



Customer Agreement with Studio B01 Ltd T/a The Flash Pack

Terms and Conditions

The terms and conditions set out herein, together with the attached Schedule(s) and any supplementary Schedule, signed by both parties, form the agreement (the “**Agreement**”) between the Customer and the Supplier. Each Schedule shall become effective from the date specified in the relevant Schedule.

1. BASIS OF AGREEMENT

- 1.1 The Supplier agrees to provide, and the Customer agrees to purchase:
 - (a) the Support and Maintenance Services for the Goods and Software described in the Schedule; and
 - (b) the Goods set out in the Schedule; and
 - (c) a licence of the Standard Software set out in the Schedule;
in accordance with the terms of the Agreement.
- 1.2 The term of the Agreement shall begin when signed by both parties, or (if earlier) the Supplier delivers Goods or the Standard Software or provides any Support and Maintenance Services and continue for a period of three (3) years, or until the last Schedule is completed, whichever is longer (the “**Initial Term**”). The term of each Schedule shall be as set out in the relevant Schedule.
- 1.3 In the event of any conflict between these terms and conditions and those contained in a Schedule, the terms contained in this Schedule shall prevail in respect of that Schedule only.
- 1.4 The Agreement constitutes the entire agreement between the parties relating to the supply of the Support and Maintenance Services, the Goods, the grant of the licence to use the Standard Software and the Maintenance for the Software. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier which is not set out in the Agreement.
- 1.5 Any advertising issued by the Supplier and any descriptions of the Goods and/or the Support and Maintenance Services or illustrations or descriptions of the Goods and/or the Support and Maintenance Services contained in the Supplier's brochures, website and other marketing materials are issued or published for the sole purpose of giving an approximate idea of the Goods and the Support and Maintenance Services described in them. They shall not form part of the Agreement or have any contractual force.
- 1.6 The terms and conditions in this Agreement shall apply to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 1.7 Any quotation given by the Supplier shall not constitute an offer and is only valid for a period of 20 Business Days from its date of issue.

2. DELIVERY OF THE GOODS

- 2.1 The Goods are described in the relevant Schedule.
- 2.2 To the extent that the Goods are customised in accordance with a specification by the Customer, the Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including direct or indirect consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with the Supplier's use of the Customer's specification. This clause 2.2 shall survive termination of the Agreement. The Supplier reserves the right to amend the specification for any of the Goods if required by any applicable statutory or regulatory requirement.
- 2.3 The Supplier shall procure the delivery of the Goods to the Delivery Location or such other location as the parties may agree.
- 2.4 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location. The risk in the Goods shall pass to the Customer on completion of delivery.
- 2.5 Whilst delivery dates are given by the Supplier in good faith based upon information available to the Supplier, such dates are not guaranteed and the Supplier accepts no liability for delay in delivery or completion of performance of Services howsoever caused and no delay shall entitle the Customer to reject any such delivery or any further instalments or part of the order or to repudiate the Agreement or the order or any part thereof or to claim any damages or compensation in respect of any such delay. the Customer or its agent shall sign the delivery note which accompanies delivery of the Goods.
- 2.6 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Supplier to deliver any one or more of the instalments in accordance with the Agreement or any claim by the Customer in respect of any one or more instalments shall not entitle the Customer to treat the Agreement as a whole as repudiated.
- 2.7 If the Customer fails to accept or take delivery of the Goods within three Business Days of the Supplier or its agent notifying that the Goods are ready to be delivered or the Customer fails to accept or take delivery when the Supplier attempts to deliver the Goods on the estimated delivery date, the Supplier shall be entitled to retain the costs incurred in attempting delivery and delivery of the Goods shall

be deemed to have been completed by 9.00am on the third Business Day after the day on which the Supplier notified the Customer that the Goods were ready or the estimated delivery date where the Supplier attempted a delivery (whichever shall be the later).

