

**JET SOFTWARE LIMITED**

**AND**

(The Customer)

**SOFTWARE LICENCE AND  
TECHNICAL SUPPORT AGREEMENT**

**Version Date: 24th July 2017**

# **SOFTWARE LICENCE AND TECHNICAL SUPPORT**

## **AGREEMENT**

### **PARTIES:**

- 1 'The Company': JET SOFTWARE LIMITED registered in England (registered number 09408958 whose registered office is at 67 – 74 Saffron Hill, London, EC1N 8QX.
  
- 2 'The Customer': as appears in the Order Form

### **RECITAL:**

- A. The Company has the benefit of the license to software products listed in the Order Form (“the Products”) and is willing to licence the Customer to use the Products on the terms and subject to the conditions of this Agreement.
  
- B. The Company has agreed to grant the Customer a non-exclusive licence to use the Products for the Customer as set out in the Order Form and to provide certain services to the Customer in respect of delivery of technical support and training on the terms and subject to the conditions of this Agreement.

### **OPERATIVE PROVISIONS:**

1. **Definitions and Interpretation**

1.1 In this Agreement unless the context otherwise requires:

'ADDITIONAL SERVICES' means those services set out in the Order Form.

'COMMENCEMENT DATE' means the date of the Order Form upon which this Agreement shall commence.

'CUSTOMERS DATA' means the data entered into the Licenced Programs of the Company which the Customer makes available for storage by the Company.

'DATA CONVERSION PROGRAM' means the software program written by the Company for the translation of all or part of the Customer's existing database fields into the corresponding database fields used in the Company's software products.

'DESIGNATED DATA' means the software program and templates submitted to the Company by the Customer for conversion to the format of the Licensed Program.

'DESIGNATED EQUIPMENT' means the items of computer hardware in the relevant Branch and any other relevant systems including those used in the provision of Remote Access suitable for use with the Licensed Programs as set out in Schedule 1.

'DIRECT DEBIT NOTICE' means notice in writing given by the Company to the Customer of the date that a direct debit payment will be collected by the Company from the Customer.

'HOSTING SERVICE' means hosting the Customer's data.

'INTELLECTUAL PROPERTY RIGHTS' means all patents, copyrights, design rights, trade marks, service marks, trade secrets, know-how, database rights and other rights in the nature of intellectual property rights (whether registered or unregistered) and all applications for the same, anywhere in the world.

'JSL' means Jet Software Limited

'LICENCE' means the non-exclusive licence granted by clause 3 below on the terms and subject to the conditions of this Agreement.

'LICENCE FEE' means the monthly fee for the Licence and Services.

'LICENSED PROGRAMS' means the software programs in object code form identified by title in the Order Form including any New Release or add on of the same made or issued pursuant to clause 7 below.

'LICENSED PROGRAM MATERIALS' means the Licensed Programs and the Program Documentation.

'NEW RELEASE' means any improved modified or corrected version of any of the Licensed Programs or Program Documentation from time to time issued by the Company pursuant to clause 7 below.

'ORDER' means the Order Form signed by the Customer in which the Customer agrees to be bound by this Agreement.

'PAYMENT DAY' means a day when banks in London England are open for business.

'POST' includes e-mail or facsimile transmission to an authorised recipient as set out in clause 27.

'PROGRAM DOCUMENTATION' means the instruction manuals user guides and other information to be made available to the Customer from time to time during this Agreement by the Company at its discretion in either printed or machine readable form to the Customer.

'REMOTE ACCESS' means the provision by the Customer of the ability for the Company to remotely access the Customer's server or such part of any third party computer infrastructure or interface used by the Customer for the hosting of its applications or processes (in the event that the Customer is providing its own Hosting Service).

'RPI' means the 'all Items' index figure of the Retail Prices Index (or equivalent) published by the competent authority in the jurisdiction where (in the Company's discretion) the Services are provided.

'SERVICES' means the provision by the Company of all services pursuant to this Agreement.

'SOURCE CODES' means the data processing and interface definitions and instructions that are directly prepared by the Company's programmers for compilation into the Company's software products.

'TECHNICAL SUPPORT' means the provision of such categories of technical support in accordance with clause 8 below as shall be specified in respect of each of the Licensed Programs in the Order Form.

'USE' means the copying or transmission of the Licensed Programs or (where in machine readable form) the Program Documentation into temporary memory or permanent storage on the Designated Equipment for the processing of the instructions contained in the Licensed Programs or (as the case may be) the Program Documentation.

'USER' means an employee consultant agent or contractor of the Customer or any other person company or entity working for or providing services to the Customer in any capacity who has an active log-on title to use the Licensed Programs and logs on to use the Licensed Programs on one day or more per calendar month and including any person on holiday or those with a temporary reason for absence from work.

'WORKING DAY' means the hours 9am to 5.30pm Monday through Friday (excluding bank and other public holidays in England and the period from 24<sup>th</sup> December to 1<sup>st</sup> January inclusive).

'WORKING HOUR' means an hour during a Working Day in Great Britain.

- 1.2 The headings in this Agreement do not affect its interpretation. Except where the context otherwise requires, references to clauses and schedules are to clauses and schedules of this Agreement.
- 1.3 Unless the context otherwise requires:
  - 1.3.1 references to the Company and the Customer include their permitted successors and assigns;
  - 1.3.2 references to statutory provisions include those statutory provisions as amended or re-enacted;
  - 1.3.3 references to one gender includes a reference to the other genders; and
  - 1.3.4 references to "including" or "includes" shall be deemed to have the words "without limitation" inserted after them.
- 1.4 Words in the singular include the plural and those in the plural include the singular.
- 1.5 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's successors or permitted assigns.

