



# APT SOFTWARE AS A SERVICE SUBSCRIPTION AGREEMENT

This Software as a Service Subscription Agreement ("**Agreement**") is between Automated Payment Transfer Limited T/A APT LTD registered in England with company number 01328668 whose registered office at 17 Cranleigh Close, Sanderstead, Surrey, CR2 9LH ("**APT**") and the customer identified in the order form ("**Customer**") for the provision of certain Services by APT to Customer.

## Background

- (A) APT has developed certain BACS payment management software applications and platforms which it makes available to its customers via the internet.
- (B) APT has agreed to provide and the Customer has agreed to subscribe to and pay for APT's services subject to the terms and conditions of this Agreement.

## Agreed terms

### 1. Definitions

Capitalised terms not otherwise defined in the Agreement shall have the meaning set out below:

- 1.1 **Add-On Applications:** additional software applications made available to the Customer by APT offering additional functionality for which an additional fee is payable and the use of which may be subject to additional terms set out in a schedule to this Agreement;
- 1.2 **Add-On Application Fees:** any fees payable by Customer to APT in respect of the Add-On Applications which are not included in the Subscription Fees including, but not limited to one-off licence fees)
- 1.3 **Additional Support Services:** any support services requested by Customer and delivered by APT in excess of the Support Services;
- 1.4 **Additional Support Fees:** any fees payable by Customer to APT in respect of the Additional Support Services;
- 1.5 **APT Data:** means (the information or data provided by APT to Customer as part of the Services; and (ii) any meta data and/or other anonymised data which may be extracted by APT from Customer's use of the Services to be used to provide the Services, which may include without limitation feedback from Customer in respect of its use of the Services;
- 1.6 **Associated Companies:** an entity that directly or indirectly controls, is controlled by, or is under common control with, a party to this Agreement. For the purposes of this definition, "control" means the ownership of (i) greater than fifty per cent of the voting power to elect directors of the entity, or (ii) greater than fifty per cent of the ownership interest in the entity;
- 1.7 **Authorised Users:** those employees, agents and independent contractors of Customer who are authorised by Customer to use the Services and the Documentation, as further described in clause 3.2 and are in accordance with the number of users permitted to use the Services as detailed in the Usage Limits;
- 1.8 **Claim Period:** means each successive period of twelve (12) months commencing on the Effective Date of this Agreement;
- 1.9 **Confidential Information:** information of a party that is proprietary or confidential and is either clearly labelled as such, identified as Confidential Information in clause 11, a reasonable person would understand to be confidential or proprietary at the time of disclosure;
- 1.10 **Business Day:** any day which is not a Saturday, Sunday or statutory public holidays in the UK;
- 1.11 **Business Hours:** 9.00 am to 5.00 pm local UK time each Business Day;
- 1.12 **Customer Data:** the data and information provided by Customer to APT and/or input by Customer, Authorised Users, or APT on Customer's behalf for the purpose of using the Services or facilitating Customer's use of the Services or data collected and processed by or for Customer through Customer's use of the Services, but excluding APT Data;



