the **skills** network

EQUAL PROPOSAL

The Skills Network (TSN) proposes to offer members of the Blended Learning Consortium (BLC) access to our learning resources across our portfolio of accredited courses (level 1, 2 and 3 qualifications). Access to the online resources will be made available via our online learning platform EQUAL, which we will build a bespoke branded tenancy of for members of the BLC.

EQUAL allows learners to undertake their study in an exciting and interactive e-learning environment. The system not only supports learners' development, but also includes tutor access and intelligent data management tools which cover all aspects of blended and distance learning delivery.

This offer includes:

Access to our catalogue of learning resources for accredited courses (level 1, 2 and 3).

50 enrolments to be used across our catalogue of accredited course learning resources.

A fully branded EQUAL tenancy + waivered cost of building the branded tenancy + reduced cost per learner of just £20.

Full training, support, and account management will be provided by TSN throughout.

Customer name	Member of the Blended Learning Consortium
Term	12 months
Enrolments Included:	50 accredited enrolments.
Additional services (if applicable)	This agreement includes: • Access to paper-based and online learning materials. • Tutor access to mark and give online feedback • Full administration rights and access • Full branding of your EQUAL Tenancy • Full reporting suite • All system updates to learning content and learner management system • Full account management between TSN and member of BLC. • Full training and support will be provided by TSN. • Full operational manual to provide ongoing support and reference
RRP Cost	RRP for 50 resources for learners (£30 per enrolment) + cost of building branded tenancy (£1,000) = £2,500.
Introductory Offer Cost:	**£1,000 (wavered cost of building the system, £20 per learner cost instead of £30).**
Payment:	Payment will be invoiced to a chosen destination of BLC member. Additional fees apply for registration and certification with the awarding body. Please contact them for details of these fees.

Agreed Terms

1.   Interpretation

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

Agreement Particulars	means the particulars of this Agreement set out at the beginning of this Agreement
Charges	means the charges set out in the Agreement Particulars and payable by the Customer to TSN under clause 4 (Charges)
Commencement Date	means the date on which the Software is first made available by TSN for electronic access by the Customer
Customer	means as defined in the Agreement Particulars
Customer Data	means any data, information or material that the Customer or any User processes or creates in the course of using the Software
Data Controller	has the meaning set out in section 1(1) of the Data Protection Act 1998
Data Controller, Data Processor and Data Subject	have the respective meanings (or their corresponding equivalent meanings set out in the applicable DP Legislation
DP Legislation	means the Data Protection Act 1998, The General Data Protection Regulation (Regulation (EU) 2016/679) ("**GDPR**") and all other laws and regulations from time to time relating to the processing of personal data, including any which implement the GDPR or create broadly equivalent law in the United Kingdom.
Domain Name	means as defined in the Agreement Particulars
Environmental Information Regulations	means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations
FOIA	means the Freedom of Information Act 2000, and any subordinate legislation made under that Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation
FOI Legislation	means FOIA and the Environmental Information Regulations
Implementation Services	means the configuration of the Software for use by the Customer and the provision of five days' training to the

	Customer on the dates set out in the Agreement Particulars (or such other dates as the parties may agree in writing), such training to be delivered at TSN's premises at Unit 16, Abbey Court, Benedict Drive, Selby, North Yorkshire, YO8 8RY
Information	has the meaning given under section 84 of FOIA
Intellectual Property Rights	means patents, utility models, rights to inventions, copyright and related rights, trade marks and service marks, trade names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and to protect the confidentiality of, confidential information (including know-how and trade secrets) and any other intellectual property rights, whether registered or unregistered and including all applications for (and rights to apply for and be granted), renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist, now or in the future, in any part of the world
Open Source Software	means open source software as defined by the Open Source Initiative (http://opensource.org) or the Free Software Foundation (http://www.fsf.org)
Operating Manual	means TSN's reference guide for the use of the Software
Personal Data	has the meaning set out in the applicable DP Legislation and relates only to personal data, or any part of such personal data, in respect of which TSN is not the Data Controller and in relation to which TSN is providing services under this Agreement
Privacy Statement	means the privacy statement accessible via [https://lambeth.equal-online.com] or such other URL as notified from time to time by TSN, in each case as amended from time to time by TSN
Processing	has the meaning set out in the applicable DP Legislation and "**Process**" shall be construed accordingly.
Request for Information	means a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations
Services	means the Implementation Services, the Support Services and any other services set out in the Agreement Particulars
Software	means the learner management system software known as EQUAL, as more specifically described in the Operating Manual, including any and all modifications to, and updates, upgrades and new versions and releases of, such software in each case including all other works and material recorded and embodied in such software, including the audio and visual content in any screen displays in the user interface, and any other software set

	out in the Agreement Particulars
Support Services	means the support services to be provided by TSN pursuant to this Agreement, as set out in Schedule 1 (Support Services)
Term	means the period of operation of this Agreement, which subject to earlier termination in accordance with its terms shall be the period of time set out in the Agreement Particulars beginning on the Commencement Date
TSN	means The Skills Network Limited, a company registered in England (number 06445363) whose registered office is at Unit 16, Abbey Court, Benedict Drive, Selby, North Yorkshire, YO8 8RY and whose email address for the purposes of serving notices under this Agreement is finance@theskillsnetwork.co.uk
User	means an employee of the Customer to whom the Customer shall have granted access to use the Software
Working Day	means 8:30 am to 5:00 pm Monday to Friday in England, excluding official public holidays in England and Wales, and "Working Hours" shall be construed accordingly
Year	means the period of 12 months beginning on the Commencement Date, each subsequent period of 12 months thereafter and any shorter period following the end of the last full Year during the Term and ending on the date that this Agreement is terminated (howsoever caused)