## **2. Customer's obligations**

- 2.1 The Customer shall:
  - 2.1.1 pay all sums due to the Company under this Agreement on the due date and without any deduction or set off ;
  - 2.1.2 co-operate in all matters relating to this Agreement with the Company;
  - 2.1.3 provide in a timely manner such information as the Company may request and ensure that all such information is accurate in all material respects;
  - 2.1.4 make available at the Place of Use such facilities as the Company shall reasonably require in order to discharge its obligations hereunder including

without limitation adequate work space storage and office furniture and equipment;

- 2.1.5 take all reasonable precautions to protect the health and safety of the Company's employees, agents and sub-contractors and any other person working for the Company while in the Customer's Branch;
  - 2.1.6 ensure that each of its employees consultants agents and contractors (or any other person working for it) who use the Licensed Programs are Users within the meaning of this Agreement;
  - 2.1.7 ensure that its network and systems comply with any relevant specifications provided in Schedule 1;
  - 2.1.8 be solely responsible for procuring and maintaining its Designated Equipment, network connections and telecommunications links from its systems to any third party's data centres, and all problems, conditions, delays delivery failures and all loss or damage arising from or relating to the Customer's Designated Equipment, network connections or telecommunications links or caused by the internet;
- 2.2 If the Company's performance of its obligations are prevented or delayed by any act or omission of the of the Customer the Customer shall be liable to pay the Company on demand all reasonable costs, charges or losses sustained or incurred by it (including without limitation any direct or indirect consequential losses, loss of profit and loss of reputation, loss or damage to property and loss of opportunity to deploy resources elsewhere) subject to the Company confirming such costs, charges and losses to the Customer in writing.
- 2.3 The Customer shall not, without the written consent of the Company, at any time from the date of this Agreement to the expiry of 12 months from its termination employ or use the services of, in any capacity, any employee or contractor of the Company.

- 2.4 Any consent given by the Company in accordance with clause 2.3 shall be subject to the Customer paying to the Company a sum equivalent to 1 x the current gross annual remuneration of the Company's employee or contractor.
- 2.5 The Customer warrants and undertakes to the Company that it is the owner of the authority to enter into this Agreement.

## **PART 1 - SOFTWARE LICENCE AND TECHNICAL SUPPORT**

### **3. Grant of licence and provision of services**

3.1 The Company in consideration of the payment by the Customer of sums due pursuant to this Agreement shall for the duration of the Agreement:

3.1.1 grant to the Customer a non-exclusive licence to Use the Licensed Programs (and where appropriate the Program Documentation) upon the Designated Equipment only and to possess and refer to the Program Documentation; and

3.1.2 provide such additional services as may be agreed from time to time..

3.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

### **4. Licence Fee**

4.1 The Licence Fee (together with value added tax thereon) as set out in the Order Form and the cost of any Services, Additional Services and the Administration Fee and any increase in such fees shall be

- (i) invoiced by the Company monthly in advance;
- (ii) payable by the Customer the later of 5 working days after the date of the invoice or the 1<sup>st</sup> (or first working day) of the following month;
- (iii) payable by direct debit.



- 4.2 Without prejudice to any other right or remedy the Company may have, if the Customer fails to pay the Company on the due date the Company may:
- 4.2.1 charge interest on such sum from the due date for payment at the annual rate of 5% above the base lending rate from time to time of Barclays Bank accruing on a daily basis and being compounded quarterly until payment is made whether before or after any judgment; and
  - 4.2.2 suspend all Licences and Services until payment has been made in full. Time for payment shall be of the essence of the Agreement.
- 4.3 The Licence Fee to the end of the first month shall be calculated pro rata from the Acceptance Date to the end of the calendar month.
- 4.4 Subject to clause 4.5 below the Company shall be permitted to increase the Licence Fee and the Additional Charges (together the 'Fees') once during each 12 month period from the Delivery Date on the following basis:
- 4.4.1 the Company gives the Customer not less than 28 days' notice of any increase in the Fees;
  - 4.4.2 subject to clauses 4.5 below for a period of 3 (Three) years commencing on the Delivery Date the Fees will be increased by no more than the percentage increase of the RPI + 2% calculated by reference to the latest 12 months RPI figures available at the date that the notice is issued pursuant to clause 4.4.1 ('Available RPI Figures') save where the average percentage increase in the Available RPI Figures was greater than 5% per annum for the preceding 3 months in which case the Company shall increase the Fees by up to the percentage increase in RPI + 3% calculated by reference to the Available RPI Figures.
- 4.5 The Licence Fee is calculated by reference to the number of active Users and will be billed monthly in advance.

4.6 Any additional User of the Customer which uses the Licensed Programs Materials will be charged the same Licence Fee as a User as appropriate..

## **5 Delivery Installation testing and acceptance**

5.1 The Company shall deliver and install electronically or such other method as the Company may in its absolute discretion determine onto the Designated Equipment..

5.2 If the Customer fails to provide the Company with access, including Remote Access, data, including the Designated Data, or hardware including the Designated Equipment that it requires in order to proceed to deliver the Licensed Program Materials on the Delivery Date after receiving 56 days written notice from the Company (by first class post, facsimile or e-mail or other electronic means) of the same the Company shall be entitled to:

5.2.1 terminate this Agreement with immediate effect; or

5.2.2 specify to the Customer such revised delivery date as it shall in its reasonable opinion think fit; and

5.2.3 in either event the Customer shall be charged for the time spent by the Company to the date of termination at the rate of £300.00 per hour or part thereof.

5.3 The Customer shall be deemed to have accepted the Licensed Program Materials with effect from the day following the Commencement Date.