- 1.13 **Development Services:** means certain implementation, configuration, development and/or customisation by APT of the Software and/or Add-On Applications licensed by Customer as part of the Services as further described and agreed by the parties in the applicable Order Form;
- 1.14 **Development Services Fees:** the fees payable by Customer for the Development Services ordered as specified in an Order Form;
- 1.15 **Documentation:** the document(s) made available to Customer by APT which sets out a description of the Services and the user instructions for the Services;
- 1.16 **Fees:** the Subscription Fees, Add-On Application Fees, Development Services Fees, Additional Support Services Fees and Overage Fees and any other fees payable under this Agreement;
- 1.17 **Force Majeure Event:** acts, events, omissions or accidents beyond a party's reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes, failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, fire, flood or storm;
- 1.18 **Initial Subscription Term:** the initial term of the Subscription as set out in the Order Form;
- 1.19 **Inappropriate Content:** content which (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; (b) facilitates illegal activity; (c) depicts sexually explicit images; (d) promotes unlawful violence; (e) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activity; or (f) causes damage or injury to any person or property;
- 1.20 **Intellectual Property Rights:** including without limitation, rights in patents, trademarks, service marks, trade names, other trade-identifying symbols and inventions, copyrights, design rights, database rights, rights in know-how, trade secrets and any other intellectual property rights arising anywhere in the world, whether registered or unregistered, and including applications for the grant of any such rights;
- 1.21 **Order Form:** the Order Form(s) entered into and signed by both parties from time to time which includes details of the Services, Usage Limits, Initial Subscription Term, any Development Services to be provided and Fees payable, each attached as Schedule 1 and forming part of this Agreement;
- 1.22 **Overage Fees:** means the fees payable by Customer calculated in accordance with the then current APT price list for Customer's use of the Services in excess of the Usage Limits;
- 1.23 **Renewal Period:** has the meaning set out in clause 14.2 below;
- 1.24 **Service Level or SLA:** has the meaning given in Schedule 2;
- 1.25 **Services:** means (i) the access to and use of the Software; and (ii) the access to and use of the Add-On Applications, each as a Service, in accordance with this Agreement;
- 1.26 **Software:** the BACS payment management software applications and additional modules provided by APT and accessed by Customer as part of the Services, as set out in the Order Form and further described in the Documentation;
- 1.27 **Subscriptions:** subscriptions purchased by Customer under an Order Form for Customer use of the Services in accordance with the Agreement and limited by the Usage Limits as set out in the Order Form, which entitle Customer to access and use the Services and the Documentation in accordance with the Usage Limits and this Agreement;
- 1.28 **Subscription Fees:** the subscription fees payable by Customer to APT for Customer's and its Authorised Users' use of the Services and any other services made available by APT from time to time, as set out in the Order Form;
- 1.29 **Subscription Term:** means the Initial Subscription Term and any subsequent Renewal Periods;
- 1.30 **Support Services:** means the APT standard support services provided by APT in accordance with the Support Services Policy in respect of the Services, including the provision of any applicable Software maintenance releases during the applicable Subscription Term;
- 1.31 **Support Services Policy:** APT's policy for providing the Support Services to Customer, as made available by APT to Customer from time to time;
- 1.32 **Taxes:** any applicable taxes, including without limitation, withholding, sales, use, excise, value added tax and similar taxes but shall not include taxes based on APT's gross income;
- 1.33 **Usage Limits:** means the limits of use in respect of the Services as set out in the applicable Order Form;
- 1.34 **Virus:** any thing or device (including any software, code, file or programme) which may prevent, impair or otherwise adversely affect the access to or operation, reliability or user experience of any computer software, hardware or network, telecommunications service, equipment or network or any other service or device, including worms, trojan horses, viruses and other similar things or devices.

## 2. Services



- 2.1 Customer shall enter into an Order Form(s) for the purchase of Subscriptions for the Services (including Add-On Applications as appropriate). In consideration of the Subscription Fees and, as appropriate, Add-On Application Fees, payable by Customer as set out in the applicable Order Form, APT shall provide the Services during the Subscription Term in accordance with the terms set out in the Order Form and this Agreement.
- 2.2 To the extent the parties agree in the applicable Order Form for the right and licence to use any of the Services in accordance with this Agreement to extend to Customer's Associated Companies, any such Associated Companies shall be entitled to perform any of the obligations and exercise any of Customer's rights under this Agreement, but only Customer shall be entitled to enforce the rights granted to Customer under this Agreement, for and on behalf of such Associated Companies. Any act or omission of any such Associated Companies shall for the purpose of this Agreement be deemed to be an act or omission of Customer and Customer shall be liable for any breach of the terms of this Agreement by such Associated Companies. Any loss, damage, liability, costs and expenses incurred by any such Associated Companies in connection with this Agreement, shall be deemed to be incurred by Customer.

### 3. Licence

- 3.1 Subject to payment of the applicable Subscription Fees, the restrictions set out in this clause 3 and the terms and conditions of this Agreement and the applicable Order Form, APT hereby grants to the Customer a non-exclusive, non-transferable licence to use the Services and the Documentation in accordance with the Usage Limits during the Subscription Term and solely for Customer's internal business operations.
- 3.2 In relation to the Authorised Users, Customer undertakes that:
  - 3.2.1 the maximum number of Authorised Users that it grants access to and use of the Services and Documentation shall not exceed the number of Authorised Users set out under the Usage Limits;
  - 3.2.2 it will not allow more than one named individual user per Authorised User unless that Authorised User has been reassigned in its entirety to another individual user, in which case the prior Authorised User shall no longer have any right to access or use the Services and/or Documentation. In particular, Customer shall not allow group or other sharing of an Authorised User login either within or outside of its organisation;
  - 3.2.3 each Authorised User shall keep a secure password for its use of the Services and Documentation, that such password shall be changed frequently and that each Authorised User password shall be kept confidential;
- 3.3 Customer shall permit APT to audit (i) Customer's compliance with the terms of this Agreement generally; and (ii) Customer's Use of the Services in order to establish the name and password of each Authorised User and the number of Authorised Users is in accordance with the Subscription purchased. Without prejudice to APT's other rights, if any such audit reveal that the Services are being used by any individual who is not an Authorised User, Customer shall promptly disable such access; or, if APT agrees, at its sole discretion, shall pay an additional fee at APT's then current rates for such individual's continued use as an Authorised User.
- 3.4 Except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties, Customer shall not:
  - 3.4.1 except to the extent expressly permitted under this Agreement, attempt to copy, modify, duplicate, create derivative works from, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means;
  - 3.4.2 attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software;
  - 3.4.3 access all or any part of the Services and Documentation in order to build a product or service which competes with the Services and/or the Documentation;



