



MindYourService.com Limited  
Standard Agreement for the use of the  
Software

## RECITALS

(A) The Customer having satisfied himself that the software is fully compliant with his needs and has the features that are required by his business wishes to purchase the Software and the Additional Services indicated in the Proposal.

(B)

(C) The Parties have agreed to enter into the Agreement to define their contractual rights and liabilities and to regulate the other documentation which has been produced in the course of those negotiations.

**IT IS AGREED AS FOLLOWS:**

**PART A : GENERAL PROVISIONS**

**1. DEFINITIONS**

1.1 In the Agreement (except where the context requires otherwise) the following expressions shall have the following meanings, namely:-

<b>“Acceptance”</b>	acceptance as defined in clause 8.2 below;
<b>“Additional Charge”</b>	a charge to be calculated by MindYourService.Com Limited in accordance with MindYourService.Com Limited standard rate for time, materials, travel, accommodation and subsistence from time to time prevailing;
<b>“Additional Services”</b>	the services (if any) indicated in the Proposal together with any other services from time to time agreed to be supplied by MindYourService.Com Limited to the Customer;
<b>“Agreement”</b>	these Terms and Conditions together with the Proposal;
<b>“Associated Company”</b>	a company directly or indirectly controlled by or under the same control, direct or indirect, as the Customer;
<b>“Business Day”</b>	any day other than a Saturday, Sunday, or a day that is a public holiday in England;
<b>“Consequential Loss”</b>	pure economic loss, loss of profit, loss of use of trade marks, loss of business and like loss;
<b>“Copy”</b>	an individual copy on electromagnetic recording material of one or more of the programs constituting the Software;

<b>“Customer”</b>	means the person, partnership, company or other undertaking whose order is accepted by MindYourService.Com Limited as indicated in the Proposal;
<b>“Hardware”</b>	the hardware (including without limitation the IBM Chiphopper software program if appropriate and including without limitation the NetBooks and Laptops) upon which the Software is intended to run as may be identified by name and version number in the Proposal;
<b>“Intellectual Property Right”</b>	a patent, right in a design, copyright, trade mark and any other intellectual property right whether or not registered or capable of registration;
<b>“Loss of Data”</b>	a loss of or corruption to data or programs held or used by or on behalf of the Customer;
<b>“Operating System, Database and Financial System Software”</b>	the operating system, database and financial system software with which the Software is intended to run as identified by name and version number in the Proposal;
<b>“Part”</b>	one of the three parts of the Agreement;
<b>“Party”</b>	MindYourService.Com Limited or the Customer;
<b>“Netbook”</b>	a low formfactor laptop, including without limitation a mobile telephone, hand-held device, laptop or like device;
<b>“Proposal”</b>	the proposal or similar document (or e-mail) created by MindYourService.Com Limited and sent to the Customer;
<b>“Services Charge”</b>	the charge or rate payable in respect of the provision of the Additional Services under the Agreement as

indicated in the Proposal (and if none, then a charge calculated as an Additional Charge);

**“Site”** the Customer’s premises specified in the Proposal (and if none, then the Customer’s address as specified in the Proposal);

**“MindYourService.Com Limited”** MindYourService.Com Limited (Company Number 07341161) whose registered office is at North Church Street, 84 Queen Street, Sheffield, S1 2DW

**“Software”** the computer software licensed to the Customer by MindYourService.Com Limited under the Agreement (which may generally comprise software used on a NETBOOK / SMARTPHONE, software used by the Customer on its own server and software used by MindYourService.Com Limited for the benefit of the Customer on MindYourService.Com Limited server) including the software (if any) expressly indicated in the Proposal together with any other software supplied from time to time by MindYourService.Com Limited to the Customer;

**“Software Licence Fee”** the licence fee (including the recurring annual licence fee) indicated in the Proposal for the Software being the fee payable in respect of the continuing right to use the Software under the Agreement;

**“Software Maintenance Services”** the provision of the maintenance services as detailed in clause 10.1 of Part B;

**“System”** the Software and the Additional Services;

**“Termination Event”** any of the following events:-

- (1) the Customer fails to pay any moneys due under the Agreement within thirty (30) days of the due date;

- (2) the Customer breaches a term or condition of the Agreement (other than a term or condition requiring payment of moneys as provided for within paragraph (1) above) and (in the case of a breach capable of being remedied) fails to have remedied such breach within thirty (30) days of a written request by MindYourService.Com Limited so to do;
- (3) (where the Customer is a company or a limited liability partnership) (and otherwise than for the purposes of an amalgamation or reconstruction of a solvent company) the Customer convenes a meeting of its creditors or a proposal is made for a voluntary arrangement within Part 1 of the Insolvency Act 1986 or a proposal is made for a composition, scheme or arrangement with (or assignment for the benefit of) its creditors or if the Customer is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or a trustee, receiver, administrator, administrative receiver or a similar officer is appointed in respect of all or a part of the business or assets of the Customer or 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 Customer or for the making of an administration order or (where the Customer is established in a country other than the United Kingdom) an event takes place in the territory in which the Customer is established which is similar to any of the foregoing;
- (4) (where the Customer is an individual or partnership) the Customer (or in the case of a

partnership any of the partners) dies or is made bankrupt or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or a proposal is made for a composition scheme or an arrangement with (or an assignment for the benefit of) its creditors; or

- (5) the Customer ceases to carry on business or threatens so to do;

**“Third Party”** a person, partnership, company or any other undertaking not being MindYourService.Com Limited or the Customer;

**“Working Hours”** the hours of 9:00 am to 5:30 pm during a Business Day.

## **2. THE AGREEMENT**

2.1 In the event of a conflict between the provisions of these Terms and Conditions and the provisions of the Proposal, the provisions of these Terms and Conditions shall prevail save where there is an express reference to a clause number of these Terms and Conditions.

