

MAINTENANCE AGREEMENT

THIS AGREEMENT FORMS PART OF THE PURCHASE ORDER WITH THE CUSTOMER.

AGREED TERMS

1. INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply in this Agreement:

Additional Equipment: any hardware or software at any Site not included in the System;

Charges: any and all of the Software Prices, the Hardware Prices, Hourly Rates, Service Charge, Emergency Rates and Other Rates as relevant to the Purchase Order;

Commencement Date: the commencement date specified in the Purchase Order;

Confidential Information: information, however recorded or preserved, that would be regarded as confidential by a reasonable business person relating to the business, affairs, customers, clients, suppliers, plans, of the disclosing party and the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party and which has not come into the public domain during the term of this Agreement in breach of any obligation of confidence, including information relating to the System or any of its constituent parts, or any such parts, commercial or technical know-how, technology, information pertaining to business operations and strategies, and information pertaining to customers, pricing, and marketing;

Customer: the customer specified on the relevant Purchase Order;

Customer Representative: a person duly authorised by the Customer to act on its behalf for the purposes of this Agreement and identified to Zen Systems on the Purchase Order or otherwise in writing from time to time;

Data Protection Law: all applicable data protection law and regulations in any jurisdiction;

Emergency Maintenance Services: the Scheduled Maintenance Services to be provided by Zen Systems outside Maintenance Hours;

Emergency Rates: the charges to the Customer for any Emergency Maintenance Services as set out in the Purchase Order;

Employees: Zen Systems' employees, consultants, subcontractors and any Third Level Engineer;

Good Industry Practice: the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector;

Hardware: the computer hardware installed by Zen Systems and used by the Customer in relation to this Agreement at the Site;

Hardware Prices: the prices for the Hardware as set out in the Purchase Order;

Hourly Rates: the hourly rates as set out in the Purchase Order for Scheduled Maintenance Services;

Initial Period: the term of the Purchase Order commencing from the Implementation Date

and as specified in the Purchase Order.

Intellectual Property Rights: all patents, copyrights, design rights, trade marks, service marks, trade secrets, know-how, database rights and other rights in the nature of intellectual property rights (whether registered or not) and all applications for the same which may now or in the future subsist anywhere in the world, including the right to sue for and recover damages for past infringements;

Implementation Date: the date as specified in the Purchase Order by which Zen Systems will have the System fully installed and operable in relation to the relevant Site;

Maintenance Hours: means the hours between 9.00 am and 5.30 pm each day excluding Saturdays, Sundays and public holidays in the United Kingdom;

Manufacturers' Warranties: the warranties given by any third-party manufacturer in relation to any Hardware;

Purchase Order: the relevant purchase order setting out the terms of the services to be provided by Zen Systems to the Customer;

Other Rates: any other rates including but not limited to on-site support as specified in the Purchase Order;

Other Terms and Conditions: any and all terms and conditions entered into between the Customer and Zen Systems in relation to a specific Service as set out in the Purchase Order;

Scheduled Maintenance Services: means the services to be provided by Zen Systems during Maintenance Hours as specified in the Purchase Order;

Service Levels: the service levels to be met by Zen Systems in Schedule 2 ;

Service Charge: the charge for the Scheduled Maintenance Services payable by the Customer to Zen Systems as specified in the Purchase Order;

Services: means the Scheduled Maintenance Services and the Emergency Maintenance Services;

Site: the locations at which the System is to be installed as specified in the Purchase Order;

Software: software installed by Zen Systems under this Agreement and all subsequent amendments and updates to, or new versions of, such software as may be provided under this Agreement;

Software Prices: the prices for the Software as set out in the Purchase Order;

Supply Date: the date as specified in the Purchase Order on which Zen Systems will invoice (wholly or in part) for the System for the relevant Site;

System: with the exception of Workstations, means the Hardware and Software, network infrastructure and communications, server software and remote connectivity and any Additional Equipment and such additions and changes thereto in relation to a Site all as specified in the Purchase Order;

Third Level Engineer: someone who, in the sole opinion of Zen Systems, has significant knowledge and experience of the technology relevant to the Services under this Agreement;

Workstation: any desktop, laptop or mobile computer, or equivalent equipment at the Site;

VAT: value added tax chargeable under the Value Added Tax Act 1994 and any similar additional tax or any other similar turnover, sales or purchase tax or duty levied in any other jurisdiction; and

Zen Systems Representative: a person duly authorised by Zen Systems to act on its behalf for the purposes of this Agreement and identified to the Customer by written notice from Zen Systems.

- 1.2 A reference to one gender includes a reference to the other genders.
- 1.3 Words in the singular include the plural and in the plural include the singular.
- 1.4 References to **including** or **includes** shall be deemed to have the words "without limitation" inserted after them.
- 1.5 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment, and includes any subordinate legislation for the time being in force made under it.
- 1.6 Except where a contrary intention appears, a reference to a clause or schedule is a reference to a clause of or schedule to this Agreement.
- 1.7 Clause and schedule headings do not affect the interpretation of this Agreement.
- 1.8 **Writing** or **written** includes faxes and e-mail except where expressly provided to the contrary.
- 1.9 The schedules to this Agreement, together with any documents referred to in them including, in particular, the Purchase Order and those letters of variation that add additional Sites where Zen Systems will provide Services and other agreed terms relating to those additional Sites, will all form an integral part of this Agreement and any reference to this Agreement means this Agreement together with the Purchase Order, schedules and all documents referred to in them, and such amendments or letters of variation in writing as may subsequently be agreed between the parties.
- 1.10 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

2. SUPPLIER'S OBLIGATIONS

- 2.1 Zen Systems shall use reasonable endeavours to:
 - (a) provide and manage the Services to the Customer in all material respects;
 - (b) meet any performance dates specified in this Agreement, but any such dates shall be estimates only and time for performance by Zen Systems shall not be of the essence of this Agreement; and
 - (c) observe all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Sites and that have been communicated to it prior to the Commencement Date of each Site.
- 2.2 Zen Systems shall not be liable under this Agreement if it is in breach of any of its obligations under this Agreement as a result of complying with clause 2.1.