- 3.4.4 use the Services and/or Documentation to provide services to third parties;
  - 3.4.5 license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party except the Authorised Users; or
  - 3.4.6 attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this clause 3.
- 3.5 Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify APT.
- 3.6 In the event Customer's use of the Services exceeds the Usage Limits, Customer shall pay the Overage Fees in respect of such excess use in accordance with clause 6.

## 4. Services Availability and Support

- 4.1 APT shall use commercially reasonable endeavours to provide the Services in accordance with the Service Levels set out in Schedule 2.
- 4.2 Subject to Customer paying the Subscription Fees, APT will, as part of the Services and at no additional cost to Customer, provide Customer with APT's standard Support Services during Business Hours in accordance with APT's Support Services Policy for standard Support Services in effect at the time that the Support Services are provided. APT may amend the Support Services Policy in its sole and absolute discretion from time to time.
- 4.3 Customer may, from time to time, request APT to deliver Additional Support Services (which fall outside the scope of APT's standard Support Services). If APT agrees to such request, it will deliver Additional Support Services subject to Customer paying the Additional Support Fees.

## 5. Development Services

- 5.1 If agreed by the parties, Customer may purchase Development Services as set out in an applicable Order Form in accordance with this Agreement and the terms of the applicable Order Form and any statement of works attached thereto.
- 5.2 The Development Services will be performed by APT with due skill, care and ability in accordance with industry practice, this Agreement and the applicable Order Form.
- 5.3 To the extent required for Customer to use the Development Services, Customer is granted a non-exclusive, non-transferable right to use the relevant Intellectual Property Rights related to the Development Services during the Subscription Term solely in conjunction with its use of the Development Services pursuant to the terms hereof.
- 5.4 Any work required to be performed by APT (i) outside the scope of, or in addition to, the Development Service; or (ii) outside normal Business Hours or not on a Business Day may be subject to further fees or charges (as determined by APT at its sole discretion). Any reasonable expenses incurred by APT in connection with the Development Services will be invoiced and payable in addition to the Development Fees.

## 6. Charges and payment

- 6.1 Customer shall pay the Subscription Fees and any additional applicable fees related to the Services as set out in the Order Form to APT in accordance with this clause 6. Unless otherwise agreed in the Order Form, APT may invoice Customer for the Subscription Fees annually in advance on or after the



- Effective Date and thereafter on each anniversary of the initial invoice date for the duration of the Subscription Term.
- 6.2 Unless otherwise agreed in the applicable Order Form, APT may invoice the Development Services Fees on or after the Order Date of the relevant Order Form for the purchase of the Development Services. Any reasonable expenses incurred by APT in connection with the Development Services will be invoiced separately and in addition to the Development Services Fees.
- 6.3 APT shall invoice Customer for any Overage Fees and Additional Support Services Fees annually in arrears and Customer shall pay such invoices in accordance with clause 6.4 below.
- 6.4 Unless otherwise specified in the Order Form, all Fees and any approved expenses shall be paid by Customer in full and without deduction within thirty (30) days of the date of invoice.
- 6.5 If APT has not received payment for any invoices which are not the subject of a bona fide dispute by the due dates and without prejudice to any other rights and remedies of APT, APT may:
- 6.5.1 by giving thirty (30) Business Days prior written notice to Customer, without liability to Customer, disable Customer's password, account and access to all or part of the Services and APT shall be under no obligation to provide any or all of the Services and/or Development Services while the invoice(s) concerned remain unpaid; and
  - 6.5.2 charge interest which shall accrue on such due amounts at the higher of (i) an annual rate equal to 4% above the base lending rate of NatWest Bank Plc or (ii) the standard statutory interest rate under applicable law.
- 6.6 All amounts and Fees stated or referred to in this Agreement are non-refundable and are exclusive of all Taxes. Customer shall be solely responsible for, and paying all applicable Taxes relating to this Agreement, and the use or access to the Services.
- 6.7 Subject to Clause 6.8, below, APT shall invoice for each Renewal Period no less than 30 days prior to the start of such Renewal Period. Customer shall provide reasonable assistance in estimating their usage during that Renewal Period as may reasonably be required by APT.
- 6.8 APT shall be entitled to increase the annual Subscription Fees payable by up to the consumer price index plus 3% with effect from the start of each Renewal Period. If the proposed increase in Subscription Fees for the Renewal Period exceeds the consumer price index plus 3% then APT will raise the invoice not less than 90 days' prior to the start of the Renewal Period and the terms of clause 6.9, below, shall apply. Notwithstanding the foregoing, in the event that third party costs (outside the control of APT) are increased during the Initial Term or any Renewal Period, APT shall be entitled to adjust its pricing accordingly. If the effect of such increase is that the Subscription Fees increase by more than the consumer price index plus 3%, then clause 6.9 below shall apply.
- 6.9 If APT increases prices by more than the consumer price index plus 3% Customer shall have the option to provide notice of termination provided always that (i) in the case of a renewal, such notice is received no later than 30 days prior to the start of the Renewal Period and such notice expires at the end of the then current period and; (ii) in the case of an increase due to third party cost increase, provided such notice is received not later than 30 days following the date of the notice of increase and giving not less than 30 days written notice.

