

## Terms and Conditions

These are the terms and conditions of TopSys-IT Limited for the provision of Services. These terms shall be deemed accepted by our customers upon their placing an order with us:

### 1. Definitions

**Acceptance Certificate** : means a certificate signed by the Customer in the form provided by TopSys-IT Limited to confirm that the Software has passed the Acceptance Test.

**Acceptance Date** : means the date on which the Software is accepted by the Customer.

**Acceptance Tests**: means the tests specified in the Specification and/or such other tests as may be agreed in writing between the Customer and TopSys-IT Limited for the purposes of confirming that the Software operates according to the functional requirements in the Specification.

**Additional Services** : means any additional services requested by the Customer to be provided by TopSys-IT Limited as set out in the Specification.

**Agreement** : means the contract between TopSys-IT Limited and the Customer for the supply of services in accordance with these Terms and Conditions (to include as appropriate) the Proposal and Costs Specification Documents.

**Annual Support Fee** : means a fee, subject to a separate commercial quotation, to be charged for the optional provision of support services to the Customer by TopSys-IT.

**Change Request** : means a documented request for a change to the Specification or Software or Project Plan or other of the Deliverables made by the Customer or by TopSys-IT.

**Confidential Information** : shall include, but not necessarily be limited to, all information which is not publicly known regarding the business, finances, technology, trade secrets, and any other commercially sensitive information of either party regardless of its nature.

**Costs Specification Documents** : means the documents detailing the fees payable for the Proposal.

**Customer** : means the organisation or person who purchases services from TopSys-IT.

**Deliverables** : means the software, hardware, documentation and services to be delivered by TopSys-IT Limited to the Customer in fulfilment of this Agreement as set out in the Specification.

**Developer** : means the creator of the Software.

**Intellectual Property Rights** : means patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of and all rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Live Operational Use** : means the use of the Software in pursuance of the business of the Customer.

**Misuse** : means use of the Software in a way for which it was not intended to be used according to the Specification;

**Party** : means either TopSys-IT Limited or the Customer and their successors and permitted assignees.

**Payment Schedule** : means the schedule of payments set out in the Specification.

**Planned Acceptance Date** : means the date specified in the Project Plan on which the Software is intended to be accepted by the Customer in accordance with this Agreement.

**Price** : means the fixed aggregate price for the provision of the Deliverables as set out in the Specification.

**Project** : means the software development, delivery and testing of the Software and the other Deliverables.

**Project Plan** : means the timing and sequence of events agreed between the Customer and TopSys-IT Limited for the performance of this Agreement, as set out in the Specification.

**Proposal** : means the written summary of the Project prepared for the Customer by TopSys-IT.

**Rates** : means the rates set out in the Specification;

**Software** : means commercially available software, as set forth and described in the Price List, scripts and installation programs being developed or customised by

TopSys-IT Limited or its suppliers for the Customer, as set out in the Specification, including any enhancements and modifications made.

**Specification** means all or any of the following documents: Proposal, Cost Specification Documents, statement of work, quotation or other similar documents supplied to the Customer describing the services to be provided by TopSys-IT.

**Specified Equipment** : means the configuration of computer or computers, including operating systems, on which the Software is to function as specified in the Specification.

**Standard Working Hours** : means the hours of 9.00am to 5.30pm UK time Monday through to Friday excluding UK Bank Holidays.

**Support** : means assistance provided to the Customer by TopSys-IT.

**Support Commencement Date** : the date that Support shall begin.

**System** : means collectively the Specified Equipment and the Software.

**Warranty Period** : means the period of thirty (30) days immediately following the Acceptance Date.

## 2. Interpretation

In this Agreement unless the context otherwise requires:

words importing any gender include every gender;

words importing the singular number include the plural number and vice versa;

words importing persons include firms, companies and corporations and vice versa;

references to numbered clauses are references to the relevant clauses in this Agreement;

the headings to the clauses and paragraphs of this Agreement shall not affect the interpretation;

any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment;

any obligation on any party not to do or omit to do anything is to include an obligation not to allow that thing to be done or omitted to be done;

any party who agrees to do something shall be deemed to fulfil that obligation if that party procures that it is done.