2.2 This Part A shall always apply. Part B below shall apply where MindYourService.Com Limited supplies Software to the Customer. Part C below shall apply where MindYourService.Com Limited supplies Additional Services to the Customer.

## **3. MINDYOURSERVICE.COM LIMITED’S OBLIGATION**

MindYourService.Com Limited shall supply the Software for use at the Site subject to the payment of the monies due from the Customer and the other terms and conditions of the Agreement.

## **4. PAYMENTS**

4.1 The Software Licence Fee is payable either as a recurring fee payable on a continuing basis for as long as the agreed contract period in the proposal: the latter element

being invoiced yearly (unless otherwise expressly indicated in the Proposal) but chargeable on a per month per user basis, or as a lump sum for the term of the agreement

4.2 The recurring part of the Software Licence Fee is payable monthly in advance from the date of Acceptance and shall be invoiced by MindYourService.Com Limited based upon the number of users available for use to the Customer as at the last date of the immediately proceeding month at the rate indicated in the Proposal. Where applicable, this shall be calculated on a pro rata basis.

4.3 The Customer shall be invoiced for the Additional Services monthly in arrears. Save as may be otherwise indicated in the Agreement, the Additional Services shall be charged for on a time and materials basis.

4.4 Where a charge for software or services supplied by MindYourService.Com Limited is not specified in the Proposal, the Customer shall pay an Additional Charge for such software and services.

4.5 All invoices issued by MindYourService.Com Limited shall be paid by the Customer within thirty (30) days of the date of issue.

4.6 MindYourService.Com Limited reserves the right to charge interest to the Customer on any monies payable under the Agreement which are not paid on the due date and such interest may be charged (as well after as before a judgment) at the rate of three per cent (3%) per annum above the base rate of Barclays Bank plc from time to time subsisting: such interest to accrue on a daily basis.

4.7 If the Customer fails to pay any monies on the due date or does not comply with an obligation imposed upon the Customer under the Agreement then, without prejudice to any other right or remedy available to MindYourService.Com Limited, MindYourService.Com Limited shall be entitled to:

- (1) withhold the supply of any Software and Additional Services to be provided to the Customer by or on behalf of MindYourService.Com Limited;
- (2) suspend the performance of any obligation owed by MindYourService.Com Limited under the Agreement; and



(3) require payment in full by the Customer for all further Software and Additional Services which MindYourService.Com Limited agrees to supply further to the Agreement before supplying the Software and Additional Services.

4.8 All sums quoted under or further to the Agreement are exclusive of value added tax and any other similar tax which will be added at the rate prevailing as at the date of invoice.

4.9 The Customer shall not be entitled to make a set-off or counter-claim or claim a lien in respect of any monies owed by the Customer and shall pay all amounts due to MindYourService.Com Limited under or further to the Agreement without making a deduction of any kind.

## **5. SUBSTITUTION AND MODIFICATION**

5.1 MindYourService.Com Limited reserves the right, as MindYourService.Com Limited shall in its discretion determine, to make an improvement, substitution or modification in the specification of any element or part of the Software and Additional Services provided that such improvement, substitution or modification will not substantially worsen the overall performance of the Software and Additional Services.

5.2 Where the Customer requests any change or addition to the Software or the Additional Services, the Customer shall pay an Additional Charge for such change or addition. In this regard, it shall be the Customer's responsibility to ensure that only authorised individuals give instructions in this regard to MindYourService.Com Limited and MindYourService.Com Limited shall be entitled to take instructions from any individual within the Customer's organisation.

## **6. CUSTOMER'S OBLIGATIONS**

6.1 The Customer shall:

(1) pay all sums, fees and other charges due under the Agreement on the dates provided for under the Agreement; and

(2) take all necessary precautions to protect the health and safety of MindYourService.Com Limited personnel whilst at the Site or any other location of the Customer.

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6.2 The Customer shall promptly and accurately provide MindYourService.Com Limited, on request, with all information and assistance that MindYourService.Com Limited may reasonably require in order for MindYourService.Com Limited to fulfil its obligations pursuant to the Agreement.

6.3 In the event that the supply of the Software and the Additional Services are delayed by reason of any delay or inaccuracy in the provision by the Customer of any information or assistance, MindYourService.Com Limited shall (without prejudice to any other remedy of MindYourService.Com Limited) be entitled to increase the price of the Software and the Additional Services to compensate MindYourService.Com Limited for all additional costs that are reasonably incurred by MindYourService.Com Limited and to extend any delivery date.

6.4 The Customer alone shall be responsible for the accuracy and validity of the information provided by the Customer.

6.5 The Customer acknowledges that it is relying solely upon its own skill and judgment and not that of MindYourService.Com Limited in determining the suitability of the Software and Additional Services and the fitness for any general or specific purpose of the Software and Additional Services save where expressly provided to the contrary in the Proposal.

6.6 The Customer acknowledges that it is relying solely upon its own skill and judgment and not that of MindYourService.Com Limited in determining the suitability of the Hardware and the Operating System, Database and Financial System Software, the type of barcoding system used by the Customer and the mobile phone standard used by the Customer's NETBOOKS or SMARTPHONES.

6.7 Where the Customer wishes MindYourService.Com Limited to make a recommendation as to any hardware, the Customer shall require MindYourService.Com Limited to make such recommendation in writing. The Customer shall not be entitled to rely upon any recommendation made by MindYourService.Com Limited unless it is made by MindYourService.Com Limited in writing. Where MindYourService.Com Limited recommends any hardware (including without limitation the procurement of any NETBOOK or SMARTPHONE for use in conjunction with the Software), MindYourService.Com Limited recommends that hardware solely as suitable for use in conjunction with the Software and not for any other attribute or purpose. The Customer acknowledges that it is relying solely upon its own skill and judgment and not that of MindYourService.Com Limited in determining the suitability of the hardware for any other attribute or purpose. For the avoidance of doubt, For MindYourService.Com Limited

MindYourService.Com Limited does not act as the agent of the Customer where MindYourService.Com Limited recommends or assists the Customer in the acquisition or rental of such hardware.