- 2.8 In the event of failure to deliver caused by the Customer, the Supplier shall store the Goods until delivery takes place and charge the Customer for all related costs and expenses (including insurance) in relation to that storage.
- 2.9 If ten Business Days after the day on which the Supplier notified the Customer that the Goods were ready for delivery the Customer has not accepted delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods and after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer any shortfall below the price of the Goods.
- 2.10 If the Supplier fails to deliver the Goods (or any instalment) for any reason other than any cause beyond the Supplier's reasonable control or the Customer's fault, and the Supplier is accordingly liable to the Customer, the Supplier's liability shall be limited to the excess (if any) of the cost to the Customer (in the cheapest available market) of similar Goods to replace those not delivered over the price payable by the Customer to the Supplier for those Goods, subject to clause 8. The Supplier will promptly notify the Customer in writing of anything that is likely to cause a delay in the delivery of the Goods.
- 2.11 Title to the Goods shall not pass to the Customer until the Supplier receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Supplier has supplied to the Customer.

3. SUPPORT AND MAINTENANCE SERVICES FOR THE GOODS

- 3.1 The Customer acknowledges and agrees that the Support and Maintenance Services (which will be detailed in a separate written Schedule) cannot be provided without the Customer being in possession of, and using, the Goods and the Software to which such Support and Maintenance Services relate. The Customer further acknowledges that the Goods need regular maintenance and Standard Software Updates to ensure that they operate properly. In delivering the Support and Maintenance Services for the Goods or the Maintenance for the Software (where applicable), the Supplier shall:
 - (a) at its option and (subject to clause 3.9) at its own cost, repair or replace any defective Goods notified to it by the Customer in accordance with clause 3.2;
 - (b) provide without additional charge for the Support Term, any Standard Software Updates released by the Supplier from time to time. Any Updates are automatically licensed to the Customer under this Agreement;
 - (c) at its discretion from time to time perform remote performance monitoring on the Goods to ensure that the Goods are connecting to the Supplier's servers and providing accurate information; and
 - (d) provide email and telephone support in accordance with the service guidelines published by the Supplier from time to time.
- 3.2 The parties agree that the Supplier may use its affiliates or contractors to perform the Support and Maintenance Services and any other services which the Customer purchases from the Supplier pursuant to any Schedule ("**Other Services**"). Unless otherwise expressly agreed in the applicable Schedule, the Support and Maintenance Services and any Other Services will be provided on a time and materials basis at the Supplier's rates current at the time the Support and Maintenance Services or Other Services (as applicable) are performed.
- 3.3 The Supplier is not obligated to provide any Maintenance (except as provide in a new Schedule for an additional fee) for: (a) Software which has been modified by the Customer or (b) Software modified by the Supplier for the Customer or (c) problems caused by software not provided by the Supplier or (d) equipment malfunction or (e) issues which have been addressed in an Update that the Customer has elected not to apply or (f) problems caused by the Customer and/or the Customer's data.
- 3.4 Subject to clause 11.3 the Supplier grants the Customer a non-exclusive, non-transferable, (except as otherwise agreed in the applicable Schedule) licence to use the Software in machine readable, object form only, on and in conjunction with the Goods during the Support Term and only as restricted in this Agreement and in any applicable Schedule. If at any time the Supplier grants the Customer the right to use additional software or delivers to the Customer additional software (including but not limited to Updates), such software and any related documentation shall be, unless otherwise stated, incorporated herein and form part of the Software. The Supplier shall when the Goods are delivered install or procure the installation of the Standard Software onto the Goods.
- 3.5 The Customer shall during the continuance of the licence:
 - (a) effect and maintain adequate security measures to safeguard the Software from access or use by any unauthorised person;
 - (b) retain the Software and all copies thereof under the Customer's effective control;
 - (c) maintain a full and accurate record of the Customer's copying and disclosure of the Software as permitted under this Agreement and produce such record to the Supplier on the Suppliers' request from time to time.
- 3.6 Except as expressly authorised in this Agreement and as and to the extent specifically authorised under applicable law, the Customer will not and will not cause or permit any person under its control to:
 - (a) copy, translate, rent, lease, sub-licence or otherwise transfer the Software;
 - (b) modify, translate, adapt or create any derivative works of the Software;
 - (c) reverse, compile or reverse assemble any portion of the Software, provided that upon the Customer's written request, the Supplier will provide necessary interface information (at the Customer's cost) to achieve interoperability of the Software with independently created computer programs to Customer; or

