

Licence Supply Agreement

GENERAL TERMS

1. INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply in this agreement.

“Business Day”	<i>a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business;</i>
“Delivery”	<i>completion of delivery of an Order in accordance with the Order Terms;</i>
“Delivery Date”	<i>the date specified for delivery of an Order;</i>
“Delivery Location”	<i>the location specified for delivery of an Order in the Order Terms;</i>
“Intellectual Property Rights”	<i>all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including 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. “Intellectual Property Right” means any one of the Intellectual Property Rights;</i>
“IP Licence”	<i>The licence set out in Annexe 1.</i>
“Order”	<i>means an order of Products as set out in the Order Terms;</i>
“Order Terms”	<i>those terms set out on front sheet</i>
“Products”	<i>the products set out on front sheet;</i>
“Product Price”	<i>the price of the Products as set out on front sheet;</i>

“Specification”	<i>the specification of the Products (if any) set out in the Annexe 2;</i>
“subsidiary”	<i>has the meaning given in sections 736 and 736A of the Companies Act 1985 and section 1159 Companies Act 2006;</i>
“VAT”	<i>value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement or additional tax;</i>
“year”	<i>a calendar year.</i>

- 1.1. *Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.*
- 1.2. *The schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement and any reference to this agreement includes the schedules.*
- 1.3. *A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.*
- 1.4. *A reference to one gender shall include a reference to the other genders.*
- 1.5. *A reference to a statute, statutory provision or any subordinate legislation made under a statute is to such statute, provision or subordinate legislation as amended or re-enacted from time to time whether before or after the date of this agreement and, in the case of a statute, includes any subordinate legislation made under that statute whether before or after the date of this agreement.*
- 1.6. *A reference to writing or written includes faxes and e-mail.*
- 1.7. *Any obligation in this agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.*
- 1.8. *A reference to an agreement is a reference to that agreement as varied or novated (in each case, other than in breach of the provisions of this agreement) at any time.*
- 1.9. *References to clauses and schedules are to the clauses and schedules of this agreement; references to paragraphs are to paragraphs of the relevant schedule.*
- 1.10. *Unless otherwise expressly provided, the obligations and liabilities of the Supplier and the Customer under this agreement are joint and several.*
- 1.11. *Any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.*

2. SUPPLY OF THE PRODUCTS AND SERVICES

- 2.1. *Where the Customer has requested the supply of Products by signing the front sheet of this Agreement, the Supplier shall supply the Products to the Customer in accordance with this Agreement and the Order Terms.*
- 2.2. *Where the Customer wishes to order additional products or services other than those specified in the Order Terms and/or Services Order Terms, the parties shall agree additional order terms and/or services order terms which, once signed by the parties, shall constitute additional Order Terms and/or Services Order Terms pursuant to this Agreement and shall be governed in all other respects in accordance with the Terms of this Agreement.*

3. SUPPLY OF PRODUCTS

- 3.1. *The Products supplied to the Customer by the Supplier under this agreement shall:*
 - 3.1.1. *conform to the Specification (if any);*
 - 3.1.2. *be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Supplier or made known to the Supplier by the Customer;*
 - 3.1.3. *Comply with all applicable statutory and regulatory requirements.*
- 3.2. *The Products shall be properly packed and secured in such manner as to enable them to reach their destination in good condition.*

3.3. *The Supplier shall obtain and maintain in force all licenses, permissions, authorisations, consents and permits needed to manufacture and supply the Products in accordance with the terms of this agreement.*

3.4. *The Supplier shall ensure that it at all times comply strictly with the provisions of all applicable statutory and regulatory provisions insofar as they apply to the supply of Products. The Supplier shall ensure that it does nothing to cause the customer to be in breach of the same.*

3.5. *The Supplier agrees to comply with all applicable laws, statutes, regulations relating to anti-bribery and anti-corruption including but not limited to the Modern Slavery Act 2015 or the UK Bribery Act 2010 and not engage in any activity, practice or conduct which would constitute an offence under the UK Bribery Act 2010.*

4. DELIVERY

4.1. *The Supplier shall deliver each Order to the Delivery Location by the Delivery Date. The Supplier shall not deliver an Order more than five Business Days in advance of the Delivery Date without the prior consent of the Customer.*

4.2. *Delivery of an Order shall be complete on its arrival and operational installation at the Delivery Location.*

4.3. *The Supplier may deliver Orders by instalments, which may be invoiced and paid for separately. Where Orders are to be delivered by instalments, they may be invoiced and paid for separately. References in this agreement to Orders shall, where applicable, be read as a reference to instalments.*

4.4. *If the Customer fails to accept delivery of an Order on the specified Delivery Date, then, except where such failure or delay is caused by the Supplier's failure to comply with its obligations under this agreement:*