6.8 The Customer acknowledges that the correct working of the Software is dependent upon a number of variables including, without limitation, the type of barcoding system used by the Customer, the mobile phone standard used by the Customer's NETBOOKS or SMARTPHONES, the Operating System, Database and Financial System Software (including the relevant versions and releases thereof) and the Hardware. Where the Customer has given or gives inaccurate statements to MindYourService.Com Limited in this regard, or changes any of those variables, the Customer acknowledges that the Software may not consequently operate effectively or at all.

6.9 Save where the Proposal expressly states otherwise, the charges to the Customer exclude the provision of any installation. Where the Customer request any installation, the Customer shall pay an Additional Charge for that installation.

## **7. DOCUMENTATION**

7.1 MindYourService.Com Limited shall provide or make available from download on its website such documentation as MindYourService.Com Limited in its reasonable discretion considers necessary for the use of the Software.

7.2 The Customer shall be free to photocopy or otherwise duplicate the documentation provided or made available by MindYourService.Com Limited and relating to the use of the Software provided always that the Customer shall ensure that such copies and duplicated copies of the documentation shall carry an identical copyright notice to the copyright notice included by MindYourService.Com Limited upon the original documentation provided or made available by MindYourService.Com Limited.

## **8 TIMETABLE**

8.1 All dates supplied by MindYourService.Com Limited (if any) for the delivery, installation and testing of the Software or for the provision of an Additional Service shall be treated as being approximate only. MindYourService.Com Limited shall not be liable for a delay if such dates are not complied with or met. No liability shall accrue to MindYourService.Com Limited for a delay in the provision of the Software or any part of the Software or for a delay in the provision of the Additional Services.

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8.2 Upon the successful delivery, installation and testing of the Software by MindYourService.Com Limited, the Customer shall accept the Software. The Customer shall not unreasonably withhold or delay the acceptance of the Software. For the avoidance of doubt:

(1) where MindYourService.Com Limited has not agreed to supply installation and testing, then acceptance shall be deemed to occur upon the delivery of the Software; and

(2) where the Customer makes any live or other commercial use of the Software, the Software shall be deemed to have been accepted.

## **9 GUARANTEE**

9.1 Where the Software fails to operate substantially in accordance with manner intended by MindYourService.Com Limited and such failure is notified to MindYourService.Com Limited within ninety (90) days of the delivery of the Software MindYourService.Com Limited shall remedy that failure, provided always that if MindYourService.Com Limited is unable to do so MindYourService.Com Limited may, at its option, either:

(1) replace the Software; or

(2) refund the monies paid by the Customer to MindYourService.Com Limited for the use of the Software, in which event the Customer shall return the Software to MindYourService.Com Limited.

9.2 The Software Maintenance Services is available and shall be provided by MindYourService.Com Limited for so long as the Customer pays the continuing element of the Software Licence Fee.

9.3 The continuous use of the Software is partly dependent upon the availability of MindYourService.Com Limited servers. Although MindYourService.Com Limited has reasonable contingency plans for the continuous availability of MindYourService.Com Limited servers and the Software, MindYourService.Com Limited does not guarantee that its servers and the Software will be available on a continuous uninterrupted basis.

## **10. GENERAL EXCLUSIONS AND LIMITATIONS OF LIABILITY**

10.1 Subject to clause 9 above and to the maximum extent permissible in law all conditions and warranties which are to be implied by statute or otherwise by general law into the Agreement or relating to the Software or the Additional Services are hereby excluded.

10.2 MindYourService.Com Limited charges to the Customer are determined on the basis of the exclusions from and limitations of liability contained in the Agreement. The Customer expressly agrees that these exclusions and limitations are reasonable because of (amongst other matters) the possibility that otherwise the amount of damages awardable to the Customer for a breach by MindYourService.Com Limited of the Agreement may be disproportionately greater than the price of the Software. MindYourService.Com Limited is willing to arrange for additional insurance cover to enable MindYourService.Com Limited to take on the burden of additional liability to the Customer provided that the Customer pays MindYourService.Com Limited a commensurately higher price for the Software. If the Customer wishes MindYourService.Com Limited to obtain a quotation for such additional insurance cover the Customer shall notify MindYourService.Com Limited accordingly prior to the Agreement being entered into.

10.3 The following provisions in this clause 10 set out MindYourService.Com Limited entire liability (including any liability for the acts and omissions of its employees, agents or sub-contractors) to the Customer in respect of:

- (1) a breach of MindYourService.Com Limited contractual obligations;
- (2) a tortious act or omission for which MindYourService.Com Limited is liable;
- (3) an action arising out of a misrepresentation for which MindYourService.Com Limited is liable.

10.4 The total liability which MindYourService.Com Limited shall owe to the Customer and in respect of all claims shall not exceed the Specified Sum. The Specified Sum shall be the lower of (i) the sum of five hundred thousand pounds (£500,000) and (ii) the sum equal to twice the monies payable by the Customer during the first year of the Agreement.

10.5 MindYourService.Com Limited shall in no circumstances be liable to the Customer for any Consequential Loss.

10.6 MindYourService.Com Limited shall in no circumstances be liable to the Customer for any indirect loss.

10.7 MindYourService.Com Limited shall in no circumstances (whether before or after termination of the Agreement) be liable to the Customer for any Loss of Data and the Customer shall at all times keep adequate back-up copies of the data and programs held or used by or on behalf of the Customer.