3. CUSTOMER'S OBLIGATIONS

3.1 The Customer shall:

- (a) co-operate with Zen Systems in all matters relating to the Services;
- (b) provide, for Zen Systems and its Employees, in a timely manner and at no charge, access to any of the Site, data and other facilities as reasonably required by Zen Systems;
- (c) inform Zen Systems of all health and safety rules and regulations and any other reasonable security requirements that apply at the Site prior to the Commencement Date of each Site;
- (d) ensure that all Customer's equipment is in good working order and suitable for the purposes for which it is used in relation to the Services;
- (e) obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the Services and the installation of the System insofar as such licences, consents and legislation relate to the Customer's business, Sites, staff and equipment, in all cases prior to the Implementation Date for that Site; and
- (f) keep and maintain Equipment in accordance with Zen Systems' instructions from time to time and shall not dispose of or use the Equipment other than in accordance with Zen Systems' instructions or authorisation.

3.2 If Zen Systems' performance of its obligations under this Agreement is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees, Zen Systems shall not be liable for any costs, charges or losses sustained or incurred by the Customer that arise directly or indirectly from such prevention or delay.

3.3 The Customer shall be liable to pay to Zen Systems, on demand, all reasonable costs, charges or losses sustained or incurred by Zen Systems (including any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) that arise directly or indirectly from the Customer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under this Agreement.

3.4 The Customer shall not, without the prior written consent of Zen Systems, from the Commencement Date until 6 months after the date of termination of this Agreement, solicit or entice away from Zen Systems or employ or attempt to employ any person who is, or has been, engaged as an Employee of Zen Systems in the provision of the Services.

3.5 During the term of this Agreement, the Customer shall perform and comply with its obligations and duties set out in Schedule 1 .

4. CHANGE CONTROL

4.1 Either party may, by giving written notice to the other at any time during the term of this Agreement, request a change to the System, Services or Charges.

4.2 Within 7 working days of receipt of such notice, Zen Systems shall prepare for the Customer a written quote for any increase or decrease in the Charges, and of any effect that the requested change would have on the Services.

4.3 Within 7 working days of receipt of the written quote referred to in clause 4.2, the Customer shall inform Zen Systems in writing of whether or not the Customer wishes the requested change to be made. Zen Systems shall not make the requested change until the parties have agreed and signed a letter of variation to incorporate such agreed changes into this Agreement in accordance with clause 20.

4.4 Notwithstanding clause 4.3, Zen Systems may, from time to time and without notice, change the Services in order to comply with any applicable safety or statutory requirements, provided that such changes do not materially affect the nature, scope of, or the charges for the Services. If Zen Systems requests a change to the scope of the Services for any other reason, the Customer shall not unreasonably withhold or delay consent to it.

5. SUBSTITUTIONS

5.1 Zen Systems reserves the right to require the Customer to replace, at the Customer's expense, the whole of the System or any part or parts thereof which may be found to be beyond repair. If the Customer fails to do so, Zen Systems may terminate this Agreement without liability to the Customer.

5.2 In the event that Zen Systems must repair or replace Hardware or Software under this Agreement and such Hardware and Software to be replaced is discontinued or no longer meets the standard necessary for Zen Systems to fulfil its obligations and Service Levels under this Agreement, Zen Systems will, at its discretion, install any substitute item of Hardware or Software in substitution for any corresponding item of the System without the prior consent of the Customer. Zen Systems shall notify the Customer of any substitute item being installed, install the substitute item on an Hourly Rate basis and, at Zen Systems' sole discretion, Zen Systems shall invoice the Customer and the Customer will pay Zen Systems within 30 days of receiving such invoice for both the costs of installation and the cost of the substitute item, provided that such cost are reasonable to the circumstances to which they relate.

6. INSTALLATION

6.1 Zen Systems will invoice the Customer for any Software or Hardware necessary to install the System at a Site on the relevant Site Supply Date and such invoice will immediately become due and payable by the Customer.

6.2 Zen Systems will install the System at each Site by the Implementation Date for that Site.

6.3 In the event that any part of the System installation is delayed at the request of, or because of the acts or omissions of, the Customer or third parties, Zen Systems will amend the Implementation Date for the relevant Site to take account of such delay with the prior written consent of the Customer, such consent not to be unreasonably withheld, delayed or conditioned.

6.4 If a delay under clause 6.3 has resulted in an increase in cost to Zen Systems in carrying out its obligations under this Agreement, Zen Systems may at its sole discretion, invoice the Customer and the Customer shall pay for, Hourly Rates and for any Hardware, Software or Additional Equipment incurred as a result of such delay under clause 6.3.

6.5 In the event that any part of the System installation takes longer than estimated by Zen Systems due to unforeseen circumstances (including but not limited to building infrastructure

issues or technology infrastructure existing prior to the Implementation Date) or the acts or omissions of the Customer or third parties, Zen Systems may, at its sole discretion, notify and charge the Customer for any additional time incurred due to such prolonged Installation.

