



Application & Services Agreement

Application & Services Agreement

1. The Parties

Zinc Digital Business Solutions Limited (otherwise known as Zinc) registered in England with company number 05235293, operating from The Old Garage, 33 Bedford Road, Little Houghton, Northampton NN7 1AB, and whose registered office is at 22-24 Harbour Road Kingsthorpe Northampton NN2 7AZ (hereby referred to as the "Company") and the Client.

2. The Agreement

The Company shall provide the Client with access to its proprietary application for incident reporting, operations management and crisis communications (known to and marketed by the Company as "Synapse" and is referred to in this agreement as the "Application"), for use by the Client and its Affiliates under software licence terms as set out in this Agreement.

The Company shall provide support to the Client and its Affiliates for day-to-day use of the Application (as set out in Appendix 2) and infrastructure for the ongoing hosting (as set out in Appendix 3), which are collectively referred to in this agreement as the "Services", for the term of this Agreement and subsequent agreements for each Affiliate.

The commercial terms for the Applications and Services is set out in Appendix 1. For the avoidance of doubt, the agreement for each Affiliate for the use of the Application and Services is subject to the same Terms and Conditions as this Agreement.

3. Definitions and Interpretation

3.1 In this Agreement, the following words and phrases shall have the following meanings:

"Affiliate" means any client, partner or company associated with the Client that is to be provided with their own separate access to the Application and provision of the Services that are outlined in, or added to, this Agreement. The commercial terms in place for each Affiliate (if applicable) is detailed in Appendix 1.

"Application" refers to Synapse - the Company's proprietary application for incident reporting, operations management and crisis communications - and Admin247 - the Company's content management, resources, people management and reporting system.

"Bespoke additions or modifications" means the development of new features or functionality at the request of the Client or its Affiliates which is to be applied to and included in the Application and Services. Any bespoke addition or modification will be subject to additional Fees and the Terms and Conditions of this Agreement will apply.

"Client" means the person, firm or company detailed in this Agreement, to which the Application and Services are to be supplied. Where the person entering into the Contract is doing so on behalf of the Client, that person confirms they have the authority to contractually bind and enter into the Contract on behalf of the Client and the business shall be the Client in the context of this Contract;

"Company" means Zinc Digital Business Solutions Limited

"Contract" means the legally binding agreement formed upon acceptance by the Client as detailed in clause 4 for our provision of the Application and Services, and includes the acceptance by the Client of these Terms and Conditions which shall be or shall be deemed to be incorporated into the Contract;

"Fee(s)" means the project charge and ongoing charges for the Application, Services, User Licences, and any bespoke modifications or additions as set out in the Quotation;

"Forward Investment" refers to the Company providing an allocation of resource upfront at no cost to the Client or its Affiliates for the delivery of the Application, the provision of the Services or for any bespoke additions or modifications, on the basis of an agreed Minimum Period

or incentive-based payment as specified in Appendix 1.

"Hours Overage" refers to the total number of hours used by the Client in each calendar year that is surplus to the total monthly allocation of hours due to have been given to the Client in the delivery of the Services during that calendar year. The resulting number of hours is chargeable to the Client at the Standard Rates.

"Intellectual Property Rights" means patents, rights to inventions, copyright and related rights, trade marks, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights (including without limitation know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;

"Quotation" means our Quotation for the provision of the Application, Services, User Licences, and any bespoke modifications or additions to the Client and/or its Affiliates;

"User Licence" refers to a single user belonging to or associated with the Client or an Affiliate that has an activated account at any point within a calendar month allowing the ability for that user to access the Application in order to send and/or receive content and communications through the Application.

"User Licence Fee" refers to the monthly charge levied upon the Client or Affiliate based on the number of User Licences at the rates given in Appendix 4.

"Services" means the support services (as detailed in Appendix 2) and hosting services (as detailed in Appendix 3) to be supplied by the Company to the Client and each Affiliate to the level(s) specified in Appendix 1.

"Software" means the software provided by the Company as part of the Application or other such system.

"Standard Rates" means the hourly chargeable rate on a per role basis (given in Appendix 5) levied upon the number of hours that have been logged against the Client for delivery of the Application, Services, or any bespoke additions or modifications.

3.2 Unless the context otherwise requires, each reference to:

3.2.1 "we", "us" and "our" is a reference to the Company;

3.2.2 "you" and "your" is a reference to the Client;

3.2.3 "writing" and "written" includes emails;

3.2.4 a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time;

3.2.5 "these Terms and Conditions" is a reference to these Terms and Conditions as amended or supplemented at the relevant time;

3.2.6 a clause is a reference to a clause of these Terms and Conditions;

3.2.7 a "Party" or the "Parties" refer to the parties to these Terms and Conditions.

3.3 The headings in these Terms and Conditions are for convenience only and do not affect their interpretation.

3.4 Any reference to a party includes its employees, agents and sub-contractors.

3.5 Words imparting the singular number shall include the plural and vice versa. References to any gender shall include the other gender. References to persons shall include corporations and bodies corporate.