10.8 The Customer acknowledges that the Software has not been designed for use in circumstances where its failure could cause severe Consequential Loss. Where the Software is to be used in a situation where a reasonable user would not use the Software without first undertaking a risk analysis assessment of the Software, the associated hardware and software and the use of the same (including without limitation where the Software is to be used in the following fields: medical; transport; control or utilisation of nuclear products), the Customer shall not use the Software or cause the Software to be used without first undertaking such a risk analysis assessment.

10.9 The Customer shall only be entitled to bring a claim against MindYourService.Com Limited where the Customer issues legal proceedings against MindYourService.Com Limited within the period of 24 months commencing on the date upon which the Customer ought reasonably to have known of its entitlement to bring such a claim.

10.10 Notwithstanding anything to the contrary herein contained MindYourService.Com Limited's liability to the Customer for:

(1) death or personal injury resulting from the negligence of MindYourService.Com Limited, its employees, agents or sub-contractors;

(2) damage suffered by the Customer as a result of a breach by MindYourService.Com Limited of the condition as to title or the warranty as to quiet possession implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (or any equivalent legislation);

(3) damage for which MindYourService.Com Limited is liable to the Customer under part I of the Consumer Protection Act 1987; or

(4) fraud,

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shall not be limited save that nothing in this clause 10 shall confer a right or remedy upon the Customer to which the Customer would not otherwise be entitled.

10.11 The exclusions from and limitations of liability set out in this clause 10 shall be considered severably. The validity or unenforceability of any part of this clause 10 shall not affect the validity or enforceability of any other part of this clause 10.

10.12 The provisions of this clause 10 shall survive the termination of the whole or a Part of the Agreement.

## **11. PROVISION OF FACILITIES**

The Customer shall provide all necessary stationery, electricity, telecommunication facilities, fuels, lubricants, other consumables, materials and apparatus and all necessary and safe facilities for the proper undertaking of MindYourService.Com Limited obligations under the Agreement including without limitation such accommodation and office and car parking space as is reasonably required by MindYourService.Com Limited at the Site and the Customer's other locations in the performance of the Agreement

## **12. FORCE MAJEURE**

Any delay in or failure of performance of any obligation by either party (save an obligation in respect of the payment of monies) shall not constitute a breach of such obligation but only to the extent that such a delay or failure is caused by an event which is not within the reasonable control of the party otherwise in default and which such party is unable to prevent or to circumvent by the exercise of reasonable diligence including without limitation an event such as a war, riot, civil commotion, fire, flood, earthquake, epidemic, inability or delay in obtaining supplies of adequate or suitable materials, strike, lock-out or other industrial action or trade dispute (whether or not involving the work force or a part of the work force of the party otherwise in default). The party otherwise in default shall take and continue to take all reasonable steps to circumvent and mitigate the effect of such event and to reduce any delay in the performance of such obligation.

### **13. INTELLECTUAL PROPERTY RIGHT INFRINGEMENT**

13.1 MindYourService.Com Limited shall defend a claim that the Software is infringing the Intellectual Property Right of a Third Party) and shall pay the reasonable costs and damages awarded against the Customer in such a claim provided that:

- (1) the Customer shall promptly notify MindYourService.Com Limited in writing of such claim; and
- (2) MindYourService.Com Limited shall have the exclusive conduct of the defence of such claim and all negotiations for its settlement or compromise; and
- (3) the Customer shall give MindYourService.Com Limited all assistance requested by MindYourService.Com Limited in the defence of such claim.

13.2 Where a court grants an injunction arising out of such a claim and that injunction prevents the Customer's use of the Software, MindYourService.Com Limited shall (or at any other time after such claim has been made, MindYourService.Com Limited may) at its option and expense:

- (1) procure for the Customer the right to continue using the Software; or
- (2) replace or modify the offending part of the Software so that the same is no longer an infringement (or alleged infringement) of the Intellectual Property Right of the Third Party; or
- (3) pay damages to the Customer limited always to twice the sum of damages stated in clause 10.4 above.

13.3 MindYourService.Com Limited shall not be liable to the Customer for an infringement (or alleged infringement) of an Intellectual Property Right to the extent that such infringement relates to:

- (1) use of the System in combination with other hardware and software not supplied by MindYourService.Com Limited;
- (2) information, data or programs furnished by the Customer in the course of the supply and maintenance of the System;
- (3) actions taken by MindYourService.Com Limited at the direction of the Customer;

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- (4) alteration of the System other than by MindYourService.Com Limited or as authorised by MindYourService.Com Limited;
- (5) failure of the Customer to use replaced or modified parts of the System provided by MindYourService.Com Limited in order to avoid such infringement; or
- (6) use of the System in a manner other than for which it was designed; or
- (7) an Intellectual Property Right in which the Customer or an Associated Company has a direct or an indirect interest (including without limitation where the Customer or such Associated Company is a licensee of that Intellectual Property Right).

13.4 Subject to the provisions of clause 10.10 above this clause 13 states MindYourService.Com Limited's entire liability to the Customer arising from an infringement (or alleged infringement) of an Intellectual Property Right.

13.5 The provisions of this clause 13 shall survive the termination of the whole or a Part of the Agreement.

#### **14. TERMINATION OF THE AGREEMENT**

14.1 Upon the happening of a Termination Event MindYourService.Com Limited may by written notice forthwith terminate the whole of the Agreement. This right shall be notwithstanding the right of either Party to otherwise terminate the whole or a Part of the Agreement as provided under the Agreement or by operation of law.

14.2 The termination of the whole or a Part of the Agreement shall be without prejudice to the rights and duties of either Party which accrue prior to termination

14.3 The termination of a Part of the Agreement shall be without prejudice to the right of MindYourService.Com Limited to terminate the whole of the Agreement.