### **3. General**

- 3.1 These Terms and Conditions shall apply to all contracts for the supply of services by TopSys-IT Limited to the Customer.
- 3.2 Before the commencement of the services TopSys-IT Limited shall submit to the Customer a Proposal and Cost Specification Documents which shall specify the services to be performed and the fees payable. The Customer shall notify TopSys-IT Limited immediately if the Customer does not agree with the contents of the Proposal and Cost Specification Documents. All Proposal and Cost Specification Documents shall be subject to these Terms and Conditions.
- 3.3 TopSys-IT Limited shall use all reasonable endeavours to complete the services within estimated time frames but time shall not be of the essence in the performance of any services.

### **4. The Project**

- 4.1 TopSys-IT Limited shall provide the Customer with software services for the purpose of creating the Software and other Deliverables as detailed in the Specification, in accordance with the terms and conditions of this Agreement.
- 4.2 TopSys-IT Limited shall provide to the Customer the Deliverables when requested by the Customer subject to full payment having been received by TopSys-IT Limited for the Deliverables or part of the Deliverables being provided.
- 4.3 Unless explicitly itemised in the Specification TopSys-IT Limited shall not be responsible for any other services including without limitation hardware and software installation, systems integration, data conversion, data import and training.
- 4.4 For the avoidance of doubt, TopSys-IT Limited shall not be responsible under any circumstances for backup and archiving of the Software or of any data used by the Software on computer equipment belonging to the Customer or the Customer's appointed computer hosting supplier.

### **5. The Customer's Obligations**

The Customer shall:

- 5.1.1 make available to TopSys-IT, free of charge, such computer facilities and resources, (including but not limited to unhindered access to the Specified Equipment including remotely for access at TopSys-IT's premises), power and computer consumables and office and administrative resources as are reasonably necessary to enable TopSys-IT Limited to carry out its obligations under this Agreement;

- 5.1.2 make available suitably qualified employees as may be required for TopSys-IT Limited to carry out its obligations under this Agreement and ensure that its employees and other independent contractors co-operate reasonably with TopSys-IT Limited and its employees in carrying out the Project;
- 5.1.3 promptly furnish TopSys-IT Limited with such information and documents as it may reasonably request for the proper performance of its obligations under this Agreement;
- 5.1.4 ensure that its representative is available as reasonably required by TopSys-IT; and
- 5.1.5 use best endeavours to co-operate with and assist TopSys-IT Limited to such extent as TopSys-IT Limited may reasonably require to perform TopSys-IT's obligations under this Agreement.
- 5.2 TopSys-IT Limited reserves the right to initiate a Change Request if the project is delayed by the failure of the Customer to carry out its obligations under this Agreement or if the project is delayed by the acts or omissions of an employee, agent or third party supplier of the Customer or if the project is delayed by circumstances beyond the reasonable control of TopSys-IT.
- 5.3 It is hereby acknowledged that by legal precedent computer software inherently contains from time to time defects, faults and difficulties however well developed and supported and acceptance of Deliverables under this Agreement shall not be unreasonably withheld due to minor faults in the Software.
- 5.4 The Customer acknowledges that all and any Deliverables from TopSys-IT Limited to the Customer or from a third party contracted by TopSys-IT Limited in respect of this Agreement are of specific importance to TopSys-IT Limited meeting the agreed schedule in the Project Plan and accepts full responsibility for any delay in accepting the Deliverables.

## **6. Change Control**

- 6.1 If either party identifies a requirement for a change to the Specification or to the Software or Project Plan, a Change Request shall be sent to the other party detailing the change requirements. If sent by TopSys-IT, the Change Request shall state the effect such a change shall have on the Specification, the Project Plan and the Price. If sent by the Customer, the receipt of the Change Request by TopSys-IT Limited shall constitute a request to TopSys-IT Limited to state in writing the effect such a change shall have on the Specification, the Project Plan and the Price. TopSys-IT Limited shall use all reasonable endeavours to supply the necessary details within ten working days from receipt of the Change Request or such other period as may be agreed.
- 6.2 Where a change to the Price is required, the rates used as the basis for the additional cost for the Change Request shall be the Rates as detailed in the Specification. The parties shall then decide whether or not to implement the change.

- 6.3 If TopSys-IT Limited in its sole discretion deems that more than one working hour is required to investigate and estimate a Change Request initiated by the Customer then TopSys-IT Limited reserves the right to produce a quotation for the investigation work for the Customer's approval before commencing investigation work.
- 6.4 TopSys-IT Limited shall not implement any changes to the Software specified in a Change Request unless the Change Request has been agreed by both of the Parties in writing or via TopSys-IT's electronic support system.
- 6.5 If a Change Request is agreed in writing by both Parties, the change shall then be deemed to form part of the Specification, Software, Project Plan and Price for the purpose of the meaning of these terms in the Agreement.