4. Quotation & Acceptance

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4.1 We will provide a Quotation for the delivery of the Application, any bespoke additions or modifications, and all accompanying Services and User Licences. The acceptance of our Quotation, electronically or otherwise, or the placement of an order, creates a legally binding Contract between the Company and the Client and includes the acceptance of these Terms and Conditions, which shall be incorporated in the Contract and apply between us.

4.2 These Terms and Conditions shall:

4.2.1 apply to and be incorporated in the Contract;

4.2.2 apply to all dealings relating to the Application and Services being supplied by us;

4.2.3 and prevail over any terms or conditions contained in or referred to by the Client's purchase order, confirmation of order or specification, or implied by law, trade custom, practice or course of dealing, subject to clause 13 below.

4.3 No addition to, variation of, exclusion or attempted exclusion of any term of the Contract shall be binding on us unless they are made in writing and signed by a duly authorised representative of ours.

4.4 The Client shall be responsible for the accuracy of any information submitted to us and for ensuring that our Quotation reflects the full requirements of the Client. Our Quotation is based on the information provided to us at the time of its preparation. Should any errors or discrepancies become evident which affect our order value, we reserve the right to make adjustments to it.

4.5 Our Quotation shall constitute our entire scope of works but may be subject to amendments.

4.6 Our Quotation will be valid for a period of 14 days only unless otherwise stated, and we may withdraw it at any time by giving notice to the Client.

5. The Contract

5.1 The licence granted under these Terms and Conditions shall commence on the launch date (the "Launch Date") of the Application developed by the Company for the Client.

5.2 The Contract will be for an initial term of 3 years (the "Minimum Period") commencing on the Launch Date and thereafter will be automatically renewed for successive one year periods (each being a separate "Renewal Period"), on the same Terms and Conditions (with the exception of the price) until and unless written notice to terminate is given by either party in accordance with clause 12 below.

5.3 Once the Contract is agreed and formally executed, and provided payments (where required and requested) are made in accordance with clause 11, we will immediately grant to the Client a non-exclusive, non-transferrable licence to use our Software in object code form only, solely for your own internal business operations, within the bounds of these Terms and Conditions.

6. Supply of Services

6.1 All Services will be carried out during our normal business hours of 9.00 - 17.00, Monday to Friday excluding public holidays in England, unless otherwise stated in the Quotation. Any works required outside of our normal business hours will be subject to additional costs at our discretion. We will, however, endeavour to keep disruption to a minimum.

6.2 We warrant to the Client that all Services supplied under the Contract will be carried out with the care and skill that is reasonable by personnel whose qualifications and experience will be appropriate for the tasks to which they are allocated.

6.3 Any changes to the agreed brief, any further changes required to the delivered Application, or any additional meetings required above

the allowance included for in our Quotation, will be chargeable at our Standard Rates applicable at the time.

6.4 We will use our reasonable endeavours to carry out the Services in accordance with any timescales requested by the Client. However, time will not be of the essence in the performance of these obligations.

6.5 We cannot accept responsibility for any changes to the Application once it has been launched including, but not limited to, additions, modifications or deletions caused by the Client or any third party.

6.6 Any supplied data, content or copy will be uploaded or imported by us exactly as we receive it. It is the Client's responsibility to check for mistakes, including spelling mistakes, and we accept no responsibility for the same.

6.7 Any additional Services must be authorised in advance by the Company and the Client in writing and will be chargeable at our Standard Rates applicable at the time.

6.8 We will contact the Client to advise when the delivery of the Application, any bespoke additions or modifications, or the Services have been completed. We may, at our sole discretion, agree to make minor adjustments after this time up to a maximum of 30 days from completion without charge, however any further work required after this time will be chargeable.

6.9 Upon delivery of the Application, all instances we produce will automatically be enrolled on to our hosting platform and will be subject to separate Hosting and User Licence Fees from and including the calendar month in which it was delivered.

7. Client's Obligations

7.1 The Client will:

7.1.1 provide us with such reasonable information and assistance as we may request, and in any event within 7 days of our request;

7.1.2 appoint a primary contact to liaise with us in connection with delivery of the Application and the Services. Should, for any reason, this primary contact become unavailable either temporarily or permanently, the Client will appoint another primary contact. However, any part of the Application or Services completed at the instruction of the original primary contact or agreed by the original primary contract shall not be open to material alteration unless the Client wishes to pay for the additional works;

7.1.3 provide us with suitable and sufficient material and images to enable us to deliver the Application and perform the Services;

7.1.4 ensure any staff are trained in the proper use and operation of the Application and any other Software provided by us;

7.1.5 act in accordance with any and all reasonable instructions issued by us in relation to the Application and Services. We shall not be liable for any failure to provide the Application or Services or any part thereof which arises out of the Client's failure to follow any such instructions;

7.1.6 virus-check all data and material supplied to us;

7.1.7 keep strong passwords and ensure they are regularly updated and secure from third parties;

7.1.8 obtain and maintain all necessary licences, permissions and consents in connection with the Application and Services;

7.1.9 allocate a single user per User Licence and not attempt to share User Licences across multiple users. Such an action will constitute a material breach of the Terms and Conditions of this Agreement.