14.4 Upon any termination of the whole or a Part of the Agreement the Customer shall not be entitled to a rebate of any monies paid in advance under the Agreement.

14.5 Following any termination of the Agreement, the Customer shall return to MindYourService.Com Limited all copies (whether authorised or unauthorised) of the Software, associated documentation and manuals and shall cease to use the Software.

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## **15. COMMUNICATIONS**

15.1 Where MindYourService.Com Limited so requests, the Customer shall promptly appoint a named individual as the person who shall act as the sole contact point and channel of communication for the provision by MindYourService.Com Limited of any services or supplies during the currency of the Agreement. The Customer shall promptly inform MindYourService.Com Limited in writing of any substitution for such named individual.

15.2 The Customer shall contact MindYourService.Com Limited at the service centre notified by MindYourService.Com Limited from time to time to the Customer.

## **16. SEVERABILITY**

16.1 If a provision in the Agreement is determined by a Court or tribunal of a competent jurisdiction to be wholly or partly unenforceable for any reason:

- (1) such unenforceability shall not affect the rest of the Agreement; and
- (2) the Parties shall in good faith amend and if necessary novate the Agreement to reflect as near as may be the spirit and intention behind such unenforceable provision or provisions so that the same comply with the laws of that jurisdiction.

## **17. ASSIGNMENT**

17.1 The Customer shall not assign or transfer the Agreement or any of its rights, benefits or liabilities under the Agreement (or purport to do so) without the previous consent in writing of MindYourService.Com Limited (such consent not to be unreasonably withheld or delayed).

17.2 MindYourService.Com Limited may assign the Agreement as it sees fit.

## **18. SUB-CONTRACTING**

MindYourService.Com Limited shall be free to sub-contract its rights and obligations under the Agreement as it in its discretion sees fit provided always that MindYourService.Com Limited shall remain responsible for the performance of the Agreement.

## 19. EXPORT RESTRICTIONS

The export of computer products from the United Kingdom (and their re-export from the country to which they were originally exported) is subject to the licence regulations of inter alia the government of the United Kingdom and the government of the United States of America. The Customer agrees that it will not export or re-export any of the Software or documentation without first applying for and receiving all necessary licences and permits.

## 20. CONFIDENTIALITY

20.1 Each Party agrees with the other in respect of all information of a confidential nature disclosed in the Agreement or discovered further to the operation of the Agreement (which includes without limitation information as to the operation of the business of MindYourService.Com Limited or the Customer and information relating to the source code and structure of the Software) (“**Confidential Information**”):

- (1) to keep the Confidential Information in strict confidence and secrecy;
- (2) not to use the Confidential Information save for complying with its obligations under the Agreement;
- (3) not to disclose the same to a Third Party;
- (4) to restrict the disclosure of the relevant and necessary parts of the Confidential Information to such of its employees and others who of necessity need the same in the performance of their duties as envisaged by the Agreement and in such circumstances to ensure that such employees and others are aware of the confidential nature of the Confidential Information,

provided however that where a part of the Confidential Information is already or becomes commonly known in the trade (except through a breach of the obligations imposed under the Agreement) then the foregoing obligations of confidentiality in respect of such part shall not apply or shall cease to apply (as the case may be)

20.2 This obligation of confidentiality shall survive the termination of the Agreement

## **21. AMENDMENT AND WAIVER**

21.1 No amendment of the Agreement shall be binding unless executed in writing and signed by each of the Parties.

21.2 Nevertheless the failure of either Party at any time to enforce a provision of the Agreement shall not be deemed a waiver of such provision or of any other provision of the Agreement or of such Party's right thereafter to enforce that or any provision of the Agreement.

## **22. CONTRACT (RIGHTS OF THIRD PARTIES) ACT 1999**

A Third Party who is not a Party to the Agreement shall have no right under the Contract (Rights of Third Parties) Act 1999 to enforce any provision of the Agreement but this shall not affect any right or remedy of any Third Party which exists or is available apart from that Act.

## **23. NOTICES**

23.1 Any notice to be given pursuant to the Agreement shall be in writing and may be served and if so served shall be deemed to have been duly served:

- (1) if delivered by hand, when left at the proper address for service;
- (2) if given or made by prepaid first class post, 48 hours after being posted (excluding days that are not Business Days);
- (3) if given or made by e-mail, at the time of error-free transmission; or
- (4) if given by facsimile transmission at the time of receipt of an error-free transmission code,

provided that where in the case of delivery by hand or transmission by e-mail or facsimile such delivery or transmission occurs either after 4:00 pm on a Business Day or on a day other than a Business Day, service shall be deemed to occur at 10:00 am on the next following Business Day (such times being local time at the address of the recipient).

23.2 Any notice shall be made in writing or by e-mail or facsimile addressed to the recipient in the case of a company at its registered office, in the case of a sole trader or

partnership to its principal place of business or its address stated in the Agreement (or such other address or e-mail address or facsimile number as may have been notified in writing by the recipient Party from time to time) and shall be marked for the attention of the Managing Director.

## **24. ENTIRE AGREEMENT AND REPRESENTATIONS**

24.1 This document together with the Proposal shall supersede all previous documents or agreements (written or oral) relating to the subject matter of the Agreement including without limitation all documents proffered by the Customer and relating to the subject matter of the Agreement.

24.2 The Parties acknowledge that in and when entering into the Agreement they have not relied upon any representations other than those reduced to writing in the Agreement. The provisions of this clause 24.2 shall not apply to any fraudulent misrepresentation nor to any representation which are also within the ambit of clause 6.8 above.