5.4 When the Company stores the data on servers controlled by the Company then the Company will backup the data on servers to flat data files and provide the Customer with access to download these backups upon request with a fee of £200 for each download request.

## **6 Data Processing**

6.1 The Company agrees that in relation to personal data processed in connection with this Agreement it shall process such personal data in accordance with the Data

Protection Act 1998 and any other applicable data protection legislation, as detailed in Schedule 2.

## **7 New Releases**

7.1 The Company may from time to time issue New Releases to the Customer which the Customer shall accept.

7.2 The Company shall retain title and copyright to and all and any Intellectual Property Rights in the Licensed Programs together with all New Releases whether commissioned by the Customer or others or otherwise.

7.3 The Company will supply at the request of the Customer (without payment of an additional Licence Fee ) an add on to the Licensed Programs so that the data stored on the Licensed Programs (including pictures of the properties for sale or to let) can be converted and uploaded on to the Customer's web site and other specified property portal and search web sites in a number of specified standard formats. The list of supported property portal and web sites and upload formats is available from the Company.

7.4 The add on to the Licensed Programs for uploading to other web sites or portals or in other formats will incur an Additional Charge which will be notified to the Customer prior to its provision.

## **8 Technical support**

8.1 With effect from the Commencement Date and for the duration of this Agreement the Company shall provide in respect of each of the Licensed Programs Technical support via the support portal.

8.2 The Response Time for Technical Support shall be during the Working Day and the Company shall use its best endeavours to respond within 4 Working Hours of receipt of a request;

8.3 Technical Support shall not include the diagnosis and rectification of any fault which the Company in its absolute discretion considers results from:

8.3.1 the improper use operation or neglect of either the Licensed Program Materials or the Designated Equipment where the same causes the Licensed Programs to fail to perform;

8.3.2 the modification of the Licensed Programs or their merger (in whole or in part) with any other software by any person other than by the Company where the same causes the Licensed Programs to fail to perform;

8.3.3 the use of the Licensed Programs on Equipment other than the Designated Equipment (save in accordance with clause 10);

8.3.4 the failure by the Customer to implement recommendations in respect of or solutions to faults previously advised by the Company, in writing ;

8.3.5 any repair adjustment alteration or modification of the Licensed Programs by any person other than the Company without the Company's prior written consent;

8.3.6 any breach by the Customer of any of its obligations under any maintenance agreement with any person or company in respect of the Designated Equipment which directly or indirectly causes the Licensed Program to malfunction or cease to function;

8.3.7 the use of the Licensed Programs for a purpose for which they were not designed;

8.3.8 data being rekeyed from another software product into the Company's format by the Customer at such low level of accuracy that it causes the Licensed Programs to fail to perform.

8.4 The Company shall at its sole discretion upon request by the Customer provide Technical Support notwithstanding that the fault results from any of the

circumstances described in clause 8.3 above. The Company shall in such circumstances be entitled to levy Additional Charges in the manner set out in clause 8.6 below;

8.5 Without prejudice to clause 8.4 above the Company shall be entitled to levy reasonable Additional Charges in the manner set out in clause 8.6 below if Technical Support is provided in circumstances where any reasonably skilled and competent data processing operator would have judged the Customer's request to have been unnecessary;

8.6 The Customer shall provide the Company with Remote Access to the Licensed Program Materials in each of the Customer's Users for the purposes of Technical Support. If for any reason Remote Access is not available the Company shall be entitled to levy Additional Charges in respect of any travel costs and disbursements incurred by the Company and for the time spent going to and from the Customer's Branches for the purpose of Technical Support. Clause 8.7 will not apply where Remote Access is not available for any reason outside the Company's control;

8.7 The Customer acknowledges and permits the Company's right to remotely monitor the usage and performance of the Licensed Programs.

## **9 Property and confidentiality in the licensed program materials**

9.1 The Licensed Program Materials contain confidential information relating to the Company and all copyright trade marks and other Intellectual Property Rights in the Licensed Program Materials including any New Release are the exclusive property of the Company.

9.2 The Customer shall not:

9.2.1 reverse compile, copy or adapt the whole or any part of the Licensed Program Materials and shall not make any back up copies of the Licensed Program Materials whether in connection with its lawful use or otherwise;

- 9.2.2 save solely for the purposes expressly permitted by and in accordance with s.296A(1) Copyright Designs and Patents Act 1988 or s.50B(2) Copyright Designs and Patents Act 1988 copy adapt or reverse compile the whole or any part of the Licensed Program Materials;
  - 9.2.3 assign transfer sell lease rent charge or otherwise deal in or encumber the Licensed Program Materials or use the Licensed Program Materials on behalf of any third party or make available the same to any third party;
  - 9.2.4 remove or alter any copyright or other proprietary notice on any of the Licensed Program Materials;
  - 9.2.5 sub-licence, assign, novate or otherwise part with the benefit or burden of this Agreement in whole or in part;
  - 9.2.6 allow the Licensed Program Materials to become the subject of any charge, lien or encumbrance;
  - 9.2.7 deal in any other manner with any or all of its rights and obligations under this Agreement.
- 9.3 The Customer shall:
- 9.3.1 keep confidential the Licensed Program Materials and limit access to the same to those of its employees agents and sub-contractors who either have a need to know or who are engaged in the Use of the Licensed Programs (including where appropriate the Program Documentation);
  - 9.3.2 reproduce on any copy (whether in machine readable or human readable form) of the Licensed Program Materials the Company's copyright and trade mark notices;
  - 9.3.3 notify the Company immediately if the Customer becomes aware of any unauthorised use of the whole or any part of the Licensed Program Materials by any person;

9.3.4 notify the Company immediately if the Licensed Program Materials or any part thereof are made available to any Branch of the Customer that is not in the Order Form and pay for the broadening of the scope of the licences granted under this Agreement to cover the unauthorized use, an amount equal to the Licence Fee which the Company would have levied (in accordance with its normal commercial terms then current) had it licensed any such unauthorized use on the date when such use commenced together with interest at the rate provided for in clause 4.2 to the date of payment;

9.3.5 without prejudice to the foregoing take all such other reasonable steps as shall from time to time be necessary to protect the confidential information and intellectual property rights of the Company in the Licensed Program Materials.