7.1.10 when notifying us of a defect or error, follow the correct procedure for communicating that defect or error in such a way that we can locate and replicate the same, and provide us with a documented

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example of such defect or error;

7.1.11 assume responsibility for all payments due for the remainder of the Minimum Period for any Affiliates who cancel the Services before the expiry of the Minimum Period of their agreement; as well as assuming responsibility for any outstanding fees for the delivery of the Application or any bespoke additions or modifications, the User Licence Fee at the specified minimum user count for the remainder of the Minimum Period, and any Hours Overage recorded up to the time of cancellation; and

7.1.12 assume responsibility for repayment of any Forward Investment made by the Company in the event of cancellation of the Contract by any Affiliates for which Forward Investment was made as specified in Appendix 1.

7.1.13 permit the Company to reference the Client's brand(s) in any promotional material and press releases that the Company may produce from time to time and the Client agrees to provide a written testimonial and reference for the Company's own promotional activities and to support any future bids the Company may undertake.

8. Software

8.1 The Software is commercially licensed software. It is not open-source, freeware or shareware.

8.2 It is the Client's responsibility to ensure that its employees, agents and other parties under its control who will use the Software do so strictly in accordance with these Terms and Conditions and are accordingly notified of the same.

8.3 The Client will ensure that any person authorised to use the Software who leaves its employment has their access to the Software removed immediately and in any case that they have no access to the Software whatsoever after the expiry of a maximum of 7 days from the date their employment ends. The Client will take all reasonable endeavours to prevent any unauthorised access to, or use of, the Software and, in the event of any such unauthorised access or use, shall immediately notify us.

8.4 All proprietary rights in the Software remain with us. The Client shall not:

8.4.1 attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, transmit, or distribute all or any portion of the Software in any form or media or by any means;

8.4.2 attempt to reverse compile, disassemble, or reverse engineer all or any part of the Software;

8.4.3 access all or any part of the Software in order to build a product or service which competes with the Software;

8.4.4 vary, delete or obscure any notices of proprietary rights or any product identification or restrictions on or in the Software;

8.4.5 sub-license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Software available to any third party unless expressly authorised by us; or

8.4.6 attempt to obtain, or assist third parties in obtaining, access to the Software other than as provided under this clause 8.

8.5 We do not warrant that the Client's use of the Software will be uninterrupted or error-free; nor that the Software will meet the Client's requirements.

8.6 We will not be responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Client acknowledges that the Software may be subject to limitations, delays and other problems inherent in the use of such communications

facilities.

8.7 We reserve the right to carry out maintenance at such times as may be necessary at our discretion but will endeavour to give the Client advance notice where possible.

8.8 The Client undertakes that it will ensure that each authorised user keeps their password confidential. The Client will also ensure that each password is reasonably strong and secure, containing a combination of letters, numbers and symbols, and is changed regularly, no less frequently than once every three months.

8.9 The Client shall not store, distribute or transmit any viruses, or any material on the Client's version of the Application or during the course of its use of the Software that:

8.9.1 is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;

8.9.2 facilitates illegal activity;

8.9.3 depicts sexually explicit images;

8.9.4 promotes unlawful violence;

8.9.5 is knowingly discriminatory based on race, gender, religious belief, sexual orientation, disability, or any other illegal activity, or

8.9.6 causes or may cause damage or injury to any person or property and we reserve the right, without liability to the Client, to remove any content that breaches the provisions of this clause.

8.10 The rights provided under these Terms and Conditions are granted to the Client only, and shall not be considered granted to any subsidiary or holding company of the Client without our written permission.

8.11 The Client shall own all rights, title and interest in and to all content and data uploaded by the Client and shall have sole responsibility for its legality, reliability, integrity, accuracy and quality. For the avoidance of doubt, we do not monitor, and will have no liability for the contents of, any content or communications transmitted by the Client using the Software.

9. Variation

9.1 If the Client wishes to vary the Application or Services to be provided, they must notify us as soon as possible. We shall respond to the Client as to whether we agree to the variation and, if so, details of the cost of the variation and any effect on any other aspect of the Contract, including any change in timescales. The Client may accept such proposal within such time as we may specify or, if none is specified, within 14 days, failing which it shall be deemed rejected. Pending acceptance or rejection, we will continue to perform our obligations under the Contract without reference to the request.

9.2 If, due to circumstances beyond our control, we have to make any change in the arrangements relating to the provision of the Application or the Services, we shall notify the Client immediately. We shall endeavour to keep such changes to a minimum and shall seek to offer the Client arrangements as close to the original as is reasonably possible in all the circumstances.