- (d) use the Software to provide information processing, computer service bureau, computer time sharing (or similar services) to any other party or operate the Software for the benefit of a third party (including Customer's affiliated companies).
- 3.7 The Customer will not remove any copyright or proprietary information notices from any full or partial copy of the Software made by the Customer. The Software embodies the Supplier's valuable proprietary information and trade secrets. The Supplier (or its licensor) retains title, copyright and other proprietary rights to all portions of the Software and all modifications and alterations thereto and all copies thereof. The Customer does not acquire any rights, express or implied in the Software and has no right to modify, translate, adapt or create any derivative works of the Software or any modifications or alterations thereto and has no right to commercialise or transfer any Software, in whole or in part or any modifications or alterations thereto, except as expressly permitted by this Agreement.
- 3.8 No more than once during any six month period, the Supplier may request that the Customer produce a written report, in a form reasonably satisfactory to the Supplier, of the scope of the Customer's use of the Software. The Customer will submit the report no later than 5 Business Days after the date of the Supplier's written request. Additionally, no more than once in any six month period upon written notice and during normal business hours, the Supplier may audit the records and systems of the Customer to verify that the Customer's use of the Software is within the scope permitted by this Agreement. The Customer will permit the audit no later than 30 days after the date of the Supplier's notice.
- 3.9 Maintenance for the Software shall commence on the date of delivery as stated in the relevant Schedule, and shall continue for the duration of the Support Term.
- 3.10 If Maintenance for the Software is terminated other than as a result of a material breach of this Agreement by the Supplier, and the Customer thereafter desires to reinstate Maintenance for the Software, the Supplier may charge a Reinstatement Fee of up to 150% of the maintenance fee that would have been due during the period which the Maintenance for the Software was not provided. A failure by the Customer to maintain all the Software may result in incompatibility, for which the Customer shall have no remedy and the Supplier shall have no obligation.

4. REPLACEMENT PARTS

- 4.1 In the event that the Customer wishes to order replacement parts for the Goods ("**Replacement Parts**"), the Customer may do so by emailing the Supplier at the address given on the Supplier's website or telephoning the Supplier.
- 4.2 Title to Replacement Parts shall not pass to the Customer until the Supplier receives payment in full (in cash or cleared funds) for the Replacement Parts and any other goods that the Supplier has supplied to the Customer.
- 4.3 The price for Replacement Parts shall be the price set out in the Supplier's then current price list as reasonably amended from time to time. The price of the Replacement Parts is exclusive of all costs and charges of packaging, insurance, transport of the Replacement Parts (together the "**Delivery Charges**") and import duties (to the extent applicable). Delivery Charges shall be paid by the Customer when it pays for the Replacement Parts. Import duties shall be the responsibility of the Customer.
- 4.4 The Supplier shall invoice the Customer in advance of delivery of the Replacement Parts. The Customer shall pay each invoice submitted by the Supplier:
 - (a) within 14 days of the date of the invoice; and
 - (b) in full and in cleared funds to a bank account nominated in writing by the Supplier; andtime for payment shall be of the essence of the Agreement. Delivery of the Replacement Parts shall not take place until full payment has been received for the Replacement Parts.
- 4.5 In the event that:
 - (a) the Supplier charges the Customer to repair or replace defective Goods pursuant to clause 5.2; or
 - (b) the Supplier charges the Customer to repair or replace defective or lost Goods at the termination or expiry of the Agreement and/or Schedule,the Supplier shall charge the Customer the list price of the Goods at such time.

5. QUALITY OF GOODS AND SUPPORT AND MAINTENANCE SERVICES

- 5.1 In the event that the Customer gives notice in writing to the Supplier within a reasonable time of discovery that some or all of the Goods are defective and on condition that:
 - (a) the Supplier is given a reasonable opportunity of examining such Goods; and
 - (b) the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Supplier's cost, the Supplier shall, at its option and (subject to clause 5.2) at its own cost, repair or replace the defective Goods.
- 5.2 The Supplier shall be entitled to charge the Customer to repair or replace the defective Goods if:
 - (a) the Customer makes any further use of such Goods after giving a notice in accordance with clause 5.1;
 - (b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
 - (c) the Customer alters or repairs such Goods without the written consent of the Supplier;
 - (d) the defect arises as a result of wilful damage, negligence, or abnormal working conditions (e.g. extreme environmental conditions such as temperature and humidity); or