7. SERVICES

- 7.1 The Customer shall, at its own expense, prepare the Site for installing the System in accordance with the information provided by Zen Systems in advance of the Implementation Date. Zen Systems may request reasonable assistance from the Customer to carry out such preparation.
- 7.2 Zen Systems shall be responsible for ensuring that the System is installed and is in working order in preparation for the Customer to use the System no later than the Implementation Date.
- 7.3 Zen Systems reserves the right to amend or withdraw all or part of the Services, modify the Charges under clause 4 or terminate this Agreement on 7 days written notice to the Customer if there is:
- (a) a failure or fluctuation of electric power, air conditioning, humidity control or other environmental conditions; or
 - (b) an accident, transportation, neglect, misuse, or default of the Customer, its employees or agents or any third party; or
 - (c) any fault in any attachments or associated equipment which do not form part of the System; or
 - (d) an act of God, fire, flood, war, act of violence, or any other similar occurrence; or
 - (e) any attempt by any person other than Zen Systems' personnel to adjust, repair or maintain the System; or
 - (f) any crash or failure of fixed or removable storage media; or
 - (g) any power surge, fire or smoke affecting any part of the System.
- 7.4 During the term of this Agreement and in relation to the System and the Services, Zen Systems shall provide support for the System by telephone or remote access or both and, in the opinion of Zen Systems, where Zen Systems will require the telephone assistance of a Third Level Engineer, Zen Systems will, as far as reasonably practicable, provide this within 4 Maintenance Hours of the Customer's initial call.
- 7.5 If Zen Systems is unable, in its opinion, to provide such support in clause 7.4, it will provide corrective maintenance pursuant to clause 7.6.
- 7.6 Corrective maintenance:
- (a) Upon receipt of written notification from the Customer that the System has failed or is malfunctioning, Zen Systems shall provide remote access support and telephone support as necessary, to repair, reconfigure, fix, patch or otherwise as may be necessary to restore the System to its proper operating condition.
 - (b) In the event Zen Systems is unable to restore the System to its proper operating condition remotely, Zen Systems will, at its sole discretion, arrange a visit by one of its Employees to the affected Site within 4 Maintenance Hours or by 9.00am the next

working day of deemed receipt of the notification from the Customer, whichever is earlier, to remedy such System failure, such Site visit being subject to the Hourly Rates.

- 7.7 In the event Zen Systems must visit a Site to remedy a System to restore it to its full operating condition outside Maintenance Hours, the Hourly Rates due and payable for such visit shall be calculated from the arrival of a Zen Systems Employee on the Site until such time Zen Systems Employee shall leave the Site.
- 7.8 In the event the Customer requests any Services in respect of Additional Equipment, Zen Systems will provide a quotation for the Services of such Additional Equipment, subject to the Customer being granted, at the Customer's cost, any right and/or licences from the Additional Equipment owner as Zen Systems requires to maintain the Additional Equipment, and:
- (a) if the Customer agrees to the quotation, Zen Systems will set out such agreed changes to this Agreement pursuant to clause 4, and any agreed charges will be added to the Service Charge in respect of future payments; or
 - (b) if the Customer does not agree, both parties will continue to be governed by the terms of this Agreement.
- 7.9 The Services exclude:
- (a) the provision of Services other than at a Site, unless agreed in writing between the parties;
 - (b) all costs associated directly and indirectly with the repair of System Hardware;
 - (c) electrical or other environmental work external to the System;
 - (d) maintenance of any attachments or associated equipment which do not form part of the System; or
 - (e) recovery or reconstruction of any data or programs lost or corrupted as a result of any breakdown of or fault in the System.
- 7.10 Subject to Zen Systems making the System secure in accordance with the Manufacturer's instructions or, as a minimum, to Good Industry Practice standards, the Customer acknowledges and accepts that the Customer will be fully and solely responsible and liable for any costs, damage or data loss (including but not limited to telephone call costs) in the event that any telecommunication, Integrated Services Digital Network (ISDN) or Session Initiation Protocol (SIP) trunk supply connected to or forming part of the System fails, is hacked into by any third party, becomes insecure, results in a denial of service attack, is left operational by error, omission or otherwise on the part of the Customer or any of its customers, employees or agents, or through modifications to the System or anything attached to the System. The Customer will hold Zen Systems harmless from and against all actions, claims, demands, liabilities, damages, costs, losses or expenses (including without limitation, consequential losses, loss of profit, loss of reputation and all interest, penalties, legal and other professional costs and expenses) related to such event in this clause 7.10. The Customer undertakes (at the Customer's cost) to monitor call usage in order to receive an early warning of a high level of telephone call costs and to limit such costs.

- 7.11 Zen Systems shall make an additional charge, in accordance with its Hourly Rates, for requests for maintenance by the Customer by reason of any fault in the System due to causes not covered by the Services or which Zen Systems, in its opinion, believes to be frivolous or unnecessary.
- 7.12 In the event that there is a System failure in the opinion of Zen Systems, Schedule 2 will apply.
- 7.13 On the termination of this Agreement by the Customer, the Customer shall be not entitled to reimbursement of such part of the Service Charge as has been paid in advance and relate to the Services which will not now be provided and calculated on a pro rata basis by Zen Systems.
- 7.14 During the term in which the Services are to be provided, the Customer shall not, without Zen Systems' prior written approval, allow any person other than a Zen Systems Representative to modify, repair or maintain any part of the System.
- 7.15 The Customer shall co-operate with Zen Systems in any manner reasonably required by Zen Systems in order to carry out the Services, including provision of information and data, the Customer shall:
- (a) provide access to the Systems for the purpose of carrying out diagnostics and correction of defects, provided that such access shall be direct or remote, at Zen Systems' option, and that, in the latter case, the Customer will be subject to any additional requirements for security and encryption techniques or software which may from time to time be specified by Zen Systems;
 - (b) comply, as soon as reasonably practicable, with all Zen Systems' reasonable requests for information or assistance;
 - (c) provide such further access for Employees to the Site as is necessary to carry out Zen Systems' obligations under this Agreement. The Customer shall obtain all permissions necessary to grant such access to Zen Systems; and
 - (d) when the Employees are working on the Site, provide facilities and supplies reasonably required by Zen Systems, such as power and computer consumables to allow Zen Systems to fulfil its obligations under this Agreement.