## 7. Customer Obligations

- 7.1 Customer shall:
- 7.1.1 provide all necessary co-operation and information as may be reasonably required by APT in order to provide the Services and where applicable Development Services. In the event of any delays in Customer's provision of such assistance, APT may adjust any agreed timetable or delivery schedule as reasonably necessary;
  - 7.1.2 procure that its Authorised Users (i) use the Services and Documentation in accordance with the terms and conditions of this Agreement; (ii) comply with all applicable laws and regulations with respect to its activities under this Agreement; (iii) only use the Services for lawful purposes; and (iv) conduct Customer's business with the highest of ethical standards and fairness. Customer shall be liable for any Authorised User's breach of this Agreement;





- 7.1.3 be solely responsible for procuring and maintaining its network connections and telecommunications links and all problems, conditions, delays and delivery failures arising from or relating to Customer's network connections or telecommunications links;
  - 7.1.4 use all reasonable efforts to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify APT;
  - 7.1.5 be solely responsible for the accuracy, completeness, design, appropriateness, creation, maintenance, and updating thereof of all Customer Data in the use of the Services. APT shall not be liable for any errors or inaccuracies in (i) any information provided by Customer; (ii) any Customer Data, or (iii) any changes or modifications to any Customer Data made by APT upon Customer's written instructions beyond its responsibility to accurately reproduce such Customer Data on Customer's instruction;
  - 7.1.6 be responsible for obtaining all necessary licenses and consents required to use Customer Data (if any and including without limitation those from the owners or licensees of any third party information) and as part of the Services and Customer warrants and represents that such licenses and consents have been obtained.
- 7.2 Customer shall not upload, input, access, store, distribute or transmit any Viruses, or any material, including without limitation Customer Data during the course of its use of the Services that:
- 7.2.1 is Inappropriate Content;
  - 7.2.2 is unlawful (including breach of Intellectual Property Rights of any other party), harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
  - 7.2.3 facilitates illegal activity; or is otherwise illegal or causes damage or injury to any person or property;

and APT reserves the right, without liability or prejudice to its other rights to Customer, to (i) disable Customer's access to any material that breaches the provisions of this clause and to (ii) remove any such content where, in APT's sole and reasonable discretion, APT suspects such content to be Inappropriate Content.

## 8. Warranty

- 8.1 APT warrants that the Services will be performed substantially in accordance with the Documentation and with reasonable skill and care for the Subscription Term.
- 8.2 The warranties provided in clause 8.1 shall not apply to the extent of any non-conformance which is caused by
  - 8.2.1 Customer's use of the Services contrary to APT's instructions or the Documentation; or
  - 8.2.2 modification or alteration of the Services by any party other than APT or APT's duly authorized contractors or agents.
- 8.3 If the Services do not conform with the warranty provided in clause 8.1, APT will, at its expense, use commercially reasonable efforts to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes Customer's sole and exclusive remedy, and APT's sole and exclusive liability for any breach of the warranty.