- (e) the Goods are amended and/or tailored to meet specific requirements of the Customer.
- 5.3 The Supplier warrants that on delivery, and for a period of 12 months from the date of delivery (the “**Warranty Period**”), the Goods shall:
 - (a) conform in all material respects with their description;
 - (b) be free from material defects in design, material and workmanship;
 - (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
 - (d) be fit for any purpose held out by the Supplier.
- 5.4 Subject to clause 5.5, if:
 - (a) the Customer gives notice in writing during the Warranty Period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.3;
 - (b) the Supplier is given a reasonable opportunity of examining such Goods; and
 - (c) the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Supplier's cost, the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.
- 5.5 The Supplier shall not be liable for the Goods' failure to comply with the warranty in clause 5.3 if:
 - (a) the Customer makes any further use of such Goods after giving a notice in accordance with clause 5.4;
 - (b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
 - (c) the Customer alters or repairs such Goods without the written consent of the Supplier;
 - (d) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions (e.g. extreme environmental conditions such as temperature and humidity); or
 - (e) the Goods are amended and/or tailored to meet specific requirements of the Customer.
- 5.6 Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.3.
- 5.7 The terms of this Agreement shall apply to any repaired or replacement Goods supplied by the Supplier under clause 4 and 5.4.
- 5.8 The Supplier warrants that the Support and Maintenance Services will be provided with reasonable skill and care. The Customer shall report any deficiencies in the Support and Maintenance Services or Other Services to the Supplier within 14 Business Days of performance of the Support and Maintenance Services or Other Services in order to receive any warranty remedies. For a breach of this limited warranty, the Customer's sole and exclusive remedy and the Supplier's entire liability will be for the Supplier to re-perform the deficient Support and Maintenance Services or Other Services (as applicable) or at the Supplier's option, to refund the fees paid to the Supplier by the Customer for the deficient Support and Maintenance Services or Other Services (as applicable), in which case the Customer will return all tangible evidence of the work performed.
- 5.9 The Supplier warrants that the Standard Software and Updates will perform substantially in accordance with the Documentation for a period of 180 days from the date of installation by the Supplier. The Supplier's sole obligation for breach of this limited warranty is to repair or replace at the Supplier's option the defective Standard Software with one copy of conforming Standard Software in a timely manner, provided the Customer (a) notifies the Supplier of the deficiency within the warranty period referred to in this clause 5.9 and (b) has the right or subscribed for Maintenance of the Software and installed all Updates provided by the Supplier to the Customer. This warranty shall be null and void upon modification of the Standard Software by any party other than the Supplier or the Customer's breach of this Agreement.

6. CHARGES AND PAYMENT

- 6.1 The price for the Support and Maintenance Services and the Goods shall be the price set out in the relevant Schedule save that the Supplier shall be permitted before delivery of the Goods or Support and Maintenance Services to reasonably increase the price for the Support and Maintenance Services and/or the Goods from time to time by giving no less than 14 Business Days' notice:
 - (a) to reflect any factor beyond the Supplier's control (including increases in labour, materials and other manufacturing costs);
 - (b) due to any request by the Customer to change the delivery date, quantities or type of the Goods or the specification for the Goods; or
 - (c) as a result of any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate information or instructions.

The price of the Goods is exclusive of all Delivery Charges and import duties (to the extent applicable). Delivery Charges shall be paid by the Customer when it pays for the Goods. Import duties shall be the responsibility of the Customer.
- 6.2 In the event that the Customer does not wish to continue using the Support and Maintenance Services at the higher rate, or pay for the Goods at the higher rate the Customer shall notify within 14 Business Days or receipt of the notification referred to in clause 6.1 (the “**Notice**”) the Supplier of such fact and the Supplier shall in its sole and absolute discretion either (i) terminate the Agreement on or at the end of the 14 Business Day period or (ii) continue to provide the Support and Maintenance Services and/or the Goods until the end of the Support Term at the price in force immediately prior to the Notice.