4.4.1. *risk in the Products comprising the Order shall pass to the Customer from the time of attempted delivery by the Supplier;*

4.4.2. *the Order shall be deemed to have been delivered on the Delivery Date; and*

4.4.3. *The Supplier shall store the Order until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).*

4.5. *If the Supplier requires the Customer to return any packaging materials to the Supplier, that fact must be clearly stated on the delivery note accompanying the relevant Order, and any such returns shall be at the Supplier's expense.*

4.6. *Upon delivery of the Products by the Supplier to the Customer, the Customer shall be deemed to have agreed to the terms of the Software Licence set out in Annex 1.*

5. ACCEPTANCE AND DEFECTIVE PRODUCTS

5.1. *The Customer shall not be deemed to have accepted any Products until it has had a reasonable time to inspect and test the Products following Delivery, or, in the case of a latent defect in the Products, until a reasonable time after the latent defect has become apparent.*

5.2. *If any Products delivered to the Customer do not comply with clause 5.1, or are otherwise not in conformity with the terms of this agreement, then, without limiting any other right or remedy that the Customer may have, the Customer may reject those Products and:*

5.2.1. *require the Supplier to repair or replace the rejected Products at the Supplier's risk and expense within 30 Business Days of being requested to do so; or*

5.2.2. *Require the Supplier to repay the price of the rejected Products in full (whether or not the Customer has previously required the Supplier to repair or replace the rejected Products).*

5.3. *The Customer's rights and remedies under this clause 6 are in addition to the rights and remedies available to it in respect of the statutory conditions relating to description, quality, fitness for purpose and correspondence with sample implied into this agreement by the Sale of Goods Act 1979.*

5.4. *The terms of this agreement shall apply to any repaired or replacement Products supplied by the Supplier.*

5.5. *If the parties dispute whether any Products comply with clause 3.1, either party may refer the matter to an independent expert.*

6. TITLE AND RISK

6.1. *The risk in Products shall remain with the Supplier until Delivery has taken place in accordance with clause 4.2.*

6.2. *Title to Products shall pass to the Customer.*

7. TERMS OF PAYMENT

- 7.1. *The Supplier shall be entitled to invoice the Customer for each Order on or at any time after Delivery of the licence or equipment in relation to the installation*
- 7.2. *The Customer shall pay invoices in full within 30 days of receipt. Payment shall be made to the bank account detailed in the Order Confirmation or otherwise in writing by the Supplier.*
- 7.3. *If a party fails to pay any amount due to the other (excluding any amount contested in good faith) by the due date for payment, then, without limiting the other party's remedies under this Agreement, that party shall pay interest on any outstanding amount at the rate of 4% per annum above Barclays Bank Plc's base lending rate from time to time, from the due date for payment until the payment is made in full, whether before or after judgment.*
- 7.4. *If the Customer disputes any invoice or other statement of monies due, the Customer shall immediately notify the Supplier in writing. The parties shall negotiate in good faith to attempt to resolve the dispute promptly. The Supplier shall provide all such evidence as may be reasonably necessary to verify the disputed invoice or request for payment. Where only part of an invoice is disputed, the undisputed amount shall be paid on the due date as set out in clause 7.2.*
- 7.5. *Blank*
- 7.6. *Each party may, without limiting any other rights or remedies it may have, set off any amounts owed to it by the other party under this agreement against any amounts payable by it to the other party under this agreement.*
- 7.7. *All payments payable to the Supplier or the Customer under this agreement shall become due immediately on its termination. This clause 7.6 is without prejudice to any right to claim for interest under the law or under this agreement.*

8. INSURANCE

- 8.1. *During this agreement the Supplier shall maintain in force the following insurance policies with reputable insurance companies:*
- 8.1.1. *public liability insurance; and*
- 8.1.2. *Product liability insurance.*
- 8.2. *On the Customer's written request, the Supplier shall provide the Customer with copies of the insurance policy certificates and details of the cover provided.*
- 8.3. *The Supplier shall ensure that any subcontractors also maintain adequate insurance having regard to the obligations under this agreement which they are contracted to fulfil.*
- 8.4. *The Supplier shall:*
- 8.4.1. *do nothing to invalidate any insurance policy or to prejudice the Customer's entitlement under it; and*
- 8.4.2. *Notify the Customer in writing if any policy is (or will be) cancelled or its terms are (or will be) subject to any material change.*
- 8.5. *The Supplier's liabilities under this agreement shall not be deemed to be released or limited by the Supplier taking out the insurance policies referred to in clause 8.1.*