1.2   Clause, Schedule and paragraph headings shall not affect the interpretation of this Agreement.

1.3   Unless the context otherwise requires:

1.3.1   words in the singular shall include the plural and in the plural shall include the singular;

1.3.2   a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time;

1.3.3   a reference to one gender shall include a reference to the other genders; and

1.3.4   any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.4   In the case of conflict or ambiguity between any provision contained in the clauses of this Agreement and any provision contained in the Schedules, the provision in the Schedules shall take precedence.

1.5   A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns.

1.6   References to clauses and Schedules are to the clauses and Schedules of this Agreement and references to paragraphs are to paragraphs of the relevant Schedule.

1.7   The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules.

2. Delivery and Acceptance

2.1 TSN shall make the Software available electronically to the Customer via the Domain Name, such access to be granted by TSN on or as soon as reasonably practicable after the date that this Agreement has been signed by both parties.

2.2 The Customer shall have a period of 7 days from the date that the Software is first made available to the Customer ("Acceptance Testing Period") within which to test whether the Software operates in accordance with the Operating Manual ("Acceptance Testing").

2.3 The Customer shall notify TSN within the Acceptance Testing Period if the Software does not operate in accordance with the Operating Manual, in which case TSN shall correct any such errors at TSN's cost and the Acceptance Testing procedure shall be repeated (with any subsequent Acceptance Testing Period beginning on the date that the relevant revision of the Software is made available to the Customer).

2.4 The Customer shall be deemed to have accepted the Software on the earlier of:

2.4.1 the Customer or any User commencing operational use of the Software; or

2.4.2 on expiry of the first or any subsequent Acceptance Testing Period if the Customer has not notified TSN that the Software does not operate in accordance with the Operating Manual during the relevant Acceptance Testing Period.

2.5 The Customer shall procure that each User has, prior to being provided with a user name and password, seen the Privacy Statement and provided acknowledgement that their personal data will be processed by TSN as set out in the Privacy Statement.

3. Licence

3.1 In consideration of the Customer paying the Charges to TSN, TSN shall:

3.1.1 grant to the Customer a non-exclusive and non-transferable licence for the Term to use the Software;

3.1.2 use reasonable endeavours to make the Software available for use by the Customer during the Term;

3.1.3 provide the Customer with access to a downloadable version of the Operating Manual; and

3.1.4 provide the Services, in each case in accordance with the terms of this Agreement.

3.2 The Customer acknowledges and agrees that:

3.2.1 for the purposes of clause 3.1, use of the Software by the Customer shall be restricted to:

(a) use of the Software by the Customer in object code form only for the purpose of processing the Customer's data for the normal business purposes of the Customer (which shall not include allowing the use of the Software by, or for the benefit of, any person other than an employee of the Customer); and

(b) subject to clause 3.8.1, permit Users to access the Software in object form only for the purpose of processing the Customer's data for the normal business purposes of the Customer;

3.2.2 the Customer's and the Users' access to the Software shall be by way of remote electronic access only;

3.2.3 neither the Customer or any User may use the Software other than as specified in this Agreement without the prior written consent of TSN, and the Customer acknowledges that additional fees may be payable on any change of permitted use approved by TSN;

3.2.4 neither the Customer or any User has any right (or shall permit any third party) to copy, adapt, translate, reverse engineer, decompile, disassemble, modify, create derivative works from, or make error corrections to, the Software in whole or in part except to the extent permitted by law; and

3.2.5 neither the Customer or any User may disclose the Operating Manual (including but not limited to any electronic or hard copy of the Operating Manual) to any third party without TSN's prior written consent, and the Customer shall procure that all Users comply with the provisions of this clause 3.2.

3.3 The Customer may not, and shall procure that no User shall, use any information provided by TSN or obtained by the Customer or any User during any reduction permitted under clause 3.2.4 to create any software whose expression is substantially similar to that of the Software nor use such information in any manner which would be restricted by any copyright subsisting in it.

3.4 The Customer shall not, without the prior written consent of TSN:

3.4.1 sub-license, assign or novate the benefit or burden of this Agreement in whole or in part;

3.4.2 allow the Software to become the subject of any charge, lien or encumbrance; or

3.4.3 deal in any other manner with any or all of its rights and obligations under this Agreement.

3.5 Subject to clause 6.6.3, TSN may at any time sub-license, assign, novate, charge or deal in any other manner with any or all of its rights and obligations under this Agreement.