9.3 Any agreed variation or amendment will be carried out in accordance with these Terms and Conditions and any price increase as a result of an agreed variation or amendment shall be payable in accordance with the terms for payment herein.

10. Our Obligations

10.1 We warrant that the Software will operate as described, when used properly.

10.2 We warrant that we will use all reasonable care and skill in fulfilling our obligations under the Contract and that all Company personnel

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have qualifications and experience appropriate for the tasks to which they are allocated.

10.3 We will ensure that we and our servants, agents and subcontractors take all reasonable precautions to prevent any known viruses, spyware or other malware for which detection and antidote software is generally available being coded or introduced into the Software.

10.4 If we receive written notice from the Client, after the Contract has commenced, of any breach of our obligations then we shall remedy the defect or error in question at our own expense and as soon as reasonably possible.

10.5 Our obligations are subject to the Client complying with its obligations under the terms of the Contract and shall also be subject to the limits and exclusions of liability set out in clause 13. In particular, they shall not apply if any defect in the Software arose or was exacerbated as a result of:

10.6.1 incorrect use, operation or corruption of the Software;

10.6.2 any unauthorised modification or alteration of the Software; or

10.6.3 use of the Software with other software or on equipment with which it is incompatible (details of compatible browsers and operating systems are given in Appendix 2).

11. Fees & Payment

11.1 Unless otherwise stated in our Quotation, our standard payment terms for any Fees associated with delivery of the Application or bespoke additions or modifications are as follows:

40% of the Application's Fee is due upon acceptance of our Quotation as a deposit. We will not schedule or commence the works until this deposit is paid in full. This deposit is non-refundable.

40% of the Fee will be due when the test link or test installation of the Application is sent.

20% of the Fee is due upon the launch of the Application, or within 3 months of sending the test link or test installation, if the completion is delayed for any reason through no fault of our own.

11.2 For larger projects, or otherwise at our discretion, we reserve the right to charge additional interim payments at various milestones as the works progress. Where possible, we will notify the Client of the expected milestones in our Quotation.

11.3 The User Licence Fee and fees for the Services are as stated in the Contract (and referenced in this Agreement in Appendix 1 and 4), or as otherwise as agreed between us in writing. These fees will be invoiced immediately at the end of each calendar month to which they apply. We may request payment prior to the Software being made available to the Client.

11.4 We reserve the right to review our User Licence Fees, Standard Rates, and fees for the Services from time to time and will provide the Client with a minimum of 30 days' notice of any change in the fees before such change shall take effect.

11.5 All invoices are payable within 30 days of the date of invoice.

11.6 All sums payable by either Party pursuant to the Contract are exclusive of VAT at the current rate or any other tax (except corporation tax), for which the Client shall be additionally liable. All payments by the Client shall be made in pounds sterling without any set-off, withholding or deduction. Any amendment to the standard VAT rate will be notified in writing and subsequent payments adjusted accordingly.

11.7 In addition, the Client shall reimburse us additionally for any and all actual, reasonable travel expenses, any incidental expenses for materials used and for third party goods and services supplied in

connection with the provision of the Application or Services.

11.8 If we either provide any services not included within the Services originally quoted for or provide the Services outside of our normal business hours at the request of the Client, we reserve the right to charge for the same at our Standard Rates applicable at the time.

11.9 Time for payment shall be of the essence of the Contract. If the Client fails to make payment in full on the due date, or fails to comply with the Client's obligations as listed in clause 7, the whole of the balance of the Quotation then outstanding shall become immediately due and payable and, without prejudice to any other right or remedy available to us, we shall be entitled to:

11.9.1 appropriate any payment made by the Client to any outstanding sum;

11.9.2 charge interest on the amount outstanding from the due date to the date of receipt by us (whether before or after judgment), at the annual rate of 4% above the then current Bank of England base lending rate, accruing daily and compounded quarterly;

11.9.3 suspend all further provision of the Services or access to the Application until the Client remedies the default;

11.9.4 shut the Application down and/or reuse it at our sole discretion, should any payments remain outstanding for a period of 3 months or more;

11.9.5 not be held liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from our failure or delay in performing any of our obligations as a result; and

11.9.6 claim for any and all costs (including legal costs) or losses sustained or incurred by us arising directly or indirectly from the Client's default.

12. Cancellation & Termination

12.1 Upon acceptance of the Quotation, the Client shall no longer be entitled to cancel the Application or Services to be provided, except with our agreement in writing and provided that the Client indemnifies us in full against all losses (including loss of profit), costs, damages, charges and expenses incurred by us as a result of the cancellation. Where the Client is an agency, the Client shall remain subject to these cancellation provisions, regardless of whether the Client's customer has cancelled their contract with the Client.