9. LIMITATION OF LIABILITY

- 9.1. *This clause sets out the entire financial liability of the parties (including any liability for the acts or omissions of their respective employees, agents and subcontractors) to each other in respect of:*
- 9.1.1. *any breach of this agreement;*
- 9.1.2. *any representation, statement or tortious act or omission (including negligence) arising under or in connection with this agreement.*
- 9.2. *Nothing in this agreement shall limit or exclude the liability of either party for:*
- 9.2.1. *Death or personal injury resulting from negligence; or*
- 9.2.2. *fraud or fraudulent misrepresentation; or*
- 9.2.3. *breach of the terms implied by section 12 of the Sale of Goods Act 1979; or*
- 9.2.4. *defective products that arises under the Consumer Protection Act 1987; or*
- 9.2.5. *the indemnities contained in clause 13.*

9.3. Subject to clause 9.2, neither party shall be liable to the other, whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation or otherwise for:

- 9.3.1. loss of profit; or
- 9.3.2. loss of goodwill; or
- 9.3.3. loss of business or business opportunity; or
- 9.3.4. loss of anticipated saving; or
- 9.3.5. any special, indirect or consequential damage or loss suffered by the other party. However, Accessit Cloud undertake through their chosen Cloud hosted partner to maintain a backup copy of all data for any agreed retention period. We would also recommend that the client asks annually for a copy of the database to store in their own environment for their own records.

9.4. Subject to clause 9.2 and clause 9.3, the Supplier's total liability arising under, or in connection with, this agreement, whether in tort (including negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise, shall be limited to the total price paid for the Product which is the subject of the claim.

10. ASSIGNMENT AND SUBCONTRACTING

10.1 Neither party may assign or transfer or subcontract any of its rights, benefits or obligations under this agreement without the prior written consent of the other party.

11. CONFIDENTIALITY

11.1. Each party undertakes that it shall not at any time during this agreement and for a period of one year after termination disclose to any person any confidential information disclosed to it by the other party concerning the business or affairs of the other party including information relating to a party's operations, processes, plans, product information, know-how, designs, trade secrets, software, market opportunities and customers ("Confidential Information"), except as permitted by clause 11.2.

11.2. Each party may disclose the other party's Confidential Information:

11.2.1. to its employees, officers, agents, consultants or subcontractors ("Representatives") who need to know such information for the purposes of carrying out the party's obligations under this agreement, provided that the disclosing party takes all reasonable steps to ensure that its Representatives comply with the confidentiality obligations contained in this clause 11 as though they were a party to this agreement. The disclosing party shall be responsible for its Representatives' compliance with the confidentiality obligations set out in this clause; and

11.2.2. as may be required by law, court order or any governmental or regulatory authority.

11.3. Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information other than those expressly stated in this agreement are granted to the other party or to be implied from this agreement. In particular, no licence is hereby granted directly or indirectly under any patent, invention, discovery, copyright or other intellectual property right held, made, obtained or licensable by either party now or in the future.

12. TERMINATION

12.1. Blank

12.2. Each party may at any time terminate this agreement in relation to the provision of Services (as defined by using any element of the hosted service) by giving the other party not less than three months' notice in writing.

12.3. A party shall be entitled to terminate this agreement with immediate effect by giving notice in writing to the other party if:

12.3.1. the other party fails to pay any undisputed 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; or

12.3.2. the other party commits a material breach of its obligations under this agreement and (if such breach is remediable) fails to remedy that breach within a period of 30 days after receipt of notice in writing requiring it to do so; or

12.3.3. the other party suspends, or threatens to suspend, payment of its debts or is, or is deemed to be, insolvent or unable to pay its debts as they fall due for payment, or admits inability to pay its debts; or

12.3.4. the other party enters into any composition or arrangement with its creditors; or

12.3.5. an order is made, or a resolution is passed, or any analogous proceedings are taken for the winding-up, administration or dissolution (other than for the purposes of a solvent amalgamation or reconstruction) of the other party;

or

12.3.6. any liquidator, trustee in bankruptcy, receiver, administrative receiver, administrator or similar officer is appointed over, or in respect of, the other party or any part of its business or assets; or

12.3.7. 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; or

12.3.8. 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 12.2.4 to clause 12.2.8 (inclusive); or

12.3.9. the other party ceases, or threatens to cease, to carry on all or substantially the whole of its business; or

12.3.10. any Force Majeure Event prevents the other party from performing its obligations under this agreement for any continuous period of three months.

12.4. Termination of this agreement shall not prejudice any of the parties' rights and remedies which have accrued as at termination.

13. OBLIGATIONS ON TERMINATION

13.1. Each party shall promptly:

13.2. return to the other party all equipment, materials and property belonging to the other party that the other party had supplied to it in connection with the supply of the Products and the Services under this agreement;

13.3. return to the other party all documents and materials (and any copies) containing the other party's Confidential Information;

13.4. erase all the other party's Confidential Information from its computer systems (to the extent possible); and

13.5. on request, certify in writing to the other party that it has complied with the requirements of this clause 13.