9.4 The Customer shall inform all relevant employees agents and sub-contractors that the Licensed Program Materials constitute confidential information of the Company and that all Intellectual Property Rights therein are the property of the Company and the Customer shall take all steps as shall be reasonably necessary to ensure compliance by its employees agents and sub-contractors with the provisions of this clause 9.

9.5 The Customer shall permit the Company to inspect and have access to any premises (and to the computer equipment located there) at or on which the Software is being kept or used, and have access to any records kept by the Customer in connection with this Agreement, for the purposes of ensuring that the Customer is complying with the terms of this Agreement, provided that the Company provides reasonable advance notice to the Customer of such inspections, which shall take place at reasonable times.

## 10 **Additional Services**

10.1 The Company may, at its sole discretion provide additional services to the Customer which shall constitute Additional Services and which shall be charged at a cost to

be agreed between the parties.. Additional Services which are provided by the Company to the Customer are chargeable at the Additional Charges rate and will be costed by the Company and approved by the Customer before the Additional Service is provided.

## **11 Warranty**

11.1 Subject to the exceptions set out in clause 11.4 below and the limitations upon its liability in clause 12 below the Company warrants that:

11.1.1 its title to and property in the Licensed Program Materials is free and unencumbered and that it has the right power and authority to license the same upon the terms and conditions of this Agreement;

11.1.2 it will perform the Services and Additional Services with reasonable care and skill.

11.2 The Customer shall give notice to the Company as soon as it is reasonably able upon becoming aware of a breach of warranty.

11.3 The Company shall have no liability to remedy a breach of warranty where such breach arises as a result of any of the circumstances described in clause 8.3 above.

11.4 Without prejudice to the foregoing the Company does not warrant that that the operation of the Licensed Programs (including where in machine-readable form the Program Documentation) will be uninterrupted or error free or that they will work on the Designated Equipment.

11.5 The Customer accepts responsibility for the selection of the Designated Equipment and of the Licensed Program Materials and acknowledges that the Licensed Program Materials have not been developed to meet the individual requirements of the Customer.

## **PART 2**



## 12 **Limitation of liability**

12.1 The Company's entire liability (including any liability for the acts and omissions of its employees agents and sub-contractors) to the Customer in respect of:

12.1.1 any breach of its contractual obligations arising under this Agreement;

12.1.2 any representation, misrepresentation ( whether innocent or negligent) statement or tortious act or oission including negligence arising under or in connection with this Agreement

shall be limited to the equivalent of the aggregate paid by the Customer to the Company in the 6 months ending with the date of the breach or representation.

12.2 In the event of more than one claim under clause 12.1 above, where the loss incurred by the Customer is substantially the same loss then they shall give rise to only one claim.

12.3 The Company's liability to the Customer shall not be limited in respect of:

12.3.1 death or injury resulting from its own or that of its employees' agents' or sub-contractors' negligence;

12.3.2 damage suffered by the Customer as a result of any breach by the Company of the condition as to title or the warranty as to quiet possession implied by section 2 of the Supply of Goods and Services Act 1982.

12.4 The Company's liability to the Customer in respect of any physical damage to the tangible property of the Customer resulting from the negligence of the Company or its employees agents or sub-contractors shall be limited to £5000.00

13 Save as appears above, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this Agreement

13.1 The Company shall not be liable to the Customer in respect of any loss of profits goodwill or any type of special indirect or consequential loss (including loss or damage suffered by the Customer as a result of an action brought by a third party) even if such loss was reasonably foreseeable or the Company had been advised of the possibility of the Customer incurring the same.

13.2 Prior to making a claim the Customer shall give the Company not less than 28 days written notice of the breach or matter complained of in which to effect a remedy provided the same is capable of remedy.

#### **14 Variation**

14.1 The Company may amend the terms of this Agreement from time to time as it sees fit. Details of the date on which the terms were last changed appear on the first page of this Agreement.

#### **15 Training**

15.1 The Company will provide online training resources for the Customer. For the avoidance of doubt the Company may also provide other training delivery methods at their discretion.

#### **16 Intellectual property rights indemnity**

16.1 The Company will indemnify and hold harmless the Customer against any damages (including costs) that may be awarded or agreed to be paid to any third party in respect of any claim or action that the normal operation possession or use of the Licensed Program Materials by the Customer under the terms of this Agreement infringes the patent copyright registered design or trade mark rights of said third party (an 'Intellectual Property Infringement') provided that the Customer:

- 16.1.1 gives notice to the Company of any Intellectual Property Infringement forthwith upon becoming aware of the same;
  - 16.1.2 so far as the Customer is able to do so the Customer gives the Company the sole conduct of the defence to any claim or action in respect of an Intellectual Property Infringement and does not at any time admit liability or otherwise settle or compromise or attempt to settle or compromise the said claim or action except upon the express instructions of the Company; and
  - 16.1.3 acts in accordance with the reasonable instructions of the Company and gives to the Company such assistance as it shall reasonably require in respect of the conduct of the said defence including without prejudice to the generality of the foregoing the filing of all pleadings and other court process and the provision of all relevant documents.
- 16.2 The Company shall have no liability to the Customer in respect of an Intellectual Property Infringement if the same results from any breach of the Customer's obligations under this Agreement.
- 16.3 In the event of an Intellectual Property Infringement the Company shall be entitled at its own expense and option either to:
- 16.3.1 procure the right for the Customer to continue using the Licensed Program Materials;
  - 16.3.2 make such alterations modifications or adjustments to the Licensed Program Materials so that they become non-infringing without incurring a material diminution in performance or function;
  - 16.3.3 replace the Licensed Program Materials with non-infringing substitutes provided that such substitutes do not entail a material diminution in performance or function.