12.2 As detailed in clause 5.2 above, the Contract will be for an initial term of 3 years commencing on the Launch Date and thereafter will be automatically renewed for successive one year periods (each being a separate "Renewal Period"), on the same Terms and Conditions (with the exception of the price) until and unless written notice to terminate is given by the Client. Such written notice must be given not less than 90 days before the end of the Minimum Period or a Renewal Period and shall be effective only at the end of that specific Period.

12.3 Subject to clause 12.1, either party may terminate this Contract:

12.3.1 forthwith on giving notice in writing to the other if one party commits any serious and material breach of any term of this Contract and (in the case of a breach capable of being remedied) shall have failed, within 14 days after the receipt of the request in writing from the other to do so, to remedy the breach;

12.3.2 if the other party goes into bankruptcy, liquidation or administration either voluntary or compulsory (save for the purposes of bona fide corporate reconstruction or amalgamation), if a receiver is appointed in respect of the whole or any part of its assets, or if the other party ceases, or threatens to cease, to carry on business.

12.4 We may terminate this Contract forthwith:

12.4.1 if the Client fails to pay any sum due under the terms of this

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Contract and such sum remains unpaid for 14 days after we have given written notice that such sum has not been paid; or

12.4.2 if we give the Client 90 days' written notice before the end of the Minimum Period or a Renewal Period and shall be effective only at the end of that specific Period.

12.5 The Contract cannot otherwise be cancelled and in this event, no refund will be provided and the Services will remain available to the Client until officially terminated.

12.6 Upon termination of this Contract for any reason, we will invoice the Client in full for the Fees relating to the Application delivery and the Services as quoted and owing for the remainder of the Contract term and such sum shall become immediately due and payable.

12.7 Termination of the Contract, howsoever arising, shall not affect or prejudice the accrued rights of the parties as at termination or the continuation of any provision expressly stated to survive or implicitly surviving termination.

12.8 Upon termination, the Client's access and licence to use any Software provided by us shall terminate immediately and we will irretrievably delete any Client Data contained in the Software.

12.9 In the event of any breach or suspected breach by the Client, we reserve the right to immediately disable the Client's account and access to any Software provided by us, until we have investigated the breach.

12.10 The rights to terminate this Contract provided by clause 12 shall not prejudice any other right or remedy of either Party in respect of the breach concerned (if any) or any other breach.

13. Limitation of Liability

13.1 The following provisions set out our entire liability (including any liability for the acts or omissions of our employees) to the Client in respect of any breach of the Contract and any representation, statement or tortious act or omission (including negligence) arising out of or in connection with the Contract.

13.2 All warranties, conditions and other terms implied by statute or common law are excluded from the Contract to the fullest extent permitted by law.

13.3 Nothing in these terms and conditions excludes, limits or seeks to exclude or limit our liability for death or personal injury caused by our negligence or fraud or fraudulent misrepresentation.

13.4 Subject to clause 13.3:

13.4.1 we shall not be liable for any loss of profits, loss of business, depletion of goodwill or similar losses or for any special, indirect or consequential loss, costs, damages, charges or expenses howsoever arising even if the loss is reasonably foreseeable or the Company has been advised of the possibility of the Client incurring it; and

13.4.2 our total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the fees paid by the Client for the delivery of the Application or for the 3 months immediately surpassed of the Services if the claim is made after 3 months of the Launch Date;

13.4.3 we accept no responsibility whatsoever for third party services, including, but not limited to, the Application not functioning properly on certain browsers, devices or plug-ins not responding;

13.4.4 we accept no responsibility whatsoever where our Services have been provided on a non-chargeable basis; and

13.4.5 we accept no responsibility whatsoever where the Client has requested and been granted access (via FTP or other such methods) to the server on which the Application is hosted and its data is stored.

13.5 We will provide the Client with such information and advice in connection with the Application and Services as the Client may, from time to time, reasonably require. However, we accept no responsibility for any actions taken or not taken as a result of such advice or recommendations, nor shall we be liable for any consequences should any professional advice not be taken.

14. Intellectual Property

14.1 The Client warrants that any document, logo or instruction furnished or given by them shall not cause us to infringe any letter patent, registered design or trade mark in the delivery of the Application, any bespoke additions or modifications, or the execution of these Services. The Client shall indemnify and keep us indemnified against all losses, damages, costs (including legal costs), claims and expenses incurred by us in connection with any claim for infringement of any third party Intellectual Property Rights which results from our use of any document, logo or instruction given to us by the Client.

14.2 The Client shall not be entitled to use any design or specification created during the delivery of the Application or provision of the Services until they have been handed over by us. Upon completion and handover of the Application and Services, and provided payment is made in accordance with the terms of payment herein, we will extend to the Client any Intellectual Property Rights belonging to us which may subsist in the design or specification created by us. However, we retain all Intellectual Property Rights which may subsist in the Application and Software provided by us.

14.3 Any Intellectual Property Rights we may grant shall be automatically revoked if the Client breaches any of these Terms and Conditions, or if this Contract is cancelled or terminated in accordance with clause 12 above.