14. SURVIVAL OF OBLIGATIONS

14.1. On termination of this agreement the following clauses shall survive and continue in full force for one year and effect:

14.2. clause 9;

14.3. clause 11;

14.4. Blank;

14.5. clause 13 (to be applicable until completed within the one year);

14.6. clause 20;

14.7. clause 21; and

14.8. Clause 23.

14.9. FORCE MAJEURE

14.10. Neither party (or any person acting on its behalf) shall have any liability or responsibility for failure to fulfil any obligation under this agreement so long as, and to the extent to which, the fulfilment of such obligation is prevented, frustrated, hindered or delayed as a consequence of a Force Majeure Event.

14.11. A party claiming the benefit of this provision shall, as soon as reasonably practicable after the occurrence of any such event:

14.12. notify the other party of the nature and extent of such Force Majeure Event; and

14.13. use all reasonable endeavours to remove any such causes and resume performance under this agreement as soon as feasible.

14.14. For the purposes of this clause 17, a "Force Majeure Event" means an event beyond the control of a party (or any person acting on its behalf), which by its nature could not have been foreseen by such party (or such person), or, if it could have been foreseen, was unavoidable, and includes acts of God, storms, floods, riots, fires, sabotage, civil commotion or civil unrest, interference by civil or military authorities, acts of war (declared or undeclared) or armed hostilities or other national or international calamity or one or more acts of terrorism or failure of energy sources.

15. SEVERANCE

15.1. If any provision of this agreement (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

15.2. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

16. FURTHER ASSURANCE

16.1. Each party shall (at its own expense) promptly execute and deliver all such documents, and do all such things, or procure the execution and delivery of all documents and doing of all such things as are required to give full effect to this agreement and the transactions contemplated by it.

17. VARIATION AND WAIVER

17.1. Any variation of this agreement shall be in writing and signed by or on behalf of the parties.

17.2. Any waiver of any right under this agreement is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and to the circumstances for which it is given.

17.3. No failure to exercise or delay in exercising any right or remedy provided under this agreement or by law constitutes a waiver of such right or remedy, nor shall it prevent or restrict any future exercise or enforcement of such right or remedy.

17.4. No single or partial exercise of any right or remedy under this agreement shall prevent or restrict the further exercise of that or any other right or remedy.

18. NOTICES

18.1. A notice served under this agreement:

18.1.1. shall be in writing in the English language;

18.1.2. shall be signed by or on behalf of the party giving it;

18.1.3. shall be sent for the attention of the person, and to the address or fax number, given in this clause 19 (or such other address, fax number or person as the relevant party may notify to the other parties in accordance with the provisions of this clause 19); and

18.1.4. shall be:

18.1.4.1. delivered personally; or

18.1.4.2. sent by fax; or

18.1.4.3. sent by commercial courier; or

18.1.4.4. sent by pre-paid first-class post or recorded delivery; or

18.1.4.5. (if the notice is to be served by post outside the country from which it is sent) sent by commercial courier requiring signature on delivery.

18.2. The addresses for service of notice are as stated on the Frontsheet:

18.3. A notice is deemed to have been received:

18.3.1. if delivered personally, at the time of delivery; or

18.3.2. in the case of fax, at the time of transmission; or

18.3.3. if sent by commercial courier, at the time of signature of the courier's delivery receipt; or

18.3.4. in the case of pre-paid first class post or recorded delivery, 9.00 a.m. on the second Business Day after posting; or

18.4. For the purposes of this clause:

18.4.1. all times are to be read as local time in the place of deemed receipt; and

18.4.2. if deemed receipt under this clause is not within business hours (meaning 9.00 am to 5.30 pm Monday to Friday on any Business Day), the notice shall be deemed to have been received at the opening of business on the next Business Day in the place of receipt.

18.5. To prove delivery, it is sufficient to prove that the notice was transmitted by fax to the fax number of the party or, in the case of post, that the envelope containing the notice was properly addressed and posted.

19. ENTIRE AGREEMENT

19.1. This agreement constitutes the whole agreement and understanding of the parties and supersedes any previous arrangement, understanding or agreement between them relating to the subject matter of this agreement. Each party acknowledges that, in entering into this agreement, it has not relied on, and shall have no right or remedy in respect of, any statement,



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representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in this agreement, provided always that nothing in this clause shall limit or exclude any liability for fraud.

20. RIGHTS OF THIRD PARTIES

20.1 *No term of this agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this agreement, but this does not affect any right or remedy of a third party which exists or is available apart from under that Act.*

21. COUNTERPARTS

21.1 *This agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this agreement, but all the counterparts shall together constitute the same agreement.*

22. GOVERNING LAW AND JURISDICTION

22.1 *This agreement and any dispute or claim arising out of or in connection with it or its subject matter shall be governed by and construed in accordance with English law.*

22.2 *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.*