3.6 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

3.7 Notwithstanding clause 5 (Confidentiality and Publicity) and 6.6.3, a party assigning any or all of its rights under this Agreement may disclose to a proposed assignee any information in its possession that relates to this Agreement or its subject matter, the negotiations relating to it and the other party which is reasonably necessary to disclose for the purposes of the proposed assignment.

3.8 The Customer shall:

3.8.1 ensure that the number of Users granted access to the Software does not exceed the number set out in the Agreement Particulars;

3.8.2 ensure that the Software is accessed only by Users who have received appropriate training to use the Software, only using equipment which satisfies the required specifications set out in the Operating Manual;

3.8.3 keep a complete and accurate record of the Customer's copying and disclosure of the Software and its Users, and produce such record to TSN on request from time to time;

3.8.4 use all reasonable endeavours to prevent any unauthorised access to, or use of, the Software and the Services and shall promptly notify TSN in the event that the Customer becomes aware of any such unauthorised access or use; and

3.8.5 pay, in respect of broadening the scope of the licences granted under this Agreement to permit any unauthorised or excessive use pursuant to clauses 3.8.1 or 3.8.4, an amount equal to the charges which TSN would have levied (in accordance with TSN's normal commercial terms then current) had TSN licensed any such excessive or unauthorised use on the date when such use commenced together with interest at the rate provided for in clause 4.5 (Charges), from such date to the date of payment.

3.9 The Customer shall permit TSN to inspect and have access to any premises (and to the computer equipment located there) at or on which the Software is being used, and have access to any records kept in connection with this Agreement, for the purposes of ensuring that the Customer is complying with the terms of this Agreement, provided that TSN provides reasonable advance notice to the Customer of such inspections, which shall take place at reasonable times.

3.10 The Customer shall not, and shall procure that no User shall, use the Software or any of the Services to access, store, distribute or transmit any:

3.10.1 viruses, worms, Trojan horses or any other file or program that is designed to disrupt, damage or limit the functioning of any software or hardware equipment;

3.10.2 material which is unlawful, harmful, threatening, inaccurate, defamatory, abusive, offensive, pornographic, racist, sexist, threatening, vulgar, obscene, hateful or otherwise inappropriate or which will constitute a criminal offence or give rise to civil liability or which may cause offence in relation to sexual orientation, age, religious belief, marital status, disability or working status; or

3.10.3 material which is protected by confidentiality, copyright, trade mark, database right or other proprietary right without the express permission of the copyright owner.

3.11 TSN shall be entitled to monitor the use of the Software in respect of all user accounts granted to Users for the purposes of establishing that the Customer and the Users are complying with this Agreement and for the purposes of developing TSN's systems and services.

3.12 The Customer:

3.12.1 warrants that all information provided or made available by the Customer to TSN, whether before or after the Commencement Date and including but not limited to information relating to any accreditations, registrations or endorsements held by the Customer, is complete, true, accurate and up to date in all respects; and

3.12.2 undertakes to notify TSN immediately in the event that any such information previously provided by the Customer ceases to be accurate.

3.13 The Customer shall:

3.13.1 not use the Software to deliver any course of education or training in respect of which the Customer is required to be registered, endorsed or accredited by an awarding organisation, unless the Customer has at all material times a valid registration, endorsement or accreditation with the relevant awarding organisation to do so;

3.13.2 not do, or fail to do, anything which, in the reasonable opinion of TSN, detrimentally affects or is likely to detrimentally affect the reputation or interests of TSN;

3.13.3 not act in any manner which, in the reasonable opinion of TSN, suggests that TSN endorses or is otherwise connected with any of the Customer's products or services; and

3.13.4 without prejudice to any other right or remedy of TSN, indemnify TSN against any and all costs, claims, threatened claims, demands, charges, liabilities, expenses, losses and fees (including without limitation reasonable legal and other professional fees), actions, proceedings, judgements awarded and damages suffered or incurred by the College arising, directly or indirectly, out of or in connection with any breach by the Customer of this clause 3.13.

3.14 Any breach by the Customer of clause 3.12 or 3.13 above shall be considered a material breach of this Agreement which is irremediable.

4. Charges

4.1 TSN shall issue to the Customer an invoice for the Charges due in respect of each Year on or before the first day of the relevant Year.

4.2 The Customer shall pay to TSN the Charges in the amount and in the manner set out in the Agreement Particulars.

4.3 The Charges shall be paid in full by the Customer without set-off, withholding or deduction.

4.4   All sums payable under this Agreement are exclusive of VAT and any relevant local sales taxes, for which the Customer shall be responsible and shall pay to TSN in addition at the prevailing rate.

4.5   Without prejudice to any other right or remedy of TSN under this Agreement, if the Customer fails to make any payment due to TSN under this Agreement by the due date for payment, TSN shall be entitled to exercise any or all of the following rights:

4.5.1   charge interest on the overdue amount at the rate of 5% per annum above Lloyd's Bank plc's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount; and

4.5.2   to suspend the Customer's access to the Software and TSN's provision of the Services until payment in full of the relevant Charges and any interest due in accordance with clause 4.4.1 has been received in cleared funds by TSN; and

4.5.3   in the event that the Customer fails to make any payment due to TSN within 30 days of the due date for payment, TSN shall be entitled to terminate this Agreement immediately by giving the Customer written notice.