16.4 If the Company in its reasonable judgement is not able to exercise any of the options set out in clauses 16.3.1, 16.3.2 or 16.3.3 above within 60 days of the date it received notice of the Intellectual Property Infringement then the Customer without prejudice to any other rights or remedies it may have hereunder or at law shall be entitled to terminate this Agreement by 28 days' notice upon the Company.

## 17 **Confidentiality**

17.1 Subject to 17.4 and 17.5 (below) each of the parties hereto undertakes to the other during the term of this Agreement and thereafter to keep confidential all information (written or oral) concerning the business and affairs of the other that it shall have obtained or received as a result of the discussions leading up to or the entering into of this Agreement and each of the parties shall use its reasonable endeavours to prevent the unauthorized disclosure of any such information save that which is:

17.1.1 trivial or obvious;

17.1.2 already in its possession other than as a result of a breach of this clause;

17.1.3 in the public domain other than as a result of a breach of this clause; or

17.1.4 required to be disclosed by virtue of the order of the court, Government department or regulatory body, or by any other operation of law.

17.2 Each of the parties shall take all such steps as shall from time to time be necessary to ensure compliance with the provisions of clause 17.1 above by its employees agents and sub-contractors.

17.3 In addition to its obligations pursuant to this Agreement, the Company will keep confidential the Designated Data and agrees that while such data is held by it in any electronic medium that access to such data will be restricted by password protection, which password will only be available to those persons who are required to have access for the purpose of performing the Company's obligations under this Agreement.

17.4 The Company shall be entitled to use the Customer's data for the purpose of statistical analysis but shall not publish any report or document that identifies the information used in preparation of the analysis.

17.5 The Company shall be entitled to use the Customer's name and logo for marketing internal and external marketing purposes.

17.6 The terms of this Agreement are confidential and may not be disclosed by the Customer to any person or corporate body without the prior written consent signed by a Director of the Company.

17.7 The terms of this Agreement are confidential and may not be disclosed by the Company to any person or corporate body without the prior written consent signed by a Director or in the case of the Customer being a Partnership a Partner of the Customer.

## **18 Duration of Agreement**

18.1 This Agreement shall continue until terminated in accordance with the provisions of clause 21 below.

## **19 Changes in numbers of Users**

19.1 The Customer will activate a new User inside the portal and the Customer shall incur the additional Licence Fee in relation to the new User as set out in clause 4.5 from the installation of the Licensed Programs.

## **20 Customer's representatives**

20.1 The person identified on the Order Form shall act as the sole contact point and channel of communication for the provision by the Company of the Services during

the currency of this Agreement. The Customer shall forthwith inform the Company of any change in the identity of any such person(s) or department.

## 21 Termination and Escrow

21.1 This Agreement may be terminated:

21.1.1 by the Customer giving to the Company not less than six months notice (the "Notice Period") at any time to expire after after their term of license from the later of Acceptance Date or Date of Delivery (such notice shall not be valid if at the date of giving notice the Company has raised invoices for payment by the Customer that have not been paid and only at the date of cleared funds in the Company Bank Account shall the date of the notice be set and become effective) or by the Company giving to the Customer not less than six months notice to expire any time after their term of license from the later of Acceptance Date or Delivery Date. At the termination date the Customer shall return any Source Codes in its possession;

21.1.2 forthwith by the Company if the Customer fails to pay the Licence Fee, or any Additional Charges due hereunder;

21.1.3 forthwith by a party if the other commits any material breach of any term of this Agreement (other than one falling within 21.1.2 above) and which (in the case of a breach capable of being remedied) shall not have been remedied within 14 days of a written request to remedy the same;

21.1.4 forthwith by a party if the other shall convene a meeting of its creditors or if a proposal shall be made for a voluntary arrangement within Part I of the Insolvency Act 1986 or a proposal for any other composition scheme or arrangement with (or assignment for the benefit of) its creditors or if the

other shall be unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or if a trustee receiver administrative receiver or similar officer is appointed in respect of the business or assets of the other or if a petition is presented or a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding up of the other or for the making of an administration order (otherwise than for the purpose of an amalgamation or reconstruction);

21.1.5 where the Customer, during the six months preceding the date fixed for the termination notice to start under clause 21, reduces the number of Users, then for the duration of the Notice Period the Customer will pay the higher of

21.1.5.1 the Licence Fee it was paying six months prior to the date it gives notice; and

21.1.5.2 the highest Licence Fee which would have been payable by the Customer during the first 24 months of this Agreement.

21.2 In the event of any termination of this Agreement pursuant to clause 21.1.2 the Customer shall be liable for a sum equal to the amount which would have been due had six months written notice been given by either party.

21.3 Any termination of this Agreement pursuant to this clause shall be without prejudice to any other rights or remedies a party may be entitled to hereunder or at law and shall not affect any accrued rights or liabilities of either party nor the coming into or continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.