8. CHARGES

- 8.1 In consideration of the Service Charge for a Site, Zen Systems agrees to provide Scheduled Maintenance Services, telephone support and remote access support within Maintenance Hours at the Service Levels from the Implementation Date for each Site on the basis of the information provided by the Customer and Zen Systems' assessment of the Customer's current system.
- 8.2 In consideration of the Emergency Rates and any charge as notified to the Customer from time to time in writing, Zen Systems will provide Emergency Maintenance Services, telephone support and remote access support outside Maintenance Hours at the Service Levels from the Implementation Date for each Site on the basis of the information provided by the Customer and Zen Systems' assessment of the Customer's current system.
- 8.3 If there is found to have been any misinformation from the Customer regarding the

Customer's current system, Zen Systems has the right to vary the Agreement pursuant to clause 4 or, where such reasonable change is not agreed with the Customer, terminate the Agreement.

- 8.4 Pursuant to clauses 8.1, 8.2 and 8.3, the Customer shall pay the Charges which are a combination of both a time and materials basis and a fixed price basis as set. Clause 8.7 shall apply if Zen Systems provides Services on a time and materials basis and clause 8.9 shall apply if Zen Systems provides Services for a fixed price. The remainder of this clause 8 shall apply in either case.
- 8.5 Zen Systems shall be entitled at any time after the expiry of the Initial Period, to increase the Charges by giving no less than 60 days' prior written notice to the Customer.
- 8.6 The Customers shall pay Zen Systems for any travel and subsistence expenses incurred in relation to Site visits in the UK or anywhere else in the world.
- 8.7 Where Services are provided on a time and materials basis under this Agreement:
- (a) the charges payable for shall be charged at the Hourly Rate on a pro-rata basis for each part day or for any time worked by Employees;
 - (b) all charges quoted to the Customer shall be exclusive of VAT, which Zen Systems shall add to its invoices at the appropriate rate; and
 - (c) Zen Systems shall ensure that every individual whom it engages on the Services completes time sheets recording time spent on the Services.
- 8.8 Zen Systems shall invoice the Customer monthly in arrears for its charges under clause 8.7, its expenses and materials (together with VAT where appropriate) for the month concerned.
- 8.9 Zen Systems shall invoice the Customer for the first Service Charge payment under this Agreement within 14 days after the Implementation Date and the Customer must pay such first invoice within 14 days of deemed receipt. For all fixed payments that become due and payable by the Customer thereafter, Zen Systems shall invoice the Customer 14 days prior to the month at which Zen Systems will supply the Services.
- 8.10 The Customer shall pay each invoice submitted to it by Zen Systems for the Charges, in full and in cleared funds, within 14 days of deemed receipt to a bank account nominated in writing by Zen Systems unless expressly stated otherwise in this Agreement.
- 8.11 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay Zen Systems within 7 days of the due date, Zen Systems may:
- (a) charge interest on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of Barclays Bank plc, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment and the Customer shall pay the interest immediately on demand; and
 - (b) at its sole discretion, suspend all Services until payment has been made in full.
- 8.12 Time for payment shall be of the essence of this Agreement.
- 8.13 All outstanding sums payable to Zen Systems under this Agreement shall become due immediately on its termination, despite any other provision. This clause 8.13 is without

prejudice to any right to claim for interest under the law, or any such right under this Agreement.

9. HARDWARE WARRANTIES

Zen Systems warrants that as far as it is able, Zen Systems will pass on to the Customer the benefits of any Manufacturers' Warranties.

10. SOFTWARE

10.1 Subject to any express provisions set out in this Agreement to the contrary or otherwise where it is necessary for Zen Systems to carry out the Services, the Software is proprietary to the Customer (or the appropriate third-party rights owner(s)) and Zen Systems acquires no rights in or to the Software.

10.2 The Customer shall use all reasonable endeavours to prevent any infringement of its Intellectual Property Rights in the Software.

10.3 The Customer grants, subject to the terms of this Agreement, the non-exclusive, non-transferable right to use the Software to Zen Systems and any third party Zen Systems may employ to carry out the Services and Zen Systems' obligations under this Agreement.

11. CONFIDENTIALITY AND PUBLICITY

11.1 Each party undertakes not to use the other party's Confidential Information otherwise than in the exercise and performance of its rights and obligations under this Agreement (**Permitted Purposes**).

11.2 Each party shall treat as confidential all Confidential Information of the other party supplied under this Agreement and the party receiving Confidential Information from the other party shall not divulge that received Confidential Information to any person except to those who need to know it for the Permitted Purposes.