Notwithstanding the foregoing, APT:



- 8.3.1 does not warrant that Customer's use of the Services will be uninterrupted or error-free; or that the Services, Documentation and/or the information obtained by Customer through the Services will meet Customer's requirements;
  - 8.3.2 is not responsible for any delays, delivery failures, or any other loss or damage resulting from Customer's access to and use of the Services and/or third-party applications or the transfer of data over communications networks and facilities, including the internet, and Customer acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities;
  - 8.3.3 is not responsible for any Virus which was not detected by APT using reasonable current commercial methods of detection or transmitted through any third-party services;
  - 8.3.4 nor its suppliers or third-party service providers or software vendors, shall have any liability whatsoever for the accuracy, completeness, or timeliness of Customer Data, or for any decision made or action taken by Customer, any Authorized User, or any third party in reliance upon any Customer Data.
- 8.4 Except as expressly provided for in this clause 8, APT (and its Associated Companies and its suppliers) to the extent permitted by law, disclaims all other warranties, express, implied or statutory, including warranties, terms and conditions of merchantability, accuracy, correspondence with description, fitness for a particular purpose or use and satisfactory quality, and non-infringement.
- 8.5 This Agreement shall not prevent APT from entering into similar Agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this Agreement.

## 9. Customer Data

- 9.1 Customer shall own all right, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, appropriateness, completeness, reliability, integrity, accuracy and quality of the Customer Data.
- 9.2 Solely to enable APT to provide the Services and any Development Services to Customer and only to the extent required to enable APT to comply with this Agreement, Customer grants APT and its Associated Companies who require access to the Customer Data in order to provide the Services and any Development Services, a non-exclusive licence to (i) host, transmit and display Customer Data and to incorporate the Customer Data with the APT Data and (ii) where necessary, to transfer Customer Data to any third party service providers used by APT, only as required for the provision of the Services and any Development Services.
- 9.3 Customer acknowledges that responsibility for all Customer Data and any communications with others while using the Services is the sole and exclusive responsibility of Customer and that APT will not be held responsible in any way for any Intellectual Property Right infringement or violation, the violation of any other person's rights or the violation of any laws, arising or relating to Customer Data. Customer agrees to indemnify and hold harmless APT from and against all losses, damages, actions or causes of action, suits, claims, demands, penalties and interest arising in connection with or out of any such Customer Data, to the extent not caused by APT's wilful misconduct.
- 9.4 APT shall follow its archiving procedures for Customer Data as set out in its Back-Up Policy as such document may be amended by APT in its sole discretion from time to time, with any such amended version to be made available to Customer. In the event of any loss or damage to Customer Data, Customer's sole and exclusive remedy shall be for APT to use commercially reasonable efforts to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by APT in accordance with the archiving procedure described in its Back-Up Policy. APT shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party, (except those third parties sub-contracted by APT to perform services related to Customer Data maintenance and back-up) unless solely caused by APT' negligence or wilful misconduct.
- 9.5 Customer acknowledges that APT is neither obliged nor able to edit or modify Customer Data (including third party information). However, APT reserves the right to remove any Customer Data (or third-party information) which APT reasonably believes breaches any laws or regulations or any third party's rights or this Agreement and/or is deemed Inappropriate Content. APT will notify Customer if it



removes any Customer Data (or third-party information) in accordance with this clause. To the extent permitted by law, APT disclaims all liability of any kind in respect of third-party products, services, information and any other material or services which can be accessed using the Services. APT expressly disclaims all liability for any fraud committed in connection with the Services.

## 10. Data Protection

- 10.1 It is not anticipated that APT will have access to or process any personal data in the delivery of the Services. However, if the Customer requests that APT processes such data APT acknowledges that the Customer is acting as a data controller in respect of any Customer Data which contains personal data. To the extent that APT has access to and/or processes any such personal data in the provision of the Services, APT shall:
- 10.1.1 have in place appropriate technical and organisational measures to ensure an appropriate level of security for the processing of such personal data and to protect such personal data of Customer against unauthorised or unlawful processing or accidental loss, destruction or damage;
  - 10.1.2 preserve the integrity of such personal data of Customer and to prevent the loss or corruption of the personal data of Customer;
  - 10.1.3 only process such personal data of Customer in accordance with the instructions and directions of the Customer; and
  - 10.1.4 provide such reasonable assistance and information to the Customer as it may reasonably require to allow the Customer to comply with its obligations under the applicable data protection laws.
- 10.2 For the purposes of this clause 10 the terms "**data controller**", "**personal data**", "**process**" and "**processing**" shall have the meaning set out in the Data Protection Act 2018.