4.6   In the event that TSN is required to issue proceedings against the Customer in order to recover any overdue sums payable by the Customer under this Agreement, the Customer shall indemnify TSN on demand in respect of any costs and expenses incurred by TSN in relation to such proceedings (including but not limited to legal fees).

5.   Confidentiality and Publicity

5.1   Each party shall, during the Term and thereafter, keep confidential all, and shall not use for its own purposes (other than implementation of this Agreement) nor without the prior written consent of the other disclose to any third party (except its professional advisors or as may be required by any law or any legal or regulatory authority), any information of a confidential nature (including trade secrets, information of commercial value and information relating to the business and affairs of the other party) which may become known to such party from the other party and which relates to the other party, unless that information is public knowledge or already known to such party at the time of disclosure, or subsequently becomes public knowledge other than by breach of this Agreement, or subsequently comes lawfully into the possession of such party from a third party, or where required by law, any governmental or regulatory authority, any court or other authority of competent jurisdiction.

5.2   The Customer agrees that TSN shall be entitled to publicise the fact that TSN has entered into this Agreement with the Customer, which shall include but not be limited to TSN being permitted to refer to the Customer's name in any public announcements and discussions with prospective customers.

6.   Warranties

6.1   TSN warrants that:

6.1.1   it shall provide the Services with reasonable care and skill; and

6.1.2   the Software will possess materially the same functionality as set out in the Operating Manual during the Term. Subject to clause 6.2, if during the Term the Customer notifies TSN in writing of any defect or fault in the Software in consequence of which the Software fails to possess materially the same functionality as set out in the Operating Manual, TSN shall, at TSN's option, do one of the following:

(a)   repair the Software;

(b)   replace the Software; or

(c)   terminate this Agreement by giving notice in writing to the Customer and refund any part of the Charges paid by the Customer as at the date of termination (less a pro rata sum in respect of the period prior to the date of termination) upon the Customer's access to the Software being removed, provided that, as soon as reasonably practicable, the Customer shall give TSN notice of any breach of either warranty contained in clauses 6.1.1 and 6.1.2 above and supply TSN with all information reasonably required by TSN in order for TSN to resolve the issue, including but not limited to a documented example of any defect or fault or sufficient information to enable TSN to re-create the defect or fault.

6.2   The warranty in clause 6.1.2 above shall not apply to any defect or failure which arises wholly or partly as a result of:

6.2.1   the Customer, or anyone acting with the authority of the Customer, having amended the Software or used the Software negligently, other than in accordance with the terms of this Agreement or for a purpose or in a context other than the purpose or context for which the Software was designed or in combination with any other software not provided by TSN; or

6.2.2   the Software being operated by any User who has not received appropriate training in the use of the Software; or

6.2.3   the Software being accessed using or in connection with equipment or products which have not been provided or approved by TSN or which are not suitably configured; or

6.2.4   the use of a non-current release of the Software.

6.3   TSN does not warrant that the use of the Software will be uninterrupted or error-free and the Customer acknowledges and agrees that TSN shall have no liability in the event that any interruptions or errors occur or any of TSN's systems, servers and equipment from time to time become inoperative or only partly operational as a consequence of mechanical breakdown, maintenance, hardware or software upgrades or faults in communication systems (including but not limited to the Internet).

6.4   The Customer acknowledges and agrees that:

6.4.1   it shall keep a back-up, in accordance with best practice and for the Customer's convenience only, of all Customer Data and any other software and databases that the Customer uses in conjunction with the Software;

6.4.2   it shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness of any Customer Data; and

6.4.3   it shall be the Data Controller of, and (subject to clause 6.6) shall have sole responsibility for compliance with the applicable DP Legislation in respect of, all Customer Data (including for the avoidance of doubt the responsibility for ensuring that Customer Data is only uploaded to the Software with the relevant Data Subject's appropriate consent or where such uploading is otherwise permitted by law);

6.4.4   all information (including but not limited to Customer Data) that it has or will provide to TSN pursuant to this Agreement is complete and accurate, and that TSN shall not be liable for any defect or failure in relation to the Software or the Services which results directly or indirectly from the Customer providing incomplete or inaccurate information; and

6.4.5   it shall procure that its Users, agents and contractors at all times treat TSN's employees in a professional and appropriate manner and in accordance with all relevant legislation. Any failure of the Customer to comply with this clause 6.4.5 shall constitute a material breach of this Agreement.

6.5 The Customer and TSN acknowledge that for the purposes of the applicable DP Legislation, TSN is a Data Processor in respect of any Personal Data.