11.3 The restrictions imposed by clause 11.1 and clause 11.2 shall not apply to the disclosure of any Confidential Information which:

- (a) is now in, or hereafter comes into, the public domain otherwise than as a result of a breach of this clause 11;
- (b) before any negotiations or discussions leading to this Agreement was already known by the receiving party (or, in the case of the Customer, any of its Affiliates) and was obtained or acquired in circumstances under which the receiving party was (or, in the case of the Customer, the Customer and its Affiliates were) not bound by any form of confidentiality obligation; or
- (c) is required by law or regulation to be disclosed to any person who is authorised by law or regulation to receive the same (after consultation, if practicable, with the disclosing party to limit disclosure to such authorised person to the extent necessary).

11.4 Each party shall notify the other party if any of its staff connected with the provision or receipt of the Services becomes aware of any unauthorised disclosure of any Confidential Information and shall offer reasonable assistance to the other party, at that other party's reasonable cost, in connection with any enforcement proceedings which that other party may elect to bring against any person.

11.5 This clause 11 shall remain in full force and effect for 1 year after the date of termination of this Agreement.

12. DATA PROTECTION

12.1 The following definitions apply:

- (a) the terms "data controller", "personal data", "data processor", "data subject" and "processing" bear the respective meanings given them in the Data Protection Act 1998, and "data protection principles" means the eight data protection principles set out in Schedule 1 to that Act;
- (b) data includes data subject to protection under Data Protection Law in any jurisdiction; and
- (c) "Customer Personal Data" mean any personal data provided by or on behalf of the Customer.

12.2 Zen Systems shall only carry out processing of any Customer Personal Data on the Customer's instructions.

12.3 The Customer acknowledges that Zen Systems will be acting as a data processor, rather than as a data controller, in respect of all such data processing activities which Zen Systems carries out under this Agreement.

12.4 Zen Systems shall use reasonable efforts to ensure the accurate migration of any data, but gives no warranties as to the completeness or accuracy of such migration. The Customer shall be responsible for checking the accuracy and completeness of the migrated data and shall promptly give sufficient details to Zen Systems of any inaccuracies or omissions in order to permit Zen Systems to correct them. If such data includes personal data, Zen Systems shall return all copies of such personal data to the Customer on completion of the data migration process.

13. WARRANTIES

13.1 Zen Systems warrants that:

- (a) it will perform the Services in a timely, reliable and professional manner, in conformity with Good Industry Practice by its Employees with appropriate skills, qualifications and experience, and has and will have the ability and capacity to meet such requirements;
- (b) it is in compliance with, and will perform the Services in compliance with, all applicable law and regulations; and
- (c) the Customer will receive good and valid title to all deliverables in connection with the Services, free and clear of all encumbrances and liens of any kind.

13.2 The Customer hereby warrants to Zen Systems that the Customer has not been induced to enter into this Agreement by any prior representations or warranties, whether oral or in writing, except as specifically contained in this Agreement and the Customer hereby irrevocably and unconditionally waives any right it may have to claim damages for any misrepresentation not contained in this Agreement or for breach of any warranty not contained, herein (unless such misrepresentation or warranty was made fraudulently) or to rescind this Agreement.

- 13.3 The Customer warrants that it holds express licences to use all Software (other than that owned by the Customer) and that Zen Systems is authorised to implement upgrades to and do other work in relation to such Software under the terms of such licences. The Customer shall indemnify Zen Systems in respect of all costs, expenses and liabilities (including but not limited to liabilities for licence fees) in respect of any breach of these warranties.
- 13.4 Save as expressly stated in this Agreement, Zen Systems does not make or give any representations, warranties or conditions, express or implied (by statute, collaterally or otherwise) including but not limited to warranties or conditions as to fitness for purpose or satisfactory quality, which are excluded to the extent permitted by law.
- 13.5 The warranties set out in this clause 13 are in lieu of all other express or implied warranties or conditions, including implied warranties or conditions of satisfactory quality and fitness for a particular purpose, in relation to this Agreement. Without limitation, Zen Systems specifically denies any implied or express representation that the System will be fit:
- (a) to operate in conjunction with any hardware items or software products other than with those hardware items and software products that are identified in the Documentation as being compatible with the System;
 - (b) to rectify all defects in the System; or
 - (c) to operate uninterrupted or error-free.
- 13.6 Any unauthorised modifications, use or improper installation of the System by or on behalf of the Customer shall render all Zen Systems' warranties and obligations under this Agreement null and void.
- 13.7 Zen Systems shall not be obliged to rectify any particular defect if attempts to rectify such defect other than normal recovery or diagnostic procedures have been made by the Customer's employees or third parties without the permission of Zen Systems.
- 13.8 Each party warrants that it has full capacity and authority, and all necessary licences, permits and consents, to enter into and perform this Agreement, and that those signing this Agreement are duly authorised to bind the party for whom they sign.
- 14. LIMITATION OF LIABILITY**
- 14.1 Subject to any express contractual terms and conditions of this Agreement, in no event shall the Customer or Zen Systems be liable to the other party for:
- (a) loss of profits;
 - (b) loss of business;
 - (c) depletion of goodwill or similar losses;
 - (d) loss of anticipated savings;
 - (e) loss of goods;
 - (f) loss of use; or
 - (g) loss or corruption of data or information.
- 14.2 Zen Systems accepts liability for direct loss and damage and loss of or damage to the tangible property of the Customer caused directly by the negligence of Zen Systems up to

a limit of £2,000 per claim or series of connected claims and an aggregate limit of no more than one annual Service Charge in any 12 month rolling period.