- 6.3 The Supplier shall invoice the Customer in advance of delivery of the Goods.
- 6.4 The Supplier shall invoice the Customer for the Support and Maintenance Services in advance and at the intervals set out in the relevant Schedule (and in the absence of any intervals, quarterly). The Customer shall pay each invoice submitted by the Supplier:
- (a) within 14 days of the date of the invoice; and
 - (b) in full and in cleared funds to a bank account nominated in writing by the Supplier, and
- time for payment shall be of the essence of the Agreement. In the event of non-payment of any invoice, the Supplier shall be permitted to suspend provision of the Support and Maintenance Services, Maintenance for the Software and delivery of the Goods.
- 6.5 All amounts payable by the Customer under the Agreement are exclusive of amounts in respect of value added tax chargeable from time to time (“VAT”). Where any taxable supply for VAT purposes is made under the Agreement by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods and/or the Replacement Parts and/or the Support and Maintenance Services and Maintenance for the Software at the same time as payment is due for the supply of the Goods and/or the Replacement Parts and/or the Support and Maintenance Services or Maintenance for the Software.
- 6.6 If the Customer fails to make any payment due to the Supplier under the Agreement by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4% per annum above HSBC 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.
- 6.7 The Customer shall pay all amounts due under the Agreement in full without any set-off, counterclaim, deduction or withholding except as required by law. The Supplier may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

7. CONFIDENTIALITY AND INTELLECTUAL PROPERTY RIGHTS

- 7.1 A party (the “**Receiving Party**”) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party (the “**Disclosing Party**”), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party’s business, its products and services which the Receiving Party may obtain. The Receiving Party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the Receiving Party’s obligations under the Agreement, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause 7 as though they were a party to the Agreement. The Receiving Party may also disclose such of the Disclosing Party’s confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction.
- 7.2 The restrictions contained in clause 7.1 shall not apply to any information, know how or material:
- (a) in the public domain without breach of this Agreement;
 - (b) which, was already in the possession of the Receiving Party (other than from the Disclosing Party) prior to the commencement of this Agreement;
 - (c) that the Receiving Party develops independently of any information and material that is disclosed to it under the provisions of this Agreement;
 - (d) which is subsequently disclosed to the recipient by a third party not in breach of any obligation of confidence to the Disclosing Party or its affiliates; or
 - (e) is approved in writing for release by the Disclosing Party.
- 7.3 All Intellectual Property Rights in the Goods are the exclusive property of the Supplier. The Customer has no right to reproduce, amend or otherwise use any Intellectual Property Rights in the Goods or otherwise belonging to the Supplier.
- 7.4 All Intellectual Property Rights in the Deliverables are the exclusive property of the Supplier. The Customer has no right to reproduce, amend or otherwise publish any of the Deliverables except as required to make use of the Goods and on condition that such Deliverables are not disseminated or distributed to persons outside of the Customer’s business.
- 7.5 All Intellectual Property Rights in any work arising from or created or produced or developed by the Supplier (whether alone or jointly with others) under or in the course of this Agreement, including those arising from the performance of the Support and Maintenance Services or any Other Services, shall immediately upon creation or performance vest absolutely in and shall be and remain the sole and exclusive property of the Supplier and the Customer shall acquire no right, title or interest in and to the same, except for the limited rights expressly granted in this Agreement.
- 7.6 Except for the licence rights under clause 3.4, neither party will own or acquire any right, title, or interest to the other party’s pre-existing Intellectual Property Rights under this Agreement.
- 7.7 This clause 7 shall survive termination of the Agreement.

8. LIMITATION OF LIABILITY

- 8.1 Nothing in the Agreement shall limit or exclude either party’s liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - (b) fraud or fraudulent misrepresentation;
 - (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
 - (d) breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession);
 - (e) defective products under the Consumer Protection Act 1987; or
 - (f) matters for which liability cannot be excluded or limited under any applicable law.
- 8.2 Nothing in the Agreement shall limit or exclude the Customer's liability for breach of:
- (a) clause 6 (Charges and Payment);
 - (b) clause 7 (Confidentiality and Intellectual Property Rights);
 - (c) clause 9 (Infringement); or
 - (d) clause 10 (Data Protection).
- 8.3 Subject to clause 8.1, the Supplier shall under no circumstances whatsoever be liable to the Customer, whether the same are suffered directly or indirectly or are immediate or consequential, and whether in contract, tort (including negligence), breach of statutory duty, or otherwise, which fall within any of the following categories:
- (a) special damage even if the Supplier was aware of the circumstances in which such special damage could arise;
 - (b) loss of profits;
 - (c) loss of anticipated savings;
 - (d) loss of business opportunity; or
 - (e) loss of goodwill.
- 8.4 Subject to clause 8.1, the Supplier's aggregate liability whether in contract, tort (including negligence), breach of statutory duty or otherwise and whether in connection with this Agreement or otherwise, shall in no circumstances exceed the lesser of:
- (a) £25,000; or
 - (b) 100% of the price paid by the Customer for the Goods or Replacement Goods or Support and Maintenance Services or Other Services (as applicable).
- 8.5 Subject to clause 8.1 and 8.2, the Customer's aggregate liability (in each contract year) whether in contract, tort (including negligence), breach of statutory duty or otherwise and whether in connection with this Agreement or otherwise, shall in no circumstances exceed £500,000.
- 8.6 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Agreement.
- 8.7 This clause 8 shall survive termination of the Agreement.