## 22 **Gross Up**

23.1 All sums payable by the Customer under this Agreement must be paid free and clear of all deductions or withholdings unless the deduction or withholding is required by

law. If any deductions or withholdings are required by law to be made from any sums payable under this Agreement the Customer must pay to the Company such additional sums as will after the deduction or withholding has been made ensure the Company receives the same amount as it would have received if there had been no such requirement to make a deduction or withholding.

## **23 Force Majeure**

23.1 Neither party hereto shall be liable for any breach of its obligations hereunder resulting from causes beyond its reasonable control including but not limited to fire, strikes (of its own or other employees), insurrection or riots, embargoes, container shortages, wrecks or delays in transportation, inability to obtain supplies and raw materials, failure of a utility service or telecommunications network, act of God, war, civil commotion, malicious damage, requirements or regulations of any civil or military authority (an 'Event of Force Majeure').

23.2 Each of the parties hereto agrees to give notice forthwith to the other upon becoming aware of an Event of Force Majeure such notice to contain details of the circumstances giving rise to the Event of Force Majeure.

23.3 If a default due to an Event of Force Majeure shall continue for more than 12 weeks then the party not in default shall be entitled to terminate this Agreement. Neither party shall have any liability to the other in respect of the termination of this Agreement as a result of an Event of Force Majeure.

## **24 Waiver**

24.1 The waiver by either party of a breach or default of any of the provisions of this Agreement by the other party shall not be construed as a waiver of any succeeding breach of the same or other provisions nor shall any delay or omission on the part of either party to exercise or avail itself of any right power or privilege that it has or may have hereunder operate as a waiver of any breach or default by the other party.

## **25 Notices**



25.1 Any notice request instruction or other document to be given under this Agreement shall be sent by Post.

25.2 Any such notice request instruction or other document shall be deemed to have been received by the addressee two Working Days following the date of dispatch if the notice or other document is sent by registered post plus facsimile, or simultaneously with the delivery or transmission if sent by hand or if given by facsimile plus e-mail or other electronic means provided that it is dispatched within a Working Day and at least one hour prior to the end of the Working Day, provided always that any notice sent by facsimile e-mail or other electronic means shall also be sent by first class post.

Notices to the Company:

Address 67 – 74 Saffron Hill, London, EC1N 8QX

Facsimile Number N/A

E-Mail Address notices@jetsoftware.co.uk

Notices to the Customer:

Address «the Customer Address on the Order Form

## 26 **Invalidity and severability**

26.1 If any provision of this Agreement shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable the invalidity or unenforceability of such provision shall not affect the other provisions of this Agreement and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect. The parties hereby agree to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision that

achieves to the greatest extent possible the economic legal and commercial objectives of the invalid or unenforceable provision.

## **27 Entire agreement**

27.1 This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to the subject matter.

27.2 The Company shall not be liable to the Customer for loss arising from or in connection with any representations agreements statements or undertakings made prior to the date of execution of this Agreement other than those representations agreements statements or undertakings confirmed by a duly authorised representative of the Company in writing or expressly incorporated or referred to in this Agreement.

27.3 The Customer accepts that the Licensed Program Materials were not designed and produced to its individual requirements and that it was responsible for their selection.

## **28 Successors**

28.1 This Agreement shall be binding upon and enure for the benefit of the successors in title of the parties hereto.

## **29 Assignment and sub-licensing**

29.1 The Customer shall not be entitled to assign or otherwise transfer this agreement nor any of its rights or obligations hereunder nor sub-licence the use (in whole or in part) of the Licensed Program Materials without the prior written consent of the Company.

29.2 The Company may at any time sub-licence, assign, novate, charge or deal in any other manner with any or all of its rights and obligations under this licence, provided that it gives written notice of the same to the Customer.

## **30 VAT**

30.1 All sums payable under this Agreement are exclusive of value added tax or any relevant local sales taxes for which the Customer shall be responsible and any value added tax arising in respect of any supply made hereunder shall be paid to the party making such supply by the party to whom it is made in addition to any other consideration payable therefor.

## 31 **Law**

31.1 This Agreement shall be governed by and construed in accordance with English Law. Any dispute which may arise between the parties concerning this Agreement or claim arising out of or in connection with this Agreement shall be determined as follows:

31.1.1 If the dispute shall be of a technical nature concerning the functions or capabilities of the Licensed Programs or any similar or related matter then such dispute shall be referred for final settlement to an expert nominated jointly by the parties or, failing such nomination within 14 days after either party's request to the other therefor, nominated at the request of either party by the President from time to time of the British Computer Society. Such expert shall be deemed to act as an expert and not as an arbitrator. His or her decision shall (in the absence of clerical or manifest error) be final and binding on the Parties and the fees for the expert for so acting shall be borne by the Parties as he or she shall award.

31.1.2 In any other case the dispute shall be determined by the English Courts and the parties hereby submit to the exclusive jurisdiction of the said Courts for such purpose.



## **SCHEDULE 1**

### Designated Equipment

The following recommendations are correct at the Delivery Date but the Company cannot be held responsible if the Customer does not upgrade to newer supported versions of third party software or hardware released with the efflux of time or when the recommended software is no longer supported.

#### JET Minimum Specification

##### PC requirements

- 3 GB Ram or greater
- 2 GHz dual-core processor or greater
- Office Internet speed requirements
- Download: 2 Mbps per every 5 users
- Upload: 0.6 Mbps per every 5 users

##### PC Software

##### Supported Operating Systems

The JET software supports all currently supported Microsoft desktop/server operating systems, review information on [Microsoft products and their support expiration dates](#).