- 14.3 The Customer shall indemnify Zen Systems and keep Zen Systems fully and effectively indemnified on demand against any loss of or damage to any property or injury to or death of any person caused by any negligent act or omission or wilful misconduct of the Customer, its employees, agents or sub-contractors.
- 14.4 Nothing in this Agreement shall limit or exclude the liability of either party for death or personal injury resulting from negligence, fraud, fraudulent misrepresentation, breach of any of the obligations under the Sale of Goods Act 1979 or the Supply of Goods and Services Act 1982, which may not be excluded by contract.

15. ASSIGNMENT AND SUBCONTRACTING

- 15.1 Zen Systems may at any time without the consent of the Customer, employ consultants, third parties and Third Level Engineers as may be necessary for Zen Systems to fulfil its obligations under this Agreement.
- 15.2 Subject to clause 15.1, this Agreement is personal to the parties and neither party shall assign, transfer, mortgage, charge, subcontract, declare a trust of or deal in any other manner with any or all of its rights and obligations under this Agreement without the prior written consent of the other party, such consent not to be unreasonably withheld or delayed.

16. TERMINATION

- 16.1 Zen Systems shall provide the Services to the Customer on the terms and conditions of this Agreement for the duration of the Initial Period and for automatic renewal periods of one year thereafter, unless terminated in accordance with either clause 16.2 or clause 16.3.
- 16.2 Either party may terminate this Agreement without cause on not less than 3 months' prior written notice to the other, such written notice not to expire during the Initial Period or before the anniversary of the Commencement Date in an automatic renewal period.
- 16.3 Unless otherwise stated in this Agreement and without prejudice to any rights that have accrued under this Agreement or any of its rights or remedies, either party may at any time terminate this Agreement or the Services at a specified Site with immediate effect by giving written notice to the other party if:
- (a) the System or a material part thereof is lost, stolen or destroyed or damaged beyond economic repair; or
 - (b) the other party fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;
 - (c) the other party commits a material breach of any term of this Agreement or failure to pay any amounts due under this Agreement) and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
 - (d) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a

solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

- (e) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (f) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party;
- (g) a floating charge holder over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
- (h) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- (i) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- (j) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause (d) to clause 16.3(i) (inclusive); or
- (k) the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business.

16.4 Other than as set out in clause 27 neither party shall have any further obligation to the other under this Agreement after its termination.

16.5 On termination of this Agreement for any reason, each party shall as soon as reasonably practicable:

- (a) return, destroy or permanently erase (as directed in writing by the other party) any information or data provided to it by the other party containing, reflecting, incorporating or based on Confidential Information belonging to the other party;
- (b) permanently delete any proprietary Software belonging to the other party and not the subject of a current licence granted by the other party from its IT network and hard disks or other storage means associated with any computer equipment owned or controlled by the other party; and
- (c) as far as reasonably practicable, return all of the other party's equipment and materials, failing which, the other party may enter the relevant Site and take possession of them, provided, regarding the Customer's rights under this clause (c), that the Customer has (if appropriate) paid Zen Systems in full for such equipment and materials. Until these are returned or repossessed, the party in possession shall be solely responsible for their safe-keeping.

16.6 On termination of this Agreement for any reason, the Customer shall immediately pay any outstanding unpaid invoices and interest due to Zen Systems. Zen Systems shall submit

invoices for any Services that it has supplied, but for which no invoice has been submitted, and the Customer shall pay these invoices under this clause 16.6 immediately on receipt of invoices.

17. WAIVER

17.1 No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

18. REMEDIES

Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

19. ENTIRE AGREEMENT

19.1 This Agreement and any documents referred to in it constitute the whole Agreement between the parties and supersede any previous arrangement, understanding or Agreement between them relating to the subject matter of this Agreement.

19.2 Each party acknowledges that, in entering into this Agreement and the documents referred to in it, it does not rely on any statement, representation, assurance or warranty of any person (whether a party to this Agreement or not) other than as expressly set out in this Agreement or those documents.

20. VARIATION

20.1 Zen Systems may, at its sole discretion, reasonably vary the terms of this Agreement without consent of the Customer.

20.2 No variation of this Agreement by the Customer shall be effective unless it is agreed in writing and signed by both the Customer Representative and the Zen Systems Representative.

21. SEVERANCE

21.1 If any court or competent authority finds that any provision of this Agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this Agreement shall not be affected.

21.2 If any invalid, unenforceable or illegal provision of this Agreement would be valid, enforceable and legal if some part of it were deleted, the parties shall negotiate in good faith to amend such provision such that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the parties' original commercial intention.

22. THIRD-PARTY RIGHTS

No person other than a party to this Agreement shall have any rights to enforce any term of this Agreement.

23. NO PARTNERSHIP OR AGENCY

Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, nor authorise any party to make or enter into any commitments for or on behalf of any other party, except as expressly authorised by the Customer or Zen Systems (as the case may be).

24. FORCE MAJEURE

24.1 Neither party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure results from events, circumstances or causes beyond its reasonable control including Acts of God, flood, earthquake, windstorm or other natural disaster, war, threat of or preparation for war, armed conflict, embargo, terrorist attack, civil war, civil commotion or riots, any law or government order, rule, regulation or direction, or any action taken by a government or public authority, including but not limited to imposing an embargo, export or import restriction, quota or other restriction or prohibition, or failing to grant a necessary licence or consent, non-performance by suppliers or subcontractors, any Hardware or Software being out of stock, the breakdown and failure or any computers or vehicles used in relation to the Services, fire, explosion (other than in each case one caused by a breach of contract by, or assistance of, the party seeking to rely on this clause or companies in the same group as such party) or accidental damage, loss at sea; adverse weather conditions or interruption or failure of utility service, including but not limited to electric power, gas or water.