6.6 TSN shall:

6.6.1 process the Personal Data only for the purposes of performing TSN's obligations under this Agreement and only in accordance with the Customer's lawful written instructions from time to time, including with regard to transfers of the Personal Data outside the European Economic Area or to an international organisation (unless required to do so by any United Kingdom, European Union or EU member state law to which TSN is subject; in such a case TSN shall inform the Customer of that legal requirement before Processing, unless that law prohibits such information on important grounds of public interest);

6.6.2 keep the Personal Data confidential, disclose and permit access to the Personal Data only to those of TSN's employees who need to have such access to perform TSN's obligations in this Agreement, and procure that such employees are subject to and abide by such confidentiality obligation;

6.6.3 not disclose, or sub-contract the Processing of, the Personal Data to any third party including but not limited to businesses associated with TSN or any of TSN's principals, without the Customer's prior written consent (and the Customer hereby consents to TSN subcontracting the hosting of the Software to a third party). Where the Customer provides such consent to disclosure or sub-contracting, TSN shall first procure from such third party obligations concerning the security and processing of the Personal Data in a form acceptable to the Customer which, for the avoidance of doubt, shall include the obligations and restrictions contained in this clause 6.6. Where TSN subcontracts its obligations under this Agreement to a third party, TSN shall remain fully liable to the Customer for the performance of that third party's data protection obligations;

6.6.4 provide the Customer with copies of the Personal Data as the Customer may reasonably request from time to time;

6.6.5 assist the Customer as the Customer may reasonably request from time to time, by using appropriate technical and organisational measures, insofar as that is possible, for the fulfilment of the Customer's obligations to respond to (i) requests made by Data Subjects under applicable DP Legislation; (ii) other requests for information which the Customer may receive in respect of the Personal Data; or (iii) any other request to which the Customer may be obliged to respond;

6.6.6 make available to the Customer all information necessary to demonstrate compliance with the obligations laid down in this clause 6.6 and applicable DP Legislation, including but not limited to Principle Seven of the Data Protection Act 1998 or any equivalent provisions under applicable DP Legislation, and allow for and contribute to audits including inspections conducted by the Customer or another auditor mandated by the Customer. TSN shall inform the Customer immediately if, in TSN's opinion, an instruction infringes applicable DP Legislation or any other European Union or EU member state's data protection provisions to which the Customer is subject;

6.6.7 comply with applicable DP Legislation and take all measures, including but not limited to appropriate technical and organisational measures, required by applicable DP Legislation (including but not limited to Principle Seven of the Data Protection Act 1998 and articles 32 to 36 of the GDPR) and all associated primary and secondary legislation when processing the Personal Data;

6.6.8 assist the Customer in ensuring compliance with the Customer's security obligations set out in applicable DP Legislation, taking into account the nature of the Processing and the information available to TSN; and

6.6.9 notify the Customer without undue delay in the event that TSN breaches any part of this clause 6.6.

6.7 The Customer acknowledges that any Open Source Software provided by TSN is provided "as is" and expressly subject to the disclaimer in clause 6.8.

6.8 All other conditions, warranties, obligations or terms which might have effect between the parties or be implied or incorporated into this Agreement or any collateral contract, whether by statute, common law or otherwise, are hereby excluded to the fullest extent permitted by law, including but not limited to the implied conditions, warranties and other terms as to satisfactory quality, fitness for purpose or the use of reasonable skill and care.

7. Limits of Liability

7.1 Except as expressly stated in clause 7.2:

7.1.1 TSN shall not in any circumstance have any liability for any loss or damage which may be suffered by the Customer (or any person claiming under or through the Customer) arising under or in connection with this Agreement, whether the same is suffered directly or indirectly or is immediate or consequential, and whether the same arises in contract, tort (including negligence), breach of statutory duty or otherwise, which falls within any of the following categories:

(a) special damage even if TSN was aware of the circumstances in which such special damage could arise;

(b) loss of profit;

(c) loss of anticipated savings;

(d) loss of business opportunity;

(e) loss of goodwill;

(f) pure economic loss;

(g) loss, corruption, destruction or failure to store any data (including but not limited to Customer Data);

(h) any indirect or consequential loss, costs, damages, charges or expenses (including but not limited to lost time of employees, consultants or directors), provided that this clause 7.1.1 shall not prevent any claim for loss of or damage to the Customer's tangible property that falls within the terms of clause 7.1.2 or any other claim for direct financial loss that is not excluded by any of clauses 7.1.1(a) to 7.1.1(h) above; and

7.1.2 the total liability of TSN in respect of any and all claims made in any Year, whether in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise and whether in connection with this Agreement or any collateral contract, shall in no circumstances exceed a sum equal to 150% of the amount of Charges payable by the Customer in respect of the relevant Year.

7.2 The exclusions in clause 6.8 (Warranties) and clause 7.1 shall apply to the fullest extent permissible at law, provided that nothing in this Agreement shall limit or exclude either party's liability for:

7.2.1 death or personal injury caused by that party's negligence or the negligence of that party's officers, employees, contractors or agents;

7.2.2 fraud or fraudulent misrepresentation;

7.2.3 breach of the obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or

7.2.4 any other liability which may not be excluded by law.

7.3   All dates supplied by TSN for the supply of the Software and the provision of the Services shall be treated as approximate only. TSN shall not in any circumstances be liable for any loss or damage arising from any delay in delivery beyond such approximate dates.

7.4   All references to "TSN" in this clause 7 shall, for the purposes of this clause and clause 16 (Third Party Rights) only, be treated as including all employees, subcontractors and suppliers of TSN, all of whom shall have the benefit of the exclusions and limitations of liability set out in this clause, in accordance with clause 16 (Third Party Rights).