## **7. Acceptance Tests**

- 7.1 It shall be the sole responsibility of the Customer to execute the Acceptance Tests.
- 7.2 The Customer shall accept the Software immediately after the Software has passed the Acceptance Tests and shall sign TopSys-IT's Acceptance Certificate without delay.
- 7.3 If the Software fails to pass the Acceptance Tests, repeat tests shall be carried out without delay following the release of corrected Software by TopSys-IT Limited or its suppliers until the Software passes the Acceptance Tests.
- 7.4 If at any time the Customer or any of its appointed agents, contractors or customers under its authority shall commence Live Operational Use of the whole or any part of the Software then the Customer shall be deemed to have accepted the Software in its entirety.
- 7.5 If at any time the Customer shall distribute all or any part of the Software for commercial use by any of its staff, appointed agents, contractors or customers then the Customer shall be deemed to have accepted the Software in its entirety.
- 7.6 If following one month after the delivery of the Software, there are no unresolved fault reports logged by the Customer with TopSys-IT Limited that evidence that the software does not pass the Acceptance Tests then the Customer shall be deemed to have accepted the Software in its entirety.
- 7.7 It shall be the responsibility of the Customer to create suitable Acceptance Test scripts that accurately reflect the Specification and to provide suitable data for the Acceptance Tests. The scripts and data must be made available to TopSys-IT Limited not less than one month prior to the expected commencement date of Acceptance Tests according to the Project Plan.

## **8. Representatives and Progress Meetings**

- 8.1 Each party shall nominate in writing upon the signing of this Agreement, the person who shall act as its representative for the purposes of this Agreement and who shall be responsible for providing any information which may be required by the other party to perform its obligations under this Agreement.
- 8.2 The parties shall procure that their respective representatives shall meet by physical meeting or conference telephone call, as agreed, at least once a month (or as otherwise may be agreed) between the date of this Agreement and the Planned Acceptance Date to discuss and minute the progress of the Project.
- 8.3 The representative of TopSys-IT Limited shall maintain a log of issues, risks and actions that affect the project. The representative of the Customer shall exercise due diligence in co-operatively assisting the representative of TopSys-IT Limited to mitigate risks, resolve issues and complete actions in a timely fashion.

## 9. Support

- 9.1 On payment of the Annual Support Fee, TopSys-IT Limited shall provide the Customer with the following support commencing on the Support Commencement Date for one year and renewable thereafter:
  - 9.1.1 Help Desk: TopSys-IT Limited shall provide the Customer with reasonable help desk assistance regarding the installation and use of the Software, and the identification and diagnosis of faults. TopSys-IT Limited shall attempt to resolve any support questions posed by the Customer.
  - 9.1.2 Error Corrections: correction of critical errors or assistance to overcome specific software problems. TopSys-IT Limited may, in its sole discretion, correct errors by providing a patch or by releasing a new version of software.
- 9.2 The Customer shall supply in writing to TopSys-IT Limited a detailed description of any fault requiring support and the circumstances in which it arose, and shall submit sufficient material and information as requested by TopSys-IT Limited including screenshots and log files to enable TopSys-IT's support staff to duplicate the problem and shall allow TopSys-IT Limited sufficient access to the Customer's systems to enable diagnosis of the fault.
- 9.3 The response period as indicated by "Response Time" in 9.4 shall commence when all material and information related to the fault requested by TopSys-IT Limited has been provided to TopSys-IT.
- 9.4 TopSys-IT Limited shall use reasonable commercial efforts to communicate with the Customer, by telephone, e-mail, or fax within the following targeted response times, regarding faults that the Customer reports to TopSys-IT Limited during the specified support hours below; for the purposes of this Agreement, a "response" means TopSys-IT's acknowledgment of a fault, and does not necessarily mean that a resolution will be achieved.

