

WHEREBY IT IS AGREED:

1. Definitions

1.1. In this Agreement the expressions with the initial capital letters listed below shall have the following meanings:

|                                 |   |
|---------------------------------|---|
| “Agreement”                     | Means these terms and conditions and all Product Schedules issued hereunder   |
| “Product Schedule(s)”           | A written description of the Software to be licensed and Consultancy Services to be provided hereunder from time to time by agreement between the Parties, the first of which is set out on page 1 of this Agreement, and method of recording any other agreed changes to this Agreement.   |
| “Consultancy Fees”              | A time and materials basis at March Hare’s daily rates as published from time to time;  |
| “Consultancy Services”          | The provision during Office Hours of training and general consultancy services as specified in the Product Schedule(s)  |
| “CPU”                           | The central processing unit specified in the Product Schedule(s) upon which the Software is installed;  |
| “Charges”                       | The Licence Fees, Consultancy Fees and the Support Fee(s);  |
| “Manuals”                       | The information supplied by March Hare concerning performance of the Software;  |
| “Initial Support Fee”           | The charge for Support Services in respect of the first 12 months from the date of the relevant Product Schedule;   |
| “Licence Fees”                  | The aggregate of the sums specified in the Product Schedule(s) for those items of computer software listed in the Product Schedule(s);  |
| “New Releases”                  | Revised versions of the Software containing enhanced functionality as released by March Hare from time to time as part of Support Services;   |
| “Software”                      | The object code or executable versions of the modules of the computer software listed in Product Schedule(s);   |
| “Location(s)”                   | The Customer’s premises specified in the Product Schedule(s) or such alternative address(es) in the same country as notified to March Hare by the Customer;   |
| “Parties”                       | March Hare and Customer   |
| “Special Conditions”            | Means details of any amendments in these terms and conditions agreed in writing between the Parties and annexed hereto;   |
| “Support Fees”                  | The aggregate annual charges specified in Product Schedule(s) (including initial Support Fee) for the Support Services as may be increased from time to time pursuant to clause 10.2;   |
| “Support Services”              | The provision during Office Hours of technical support as specified in clause 9 in respect of the Software;   |
| “Support Term”                  | The period specified in clause 10 for provision of the Support Services.  |
| “Working Day” or “Office Hours” | 09h00 to 17h00 Monday to Friday excluding Bank and Statutory holidays. If the Location is in North America the time zone is Central (or Central Daylight Time). If the Location is in Europe the time zone is GMT (or British Summer Time). If the Location is in Asia Pacific then the time zone is AEST (or Australian Eastern Summer Time).  |
| “GPL”                           | GNU General Public Licence  |
| “Support Fee(s)”                | The aggregate of the sums specified in the Product Schedule(s) for those items of support listed in the Product Schedule(s); can include one or more of: Support Fee, E-Mail Support Fee, Telephone Support Fee, Incident Support Fee.  |
| “Support Fee”                   | The aggregate of the sums specified in the Product Schedule(s) for those items of software maintenance and self support listed in the Product Schedule(s);  |
| “E-mail Support Fee”            | The aggregate of the sums specified in the Product Schedule(s) for those items of Bronze support listed in the Product Schedule(s);   |
| “Telephone Support Fee”         | The aggregate of the sums specified in the Product Schedule(s) for those items of Silver Support, Gold Support and Platinum Support listed in the Product Schedule(s);  |
| “Incident Support Fee”          | The aggregate of the sums specified in the Product Schedule(s) for those items of incident support listed in the Product Schedule(s);   |
| “Incident Support”              | The provision during Office Hours of a number of support e-mail threads or telephone call topics as specified in the Product Schedule(s)  |
| “Users”                         | Employees and sub-contractors of the Customer as specified in the product Schedule. If Customer is an educational institution, the Software may only be used by Customer's enrolled students, faculty, teaching assistants and administrators on Customer's computers. If Customer is a charity then the Software may only be used by Customer's staff and volunteers and administrators on Customer's computers. |