## 11. Confidentiality

- 11.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this Agreement. A party's Confidential Information shall not be deemed to include information that:
- 11.1.1 is or becomes publicly known other than through any act or omission of the receiving party;
  - 11.1.2 was in the other party's lawful possession before the disclosure;
  - 11.1.3 is lawfully disclosed to the receiving party by a third party without restriction on disclosure;
  - 11.1.4 is independently developed by the receiving party, which independent development can be shown by written evidence; or
  - 11.1.5 is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.
- 11.2 Each party shall (i) hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this Agreement; and (ii) take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement. Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third-party.
- 11.3 Customer acknowledges that details of the Software, Documentations, Services, Development Services, APT Data, feedback on the Services and the results of any performance tests of the Services, constitute APT's Confidential Information. APT acknowledges that the Customer Data is the Confidential Information of Customer.
- 11.4 On termination of this Agreement or when requested to do so in writing by the disclosing party, the receiving party shall promptly:





- 11.4.1 deliver to the disclosing party any documents and other materials in its possession or control that contain any of the Confidential Information;
  - 11.4.2 permanently delete, destroy and erase all electronic copies of the Confidential Information from any computer or data storage system into which the Confidential Information was entered; and
  - 11.4.3 make no further use of the Confidential Information.
- 11.5 The receiving party, if requested by the disclosing party, shall confirm in writing that the provisions of clause 11.4 have been complied with. The obligations of confidentiality under this clause 11 shall survive any expiration or termination of this Agreement.

## 12. APT IP Ownership

Customer acknowledges and agrees that APT and its licensors and suppliers own all Intellectual Property Rights in the Software, Services, APT Data, the Development Services and the Documentation. Except as expressly stated herein, this Agreement does not grant Customer any Intellectual Property Rights or any other rights or licenses in respect of the Software, Services, Development Services or the Documentation.

## 13. Limitation of Liability

- 13.1 The exclusions in this clause 13 shall apply to the fullest extent permissible at law but neither party excludes liability for (i) death or personal injury caused by its negligence or that of its officers, employees, contractors or agents; (ii) fraud or fraudulent misrepresentation; (iii) or any other liability which cannot be excluded by law.
- 13.2 Except with respect to amounts owed by Customer to APT hereunder and subject to clause 13.1, the aggregate liability of each party for or in respect of any loss or damage suffered by the other party (whether due to breach of contract, tort (including negligence) or otherwise) under or in connection with this Agreement in any Claim Year shall be limited to the total amount of Fees paid by Customer during such Claim Year.
- 13.3 To the maximum extent permitted by applicable law, in no event will either party be liable to the other for special, consequential, incidental or other indirect damages, or for loss of profits, anticipated savings, business opportunity, goodwill, or loss of revenue, loss of use or loss of data (including corruption of data), or costs of procurement of substitute goods or services arising of this Agreement, howsoever caused and under any theory of liability (including contract, tort, negligence or otherwise) even if the other party has been advised of the possibility of such damages. The parties acknowledge that the amounts payable hereunder are based in part on these limitations and further agree that these limitations shall apply notwithstanding any failure of essential purpose of any limited remedy. APT accepts no liability for failure to maintain any level of availability of the Services other than where it is in breach of its obligations under this Agreement.
- 13.4 In addition to the other exclusions set out in this clause 13, APT has no liability:
- 13.4.1 for any other third party products or services accessed and/or used by Customer through the Services;
  - 13.4.2 where any failure to provide the Services is caused by a network, hardware or software fault in equipment which is not under the control of APT, including without limitation BACS or other third-party banking systems;
  - 13.4.3 any act or omission of Customer;
  - 13.4.4 use of the Services in breach of this Agreement; or
  - 13.4.5 any unauthorised access to the Services including a malicious security breach.

In the event of any loss or damage to Customer Data, Customer's sole and exclusive remedy shall be as set out in clause 9.4.

- 13.5 Customer assumes sole responsibility for results obtained from the use of the Services and the Documentation by Customer, and for any results or conclusions drawn from such use. APT shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to APT by Customer in connection with the Services or any actions taken by APT at



Customer's direction.

- 13.6 APT does not and cannot control the flow of data to or from the network where the Software and Services reside and other portions of the internet including denial of service attacks (an attack which send a flood of incoming messages to the target system forcing the system to shut down, thereby denying service to legitimate users). Such flow depends in large part on the performance of internet services provided or controlled by third parties. At times, actions or inactions of such third parties can impair or disrupt Customer's connections to the internet (or portions thereof). APT cannot guarantee that such events will not occur. Accordingly, APT, its suppliers and subcontractors, if any, disclaim any and all liability resulting from or related to such events and Customer shall have no claim in respect thereof.