9. INFRINGEMENT

- 9.1 The Supplier shall defend at its own expense any claim brought against the Customer alleging that the use of the Standard Software, Documentation and Updates (collectively "**Materials**") in accordance with this Agreement infringes the UK Intellectual Property Rights of a third party ('Intellectual Property Claim') and the Supplier shall pay all costs and damages awarded or agreed to in settlement of an Intellectual Property Claim provided that the Customer: (i) furnishes the Supplier with prompt written notice of the Intellectual Property Claim and makes no comment or admission that may adversely affect the Supplier's ability to defend or settle an Intellectual Property Claim; (ii) provides the Supplier with reasonable assistance in respect of the Intellectual Property Claim; and (iii) gives to the Supplier the sole authority to defend or settle the Intellectual Property Claim.
- 9.2 If, in the Suppliers' reasonable opinion, the use of the Materials is or may become the subject of an Intellectual Property Claim then the Supplier shall either obtain for the Customer the right to continue using the Materials which are the subject of the Intellectual Property Claim; or replace or, with the written consent of the Customer, modify the Materials which are the subject of the Intellectual Property Claim so they become non-infringing. If the remedies set out in this clause 9 are not in the Suppliers' opinion reasonably available (including on the grounds of cost), then the Customer shall return the Materials which are the subject of the Intellectual Property Claim.
- 9.3 The Supplier shall have no liability for any Intellectual Property Claim resulting from the use of the Materials in combination with any equipment (other than the Goods) or programs not supplied or approved by the Supplier or any modification of any item of the Software by a party other than the Supplier or its authorised agent or if infringement would have been avoided by the use of a subsequent release of the Materials which is provided to the Customer (provided that the Supplier has notified the Customer that using the subsequent release would avoid the infringement claim) or the Customer's use of the Materials in any manner not permitted under this Agreement.
- 9.4 The parties agree that this clause 9 exhaustively sets out the Supplier's responsibility and liability to the Customer in the event of an Intellectual Property Claim, subject always to clause 8.
- 9.5 This clause 9 shall survive termination of the Agreement.

10. DATA PROTECTION

- 10.1 Each of the parties acknowledges and agrees that in order for the Supplier to provide the Goods, Software and/or Maintenance and Support Services, it is necessary for Personal Data to be shared by the Customer to the Supplier in relation to contact details for certain Customer representatives (including name, telephone number and email address) (the “Shared Data”). The Shared Data to be shared between the parties will be no more than is necessary in the particular circumstances.
- 10.2 The parties agree that each party will be a separate controller in relation to Shared Data that is processed for the purposes set out in clause 10.1.
- 10.3 The Customer warrants and undertakes that: (a) it has no reason to believe that it is prohibited from sharing, or that the Supplier is prohibited from receiving, the Shared Data in accordance with the Agreement; (b) at the time it is shared, to the best of its knowledge the Shared Data is accurate and up to date; and (c) it will at all times ensure that it (and any sub-contractor) has obtained the Shared Data in accordance with the Data Protection Legislation and has provided all necessary notices to data subjects and has procured all necessary consents, or satisfied another legal basis, to disclose the Shared Data to the Supplier and for the Supplier to process the Shared Data in compliance with the Data Protection Legislation.