## **25. ASSOCIATED COMPANIES**

25.1 Any act or omission of an Associated Company of the Customer which if it had been committed or omitted by the Customer would have been a breach of the Agreement by the Customer will be deemed to be a breach of the Agreement by the Customer who will be liable to MindYourService.Com Limited accordingly.

25.2 All rights granted by MindYourService.Com Limited under the Agreement may be exercised by an Associated Company of the Customer. Whether or not the rights granted to the Customer under the Agreement are exercised by such an Associated Company the Customer will procure that all its Associated Companies comply with all the duties, obligations and restrictions imposed on the Customer by the Agreement and will fully and effectively indemnify MindYourService.Com Limited from and against any loss, damage or other cost of whatsoever nature suffered or incurred by MindYourService.Com Limited as a result of a failure so to comply.

25.3 This clause 25 shall not apply where the Customer is a sole trader or partnership.

## **26. INTERPRETATION**

26.1 Reference in the Agreement to a clause is to a clause of a Part of the Agreement.

For MindYourService.Com Limited

26.2 The headings to the clauses of the Agreement shall not affect the construction of the Agreement.

26.3 In the Agreement the use of the plural shall include the singular and the use of the singular shall include the plural and reference to the whole shall include a reference to any Part.

26.4 In the Agreement references to the masculine, feminine or neuter genders shall include each and every gender.

26.5 Where a consent or approval is to be given or a discretion is to be exercised under a term or condition of the Agreement by MindYourService.Com Limited then MindYourService.Com Limited shall be entitled (unless the contrary is expressly indicated) to withhold (or give) such consent, approval or discretion at MindYourService.Com Limited's absolute discretion.

## **27. LAW AND ARBITRATION**

27.1 The formation, construction, performance, validity and all aspects whatsoever of the Agreement shall be governed by English Law and the Parties hereby submit to the non-exclusive jurisdiction of the English courts.

27.2 All disputes and questions whatsoever which arise either during the subsistence of the Agreement or afterwards between the Parties and which touch upon the Agreement or the construction or application thereof or as to any other matter in any way relating to the Agreement shall be referred to a single arbitrator in accordance with and subject to the provisions of the Arbitration Acts 1950-1979 (or any statutory modification or re-enactment thereof for the time being in force). Either Party may serve notice upon the other Party to agree upon an arbitrator and in default of such agreement within seven Business Days of the date of such notice the arbitrator shall be appointed at the request of either party by the President for the time being of the Institution of Engineering and Technology. The costs of any such arbitration shall be paid by one or more Parties as determined by the arbitrator.

27.3 The arbitration proceedings will be conducted in the English language and will be held in London, England. The arbitrator shall act as an expert and the decision of the arbitrator will be final and binding on the Parties

27.4 Notwithstanding the provisions of clause 27.2 above, MindYourService.Com Limited shall have the right to seek appropriate injunctive relief against the Customer in the English or a foreign court and provided that such court is satisfied that such proceedings have not been brought frivolously or vexatiously all aspects of the dispute the subject of the injunction proceedings shall be dealt with by such court and not by arbitration as provided for in clause 27.2 above.

## **PART B**

### **LICENCE AND MAINTENANCE OF SOFTWARE**

#### **1. FURTHER DEFINITIONS**

In this Part B:

1.1 **“Excepted Services”** means those services referred to in clause 10.4 of this Part B which are not included within the Software Maintenance Services;

#### **2. OWNERSHIP**

Notwithstanding a description of the Customer’s rights as or by virtue of a sale (and whether made orally or in writing and whether made in the Agreement or in any other document) the Customer’s only right to use the Software is by virtue of the licence granted under Part B of the Agreement and the Customer acknowledges that all Intellectual Property Rights in or relating to the Software and all related documentation are and shall remain the exclusive property of MindYourService.Com Limited or in the case of Software licensed to MindYourService.Com Limited by a Third Party licensor, the exclusive property of such licensor.

#### **3. LICENCE AND PAYMENT**

3.1 The licence to use the software will cease when the Customer ceases to pay the continuing Software Licence Fee.

3.2 This licence shall be deemed to incorporate and include access to MindYourService.com software which is supplied from time to time to the Customer by MindYourService.Com Limited and whether such further software is expressly referred to in the Proposal or not (including without limitation any further software from time to time created by MindYourService.Com Limited for the Customer as part of the Additional Services). The provisions of this clause 3.2 are without prejudice to MindYourService.Com Limited’s right to charge the Customer for the supply of such further software.

3.3 MindYourService.Com Limited shall from time to time review and determine the amount of the recurring Licence Fee payable which amount shall take into account MindYourService.Com Limited’s charges to its other customers and shall inform the Customer of the same. The Customer shall be entitled to decline to renew this Part B by For MindYourService.Com Limited



giving notice to MindYourService.Com Limited so to do within fourteen (14) days of MindYourService.Com Limited informing the Customer of the new amount of the recurring element of the Software Licence Fee.

3.4 MindYourService.Com Limited shall have power to make (but shall not be obliged to make) such reasonable apportionments pro rata as appear to MindYourService.Com Limited to be necessary in the calculation of the recurring Software Licence Fee.

#### **4. RESTRICTIONS**

4.1 The licence hereby granted and the Customer's rights to use the Software are subject to the following restrictions:

(1) the Software (including without limitation, the software used by the Customer on its own server) shall be used only for the purposes of the Customer's own internal business at the Site or at such other location as MindYourService.Com Limited may previously agree in writing;

(2) the Software shall be used only in conjunction with the Operating System, Database and Financial System Software;

(3) the Customer shall not assign, sub-licence or otherwise dispose of or grant rights over or out of the licence hereby granted or the Software and shall not attempt to do any such thing;

(4) the Customer shall not copy or reproduce in any way the whole or a part of the Software, except that the Customer may maintain a reasonable number of Copies of the Software in machine readable form for normal operational security and back-up purposes and this licence applies to any Copy as it applies to the original Copy of the Software supplied to the Customer;

(5) the Customer shall not attempt to ascertain or list the source programs or source code relating to the Software; and

(6) the Customer shall not decompile or translate the Software into any other computer language nor attempt so to do.