14.4 We reserve the right to take such actions as may be appropriate to restrain or prevent infringement of any Intellectual Property Rights. The Client shall immediately bring to the attention of the Company any infringement or suspected infringement of any of the Intellectual Property Rights licensed hereunder of which it is aware and shall at the request and expense of the Company take such action or assist the Company in taking such action as the Company may deem appropriate to protect the Intellectual Property Rights.

14.5 We reserve the right to use any designs or specifications created by us, together with the Client's company name and logo, in any advertising or promotional material, publications, print, or for any other purpose required by us.

14.6 The Software, together with any and all intellectual property rights of whatever nature which now or in the future subsist in the Software are and shall remain our property. The Contract does not constitute a sale of the original Software or any copies thereof.

14.7 The Client must notify us immediately if it becomes aware of any unauthorised use of the whole or any part of the Software by any person or third party.

14.8 We will defend, at our own expense, any claim brought against the Client alleging that the use of the Software infringes the intellectual property rights of a third party and we shall pay all reasonable costs and damages awarded or agreed to in settlement of such a claim provided that the Client:

14.8.1 gives us the sole authority to defend or settle the claim;

14.8.2 furnishes us with prompt written notice of the alleged claim; and

14.8.3 provides us with reasonable assistance in respect of the claim.

14.9 We shall have no liability for any such claim resulting from any modification of any part of the Software by any party other than us or an authorised agent of ours.

15. Confidentiality

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15.1 Each party shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed as such by one party to the other. Each party shall restrict disclosure of such confidential material to such of its employees as need to know the same expressly for the purpose of discharging its obligations under the Contract and shall ensure that such employees are subject to corresponding obligations of confidentiality.

15.2 All materials, drawings, specifications or data supplied by us to the Client shall at all times be and remain our exclusive property, but shall be held by the Client in safe custody at its own risk until returned to us, and shall not be disposed of or used other than in accordance with our written instructions or authorisation.

15.3 This clause 15 shall survive termination of the Contract, however caused.

16. No Employment

16.1 Nothing in this Contract shall render or be deemed to render us an employee or agent of yours or you an employee or agent of ours.

16.2 Nothing in this Contract shall constitute or be deemed to constitute a partnership, joint venture, agency or other fiduciary relationship between the Parties other than the contractual relationship expressly provided for in this Contract. Neither Party shall have the authority to act in the name of or on behalf of, or otherwise to bind, the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

17. Non-Solicitation

17.1 Neither party shall, during the continuance of the Contract, or within 12 months of its termination or expiry, whether on behalf of itself or any third party, solicit or seek to entice away any employee of the other unless express permission is granted by the other party in writing. In the event of breach of this clause, the party in default shall pay the other a sum equal to six months gross pay of the employee concerned, being a pre-estimate of the cost of recruitment and training a replacement.

18. Data Protection

18.1 If any Personal Data (as defined by the Data Protection Act 1998) is passed to us under the Contract then the parties agree that the Client is the Data Controller and that we are the Data Processor.

18.2 We shall:

18.2.1 process the Personal Data only to the extent, and in such manner, as is necessary for the delivery of the Application or provision of the Services or as is required by law or any regulatory body;

18.2.2 implement appropriate measures to protect the Personal Data against unauthorised or unlawful processing or loss, destruction, damage, alteration or disclosure; and

18.2.3 take reasonable steps to ensure the reliability and confidentiality of any of our personnel who have access to the Personal Data.

18.3 We may transfer and store Personal Data outside of the European Economic Area ("EEA"). If this is to occur, we will advise the Client in advance. The Client is entitled to request that Personal Data is not transferred or stored outside of the EEA, however the provision of alternative means may incur additional costs that would be chargeable to the Client.

18.4 The Company adheres to a comprehensive Data Protection Policy which is available from and updated from time to time at <https://www.zincdigital.com/gdpr>

19. Force Majeure

19.1 We shall not be liable to the Client for any breach of our obligations under the Contract if such breach is due to an act, event, omission or accident beyond our reasonable control (a "Force Majeure Event") including but not limited to: power failure, internet service provider failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is beyond our reasonable control.

19.2 If a Force Majeure Event occurs, we shall inform the Client as soon as possible and take all reasonable steps to mitigate the effects of the event and resume performance of our obligations as soon as possible.

20. Waiver

20.1 No failure or delay by either Party in exercising any of its rights under this Contract shall be deemed to be a waiver of that right, and no waiver by either Party of a breach of any provision of the Contract shall be deemed to be a waiver of any subsequent breach of the same or any other provision.

21. Entire Agreement

21.1 The Contract constitutes the whole agreement between the parties and supersedes any and all previous agreements between the parties relating to its subject matter. This Contract may only be amended by an express agreement between the parties signed by both Parties.