24.2 The affected party shall be entitled to a reasonable extension of the time for performing such obligations, provided that if the period of delay or non-performance continues for 2 months or more, the party not affected may terminate this Agreement by giving 30 days' written notice to the other party.

24.3 Both parties will in any event use reasonable endeavours to mitigate the impact of any force majeure event under clause 24.1 and to recommence performance of their obligations under this Agreement as soon as reasonably possible.

25. CONFLICT

25.1 If there is an inconsistency between any of the provisions of this Agreement, the Purchase Order and Other Terms and Conditions, the provisions of this Agreement shall prevail in preference to the Purchase Order and Other Terms and Conditions, and the provisions of Other Terms and Conditions shall prevail over the provisions of the Purchase Order.

26. NOTICES

26.1 Any notice or other communication required to be given under this Agreement, shall be in writing and shall be delivered personally, or sent by pre-paid first-class post or recorded delivery or by commercial courier, to each party required to receive the notice or communication as set out in the Purchase Order or as otherwise specified by the relevant party by notice in writing to each other party.

26.2 Any notice shall be deemed to have been duly received:

- (a) if delivered personally, when left at the address and for the contact referred to in this clause;

- (b) if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second business day after posting; or
- (c) if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

26.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

27. CONTINUING OBLIGATIONS

27.1 On termination of this Agreement, clauses 1, 6.4, 7.10, 7.11, 7.13, 8, 11, 12, 14, 16.5, 16.6, 19, 22, 26, 27 and 29 shall survive and continue in full force and effect.

28. DISPUTE RESOLUTION

28.1 Any dispute which may arise between the parties concerning this Agreement shall be determined as provided in this clause 28.

28.2 Unless this Agreement has already been terminated by the date of the notice of dispute, Zen Systems shall, as far as it is practically possible, continue to provide the Services regardless of the nature of the dispute and the Customer shall continue to make payments in accordance with clause 8.

28.3 After service of the notice of dispute, the following procedure shall be followed by the parties (all periods specified in this clause 28.3 shall be extendable by mutual agreement):

- (a) within 7 days, a Zen Systems Representative and a Customer Representative shall meet to attempt to settle the dispute; and
- (b) if no settlement results from the meeting in clause (a) for the following 28 days the parties shall attempt to settle the dispute by mediation by an independent mediator, with costs to be shared equally between the parties.

28.4 If no settlement is reached under clause 28.3, then such dispute shall be either:

- (a) referred for arbitration where the arbitrator's decision shall (in the absence of clerical or manifest error) be final and binding on the parties and his fees for so acting shall be borne by the parties in equal shares unless he determines that the conduct of either party is such that such party should bear all of such fees; or
- (b) determined by the English High Court and the parties submit to the exclusive jurisdiction of such court for such purposes,
whichever Zen Systems shall elect.

29. GOVERNING LAW AND JURISDICTION

29.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

29.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

Schedule 1 Customer Obligations

The Customer undertakes to:

- (a) ensure that proper environmental conditions are maintained for the System and shall maintain in good condition the accommodation of the System, the cables and fittings associated therewith and the electricity supply thereto;
- (b) not make any modification to the System without Zen Systems' prior written consent;
- (c) keep and operate the System in a proper and prudent manner in accordance with the manufacturer's operating instructions and ensure that only competent trained employees (or persons under their supervision) are allowed to operate the System;
- (d) ensure that the external surfaces of the System are kept clean and in good condition and shall carry out any minor maintenance recommended by the relevant manufacturer or Zen Systems from time to time;
- (e) save as provided in this clause, not attempt to adjust, repair or maintain the System and shall not request, permit or authorise anyone other than Zen Systems to carry out any adjustments, repairs or maintenance of the System;
- (f) use on the System only such operating supplies as the manufacturer or Zen Systems shall recommend in writing;
- (g) not to make any movement of those items of the System specified as not to be moved in the Schedule, nor to remove any of the System from the Site without Zen Systems' prior written consent;
- (h) not use in conjunction with the System any accessory, software, attachment or Additional Equipment other than that which has been approved in writing by Zen Systems;
- (i) upon reasonable notice, provide Zen Systems with full and safe access to the System for the purposes of this Agreement, including but not limited to the provision of access passwords to all necessary levels and the facility for Zen Systems to operate diagnostic software on the System remotely;
- (j) ensure in the interests of health and safety that Zen Systems' personnel, while on the Site for the purposes of this Agreement, are made aware of the Customer's health and safety procedures;
- (k) promptly notify Zen Systems if the System needs maintenance or is not operating correctly;
- (l) make available to Zen Systems access to such of its programs, operating manuals and information as may be reasonably necessary to enable Zen Systems to perform its obligations hereunder and shall if requested by Zen Systems, the Customer will provide staff familiar with the Customer's programs and operations, which such staff shall co-operate fully with Zen Systems' personnel in the diagnosis of any failure or incorrect operation of the System;
- (m) make available to Zen Systems free of charge all facilities and services reasonably required by Zen Systems to enable Zen Systems to perform the Services including

- without limitation computer runs, memory dumps, print-outs, data preparation, office accommodation, typing and photocopying;
- (n) in the event that Zen Systems is requested to supply any Services in respect of any Additional Equipment or software, advise Zen Systems of the date of installation of such item of Additional Equipment at the Site as soon as practicable;
 - (o) provide such telecommunication facilities as are reasonably required by Zen Systems for testing and remote diagnostic purposes at the Customer's expense;
 - (p) keep full security copies of the Customer's programs, data bases and computer records in accordance with best computing practice.