2. Grant of Licence

- 2.1. Upon execution of this Agreement by the Parties and in consideration of Customer agreeing to pay the Charges, March Hare grants to the Customer a non-exclusive, non-transferable licence to use the Software on the CPU(s) (if any) at the Location(s) for a period of 70 years (or such shorter period as may be specified in the Product Schedule) with effect from the date hereof.
- 2.2. The Software may be used only: (i) by no more than 110% of the number of Users as may be specified in the product Schedule. (ii) to process Customer’s own data and (iii) for Customer’s own internal operations. Customer may not use the Software to offer data processing services to third parties, including but not limited to timesharing, facilities management, outsourcing or service bureau use, or other third part commercial purpose or gain unless Customer either executes, and pays the fees associated with an appropriate March Hare licence for third party use or the specific third party use is otherwise authorised in writing by March Hare.
- 2.3. If the actual number of users exceeds the actual number of licensed users of the Software or the Software has been installed on unlicensed CPU(s) or platforms, March Hare may, at its option, terminate this Agreement or allow Customer to continue using the Software subject to paying the licence fee then in effect, retroactive to the initial date of unauthorised use.
- 2.4. The obligations of March Hare under this Agreement, are subject to and conditioned upon the timely performance of the Customer’s obligations under this Agreement.

3. Charges
  - 3.1. The Charges shall be due and invoiced by March Hare; (i) on the date of the Product Schedule, in respect of the Software or on such other payment date as may be specified in the Product Schedule, (ii) annually in advance (pro-rata where agreed) in respect of the Support Fees, (iii) monthly in arrears in respect of the Consultancy Fees and the Customer hereby agrees to pay the Charges levied within 21 days of the date of March Hare's invoice therefore.
  - 3.2. In the event of there being more than one Product Schedule March Hare reserves the right after prior consultation with the Customer to apportion (on a pro-rata time basis) Support Fees to a single date for all items of Software for which Support Services are provided.
  - 3.3. March Hare reserves the right, subject to clause 3.4 below, to charge Customer interest in respect of the late payment of any sums due under this Agreement (as well after as before judgement) at the rate of 3% above the base rate from time to time of Clydesdale Bank PLC from the due date thereof until payment.
  - 3.4. Should Customer have any query over the contents of any invoice issued by March Hare it shall so notify March Hare within 14 days of the date of issue of the relevant invoice, failing which Customer shall be deemed to accept such invoice as conclusive evidence of the performance of the service as specified therein.
  - 3.5. The Charges and any additional sums payable under this Agreement are exclusive of Value Added Tax, Goods and Services Tax or Sales Tax which shall be paid by the Customer at the rate and in the manner for the time being prescribed by law.
4. Customer's Obligations
  - 4.1. At March Hare's request, Customer shall promptly furnish March Hare with written certification verifying that the Software is being used in accordance with this Agreement, including the number of users and the location, platform, model and serial number of the computer(s) on which the Software is installed. Customer shall give March Hare reasonable access to Customer's records and systems to verify that the Software is being used pursuant to this Agreement.
  - 4.2. The Customer agrees not to; (i) copy the whole or any part of the Software except for the creation of not more than one back up copy of the Software; or (ii) decompile or reverse engineer the Software except to the extent as authorised by the EU Directive no 91/250/EG, or (iii) at any time transfer sell lease rent charge or otherwise deal in or encumber the Software;
  - 4.3. Customer agrees to observe all applicable laws and regulations in respect of the Software, (including without limitation, the U.S. Export Administration Regulations and U.S. Department of Commerce Regulations).
5. Warranty
  - 5.1. March Hare warrants and represents that (i) it has full right and power to enter into this Agreements and to grant the licence and perform all its obligations pursuant to this Agreement, (ii) the Software will operate substantially in accordance with the specifications set forth in the Manuals, and (iii) the Support Services and Consultancy Services will be performed by suitably skilled and experienced personnel; subject thereto all conditions, warranties, terms and undertakings, express or implied, statutory or otherwise in respect of the performance by March Hare of its obligations hereunder are hereby excluded to the fullest extent permitted by law.
  - 5.2. Any claim by the Customer in respect of Part (ii) of sub-Clause 5.1 must be notified to March Hare within 90 days of delivery of the Software.
6. Limitation of Liabilities
  - 6.1. March Hare prohibit the installation of the Software in any situation where its use or negligent use may cause injury or death of any person.
  - 6.2. March Hare prohibit the installation of the Software in any situation where its use or negligent use may cause damage or cause the loss of any physical property of the Customer.
  - 6.3. March Hare advises that the Customer is entirely responsible for ensuring that back up copies are made and maintained of all databases and files generated or altered by the Software.
  - 6.4. In all other cases March Hare's liability, whether in contract, by reason of negligence or otherwise, will not exceed a sum equal to 125% of the Licence Fees received by March Hare or £1,000,000 (whichever is greater). Provided that in no event will March Hare be liable for, (i) loss resulting from any defect or deficiency which March Hare have physically remedied at its own expense within a reasonable time, or (ii) any indirect or consequential loss or loss of business, profits, revenue or anticipated savings, or (iii) loss which could have been avoided by the Customer following March Hare's reasonable advice and instructions.
7. Termination
  - 7.1. Either party may terminate this Agreement forthwith at any time upon the giving of written notice, (i) in case of breach of this Agreement by either party not remedied within thirty (30) days from the other party's notice thereof, or (ii) in the event that the other party makes an assignment, composition or arrangement for the benefit of creditors, if a receiver or administrative receiver is appointed over the whole of any part of its assets or undertakings or if an order is made or an effective resolution passed for the winding up of the other unless such order is part of a bona fide scheme of solvent reconstruction or solvent administration;
  - 7.2. Any termination of this Agreement shall be without prejudice to any other rights or remedies either party may be entitled to hereunder or at law and shall not affect any accrued rights or liabilities of either party nor the coming into or continuance in force of any provision hereof which is expressly of by implication intended to come into or continue in force on or after such termination.
8. Title Proprietary Rights and Confidentiality
  - 8.1. Each party hereto agrees that it will keep secret and will not without the prior written consent of the other, peruse or disclose to any third party any confidential information including software, trade secrets or otherwise relating to the business or affairs of the other (including this Agreement) or the other's customers learned by such party or disclosed to such party by the other pursuant to or otherwise in connection with this Agreement except insofar as information as aforesaid shall (otherwise than by breach of this Agreement) be trivial or obvious or in the public domain.
  - 8.2. The Software and the Manuals contains confidential information of March Hare and all copyright trade marks service marks and other intellectual property rights therein are and shall remain the exclusive property of March Hare.
  - 8.3. The Customer shall; (i) keep confidential the Software and limit access to the same to those of its employees agents and contractors who either have a need to know or who are engaged in the use of the same pursuant to the licence granted under this Agreement to the Customer (ii) reproduce in any copy of the Software March Hare's copyright and trademarks or service mark notice as appears upon the original version being copied, and (iii) without prejudice to the foregoing take all other reasonable steps to protect the confidential information and intellectual property rights of March Hare in the Software.