| Severity               | Failure Description   | Response Time   |
|------------------------|---|-----------------|
| 1 – System Failed      | Multiple users not able to access the system to perform normal work.  | 2 working hours |
| 2 – System Malfunction | The system is still considered operational with some functionality disabled.                                | 4 working hours |
| 3 – Operation impaired | System operation is impaired, slow running or prints not being produced. Core functionality is operational. | 24 hours        |
| 4 – Data Issues        | System operates normally but incorrect data items or an individual user not able to access the system etc.  | 2-5 Days        |
| 5 – Cosmetic Issues    | Cosmetic error, e.g. spelling mistake, screen layout inconsistency. User enhancement request.               | 5 Days          |

9.5 TopSys-IT Limited shall respond to calls and progress calls during Standard Working Hours.

9.6 Where possible, TopSys-IT's response to a fault report shall include an estimate of how long a problem may take to resolve. TopSys-IT Limited shall keep the Customer informed of the progress of problem resolution. This shall be not more than every two hours for Severity 1 and 2 calls.

9.7 All support shall be provided by electronic or other communication methods. TopSys-IT Limited shall not provide on-site support under this Agreement.

9.8 TopSys-IT Limited shall be under no obligation to provide support in respect of:



- 9.8.1 problems resulting from any modifications or customisation of the Software not authorised in writing by TopSys-IT. For the avoidance of doubt, modifications to the software shall include but not be limited to changes to the logical or physical database schema of the software, changes to the computer hardware configuration, and hand-modified changes to the data within the database;
- 9.8.2 any software other than the Software;
- 9.8.3 incorrect or unauthorised use of the Software or Misuse of the Software or operator error;
- 9.8.4 any fault in the Specified Equipment or any other computer or network hardware;
- 9.8.5 any programs or software used in conjunction with the Software which have not been supplied by TopSys-IT;
- 9.8.6 use of the elements of the Software in any combination other than those specified in any operating instructions supplied by TopSys-IT;
- 9.8.7 use of the Software with computer hardware, operating systems or other supporting software other than the Specified Equipment; and
- 9.8.8 the Customer's failure to install and use upon the any new release of the Software within 30 days of its receipt from TopSys-IT.
- 9.9 Any time spent by TopSys-IT Limited investigating any fault pursuant to the circumstances described in clause 9.8 shall be chargeable at TopSys-IT's then current rates. TopSys-IT Limited shall invoice such charges at its discretion and such shall be paid within 30 days of the date of said invoice.
- 9.10 TopSys-IT Limited reserves the right to discontinue the Support for any prior version of the Software if a superseding version has been available to the Customer.
- 9.11 TopSys-IT Limited shall not be obliged to make modifications or provide Support in relation to the Customer's computer hardware, operating system software, third party software or any data feeds or external data.
- 9.12 The Customer shall:
  - 9.12.1 operate the Software, maintain data and the database in accordance with all instructions issued by TopSys-IT;
  - 9.12.2 by arrangement, grant access to premises and/or systems at all times for support;
  - 9.12.3 make hardware accessible to TopSys-IT's support staff and, when required, enable logons or passwords with suitable access permissions required for such support staff;

- 9.12.4 permit TopSys-IT Limited to install the current version of the Software from time to time when upgrades or fixes occur;
- 9.12.5 provide notice of intention to change hardware or operating system or data-feeds. If any of these changes have a major effect on the Software then TopSys-IT Limited reserves the right to increase its charges.
- 9.13 The Customer shall pay to TopSys-IT Limited the Annual Support Fee on or before the Support Commencement Date. No support services shall be provided before the Annual Support Fee has been paid in full.
- 9.14 The Customer shall renew the support annually by paying the Annual Support Fee to TopSys-IT Limited on or before the anniversary of the Support Commencement Date unless 90 days' notice in writing is provided to TopSys-IT Limited to cancel the renewal of the service.
- 9.15 The support service may be cancelled at any time during the supported year but no refund of the Annual Support Fee or part thereof shall be payable to the Customer.
- 9.16 TopSys-IT Limited may increase the Annual Support Fee for any annual renewal of the support by providing not less than 120 days notice in writing to the Customer before the anniversary of support renewal.