Schedule 2 Service Levels

This Service Level Agreement ("SLA") describes the level of service Zen Systems will provide to Customers in respect of the Services.

1. Definitions

1.1. In this SLA the following terms shall have the following meanings, unless otherwise specified here:

Availability	Means the percentage of a particular calendar month the Service is available, as measured by Zen Systems - not including any Scheduled and or Emergency Maintenance;
Response Time	means the time Zen Systems will start working on an issue.

2. Service Level Targets

2.1 Zen Systems have no control over the speed, performance or availability of the wider Internet. No guarantees are made or implied for the quality of Internet calls before they reach Zen Systems' broadband network due to variants in ADSL connection speeds and stability and distance from the BT telephone exchange local to the Site.

2.2 Availability target: 99.9%

3. The System

3.1 The System will be available to the Customer 99.9% of the time in any calendar month. The Customer may be temporarily restricted from accessing the System whilst it is being backed up, maintained or upgraded by Zen Systems. Such restriction does not count as non-performance against the Availability target.

3.2 Zen Systems will provide the Customer with support during Maintenance Hours. The preferred method for logging support requests is via email to support@zensystems.co.uk, or via 01473 760021. Critical issues will be supported 24/7. To obtain support for critical issues the Customer must in the first instance telephone the 24 hour support line on 0333 344 0239. Critical issues will be assigned the highest priority and as such Zen Systems request that the Customer exercise restraint when logging a Critical issue.

Support Request	SLA Type	Response Time
Level 1 minor - configuration change or general support enquiry.	Best endeavours	Same working day
Level 2 Serious - a non-critical defect or problem for which there is a workaround or ongoing operation is still possible.	Best endeavours	4 Maintenance Hours
Level 3 Critical - the problem results in total unavailability of the Service affecting the entire user base.	Guaranteed	4 Maintenance Hours

3.3 In the event of a total System failure, Zen Systems will restore the failed System from the most recent backup of the System to a stand-by server at the relevant Site. This will be done remotely where possible, or via a Site visit by an Employee at Zen Systems' sole discretion.

4. Scheduled & Emergency Maintenance

4.1 Where Scheduled Maintenance Services will be scheduled to take place after 8pm GMT on a Friday and before midnight GMT on the immediate Sunday following (**Additional Maintenance**), this paragraph 4 will apply and will be covered by the Service Charge and no additional Hourly Rates will apply.

4.2 Advanced notice of Additional Maintenance and the period in which Zen Systems will undertake such Additional Maintenance, will be sent to the Customer via email or notified by telephone at least 7 days prior to such the scheduled Additional Maintenance period.

4.3 Upgrades of The System software are part of the Additional Maintenance and are ordinarily conducted quarterly and take between approximately 1 and 8 hours depending on complexity and whether problems are encountered during the upgrade.

4.4 Emergency Maintenance Services may be necessary in order to apply security related software patches or resolve a service affecting critical issues in relation to the System. Zen Systems will conduct this outside Maintenance Hours where possible and will notify the Customer if practicable, but such services in this paragraph 4.4 shall be covered by the Service Charge and no additional Hourly Rates will apply.

5. SLA Measurement

5.1 To monitor the availability of the System, Zen Systems will remotely monitor the System, as well as record and store all System events.

5.2 Performance against SLA Service Availability targets is measured on a monthly basis and is calculated using the equation below using data gathered from remote monitoring.

$$\text{Availability} = \frac{\text{Total minutes in month} - \text{Maintenance minutes} - \text{Unavailability minutes}}{\text{Total minutes in month} - \text{Maintenance minutes}}$$

5.3 Maintenance minutes include minutes of unavailability due to scheduled maintenance and emergency maintenance under paragraph 4 and Exclusions (listed below)

6. Credits

6.1. Failure to meet the SLA target will result in the Customer becoming eligible for the following credit. Credits will only be applied against the Service for which the credit is due if the Customer has no outstanding, non-disputed bills.

Metric	Service Level	Incident	Service Credit - % of 1 month charge
Up time %	< 100% & ≥ 99.9%	Availability below service level	0
	< 99.9% & ≥ 99.0%		25
	< 99.0%		50

7. Exclusions

7.1 Customers will not receive any credits under this SLA if any of the following causes or are associated with unavailability or deficiency:

7.1.1 Scheduled or emergency maintenance in paragraph 4 or any agreed downtime between the parties;

7.1.2 unavailability of, or disruption or delay in telecommunications or third party circuits or links;

7.1.3 any external Internet Service Provider or an Internet exchange point;

7.1.4 malicious attacks intended to degrade the Service;

7.1.5 behaviour of Customer equipment, facilities or applications;

7.1.6 Customer, its employees or third party acts or omissions of others, engaged or authorised by Customer including without limitation any negligence, wilful misconduct or use of the Service in breach of the Agreement; or

7.1.7 acts of god, acts of any governmental body, war, civil disorder, embargo, natural cataclysm or other occurrences beyond the reasonable control of Zen Systems.

7.2 In addition, Zen Systems shall not be liable for any loss, liability, damages (whether direct, indirect or consequential) or expenses of any nature that may arise out of Zen Systems' failure to meet its obligations under this Service Level Agreement.

8. Claims

8.1 To receive credit if any of the guarantees has not been met, the Customer must email accounts@zensystems.co.uk within 15 days of the end of the month for which the credit is requested. The total amount credited to a Customer in a particular month under this SLA will not exceed the total Service Charge paid by the Customer for such month of the Service.