4.2 The Customer agrees not to use the Software or the associated documentation save in accordance with the terms and conditions of the Agreement.

For MindYourService.Com Limited

4.3 Save as provided in clause 4.1(4) of this Part B, the Customer shall only use the single original Copy of the Software provided on the electromagnetic or optical recording material supplied to the Customer by MindYourService.Com Limited.

4.4 Notwithstanding clause 4.1(1) of this Part B, the Customer shall not without the prior written consent of MindYourService.Com Limited use the Software as part of an outsourcing or a computer bureau business or for a business which the Customer does not prior to the date of delivery of the Software carry on.

4.5 The Software is designed only to work with the Operating System, Database and Financial System Software indicated on the Proposal.

4.6 The Customer acknowledges and agrees that none of the acts which are prohibited by the provisions of the Agreement (including, without limitation, the prohibitions on copying or adapting the Software or any part for the purpose of correcting errors in the Software) are necessary for the purposes of the use of the Software by the Customer in accordance with its intended purpose or for the purposes of the use of the Software in accordance with this licence.

4.7 The Customer shall promptly notify MindYourService.Com Limited each time that MindYourService.Com Limited wishes to replace a User using the Software or to add a new User which uses the Software.

4.8 MindYourService.Com Limited reserves the right to (a) incorporate a software lock or other device to prevent the use of the Software or (b) switch off that part of the Software which is used on MindYourService.Com Limited's server for the benefit of the Customer in circumstances where the Customer attempts to use the Software outside the scope of the licence granted in the Agreement.

4.9 The Software is licensed for the purpose of enabling the transmission of large data sets from a NETBOOK to a server at high speed as this purpose may be further limited by the specification (if any) set out in the Proposal.

## **5. WARRANTY**

MindYourService.Com Limited warrants to the Customer that it has the right to grant the Customer the licence and rights hereby granted in this Part B.

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## **6. MODIFICATIONS**

The Customer shall not modify, alter or in any way interfere with the Software or merge the Software with other data, programs or systems. Without prejudice to any other remedy of MindYourService.Com Limited if the Customer (in breach of this clause) does modify, alter, interfere with or merge the Software no such modification, alteration, interference or merger however extensive shall derogate from the obligations of and restrictions on the Customer under the Agreement which shall thenceforth apply to the Software as so modified, amended, altered, interfered with or merged.

## **7. UNAUTHORISED USE**

If any unauthorised use is made of the Software (or any of it) and such use is attributable to the act or default of the Customer then, without prejudice to MindYourService.Com Limited's other rights and remedies, the Customer will immediately be liable to pay MindYourService.Com Limited an amount equal to the charges which MindYourService.Com Limited would have levied had MindYourService.Com Limited authorised the grant of a licence to or for such unauthorised user at the beginning of the period of such unauthorised user together with interest at the rate provided for in clause 4.7 of Part A from the date of such unauthorised use to the date of payment.

## **8. PROVISION OF SOFTWARE MAINTENANCE FOR BESPOKE AMENDMENTS**

In consideration of the payment by the Customer from time to time of the initial and the recurring Software Licence Fee in accordance with the Agreement, MindYourService.Com Limited undertakes to provide the Software Maintenance Services in respect of the Software upon the terms and conditions of the Agreement commencing upon the Acceptance of the Software and until the Customer ceases to pay the recurring element of the Software Licence Fee or this Part B is terminated.

## **9. ADDITIONAL SOFTWARE MAINTENANCE CHARGES**

9.1 The Software Licence Fee does not include the cost of travel, accommodation and subsistence expenses (including the cost of time spent travelling) incurred in the provision of the Software Maintenance Services for which the Customer shall pay an Additional Charge.

9.2 The Software Maintenance Charges do not include the cost of the Excepted Services for which the Customer shall pay an Additional Charge.

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9.3 Any Additional Charge shall be invoiced by MindYourService.Com Limited monthly in arrears which invoice shall be payable by the Customer within thirty (30) days of the date of issue.

## **10. SOFTWARE MAINTENANCE SERVICE**

10.1 MindYourService.Com Limited agrees to provide the following Software Maintenance Service to the Customer during Working Hours in respect of the Software:

- (1) reasonable assistance in the resolution of queries via a telephone call originated by the Customer;
- (2) recommendations relevant to the course of action necessary to recover from a fault, error or failure emanating from the Software or its use;
- (3) upon request by the Customer the use of reasonable endeavours (a) to diagnose failures in the Software to operate substantially in accordance with manner intended by MindYourService.Com Limited and (b) to rectify such failures (remotely or by attendance at the Customer's premises) by the issue of fixes in respect of the Software; and
- (4) the creation and dispatch (which may be electronically or otherwise) to the Customer from time to time at MindYourService.Com Limited's sole discretion of fixes in respect of the Software.

For the avoidance of doubt, where any fix is sent to the Customer, it shall be the Customer's responsibility to install the fix (whether on the Customer's server, the Customer's NETBOOKS, SMARTPHONES or otherwise). Where any work in this regard is undertaken by MindYourService.Com Limited at the Customer's request, that work shall be treated as an Excepted Service.

10.2 The Customer shall supply to MindYourService.Com Limited (in writing if MindYourService.Com Limited so requests) a detailed description of the fault requiring Software Maintenance Service by virtue of clauses 10.1(1), 10.1(2) or 10.1(3) above and the circumstances in which the fault arose forthwith upon becoming aware of such circumstances.