7.5   The Customer acknowledges that the Charges have been calculated based on the limitations and exclusions of liability contained in this Agreement and agrees that such limitations and exclusions are reasonable in the circumstances considering the potential losses that could be incurred by the Customer as a result of TSN's breach of this Agreement against the value of this Agreement to TSN.

7.6   The Customer acknowledges and agrees that the Software has not been developed to meet the individual requirements of the Customer or any User, and that it is the Customer's responsibility to ensure that the Software meets the requirements of the Customer and the Users.

8.   Intellectual Property Rights

8.1   The Customer acknowledges that all Intellectual Property Rights in the Software and the Operating Manual, including any maintenance release for the Software supplied by TSN as part of the Support Services, belong and shall belong to TSN or the relevant third party owner (as the case may be), and that the Customer shall have no rights in or to the Software or the Operating Manual other than the right to use the Software and the Operating Manual in accordance with the terms of this Agreement.

8.2   Subject to clauses 8.3 to 8.5 inclusive below, TSN undertakes at its own expense to defend the Customer or, at TSN's option, settle any claim or action brought against the Customer alleging that the Customer's possession or use of the Software (or any part thereof) in accordance with the terms of this Agreement infringes the UK Intellectual Property Rights of a third party ("Claim") and shall be responsible for any reasonable losses, damages, costs (including legal fees) and expenses incurred by or awarded against the Customer as a result of or in connection with any such Claim. For the avoidance of doubt, this clause 8.2 shall not apply where the Claim in question is attributable to the possession or use of the Software (or any part thereof) by the Customer other than in accordance with the terms of this Agreement, the use of the Software in combination with any hardware or software not supplied or specified by TSN if the infringement would have been avoided by the use of the Software not so combined, or the use of a non-current release of the Software.

8.3   If any third party makes a Claim, or notifies an intention to make a Claim against the Customer, TSN's obligations under clause 8.2 are conditional on the Customer:

        8.3.1   promptly giving written notice of the Claim to TSN, specifying the nature of the Claim in reasonable detail;

        8.3.2   giving TSN the sole authority to defend or settle the Claim and not making any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of TSN;

        8.3.3   giving TSN and TSN's professional advisers access at reasonable times (on reasonable prior notice) to the Customer's premises and the Customer's officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of the Customer, so as to enable TSN and TSN's professional advisers to examine them and to take copies (at TSN's expense) for the purpose of assessing the Claim; and

        8.3.4   taking such action and providing such assistance as TSN may reasonably require to avoid, dispute, compromise or defend the Claim.

8.4   If any Claim is made, or in TSN's reasonable opinion is likely to be made, against the Customer, TSN may at its sole option and expense:

8.4.1   procure for the Customer the right to continue to use the Software (or any part thereof) in accordance with the terms of this Agreement;

8.4.2   modify the Software so that it ceases to be infringing;

8.4.3   replace the Software with non-infringing software; or

8.4.4   terminate this Agreement immediately by giving notice in writing to the Customer, provided that if TSN modifies or replaces the Software, the modified or replacement Software shall comply with the warranties contained in clause 6.1 (Warranties) and the Customer shall have the same rights in respect thereof.

8.5   The remedies set out in this clause 8 shall constitute the Customer's exclusive remedies, and TSN's only liability, in respect of Claims and, for the avoidance of doubt, are subject to clause 7.1 (Limits of Liability).

9.   Freedom of Information

9.1   In the event that the Customer is subject to the requirements of the FOI Legislation, TSN shall, upon reasonable request by the Customer, assist and co-operate with the Customer (at the Customer's expense) to enable the Customer to comply with its obligations under the FOI Legislation.

9.2   If the Customer receives a Request for Information:

9.2.1   the Customer shall notify TSN as soon as reasonably practicable after receipt of a Request for Information which relates to Information held by TSN;

9.2.2   TSN shall provide the Customer with a copy of all Information in its possession or power in the form that the Customer reasonably requires within seven days (or such other period as the Customer may reasonably specify) of the Customer requesting that Information; and

9.2.3   TSN shall provide all necessary assistance as reasonably requested by the Customer to enable the Customer to respond to a Request for Information within the time for compliance set out in section 10 of FOIA or regulation 5 of the Environmental Information Regulations.

9.3   TSN shall be permitted to make representations to the Customer regarding any Information requested under a Request for Information of the nature referred to in clause 9.2.1 as to any Information relating to TSN in respect of which TSN considers a statutory exemption to disclosure may apply. The Customer shall, acting reasonably, consider any such representations provided that the Customer shall be responsible for determining at its absolute discretion whether any Information:

9.3.1   is exempt from disclosure in accordance with the provisions of FOIA or the Environmental Information Regulations; and

9.3.2   is to be disclosed in response to a Request for Information.

10.   Duration and Termination

10.1   This Agreement shall come into force on the date that it has been signed by both parties and, subject to the rights of earlier termination contained in this Agreement, continue in force until the end of the Term.