- 8.4. The Customer shall inform all relevant employees agents and contractors that the Software constitutes confidential information of March Hare and that all intellectual property rights therein are the property of March Hare and the Customer shall take all reasonable steps to require compliance by its employees agents and contractors with the provision of this clause 8.
- 8.5. This clause 8 shall survive termination of this Agreement howsoever arising.
- 8.6. This clause 8 shall not apply to Software that is entirely covered by the GPL.
9. Support Services
- 9.1. Subject to payment of the Support Fee March Hare will provide the following services in respect of the Software; (i) a Customer support centre for the resolution of user problems and questions relating to the Software shall be available during Office Hours and (ii) sending to Customer from time to time, as March Hare deems appropriate, New Releases.
- 9.2. Subject to payment of an Email Support Fee March Hare will provide the following services in respect of the Software; (i) a Customer support centre e-mail address for the resolution of user problems and questions relating to the Software shall be available during Office Hours.
- 9.3. Subject to payment of an Telephone Support Fee March Hare will provide the following services in respect of the Software; (i) a Customer support centre telephone number for the resolution of user problems and questions relating to the Software shall be available during Office Hours.
- 9.4. The implementation of New Releases is mandatory and the previous release of Software will only be supported for six months following the "general availability" of the New Release as determined by March Hare.
- 9.5. If Customer fails to implement the most current New Release or upgrade of the Software product for any reason whatsoever, March Hare may discontinue providing Software Support for any affected Software product without further liability, including refund of Support Fees, to Customer.
- 9.6. March Hare shall work with the Customer in good faith to resolve user problems and questions relating to the Software. In the event that the Customer delivers in writing to March Hare at the registered address notice that the supplied resolutions are unsatisfactory March Hare will provide a suggested plan for dispute resolution and continue to work with the Customer in good faith to resolve user problems and questions relating to the Software.
10. Support Terms
- 10.1. March Hare shall provide and the Customer shall accept the Support Services for the initial period of 12 months from the date set out in the Product Schedule and automatically thereafter provided that either party shall have the right to terminate the Support Services upon giving the other not less than three months prior written notice to expire on the first or subsequent anniversary of the date set out in the Product Schedule or the date specified by March Hare pursuant to clause 3.2
- 10.2. The Customer hereby further agrees that March Hare may upon each anniversary of the date hereof increase the Support Fees so that they are a fixed percentage of March Hare's most current undiscounted list price for the Software as published from time to time, as follows;
- (i) 100% for subscription only products
  - (ii) 1000% for Software purchased with Incident Support
  - (iii) 20% (Support Fee) for all products not described by clause (i) or (ii)
  - (iv) 50% (Email Support Fee) for all non-subscription products
  - (v) 100% (Telephone Support Fee) for all non-subscription products with a 2 day service level agreement
  - (vi) 150% (Telephone Support Fee) for all non-subscription products with a 1 day service level agreement
  - (vii) 200% (Telephone Support Fee) for all non-subscription products with a 2 hour service level agreement
- 10.3. Customer acknowledges that should it wish to re-instate the Support Services following termination pursuant to Clause 10.1 March Hare shall as a condition of re-instatement require payment of a re-instatement fee to be determined as follows:
- |                      |   |
|----------------------|---|
| Lapse 1 .. 35 months | For products described by clause 10.2 (ii) back maintenance for the lapsed period and one-year forward.<br>For products described by clause 10.2 (i) - back maintenance for the lapsed period and one-year forward.<br>For products not described by clause 10.2 (i) and 10.2 (ii) - back maintenance for the lapsed period and one-year forward. |
| Lapse 36+ months     | For products described by clause 10.2 (ii) Full list price (including 12 months maintenance).<br>For products described by clause 10.2 (i) back maintenance for 24 months and one-year forward.<br>For products not described by clause 10.2 (i) and 10.2 (ii) back maintenance for 24 months and one-year forward.                               |
11. Non-Solicitation
- Each of the Parties hereby undertake to the other that during the currency of this Agreement and for the period of 12 months following upon its termination (howsoever and by whomsoever occasioned) not directly or by its agent or otherwise and whether for itself or for the benefit of any other person, solicit or induce or endeavour to solicit or induce any officer or employee of the other to leave that others employment.
12. Force Majeure
- Neither party shall be liable for delay in performing obligations or for failure to perform obligations (other than the payment of Charges) if the delay or failure results from any of the following: Act of God governmental act fire war explosion accident industrial dispute impossibility of obtaining materials computer breakdown or any other such circumstances beyond the party's reasonable control.
13. General Public Licence
- 13.1. Any Software that is entirely covered by the GPL will be clearly marked as such in the Software Schedule(s).
- 13.2. March Hare do not indemnify the Customer against any claim that the use or possession of the Software infringes the intellectual property rights of any third party where the Software is described in the Software Schedule(s) as entirely covered by the GPL .
- 13.3. This Agreement does not supersede any of the conditions of the GPL for Software which is described in the Software Schedule(s) as entirely covered by the GPL