## **10. Warranties**

- 10.1 TopSys-IT Limited warrants that the Software shall perform substantially in accordance with the Specification on the Specified Equipment, minor interruptions and errors excluded;
- 10.2 TopSys-IT Limited shall not be liable under clause 10.1 if a failure to meet the warranties set out in it is caused by:
- the Developer of the Software where TopSys-IT Limited was acting as the reseller; or
- computer equipment or computer software, other than the Software delivered by TopSys-IT; or
- modifications or customisation made by or on behalf of the Customer to the Software, without the authorisation of TopSys-IT; or
- Misuse of the Software; or
- Force Majeure.
- 10.3 If TopSys-IT Limited receives a written notice from the Customer identifying a breach of the warranties set out in clause 10.1, or otherwise becomes aware of its failure to comply with the warranties set out in clause 10.1, then TopSys-IT Limited shall, at its own expense, promptly remedy such breach or failure provided that TopSys-IT

Limited shall have no liability or obligations under the warranties unless it shall have received written notice of the defect or error within the Warranty Period.

## **11. Licence and Ownership**

### **11.1 Ownership**

The Software, any accompanying printed materials and all copies of the Software and printed materials, are owned by the Developer and its licensors and are protected by copyright, trademark and trade secret laws and international treaty provisions. The Software is licensed and not sold.

### **11.2 Grant of License**

This agreement permits the use of one copy of the Software, which is licensed as a single product, in accordance with the accompanying documentation. The Software is "in use" on a single computer when it is loaded into the temporary memory (i.e., RAM) or installed into the permanent memory (e.g., hard disk or other storage device) of that computer. Purchase of a network version of the software allows use of the program on multiple computers AT THE SAME SITE.

### **11.3 License Restrictions**

You may not make any unauthorized copies of the Software, except that you may either make one copy of the Software solely for backup or archival purposes or transfer the Software to a single hard disk provided you keep the original solely for backup or archival purposes. You may not permit other individuals to use the software except under the terms listed above. You may not modify, rent, lease, sub-license or use the Software for service bureau purposes. You may not reverse engineer, decompile or disassemble the Software, except to the extent expressly permitted by applicable law. This license is non- transferrable. Once the software is registered and unlocked, the software may not be returned, transferred, or the purchase price refunded for any reason.

## **12. Proprietary Rights**

12.1 TopSys-IT Limited shall indemnify the Customer on demand against all costs, claims, demands, expenses and liabilities of whatsoever nature arising out of or in connection with any claim that the use or possession of the Software infringes the Intellectual Property Rights of any third party subject to such infringement having been deliberately and consciously entered into on the part of TopSys-IT.

The Customer shall promptly notify TopSys-IT Limited in writing of any allegations of infringement of which it is aware and shall not make any admissions without TopSys-IT's prior written consent;

The Customer, at TopSys-IT's request and expense, shall allow TopSys-IT Limited to conduct and/or settle all negotiations and litigation resulting from any such claim subject to TopSys-IT Limited taking over such conduct within 10 working days after being notified of the claim and provided that TopSys-IT Limited diligently pursues the settlement of any such claim; and

The Customer shall, at the request of TopSys-IT, afford all reasonable assistance with such negotiations or litigation, and shall be reimbursed by TopSys-IT Limited on demand for all expenses properly incurred in doing so.

- 12.2 If the Customer's use or possession of the Software or any part of the Software in accordance with this Agreement, is held by a court of competent jurisdiction to constitute an infringement of a third party's Intellectual Property Rights, then TopSys-IT Limited shall promptly and at its own expense:

procure for the Customer the right to continue using and possessing the Software or the infringing part; or

modify or replace the Software (or part thereof) without detracting from the overall performance of the Software, so as to avoid the infringement.

- 12.3 If the remedies set out in clause 12.2 above are not in TopSys-IT's opinion reasonably available, then the Customer shall return the Software which is the subject of the intellectual property claim and TopSys-IT Limited shall refund to the Customer the corresponding portion of the Price, as normally depreciated, whereupon this Agreement shall immediately terminate.

### **13. Charges and Expenses**

- 13.1 In consideration of TopSys-IT Limited carrying out the Project, the Customer shall pay to TopSys-IT Limited the Price which shall be invoiced to the Customer in the specified proportions set out in the Specification and subject to the terms set out in clause 13.
- 13.2 In consideration of any Additional Services, the Customer shall pay to TopSys-IT Limited the amounts invoiced by TopSys-IT Limited to the Customer using the Rates set out in the Specification.
- 13.3 Except as otherwise agreed in writing, The Customer shall pay to TopSys-IT Limited all reasonable travelling, accommodation and other reasonable out-of-pocket expenses incurred by TopSys-IT Limited staff in the course of the Project with car mileage charged at the rate of 40 pence per mile.