## 14. Term and Termination

- 14.1 This Agreement shall, unless otherwise terminated as provided in this clause 14, commence on the Effective Date and shall continue until the expiration, or earlier termination, of the Subscription Terms of all Subscriptions.
- 14.2 Each Subscription purchased under an Order Form shall commence on the Order Date and shall continue for the Initial Subscription Term. Thereafter, the Subscription shall automatically renew for successive periods of 12 months (or such other period as specified in the applicable Order Form) (each a "**Renewal Period**"), unless either party terminates with not less than thirty (30) days' written notice prior to the end of the Initial Subscription Term or relevant Renewal Term or otherwise terminates in accordance with the provisions of this Agreement. The Initial Subscription Term together with any subsequent Renewal Periods shall constitute the "**Subscription Term**". Without a Renewal Period in place, Customer's access and use of the Service shall automatically terminate.
- 14.3 Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate this Agreement and/or an Order Form without liability to the other at any time with immediate effect upon written notice if the other party:
- 14.3.1 is in material breach of any of its obligations under this Agreement and/or an Order Form and, in the case of a breach which is capable of remedy, fails to remedy such breach within thirty (30) days following notice of the breach; or
  - 14.3.2 voluntarily files a petition under bankruptcy or insolvency law; shall have a receiver or administrative receiver appointed over it or any of its assets; or if the other party shall become subject to an administration order or shall enter into any voluntary arrangement with its creditors or shall cease or threaten to cease to carry on business; or is subject to any analogous event or proceeding in any applicable jurisdiction.
- 14.4 Customer may terminate a Subscription under an Order Form with three (3) months' written notice, provided that Customer shall pay an early termination fee in an amount equal to the number of months remaining in the then current Initial Subscription Term or Renewal Period multiplied by the monthly Subscription Fees as set out in such Order Form.
- 14.5 On termination of this Agreement and/or an Order Form for any reason:
- 14.5.1 Customer's rights of use granted under this Agreement (or under the applicable Order Form in the case of termination of an individual Order Form only) shall immediately terminate and Customer shall immediately cease the use of the Services;
  - 14.5.2 Customer shall (i) in the case of termination of the Agreement, promptly pay all monies due or to become due under this Agreement and all Order Forms through the effective date of termination, including any fees in respect of early termination pursuant to clause 14.4 and (ii) in the case of termination of an individual Order Form where the Agreement and remaining valid Subscriptions will continue in full force and effect, promptly pay all monies due or to become due under such Order Form, including any fees in respect of early termination pursuant to clause 14.4;
  - 14.5.3 each party shall return and make no further use of any equipment, property, Software,



Services and Documentation and other items (and all copies of them) belonging to the other party, subject to APT retaining a back-up of Customer Data in its possession for the longer of 30 days or as required by law after the date of termination in accordance with clause 14.6 below.

- 14.6 Subject always to APT's legal obligation to retain records, APT may destroy or otherwise dispose of any of Customer Data in its possession unless APT receives, no later than thirty (30) days after the effective date of the termination of this Agreement, a written request for the delivery to Customer of the then most recent back-up of the Customer Data. APT shall deliver the back-up to Customer following its receipt of such a written request. Customer shall pay all reasonable fees and expenses incurred by APT in returning or disposing of the Customer Data.

## 15. Change Control

- 15.1 If either party wishes to change the scope of the Development Services, it shall submit details of the requested change to the other in writing (which may be by email).
- 15.2 If either party requests a change to the scope or execution of the Development Services, APT shall, within a reasonable time, provide a written estimate to Customer of: (a) the likely time required to implement the change; (b) any variations to the Development Services Fees or other Fees and any other APT charges arising from the change; and (d) any other impact of the change on the terms of the Agreement.
- 15.3 The change shall not take effect until the parties have agreed in writing and have signed by a duly authorized signatory an amendment to this Agreement to incorporate the necessary variations to the charges, the relevant statement of work and any other relevant terms of the Agreement to take account of the change.