##### Productivity

The company's software programs have been tested with the following versions of Microsoft Office:

- Office 2007
- Office 2010 (Office 2010 Starter is not supported)
- Office 2013
- Office 365 (web based only version is not supported)

JET requires an installed version of Office on the user machines i.e. Office 2013 connected to Office 365 Exchange Online.

Each user will require an unique email address.

Web browsers

- Internet Explorer at latest release for your Operating system

## SCHEDULE 2

### Personal Data Processing Agreement

#### (PDPA)

- A. Having noted changes to data protection law being introduced by among others, the GDPR,
- B. Being mindful of their own direct responsibilities and liabilities under data protection law, and
- C. Considering Article 28 of the GDPR,

The parties have agreed to enter into this PDPA to govern their rights and obligations under Data Protection Law in relation to the processing of personal data, in so far as this is required by the GDPR.

#### 1. DEFINITIONS

- 1.1. **"Affiliate"** means an entity that directly or indirectly controls or owns, or is owned or controlled, or is under common control or ownership with another entity, including without limitation Reapit Australia and Jet Software Limited.
  - 1.1.1. Any references to the Company or the Customer shall be construed to mean reference to their respective Affiliates and, **in the case of the Customer, also reference to their Member Companies;**
- 1.2. **"The GDPR"** means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation);
- 1.3. **"Data Protection Law"** means The Data Protection Act 1998 (c 29) and any superseding and repealing legislation; the GDPR; and the Privacy and Electronic Communications (EC Directive) Regulations 2003 and any superseding and repealing legislation;
- 1.4. **"Data Controller"** has the same meaning as the one provided for in Article 4.7 GDPR. For the purposes of this PDPA and the Agreement, the Data Controller is the Customer;
- 1.5. **"Data Processor"** has the same meaning as the one provided for in Article 4.8 GDPR. For the purposes of this PDPA and Terms, the Data Processor is the Company;
- 1.6. **"Reapit Australia"** means Reapit PTY Limited, the Company's wholly-owned subsidiary domiciled in Australia, which may process personal data on behalf of the Customer in accordance with clause 8 of this PDPA;

1.7. "SCCs" means the standard contractual clauses annexed to Commission Decision (2010/87/EU) of 5 February 2010 found at <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32010D0087> and any superseding and repealing contractual clauses that may be adopted pursuant to a Decision of the European Commission;

1.8. All definitions in Article 4 GDPR shall apply to this PDPA;

1.9. All capitalised terms shall have the meaning given in the Agreement.

## **2. GENERAL PROVISIONS**

2.1. This PDPA is hereby incorporated into and forms part of the Agreement. In the event and to the extent of a conflict with any provision of the Agreement relating to Data Protection Law, and Clause 7 thereof in particular, this PDPA shall prevail. Save as specifically amended herein, all of the provisions of the Agreement, save to the extent modified by this PDPA, are unaffected and shall continue to apply.

2.2. The SCCs are hereby incorporated by reference into and form part of this PDPA. In the event and to the extent of a conflict with any provision of this PDPA or the Agreement, the SCCs shall prevail.

2.3. This PDPA together with the Agreement represent the Customer's complete and final documented instructions to the Company for the processing of personal data on the Customer's behalf, including for the avoidance of doubt with regard to transfers of personal data as described in Clause 8 below.

2.4. This PDPA applies where and only to the extent that the Company processes personal data that originates from the European Economic Area and/or is otherwise subject to Data Protection Law.

2.5. Each party's and all of its Affiliates' and Member Companies' liability, taken together in the aggregate, arising out of or related to this PDPA or the SCCs, whether in contract, tort or under any other theory of liability, is subject to any limitation of liability provisions set out in the Agreement, and any reference herein to the liability of any party means the aggregate liability of that party and all of its Affiliates or Member Companies under the Agreement.

2.6. Upon the parties' written agreement and subject to 30 days written notice being served by either party to the other, this PDPA may be replaced by standard contractual clauses adopted pursuant to Article 28(7) or Article 28(8) GDPR.

2.7. Following service of written notice pursuant to Clause 2.6, the Company may also modify this PDPA if required to do so by law or if it decides to implement approved codes of conducts or certifications pursuant to Article 28(5) GDPR or Binding Corporate Rules pursuant to Article 47 GDPR.

## **3. PERSONAL DATA PROCESSING**

3.1. The Company may process, on behalf of the Customer, personal data:



- 3.1.1. relating to the Customer's current and prospective clients in accordance with the Agreement and for the length of time permitted under the Agreement;
- 3.1.2. by automated means for the purpose of fulfilling its obligations under the Agreement or as otherwise required by law;
- 3.1.3. such as individual names, addresses, email addresses, phone numbers, bank details, ID documentation, and any other information that may be capable of identifying a Customer's client or prospective client which the Customer or its representative inputs into the Licensed Programs or otherwise records in relation to the provision of the Services.

#### **4. UNDERTAKINGS OF THE COMPANY**

- 4.1. The Company undertakes to implement appropriate technical and organisational measures sufficient to ensure that any processing of personal data it undertakes on behalf of the Customer will meet the requirements of the GDPR and will ensure the protection of the rights of the data subject to whom the personal data relates. With regard to the above, the Company hereby undertakes to:
  - 4.1.1. only act on the documented instructions of the Customer, unless otherwise required by law;
  - 4.1.2. ensure that persons authorised to process the personal data, if any, are subject to a duty of confidence;
  - 4.1.3. ensure a level of security of personal data processing appropriate to the risk involved in such processing;
  - 4.1.4. only engage third parties in the sub-processing of personal data on behalf of the Customer on terms substantially similar to the Agreement of this PDPA;
  - 4.1.5. assist the Customer, insofar as this is possible taking into account the nature of the relevant processing, in fulfilling the Customer's obligations with respect to the exercise of data subjects' rights laid down in Data Protection Law (it being understood that the Company will be entitled to make reasonable charges to the Customer reflecting the level of assistance required);
  - 4.1.6. reasonably assist the Customer, while taking into account the nature of the processing and the information available to the Company, in meeting its obligations under Data Protection Law in relation to the security of processing, the notification of personal data breaches and data protection impact assessments;
  - 4.1.7. delete and/or return to the Customer all personal data obtained from the Customer within a reasonable time following the Customer's request following expiry of the Agreement, save for any personal data the Company is obliged to retain under law;