#### **14. Terms of Payment**

- 14.1 Payment of sums due by the Customer to TopSys-IT Limited shall be made within 30 days of the receipt of an invoice from TopSys-IT. All payments under this Agreement shall be made in Pounds Sterling unless otherwise agreed in writing between the Parties.
- 14.2 With effect from the beginning of each year commencing on the Acceptance Date, TopSys-IT Limited may, at its sole discretion, increase the Rates in effect during the previous year.
- 14.3 All monetary amounts stated within this Agreement are exclusive of VAT, which shall be payable by the Customer at the rate and in the same manner for the time being prescribed by law against submission of a valid tax invoice.
- 14.4 Without prejudice to any other right reserved by TopSys-IT Limited in this Agreement, if any sum payable under this Agreement is in arrears for more than fourteen (14) days from the due date of payment then TopSys-IT Limited shall be entitled to charge interest on a day-to-day basis on any such arrears as from the invoice date at the rate permitted from time to time under the provisions of the Late Payment of Commercial Debts (Interest) Act 1998.

#### **15. Liability and Insurance**

- 15.1 TopSys-IT Limited shall, during the term of this Agreement, maintain employer's liability and third party liability in respect of its liabilities arising out of or connected with this Agreement, such cover to be to a minimum value of £1,000,000 and with an insurance company of repute. TopSys-IT Limited shall on request supply copies of the relevant certificates of insurance to the Customer as evidence that such policies remain in force. TopSys-IT Limited undertakes to use reasonable commercial efforts to pursue claims under such insurance policies.
- 15.2 TopSys-IT Limited shall indemnify the Customer for personal injury or death caused by the negligence of its employees in connection with the performance of their duties under this Agreement or by defects in any product supplied pursuant to this Agreement.
- 15.3 TopSys-IT Limited shall indemnify the Customer for direct damage to tangible property caused by the negligence of its employees in connection with the performance of their duties under this Agreement or by defects in any product supplied pursuant to this Agreement. TopSys-IT's total liability under this clause shall be limited to £1,000,000 for any one event or series of connected events.
- 15.4 Save in respect of claims for death or personal injury arising from TopSys-IT's negligence, in no event shall TopSys-IT Limited be liable for any damages resulting from loss of or corruption of data or information, loss of goods, use, profits, business, anticipated savings, goodwill or similar losses, nor for any damages that are an

indirect or secondary consequence of any act or omission of TopSys-IT Limited whether such damages were reasonably foreseeable or actually foreseen.

- 15.5 In no event shall TopSys-IT Limited be liable for any damages resulting from the Misuse of the Software.
- 15.6 Except as provided above in the case of personal injury, death and damage to tangible property, TopSys-IT's maximum liability to the Customer under this Agreement or otherwise for any cause whatsoever (whether in the form of the additional cost of remedial services or otherwise) shall be for direct costs and damages only and shall be limited to the greater of:
- the sum for which TopSys-IT Limited carries comprehensive insurance cover pursuant to clause 15.1 above; or
- a sum equivalent to the price paid to TopSys-IT Limited for the products or services that are the subject of the Customer's claim.
- 15.7 The parties acknowledge and agree that the limitations contained in this clause 15 are reasonable in the light of all the circumstances.
- 15.8 The terms implied by sections 3 – 5 of the Supply and Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from this Agreement.
- 15.9 This clause 15 shall survive termination of this Agreement.

## **16. Termination**

- 16.1 This Agreement shall continue until completion of the Project unless either party gives to the other not less than 90 days' prior written notice of termination or unless the Agreement is terminated in accordance with any of the provisions of this clause 15 or any other clause of this Agreement.
- 16.2 Either party shall be entitled to terminate this Agreement forthwith at any time by written notice to the other party if:

the other party commits a breach of any of the terms of this Agreement (and if the breach is capable of remedy) fails to remedy the breach within 30 days after receipt of notice in writing to do so; or

the other party becomes subject to an administration order; a receiver or administrative receiver or similar is appointed over, or an encumbrancer takes possession of any of the other party's property or assets; the other party enters into an arrangement or composition with its creditors, ceases or threatens to cease to carry on business, becomes insolvent, or ceases to be able to pay its debts as they fall due.