#### 14. General

- 14.1. Any notice or other document given by either party to the other under this Agreement shall be in writing. Such notice will be deemed served if delivered personally or sent by registered mail or recorded delivery to the other at the last known address of the other party and shall be deemed to have been given two Working Days after the date of posting or in the case of personal delivery on the date of delivery
- 14.2. This Agreement shall not be assigned in whole or in part by the Customer and any attempt by the Customer to do so shall be invalid. In the event that March Hare agrees to novate/assign/transfer this Agreement a 15% fee, based upon the current list price of the Software and Support Fee(s) being novated/assigned/transferred shall be paid in consideration of said novation/assignment/transfer.
- 14.3. March Hare shall be entitled to assign or otherwise sub-contract its rights and obligations hereunder. The Customer may terminate the contract if there are any material changes to this agreement that occur due to March Hare assigning or otherwise sub-contracting its rights and obligations hereunder.
- 14.4. No relaxation forbearance delay or indulgence by either party in enforcing any of the terms and conditions of this Agreement or the granting of time by either party to the other shall prejudice affect or restrict the rights and powers of that said party hereunder nor shall any waiver by either party of any breach hereof operate as a waiver of any subsequent or any continuing breach hereof.
- 14.5. No amendment or other variation to this Agreement shall be effective unless it is in writing, is dated, and is signed by or on behalf of each of the Parties.
- 14.6. The provision of this Agreement, as in effect from time to time by its terms constitute the entire agreement between the Parties in relation to the Software and supersedes all communications negotiations representations and agreements (whether written or oral) of the Parties with respect thereto made prior to the date of this Agreement. Any terms contained in Customer's purchase orders, invoices, acknowledgements or other forms that are inconsistent with or different from the terms of this Agreement shall be void and of no effect.
- 14.7. Customer agrees to participate in March Hare's customer reference programme and to permit the use of its name and logo for use in marketing collateral and as both a written and verbal media and prospect reference. Subject to reasonable notice, Customer also agrees to assist March Hare in producing an "order press win release", case study and to participate in ad-hoc interviews with the media
- 14.8. This Agreement shall be governed by and construed in accordance with the Laws of England. And shall be subject to the exclusive jurisdiction of the English Courts.