10.2   Without affecting any other right or remedy available to it, either party may terminate this Agreement with immediate effect by giving written notice to the other party if:

10.2.1 the other party commits a material breach of any term of this Agreement (other than a breach by the Customer of its obligations under clause 4 (Charges)) which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;

10.2.2 the other party is unable to pay its debts as they fall due, or 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, or 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 the other party, or an application is made to court, or an order is made, for the appointment of an administrator or a notice of intention to appoint an administrator is filed or an administrator is appointed in respect of the other party, or a floating charge holder over the assets of the other party has become entitled to appoint or has appointed an administrative receiver, or 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, or a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution 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 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which the other party is subject that has an effect equivalent or similar to any of the events mentioned in this clause 10.2.2; or

10.2.3 the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

10.3 TSN may terminate this Agreement without prejudice to its other rights and remedies forthwith by notice in writing to the Customer if there is a change in the ownership or control of the Customer to which TSN has not previously given written consent.

10.4 The Customer:

10.4.1 may terminate this Agreement at any time by giving TSN not less than 6 months' written notice of termination; and

10.4.2 acknowledges and agrees that, in the event that the Customer serves notice to terminate in accordance with clause 10.4.1 to expire on any date other than an anniversary of the Commencement Date, the Customer shall not be entitled to a refund in respect of any Charges paid by the Customer in respect of the Year during which this Agreement is terminated.

10.5 Any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination of this Agreement shall remain in full force and effect after termination, which for the avoidance of doubt shall include clauses 1 (Interpretation), 5 (Confidentiality and Publicity), 6.4 (Warranties), 7 (Limits of Liability), 9 (Freedom of Information), 10.7 (Duration and Termination), 18 (Force Majeure) and 19 (Notices).

10.6 Termination of this Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Agreement which existed on or before the date of termination.

10.7 On termination of this Agreement for any reason:

10.7.1 all rights granted to the Customer under this Agreement shall cease;

10.7.2 the Customer shall cease all activities authorised by this Agreement (including but not limited to using the Software and the Operating Manual);

10.7.3 the Customer shall immediately pay to TSN any sums due to TSN under this Agreement;

10.7.4 without prejudice to clause 10.7.5 but subject to the Customer's compliance with clause 10.7.3, TSN shall make available to the Customer an electronic file containing the Customer Data within 30 days of termination upon request by the Customer;

10.7.5 TSN shall, at the choice of the Customer, delete or return to the Customer all Personal Data held by TSN (and delete existing copies) unless any United Kingdom, European Union or EU member state law requires storage of such Personal Data by TSN; and

10.7.6 the Customer shall immediately destroy or return to TSN (at TSN's option) any copies of the Operating Manual then in its possession, custody or control and, in the case of destruction, certify to TSN that it has done so.

11. Escalation

Without prejudice to the rights and remedies of either party pursuant to this Agreement or by law, the parties agree in the first instance to attempt to resolve any dispute in relation to this Agreement by good faith negotiations between a Director of each party within 10 days of request from either party.

12. Waiver

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 prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

13. Entire Agreement

13.1 This Agreement, the Schedules and any documents annexed as appendices to this Agreement or otherwise referred to herein together constitute the entire agreement and understanding between the parties relating to the subject matter hereof and supersede all prior oral or written agreements understandings or arrangements between the parties relating to that subject matter.

13.2 Each party acknowledges that in entering into this Agreement it does not do so on the basis of and does not rely on any representation, warranty or other provision except as expressly provided herein and all conditions, warranties or other terms implied by statute or common law are hereby excluded to the fullest extent permitted by law.

14. Variation

No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

15. Severance

15.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause 15.1 shall not affect the validity and enforceability of the rest of this Agreement.

15.2 If any provision or part-provision of this Agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

16. Third Party Rights

16.1 TSN and the entities referred to in clause 7.4 (Limits of Liability) may enforce the terms of clause 6 (Warranties) and clause 7 (Limits of Liability) subject to and in accordance with this clause 16 and the Contracts (Rights of Third Parties) Act 1999.

16.2 Except as provided in clause 16.1, a person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

17. No Partnership or Agency

17.1 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other party, or authorise either party to make or enter into any commitments for or on behalf of the other party.

17.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

18. Force Majeure

18.1 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 a Force Majeure Event.

18.2 For the purposes of this Agreement, a "Force Majeure Event" shall be any event, circumstance or cause beyond the reasonable control of either party, including but not limited to acts of God, fire, flood, natural disaster, accidents, strikes or lockouts (including those affecting that party's employees), insurrection, riots, embargos, container shortages, act of terrorism, unauthorised use or access to TSN's IT system (including but not limited to hacking), wreck or delay in transportation, inability to obtain supplies, failure by a supplier, failure of electrical power, internet, communications network or electrical circuitry, and the action of any civil or military authority.

18.3 In the event that either party is prevented or delayed in performing any of its obligations under this Agreement due to a Force Majeure Event, that party's time for performance of the relevant obligation shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed. If the period of delay or non-performance continues for 3 months or more, the party not affected by the Force Majeure Event may terminate this Agreement immediately by giving written notice to the affected party.