- 16.3 Forthwith upon the termination of this Agreement, TopSys-IT Limited shall return to the Customer any materials and documentation and any Confidential Information belonging to the Customer and all copies of the whole or any part thereof or, if requested by the Customer, shall destroy the same and certify in writing to the Customer that it has been destroyed.
- 16.4 Any termination of this Agreement (howsoever occasioned) shall not affect any accrued rights or liabilities of either party nor shall it affect the coming into force or the 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.
- 16.5 In the event of termination of this Agreement TopSys-IT Limited shall compute a project completion percentage by comparing completed tasks with tasks on the project plan. The Customer shall immediately pay to TopSys-IT Limited the same percentage of the Price together with any other invoices then outstanding. TopSys-IT Limited shall evidence completed tasks to the Customer by demonstrating working functionality or source code.

## 17. Confidentiality

- 17.1 Both during this Agreement and after its termination, the parties shall treat as confidential (and shall procure that its personnel and each of them treat as confidential) and shall not (and shall procure that their personnel and each of them does not) other than in the proper provision of the services required to fulfil the Project, use or disclose to any person, firm or company, any Confidential Information belonging to the other party or its Customers, suppliers or customers, nor permit its use or disclosure.
- 17.2 The provisions of clause 17.1 shall not apply where Confidential Information is divulged to:
- either party's own employees and then only to those employees who need to know the same;
- either party's auditors, an officer of HM Customs and Excise, a court of competent jurisdiction, governmental body or applicable regulatory authority and any other persons or bodies having a right, duty or obligation to know the business of the other party and then only in pursuance of such right, duty or obligation.
- 17.3 Both parties undertake to ensure that persons and bodies referred to in clause 17.2 are made aware before the disclosure of any part of the Confidential Information that the same is confidential and that they owe a duty of confidence to the other party.
- 17.4 Each party to this Agreement shall promptly notify the other party if it becomes aware of any breach of confidence by any person to whom it divulges all or any part of the Confidential Information and shall give the other party all reasonable assistance in

connection with any proceedings which the other party may institute against such person for breach of confidence.

- 17.5 The provisions of this clause shall survive the termination of this Agreement but the restrictions contained in clause 17.1 shall cease to apply to any information which may come into the public domain otherwise than through unauthorised disclosure.
- 17.6 Nothing in this clause 17 shall prevent TopSys-IT Limited from exploiting any inventions or software that it develops during the term of this Agreement.

## **18. Non-Hiring of Personnel**

For the duration of this Agreement and for a period of twelve months thereafter neither Party shall employ or make an offer of employment to any employee of the other Party without the express permission in writing of the other Party. "Employ" means the engagement of such person as an employee, director, contractor or sub-contractor directly or indirectly including via an employment agency or other company.

## **19. Data Protection**

- 19.1 The Customer and TopSys-IT Limited acknowledge that for the purposes of the Data Protection Act 1998 the Customer is the data controller and TopSys-IT Limited is the data processor in respect of any personal data.
- 19.2 TopSys-IT Limited shall process the personal data only in accordance with the Customers instructions from time to time and shall not process the personal data for any purposes other than those expressly authorised by the Customer.
- 19.3 It is the sole responsibility of the Customer to ensure that the Software is not used in any way that infringes data protection legislation at the time being. For the avoidance of doubt, TopSys-IT Limited accepts no responsibility whatsoever for any such infringement or alleged infringement.

## **20. Agency, Partnership**

- 20.1 This Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the parties other than the contractual relationship expressly provided for in this Agreement.
- 20.2 This Agreement shall not establish the relationship of employer and employee as between the Customer and TopSys-IT Limited or its personnel. The Customer shall not be entitled to require TopSys-IT Limited or its personnel to carry out any work other than as provided for by this Agreement.



## **21. Amendments**

This Agreement may not be released, discharged, supplemented, interpreted, amended, varied or modified in any manner except by an instrument in writing signed by a duly authorised officer or representative of each of the parties.

## **22. Assignment**

22.1 TopSys-IT Limited may at any time assign , mortgage, charge, sub-contract, delegate, declare a trust over or deal in any manner with any or all of its rights and obligations under this Agreement.

22.2 The Customer shall not assign, transfer, mortgage, charge, sub-contract, declare a trust over or deal in any other manner with any of its rights and obligations under this Agreement (without the prior consent of TopSys-IT).

## **23. Entire Agreement**

This Agreement supersedes all prior agreements, arrangements and undertakings between the parties and constitutes the entire agreement between the parties relating to the subject matter of this Agreement. However the obligations of the parties under any pre-existing non-disclosure agreement shall remain in full force and effect in so far as there is no conflict between the same. The parties confirm that they have not entered into this Agreement on the basis of any representation that is not expressly incorporated into this Agreement.