4.1.8. allow for and contribute to audits conducted by or on behalf of the Customer and make available to the Customer information necessary to verify that the Customer and the Company are both meeting their obligations under this PDPA (it being understood that the Company will be entitled to make reasonable charges to the Customer reflecting the level of assistance required);

4.1.9. attend to queries related to Data Protection Law that the Customer may have in relation to this PDPA or the Agreement, which are to be directed to [dpo@reapit.com](mailto:dpo@reapit.com).

## 5. UNDERTAKINGS OF THE CUSTOMER

5.1. The Customer hereby:

5.1.1. acknowledges it is solely responsible for the accuracy, quality, and legality of personal data and the means by which it was acquired;

5.1.2. grants permission to the Company to use third party sub-processors on its behalf for the purposes of fulfilling the Company's obligations under this PDPA (and the Company shall, upon request, make a list of such sub-processors available to the Customer within a reasonable time);

5.1.3. instructs the Company to process personal data on its behalf for the purposes of fulfilling its obligations under this PDPA;

5.1.4. acknowledges that, as a Data Controller, it is ultimately responsible for ensuring that personal data is processed in accordance with Data Protection Law;

5.1.5. waives its right to make any claims against the Company for any share of liability under Article 82(5) GDPR.

## 6. THIRD PARTIES

6.1. The Company has engaged one or more secure cloud storage providers to provide data storage facilities on behalf of its Customers (“**Storage Providers**”). All information provided by Customers in the United Kingdom, whether personal data or not, will be physically stored in the United Kingdom. The Company has and will procure that any agreements it enters into with Storage Providers will be on substantially similar terms to the Agreement of this PDPA. In the event the Company engages alternative Storage Providers or other sub-processors it will notify the Customer in writing.

6.2. As between the Company and the Customer, the Customer shall be solely responsible for the conduct of any third parties that it decides to engage or otherwise share personal data with for the purposes of carrying out activities which involve the Customer authorising the extraction of Personal Data entered into the Licensed Programs and/or the integration of such Personal Data onto third party software systems. For the avoidance of doubt, any such third parties shall act as additional Data Processors or joint Data Controllers with the Customer, and not as sub-processors of the Company.

## 7. SECURITY MEASURES

- 7.1. The company maintains a robust set of security measures for ensuring the ongoing confidentiality, integrity and availability of personal data, and the resilience of the hardware and software systems in use. Such security measures are subject to continuing technical progress and development.
- 7.2. Further information on the security measures the Company has in place is available on request made via email to [dpo@reapit.com](mailto:dpo@reapit.com).

## **8. PERSONAL DATA TRANSFERS OUTSIDE THE EUROPEAN ECONOMIC AREA**

- 8.1. The Customer acknowledges that the Company's Affiliate Reapit Australia operates under the same data protection policies as those adopted by the Company. The Customer further acknowledges that personal data stored in the United Kingdom may be accessed by Reapit Australia to the extent necessary to provide the services specified in the Agreement, including but not limited to:
  - 8.1.1. 24/7 Customer support;
  - 8.1.2. Software development, modifications and/or enhancements to RPS or any other Licensed Program(s) identified in the Agreement.
- 8.2. Reapit Australia's access to personal data provided by the Customer pursuant to clause 8.1, to the extent that it includes the processing of personal data of residents of the United Kingdom or the European Union, shall be governed by the SCCs which are incorporated into this PDPA by reference.
- 8.3. For the purposes of the SCCs the Company and the Customer agree as follows:
  - 8.3.1. the SCCs are binding on both the Company and the Customer in their entirety;
  - 8.3.2. insofar as the Customer's personal data is transferred outside the European Economic Area to third parties other than Reapit Australia, the Company and the Customer each agree to be bound by and comply with their obligations under the SCCs;
  - 8.3.3. the Customer is the data exporter;
  - 8.3.4. Reapit Australia is the data importer;
  - 8.3.5. for the purposes of Clauses 5(j) and 11(4) of the SCCs, there are no sub-processing agreements to be notified. A copy of any relevant agreements will be made available upon request, it being acknowledged that the Company will be entitled to redact commercial information, or clauses unrelated to the SCCs, pursuant to Clause 5(g) of the SCCs;
  - 8.3.6. for the purposes of Clauses 9 and 11 of the SCCs, the governing law shall be the law of the country of incorporation of the Customer;

8.3.7. for the purposes of Appendix 1 to the SCCs, the relevant information is Clause 3 of this PDPA;

8.3.8. for the purposes of Appendix 2 to the SCCs, the relevant information is Clause 7 of this PDPA;

8.4. In the event that the Company adopts Binding Corporate Rules pursuant to Article 47 GDPR and/or Clause 2(7) of this PDPA, international personal data transfers carried out by the Company shall be governed by such Binding Corporate Rules and not by the SCCs.

## **9. SEVERABILITY**

9.1 If any provision of this PDPA is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision shall be deemed deleted. Any modification to or deletion of a provision under this Clause shall not affect the validity and enforceability of the rest of this PDPA.