21.2 In entering into the Contract, the Client acknowledges that it does not rely on, and waives any claim for breach of, any such statement, representation, assurance or warranty (whether made negligently or innocently) which has not been confirmed in writing by an authorised officer of ours.

22. Assignment

22.1 The Client shall not, without our prior written consent, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

22.2 We may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of our rights or obligations under the Contract, without the consent of the Client.

23. Survival on Merger or Acquisition

23.1 In the event the Client is acquired during the Minimum Period, or is the non-surviving party in a merger, or sells all or substantially all of its assets, this Agreement shall not be terminated, and the transferee or surviving company shall assume and be bound by the provisions of this Agreement.

24. Third Party Rights

24.1 The Contract is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns, and is not intended to benefit, or be enforceable by, any other party.

25. Notices

25.1 Any Notice required to be given pursuant to this Contract shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post or by e-mail to the address of the party as set out in these Terms and Conditions, or such other address as may be notified by one party to the other.

25.2 A Notice delivered by hand is deemed to have been received when delivered (or, if delivery is not in business hours, 9.00am on the first business day following delivery). A correctly addressed Notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it should have been delivered by the recognised postal service. An e-mail shall be deemed to have been delivered within 24 hours from the time of being sent, provided that no "non-deliverable" notice is received by the sender.

Application & Services Agreement

26. Severance

26.1 In the event that one or more of the provisions of the Contract is found to be unlawful, invalid or otherwise unenforceable, that/those provision(s) shall be deemed severed from the remainder of this Contract. The remainder of the Contract shall be valid and enforceable.

27. Dispute Resolution Procedure

27.1 Any complaint or issue regarding the Application, Services or any invoice must be made in writing within 30 days from the date of the issue or from the date of invoice.

27.2 The Client recognises that our business relies upon the protection of our Intellectual Property Rights ("IPR"). In the event of a breach or threatened breach of IPR, we may suffer irreparable damage and may therefore be entitled to injunctive or other equitable relief in order to prevent a breach or threatened breach of our IPR.

27.3 With respect to all other disputes which are not IPR related, the following clauses 27.4 - 27.6 shall apply.

27.4 In the event of a dispute, the directors or other senior representatives of the parties with authority to settle the dispute will, within 7 days of a written request from one party to the other, meet promptly in good faith to resolve the dispute.

27.5 If the dispute is not resolved in accordance with clause 27.4, the dispute shall be referred to mediation and the mediator shall be appointed by the Centre for Dispute Resolution.

27.6 If no mediation takes place within 28 days of the request under clause 27.5, then the matter shall be referred to an expert, to be appointed, in default of agreement, on the request of either party to the President of the Law Society. He or she shall act as an independent expert and not as an arbitrator and his or her decision (including as to costs) shall, except in the case of manifest error, be final and binding upon us and the Client.

28. Governing Law & Jurisdiction

28.1 The Contract and these Terms and Conditions (including any non-contractual matters and obligations arising therefrom or associated therewith) shall be governed by, and construed in accordance with, the laws of England and Wales.

28.2 Subject to the provisions of clause 27, any dispute, controversy, proceedings or claim between the Parties relating to these Terms and Conditions or the Contract (including any non-contractual matters and obligations arising therefrom or associated therewith) shall fall within the jurisdiction of the courts of England and Wales.

Appendix 1 - Commercials

All commercials will be as per the Quotation.

Appendix 2 - Support Service

The Support Service (part of the Services) is intended to assist, troubleshoot and resolve specific tasks resulting from use of the Application on a supported platform as well as provide maintenance of, and incremental enhancements to, the Application over the Term. The list of items covered in the Support Service is as follows:

- Assistance with using the Application with the existing fields and functionality that has been built as part of the Quotation;
- Content insertion, adding and editing of records, adding and editing of staff and administrators;
- Setting up, modifying and applying configurations;
- Corrections and bug fixes to the Application (both visual and functional) after the first 30 days following delivery;
- Minor changes or improvement requests to the Application as requested by the Client on an ad hoc basis;
- Browser- and device-related updates and amendments to the Application;
- Bespoke additions or modifications and new developments outside of the existing capability of the Application where planned and agreed by the Client and the Company;
- Design items (banners, layers, in-content styling);
- Optimisation of the Application for speed;
- General advice, guidance, and training;
- Restoring data from back-ups;
- Hosting infrastructure maintenance and security updates;
- Changes/recommendations made by third party reports as collectively agreed by the Client and the Company;
- General time spent looking into requests, analysing and providing feedback (via email, phone, ticketing system or other);
- Review meetings/phone calls;
- Support performance and activity reporting;
- Assisting the Client with marketing and presenting the Application; and
- Strategy planning and vision for Application development in line with future Client objectives.

The above items may be carried out in either a reactive (as and when requirements arise) or proactive (pre-planned) capacity, and all time spent will be charged as 'Pay-As-You-Go Support' or will contribute towards the 'Enterprise Support' monthly hours allocation as detailed in Appendix 1.