19. Notices

19.1 Any notice given by either party under or in connection with this Agreement shall be in writing and shall be served by sending the same by hand, by pre-paid recorded delivery post or (subject to clauses 19.3 and 19.4) email to the address of the other party as set out in this Agreement or to such other address as that party may have previously notified the party giving notice as its address for service.

19.2 Subject to clauses 19.3 and 19.4, any notice shall be deemed to have been received:

19.2.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;

19.2.2 if sent by pre-paid recorded delivery post, at 9.00 am on the second Working Day after posting or, if earlier, at the time recorded by the delivery service; or

19.2.3 if sent by email, on the day it was sent where it was sent on a Working Day, and otherwise on the next Working Day, in each case provided that no related delivery failure message is received by the sender before the end of the relevant Working Day.

19.3 Any notice of termination cannot be served by email or any other electronic means.

19.4 This clause 19 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

20. Governing Law and Jurisdiction

20.1 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.

20.2   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).

This Agreement has been entered into on the date that it has been signed and dated by both parties.

Schedule 1 Support Services

TSN shall provide the following support in respect of the Software:

- back-up the Customer Data electronically overnight;

- a monthly meeting to review issues, system performance and agree scheduled maintenance upgrades (as part of the Customer's monthly account meeting with TSN);

- logging and management of support calls raised by the Customer based on Priority Levels/Service Levels (see paragraph 1.4 below);

- access for the Customer to TSN's support/issue tracking portal;

- scheduled maintenance releases where necessary (no additional charge); and

- support with 'How do I?' type issues – answering general queries, training related requests – where those issues cannot reasonably be resolved internally by the Customer.

1. Service Levels

1.1 Front line "Level 1 Support" for the Customer's end Users shall be provided by the Customer. Requests from end Users for general help and assistance should be directed to an appropriately trained member of the Customer's staff. The Customer shall resolve basic questions and enquiries from end Users internally.

1.2 TSN will provide "Level 2 Support" to the Customer and the Customer should contact TSN via the support portal where the Customer reasonably suspects there is an underlying issue or bug with the Software.

1.3 The Customer shall log all requests for support with TSN via TSN's support portal. The Customer should include details of the problem and a screenshot where appropriate.

1.4 Issues will be allocated a Priority Level by TSN as indicated in the table below. The table also shows Response Times. These are defined as:

Response Time - TSN will aim to respond to the initial request for support from the Customer within the response time indicated in the table below. That response will either be via email or phone and will be an acknowledgement of the issue and confirmation that work to resolve it has started. Nothing in this Agreement shall guarantee that any request for support shall be resolved within any of the Response Times set out below.

Priority Level	Definition	Response Time
Priority 1	System doesn't function and a solution is needed. Indicators include: • High visibility • Large number Users affected • Major component not available for use (for all Users) • Many or major files lost • Major loss of functionality	30 minutes

Priority 2	A serious problem which, whilst unresolved, causes major problems in operation of the system for many Users. Indicators include: • Moderate visibility • Moderate to large number Users affected • Seriously slow response times • Serious loss of functionality • Limited use of product or component for one or more roles of Users.	30 minutes
Priority 3	A moderate problem that, whilst not serious, does need to be resolved. Indicators include: • Low to medium visibility • Low User impact • Limited use of product or component • Single client device affected • Minimal loss of functionality	1 day
Priority 4	Shall mean a minor fault that does not impact upon the Software.	1 day
Priority 5	Shall mean a fault that does not materially impact upon the Software, including a software fix that may be uneconomical to resolve. Priority 5 shall also include a Software fault beyond TSN's direct control.	1 day

2.   **Support Notes**

2.1   Where, upon investigation, there is no fault found these calls shall be logged as "No fault".

2.2   TSN and the Customer shall meet every month to review the support arrangements and the list of outstanding support calls. Each such review shall be conducted during the relevant monthly account meeting between the parties.

2.3   From time to time TSN may make scheduled maintenance updates to the Software or the Software hosting infrastructure. Whenever possible these will happen outside Working Hours and TSN will endeavour to keep system downtime to a minimum. It will be the responsibility of the Customer to inform its end Users of any scheduled system upgrade notified to the Customer by TSN.

2.4   Work to resolve Priority 1 & 2 issues will start as soon as is reasonably possible even where the issue occurs outside of Working Hours.

2.5   When it becomes clear to TSN that a Priority 1 issue cannot be resolved within one Working Day TSN may elect to move the Software onto TSN's Disaster Recovery system (if that will resume the availability of the Software). TSN will notify the Customer in the event that this may be necessary.

2.6   Where TSN elects to move the Software onto TSN's Disaster Recovery system in accordance with paragraph 2.5 of this Schedule 1, TSN will move the Software onto the Disaster Recovery system as quickly as possible so that there is minimum loss of service. TSN will also work to resolve the underlying issue with the live service (or infrastructure) in parallel.

2.7   In the event of there being any interruptions to service due to scheduled maintenance upgrades, a notice will be displayed on the live site notifying end Users that an upgrade is in progress together with an indication of the likely length of the interruption.

2.8   When reasonably possible TSN will use a web page to notify the Customer's end Users of a loss in service due to technical problems.