## 16. General

- 16.1 **Marketing and use of Customer name.** APT may while this Agreement continues (i) use the Customer's name or logo on APT's website; (ii) use the Customer's name or logo in APT's collateral marketing materials; (iii) issue a press release announcing Customer's use of the Subscriptions and/or Services; (iv) write and publish a case study detailing Customer's use of the Subscriptions and/or Services, the project(s) for which the Subscriptions and/or Services were used, and the business and technical benefits arising from the project(s); and (v) use the Customer as a reference for the Subscriptions and/or Services provided that if APT is aware that a third party proposes contacting the Customer, APT shall notify the Customer and arrange a time that is suitable for the third party to make such contact.
- 16.2 **Entire Agreement.** This Agreement together with its Schedules sets out the entire Agreement and understanding between the parties and supersedes any previous Agreement between the parties relating to its subject matter. Unless otherwise expressly agreed in writing this Agreement applies in place of and prevails over any terms or conditions contained in or referred to in any correspondence or elsewhere or implied by trade custom or course of dealing. Any general terms of business or other terms and conditions of any order or other document issued by Customer in connection with this Agreement shall not be binding on APT. In entering into this Agreement each party acknowledges and agrees that it has not relied on any representations made by the other except as set forth in this Agreement. Any such representations are excluded.
- 16.3 **Waiver.** A 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. Unless specifically provided otherwise, rights arising under this Agreement are cumulative and do not exclude rights provided by law.
- 16.4 **Invalid provisions.** If any provision (or part of a provision) of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force. 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 whatever modification is necessary to give effect to the commercial intention of the parties.

- 16.5 **Governing Law and Jurisdiction.** This Agreement and any disputes or claims arising out of or in connection with it, its subject matter or formation (including non-contractual disputes or claims) will for all purposes be solely and exclusively governed, construed and enforced in accordance with the laws of England and Wales (without regard to the conflicts of law provisions thereof). Both parties submit to the exclusive jurisdiction of the courts of England.
- 16.6 **Third Party Rights.** A person who is not a party to this Agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 (the "**Act**") to enforce, or to enjoy the benefit of, any term of this Agreement, but this does not affect any right or remedy of a third party which exists or is available apart from the Act or that is expressly provided for under this Agreement.
- 16.7 **Independent Contractor.** The parties to this Agreement are independent contractors. Customer bears all risk and cost of operating its own business, including risk of loss. Nothing in this Agreement is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind or employment relationship between the parties, nor constitute any party an employee or agent of another party for any purpose. No party shall have authority to act as employee or agent for, or to bind, the other party in any way.
- 16.8 **Sub-contracting and Assignment.** Neither APT nor Customer may assign or otherwise transfer this Agreement or any of its rights or obligations or purport to do any such acts under it to any third party without prior written consent from the other party, such consent not to be unreasonably withheld or delayed. Notwithstanding anything to the contrary, APT shall have the right, upon written notice to Customer, to assign this Agreement to any of its Associated Companies, or to an entity resulting from a merger, acquisition or other business reorganization of APT. In addition, APT shall have the right to sub-contract any of its obligations hereunder to a third party, provided that APT shall continue to remain responsible for the performance of the Services hereunder. Any attempted assignment, sub-contracting or other transfer in violation of this provision shall be null and void.
- 16.9 **No partnership or agency.** Nothing in this Agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name 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).
- 16.10 **Force Majeure.** APT shall have no liability to Customer under this Agreement if it is prevented from or delayed in performing its obligations under this Agreement due to a Force Majeure Event. APT shall provide Customer with notice of a Force Majeure Event and its expected duration
- 16.11 **Notices.** All notices to be given under this Agreement shall be given in English in writing to the address stated at the beginning of this Agreement, or to such other address as shall be given by either party to the other in writing. Any notice involving non-performance, termination, or renewal shall be hand-delivered or sent by recognized overnight courier or by registered post. All notices shall be deemed to have been given and received on the earlier of actual receipt or three (3) days from the date of postmark.
- 16.12 **Variations.** Save as otherwise expressly stated in this Agreement, this Agreement may only be modified or varied in writing executed by duly authorized representatives of both parties.
- 16.13 **Survival.** In addition to those provisions which by their nature are intended to survive any termination of this Agreement, clauses 8, 9, 10 11, 12 13, 14, and 16 of this Agreement shall survive such termination or expiration of this Agreement.
- 16.14 **Counterparts.** This Agreement may be executed and delivered in any number of counterparts, each of which is an original and which, together, have the same effect as if each party had signed the same document.
- 16.15 **Export Control.** The Services, Software, Documentation, Development Services and APT Data are subject to the export control laws of various countries, including without limitation the laws of the UK.



Customer agrees that it will not submit the Services, Software, Documentation, Development Services or APT Data to any government agency for licensing consideration or other regulatory approval without the prior written consent of APT, and will not export the Service, Software, Documentation, Development Services or APT Data to countries, persons or entities prohibited by such laws. Customer shall also be responsible for complying with all applicable governmental regulations of the country where Customer is registered, and if relevant any foreign countries with respect to the use of the Services, Software, Documentation, Development Services or APT Data by Customer and its users. Customer will not engage in any activity that would cause APT to be in violation of any such export control laws and regulations.