10.3 The Software Maintenance Services may be performed at one of MindYourService.Com Limited's premises or via a telecommunication or internet link or at

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the Customer's premises as MindYourService.Com Limited determines. Where MindYourService.Com Limited so requests, the Customer shall promptly provide access to and copies of such test data as MindYourService.Com Limited may reasonably require for the performance of the Software Maintenance Services. In accordance with the provisions of clause 20 of Part A above MindYourService.Com Limited shall keep confidential such of the information as is contained in the data and which can reasonably be regarded by MindYourService.Com Limited to be confidential.

10.4 The above Software Maintenance Service shall not include the diagnosis and rectification of a fault resulting from:

- (1) the improper use operation or neglect of either the Software, Operating System, Database and Financial System Software or hardware upon which the software resides;
- (2) the modification or alteration of or interference with the Software or its merger (in whole or in part) with any other software;
- (3) the use of the Software by an individual who has not undergone training to the required level or is not otherwise reasonably competent in the use of the Software;
- (4) the use of the Software on equipment other than hardware approved for the purpose by MindYourService.Com Limited or in conjunction with an operating system, database or financial system software other than the Operating System, Database and Financial System Software or in conjunction with barcoding or telecommunication standards and protocols not approved for the purpose by MindYourService.Com Limited;
- (5) the failure by the Customer to implement recommendations (including without limitation fixes) in respect of or solutions to faults previously advised by MindYourService.Com Limited;
- (6) a repair, adjustment, alteration or modification of the Software by a Third Party save with the prior written authority of MindYourService.Com Limited; or
- (7) the use of the Software for a purpose for which it was not designed.

10.5 The above Software Maintenance Service shall not include the diagnosis and rectification of a fault arising in a version or release of the Software other than:

(1) the then current version supplied by MindYourService.Com Limited to the Customer;  
or

(2) the most recently replaced version or release which was supplied by MindYourService.Com Limited to the Customer but has been superseded by the latest version or release within the period of one hundred and eighty (180) days ending on the date of the request for such diagnosis and rectification by MindYourService.Com Limited.

10.6 Upon request from the Customer, MindYourService.Com Limited shall use its reasonable endeavours to provide the above maintenance notwithstanding that the fault results from any of the circumstances described in clause 10.4 of this Part B or which MindYourService.Com Limited is not liable to maintain because of clause 10.5 of this Part B. The Customer shall in such circumstances pay an Additional Charge for the same.

10.7 The provision of a new version or a new release is not included in the Software Maintenance Service. When a new version or a new release becomes available, MindYourService.Com Limited shall inform the Customer of the contents of and the additional licence fee for the same or indicate on its website what the contents of and the additional licence fee for the same are. Upon request from the Customer, MindYourService.Com Limited shall dispatch a copy of the new version or new release to the Customer for which the Customer shall pay an Additional Charge.

## **11. TERMINATION**

11.1 Upon the happening of a Termination Event, MindYourService.Com Limited may by notice terminate this Part B forthwith.

11.2 The Customer may within fourteen (14) days of notification of an increase in the continuing element of the Software Licence Fee, terminate this Part B as provided in clause 3.3 of this Part B.

11.3 Upon the termination of this Part B:

(1) the Customer shall immediately cease to be entitled to use the Software;

(2) the Customer shall forthwith return to MindYourService.Com Limited all copies (whether authorised or unauthorised) of the Software, associated documentation and manuals.

11.4 Termination of this Part B shall not prejudice the provisions of clauses 4.1(5) and 4.1(6) inclusive of this Part B which shall continue in full force and effect.

11.5 Termination of this Part B shall be without prejudice to the continuance of the remainder of the Agreement.

11.1 Upon the happening of a Termination Event MindYourService.Com Limited may by notice terminate this Part B forthwith.

## **PART C**

### **PROVISION OF ADDITIONAL SERVICES**

#### **1. MINDYOURSERVICE.COM LIMITED'S OBLIGATIONS**

1.1 MindYourService.Com Limited shall provide such Additional Services as are indicated in the Proposal upon payment to MindYourService.Com Limited of the Services Charge.

1.2 The Additional Services may take the form of all or any of the following:

(1) the provision of a set number of man days of consultancy (whether for the preparation of further or bespoke software, a software specification or otherwise) as indicated in the Proposal;

(2) the supply of further or bespoke software, a software specification or such other items as indicated in the Proposal;

(3) the provision of training and consultancy services as indicated in the Proposal.

1.3 The provision of all services by or on behalf of MindYourService.Com Limited for the Customer shall be subject to the terms and conditions of the Agreement

#### **2. ESTIMATE FOR ADDITIONAL SERVICES**

2.1 Any estimate or indication by MindYourService.Com Limited as to the number of man days or man hours required by MindYourService.Com Limited to undertake a specific task shall be construed as being an estimate only. MindYourService.Com Limited shall in no circumstances be liable for a delay or for any other loss, damage or other cost of whatsoever nature (including without limitation Consequential Loss) suffered or incurred by the Customer where such estimate or indication is incorrect.

2.2 For the purposes of MindYourService.Com Limited's charges pursuant to the Agreement, the Customer acknowledges that there are seven and a half working hours in a working day.



### **3. ADDITIONAL ITEMS**

The charges for the Additional Services do not include the cost of travel, accommodation and subsistence expenses (including the cost of time spent travelling) incurred in the provision of the Additional Services for which the Customer shall pay an Additional Charge.

### **4. BESPOKE SOFTWARE**

Where the Additional Services include the provision of programmers by MindYourService.Com Limited in order to write further or bespoke software then such software shall belong to MindYourService.Com Limited and the provisions of Part B shall apply to that further or bespoke software. That further or bespoke software may be subject to a further licence fee levied for the use of that further or bespoke software by MindYourService.Com Limited on the Customer.