A maximum of 50% of the 'Enterprise Support' monthly hours allocation due to be provided in the Support Service may be rolled forward to the immediately following month but not beyond. Hours may be spread across Affiliates as a collective, however no refund will be eligible for hours not used.

The Support Service provided by the Company will be '2nd Line' in nature, meaning the Company will liaise with the primary contact as stipulated in clause 7.1.2 or other staff members reporting to him. For the avoidance of doubt, the Company will not be providing support directly to end users (those who contribute towards the User Licence count) or members of the public under this Agreement.

Standard operating hours for the Support Service are 09:00 to 17:00 from Monday to Friday, excluding Public Holidays.

A minimum time log of 15 minutes will be applied to each task and request that is raised. This may subsequently be increased after further assessment of the task or request.

Response times to tickets raised are determined by their priority level (P1, P2, P3, or P4). The Client may state a priority level on raising the ticket however the Company reserves the right to re-assign the ticket to a different priority level after conducting its own initial assessment.

The Application will be compatible for use on the following browsers and operating systems:

Browser-based:

- Chrome (latest 3 versions)
- IE/Edge (latest 3 versions)
- Firefox (latest 3 versions)
- Safari (latest 3 versions)

Mobile app:

- Android (latest 3 versions)
- iOS (latest 3 versions)

The Company utilises cross-browser testing and app simulation tools that enable its Support Team to test the Application across various platforms and mobile devices without requiring users to install virtual machines, devices or emulators. As such, the Support Team will best endeavour to replicate the reported item however the Client may be required to provide specific details and evidence where replication of the item cannot be achieved.

When notifying us of a defect or error, the Client should follow the correct procedure for communicating that defect or error in such a way that we can locate and replicate the same, and provide us with a documented example of such defect or error.

We accept no responsibility for defects, errors or data loss where the Client has requested and been granted access (via FTP or other such methods) to the server on which the Application is hosted and its data is stored.

Client users are required to meet the minimum system requirements before accessing and using the Application via any of the compatible browsers. The Company is not obliged to provide support for users accessing the Application on any system that does not meet the specified criteria.

Appendix 2 - Support Service

To use the Application on a PC:

- Windows 8, Windows 8.1, Windows 10 or later
- An Intel Pentium 4 processor or later that's SSE2 capable
- Note: Servers require Windows Server 2008 R2, Windows Server 2012, or Windows Server 2016.

To use the Application on Mac:

- OS X Mavericks 10.9 or later

To use Chrome on Linux:

- 64-bit Ubuntu 14.04+, Debian 8+, openSUSE 13.3+, or Fedora Linux 24+. An Intel Pentium 4 processor or later that's SSE2 capable

Appendix 3 - Hosting Service

Unless otherwise stated in the Quotation, the Company provides the Client with a shared cloud hosting infrastructure for the hosting of the Application, with daily data back-ups taken with 30 day retention.

The Company partners with third party hosting specialists to provide enterprise-grade physical security whereby all data centres are restricted by authentication and 24x7x365 surveillance, and adhere to ISO 27002, ISO 27001, PCI-DSS (Payment Card Industry Data Security Standard), SSAE16, SOC 1, SOC 2, SOC 3, Safe Harbor, Content Protection & Security Standard (CPS).

Time spent managing the Hosting Service will be attributed to the Support Services time logs.

The Fees for the Hosting Service are stated in the Quotation. The Company reserves the right to modify the Hosting Service from time to time in the interest of future improving operational delivery, service reliability, and security.

Appendix 4 - User Licence Fees

Where applicable, the Licences fees operate on a cascading basis according to the number of licences (users of the Application with activated accounts at any point within the calendar month in which to be able to log in to and use the Application) and the bands in which they fall. The amount is charged in full for each band before reducing for the licence in the next band up only.

The different user types are as follows:

- 1-Way: refers to any user with an activated account at any point within the calendar month who has the ability to receive and view content and communications through the Application but not add, edit, or send information back to the central database (for example, the user can receive alerts and notifications, view documents and resources, view incident reports, etc); and
- 2-Way: refers to any user with an activated account at any point within the calendar month who has the ability to send and receive content and communications through the Application (for example, submit incident reports, send alerts and notifications, receive and complete tasks and checklists, etc).

The Client will allocate a single user per User Licence only and not attempt to share User Licences across multiple users. Such an action will constitute a material breach of the Terms and Conditions of this Agreement.

The User Licence Fees are stated in the Quotation. The Company reserves the right to modify the User Licence Fees from time to time.

Appendix 5 - Standard Rates

The Company adopts the following rates that will apply to all activities conducted as part of the Agreement unless otherwise agreed. The Company reserves the right to modify the Standard Rates from time to time.

Role	Hourly Rate
Director	£120.00
Technical Project Manager	£75.00
Senior Technician	£75.00
Technician / Developer	£75.00
Support Analyst	£75.00
Designer	£75.00
Infrastructure Technician	£75.00