Intellectual Property Rights by virtue of the operation of this Agreement.

23.2 All Intellectual Property Rights created or developed in connection with the provision of the Services shall, unless otherwise agreed in writing by the parties, vest with SOLSOFT.

23.3 The Customer shall indemnify SOLSOFT from and against all costs, damages, losses, or expenses (including legal expenses) incurred by SOLSOFT in respect of any demands or claims received by SOLSOFT that the Customer has used the Services or the Equipment to infringe the Intellectual Property Rights of any third party.

**24. Data Protection**

24.1 The parties shall duly observe all their obligations under the Data Protection Act 1998 and any regulations or instruments thereunder ("1998 Act") which arise in relation to any personal data processed (as those terms are defined in the 1998 Act) in connection with this Agreement and shall render such assistance and co-operation as is reasonable necessary or reasonably requested by the other party in respect thereto.

24.2 For the purposes of providing the Services, the personal data of the Customer's employees and its customers will be transferred to and processed by SOLSOFT Affiliates and authorised subcontractors, including Affiliates and subcontractors outside the EU. The Customer acknowledges and hereby consents to such transfer and processing activities. The Customer will be responsible for procuring all consents necessary from its employees and customers in respect of such transfer and processing activities, and shall indemnify SOLSOFT against any and all claims, actions, liabilities, losses, damages and expenses (including legal expenses) incurred by SOLSOFT which arise directly or indirectly from any failure by the Customer to procure any such consent, or any other failure by Customer to comply with the terms of the 1998 Act.

**25. Non-Solicitation**

Neither party shall (except with the prior written consent of the other) during the term of this Agreement, and for a period of six months thereafter, directly solicit the services of any staff of the other party who have been engaged in the provision of the Services or the management of this Agreement.

**26. Miscellaneous Provisions**

26.1 No variation of this Agreement shall be valid unless it is in writing and signed by or on behalf of each of the parties.

26.2 No person who is not a party to this Agreement shall have the right (whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise) to enforce any term of this Agreement.

26.3 Nothing in this Agreement shall operate to create a partnership or joint-venture between the parties or is to

be construed as appointing either party as the agent of the other.

26.4 Failure or delay in exercising any right or remedy under this Agreement shall not constitute a waiver of that or any other right or remedy.

26.5 If any provision in this Agreement shall be held to any extent to be illegal or unenforceable, the enforceability of the remainder of this Agreement shall not be affected.

**27. Further Assurances**

Each party shall from time to time upon the request of the other party do all such acts and execute all such documents as are reasonably required to implement or perfect the rights granted by this Agreement.

**28. Governing Law**

This Agreement shall be governed by the laws of England. The Parties irrevocably submit for all purposes in connection with this Agreement to the exclusive jurisdiction of the courts of England and Wales.