## **24. Force Majeure**

Neither Party shall be liable for any delay in meeting, or failure to meet, its obligations under this Agreement due to any cause outside its reasonable control including (without limitation) acts of God, war, riot, malicious acts of damage, fire, acts of any government authority, failure of the public electricity supply, strike, lock-out or labour dispute or apprehension thereof (whether or not the settlement of the matter is at the discretion of the Party in question).

## **25. Notices**

25.1 All notices under this Agreement shall be in writing.

25.2 Notices shall be deemed to have been duly given:

when delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient; or

when sent, if transmitted by fax or e-mail and a transmission report or return receipt indicating failure of transmission is not generated; or

on the fifth business day following mailing, if mailed by Royal Mail; or

on the tenth business day following mailing, if mailed by airmail, postage prepaid,

in each case addressed to the most recent address, e-mail address, or facsimile number notified to the other party.

## **26. Severance**

If any provision of this Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from this Agreement and rendered ineffective as far as possible without modifying the remaining provisions of this Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of this Agreement.

## **27. Successors and Assignees**

27.1 This agreement shall be binding upon, and inure to the benefit of each Party and their respective successors and permitted assignees.

27.2 In this Agreement references to a Party include references to a person:

who for the time being is entitled (by assignment, novation or otherwise) to that party's rights under this Agreement (or any interest in those rights); or

who, as administrator, liquidator or otherwise, is entitled to exercise those rights,

and in particular those references include a person to whom those rights (or any interest in those rights) are transferred or pass as a result of a merger, division, reconstruction or other reorganisation involving that party. For this purpose, references to a Party's rights under this Agreement include any similar rights to which another person becomes entitled as a result of a novation of this Agreement.

## **28. Waiver**

No delay, neglect or forbearance on the part of either party in enforcing against the other party any term or condition of this Agreement shall either be or be deemed to be a waiver or in any way prejudice any right of that party under this Agreement. No right, power or remedy in this Agreement conferred upon or reserved for either party is exclusive of any other right, power or remedy available to that party.

**29. Counterparts**

This Agreement may be executed in any number of counterparts or duplicates, each of which shall be an original, and such counterparts or duplicates shall together constitute one and the same agreement.

**30. Time of the Essence**

Save in relation to clause 3.3 time shall be of the essence in this Agreement as regards any time, date or period mentioned in this agreement or subsequently substituted as a time, date or period by agreement in writing between the parties.

**31. Sub-Contracting**

With the prior written consent of the Customer (such consent not to be unreasonably withheld or delayed) TopSys-IT Limited may perform any or all of its obligations under this Agreement by the use of agents or sub-contractors, provided that TopSys-IT Limited shall remain liable for such performance and shall indemnify the Customer against any loss or damage suffered by the Customer arising from any act or omission of such agents or sub-contractors.

**32. Third Parties**

The parties confirm their intent not to confer any rights on any third parties by virtue of this Agreement and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement.

**33. Dispute Resolution**

33.1 For the purpose of this clause 33, a dispute shall be deemed to have arisen when one Party serves on the other a notice in writing (not including e-mail) stating the nature of the dispute.

33.2 Any dispute which may arise between the parties concerning this Agreement shall be determined as follows.

Within seven days the representatives of the Parties shall meet to attempt to settle the dispute by mutual agreement.

If the representatives fail to reach a mutual agreement a director or partner of each of the Parties shall meet within the following seven days to attempt to settle the dispute by mutual agreement.

If the dispute remains unresolved and is of a technical nature relating to the functions or capabilities of the Software or any similar or related matter then such a dispute shall be referred for final settlement to an expert nominated jointly by the parties or failing such nomination within fourteen days after either Party's request to the other therefore nominated at the request of either party by the President for the time being of the British Computer Society. Such expert shall be deemed to act as an expert and not as an arbitrator. His decision shall (in the absence of clerical or manifest error) be final and binding on the Parties in equal shares unless he determines that the conduct of either Party is such that such Party should bear all (or greater proportion) of such fees.

- 33.3 The Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the Law of England and Wales.
- 33.4 Each party irrevocably agrees that the Courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Agreement or its subject matter or formation.

I agree that I have read and accept these terms and conditions

Company .....

Name .....

Signed .....

Date .....