#### CONSULTANCY SERVICES ADDITIONAL TERMS AND CONDITIONS

In addition to the above terms & conditions the following shall ONLY apply where Consultancy Services are being provided:

- "Consultants" means resource either employed or sub-contracted by March Hare required to perform Services.
- "Foreground Information" Means all information generated in the course of or arising from the performance of the Agreement, excluding residual information such as new skills, know-how, test scripts and knowledge
- "Services" Means performance of tasks listed in Specification;
- "Specification" Means a written description of tasks as agreed from time to time between the Parties which shall be attached to and form part of this Agreement;

#### A. Customers Obligation

To assist March Hare in the provision of the Services, Customer shall at its own expense make available:

- A.1.1. access to Customer's computer equipment including any software;
- A.1.2. reasonable working space and facilities;
- A.1.3. if requested by March Hare, a nominated individual, responsible for operation of Customer's computer equipment;
- A.1.4. if requested by March Hare, one on-line port and dial back modem to the computer equipment upon which any software is running;
- A.1.5. such information relating to Customer's business as March Hare shall reasonably require to fulfil March Hare's obligations hereunder.

Failure by Customer to provide any such assistance may prohibit effective action by March Hare and render March Hare unable to perform the Services and in such circumstances March Hare shall have no liability to perform its obligations under this Agreement to the extent that performance is prohibited by such failure of Customer.

#### B. Intellectual Property Rights

Unless otherwise specified all Foreground Information prepared by or worked on by March Hare's Consultants shall belong exclusively to March Hare and March Hare shall retain all copyrights, trademark registrations, patents or whatever protection March Hare may deem appropriate to the subject matter.

C. Terms and Termination

This Agreement shall become effective on the date as written above for the period as specified in Schedule 1 the Services may be terminated;

- C.1.1. forthwith by March Hare of Customer fails to pay any sum within thirty (30) days of written notice by March Hare to Customer of Customer's failure to pay in accordance with the Agreement; or
  - C.1.2. forthwith by the Customer in the event of change of control of March Hare, meaning the sale, transfer or change of majority ownership or sale of all or substantially all of the assets of March Hare if there are any material changes to this agreement that occur because of the transfer or change of majority ownership or sale (including changes to support and service)
  - C.1.3. forthwith by either party if the other commits any breach of any term of this Agreement (other than falling within C.1.1. above) and which (in the case of a breach capable of being remedied) shall not have been remedied within thirty (30) days of a written request to remedy the same; or
  - C.1.4. forthwith by either party if the other:
    - (i) enters into liquidation whether compulsory or voluntarily otherwise than for the purpose of amalgamation or reconstruction without insolvency; or
    - (ii) compound or make any arrangement with creditors; or
    - (iii) have a receiver or manager appointed in respect of any or any part of its assets; or
    - (iv) be the subject of any application for an administration order.
  - C.1.4. by either party upon giving the other thirty (30) days' prior written notice.
- March Hare shall have the right to terminate the services promptly in the event of change of control of Customer, meaning the sale, transfer or change of majority ownership or sale of all or substantially all of the assets of Customer.

D. Sub-Contractors and Tax Liabilities

- D.1. March Hare reserves the right to sub-contract, assign or otherwise deal with any of its obligations under this Agreement provided that March Hare shall notify Customer of such action.
- D.2. The Consultant shall not be entitled to participate in any life insurance, pension, medical or other benefit schemes available to the employees engaged in Customer's business
- D.3. Customer shall not be liable for the death or injury of the Consultant or for loss or damage to his property while performing the Services except to the extent that such death, injury, loss or damage is caused by the negligence of Customer or its agents or employees.
- D.4. March Hare shall be responsible for all Income Tax, Social Security contributions and all fringe benefits, pension and insurance when working for Customer under the terms of this Agreement and acknowledges that no master/servant relationship is created between Customer and the Consultant by this Agreement.