11. TERMINATION

- 11.1 If the Customer becomes subject to any of the events listed in clause 11.2, the Supplier may terminate the Agreement with immediate effect by giving written notice to the Customer.
- 11.2 For the purposes of clause 11.1, the relevant events are:
- (a) the Customer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;
 - (b) the Customer 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;
 - (c) 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 Customer, other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
 - (d) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer;
 - (e) the holder of a qualifying floating charge over the Customer's assets has become entitled to appoint or has appointed an administrative receiver;
 - (f) a person becomes entitled to appoint a receiver over the Customer's assets or a receiver is appointed over the Customer's assets;
 - (g) a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
 - (h) any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 11.2(a) to clause 11.2(g) (inclusive);
 - (i) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; and
 - (j) the Customer's financial position deteriorates to such an extent that in the Supplier's reasonable opinion the Customer's capability to adequately fulfill its obligations under the Agreement has been placed in jeopardy.
- 11.3 Without limiting its other rights or remedies, the Supplier may suspend provision of the Goods, Software and/or Support and Maintenance Services under the Agreement or any other contract between the Customer and the Supplier if (a) the Customer becomes subject to any of the events listed in clause 11.2 or the Supplier reasonably believes that the Customer is about to become subject to any of them; (b) if the Customer fails to pay the Supplier any amount due under this Agreement on the due date for payment; or (c) the Supplier sells or disposes of the Goods pursuant to clause 2.9. If any suspension lasts for more than fourteen (14) days, the Supplier may terminate the Agreement for cause.
- 11.4 Either party may terminate the Agreement by written notice to the other party if (a) the other party is in material breach of the Agreement (being a single event or a series of events which are together a material breach) and that breach is not capable of remedy, or if the breach is capable of remedy, has not been remedied by the other party within 30 days of date of notice requiring it to do so.
- 11.5 On termination of the Agreement for any reason the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest, provided that the termination is not due to the Supplier's breach of this Agreement. The Supplier shall have the right to take immediate possession of the Software to the extent permitted by law and the Customer will (a) discontinue exercising any rights granted (b) deliver to the Supplier all Software then in its possession or control, including without limitation, all copies and duplicates in whatever form and (c) certify in writing that all materials required to be delivered to the Supplier have been

delivered to the Supplier. For the avoidance of doubt, termination of the Maintenance for the Software or the Support and Maintenance Services, will not terminate this Agreement.

11.6 Termination of the Agreement, however arising, shall not affect any of the parties' rights, remedies, obligations and liabilities that have accrued as at termination including injunctive relief and shall not relieve either party of any of its obligations to the other existing at the time of termination, including the Customer's obligation to pay all charges accrued prior to termination.

11.7 Clauses which expressly or by implication survive termination of the Agreement shall continue in full force and effect.

12. GENERAL

12.1 Assignment

(a) The Supplier may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Agreement and may subcontract or delegate in any manner any or all of its obligations under the Agreement to any affiliate or subcontractor.

(b) The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, subcontract, sublicense, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Agreement by way of stock or asset sale.

12.2 Notices

(a) Any notice or other communication given to a party under or in connection with this Agreement shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause 12.2, and shall be delivered personally or sent by prepaid first-class post or other next working day delivery service, or by commercial courier, or e-mail.

(b) Any notice or other communication shall be deemed to have been received: if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by e-mail, one Business Day after transmission.

(c) The provisions of this clause 12.2 shall not apply to the service of any proceedings or other documents in any legal action.

12.3 Severance

(a) If any provision or part-provision of the 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 12.3 shall not affect the validity and enforceability of the rest of the Agreement.

(b) If one party gives notice to the other of the possibility that 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.

12.4 **Waiver.** A waiver of any right under the Agreement or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Agreement or by law shall constitute a waiver of that or any other right or remedy, nor prevent or restrict its 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.

12.5 **No partnership or agency.** Nothing in the Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, nor constitute either party the agent of another party for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

12.6 **Third parties.** A person who is not a party to the Agreement shall not have any rights to enforce its terms.

12.7 **Variation.** Except as set out in these Conditions, no variation of the Agreement, including the introduction of any additional terms and conditions shall be effective unless it is agreed in writing and signed by both parties.

12.8 **Governing law.** 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 laws of England and Wales.

12.9 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

12.10 **Force Majeure.** 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 result from events, circumstances or causes beyond its reasonable control including without limitation acts of God, flood, drought, earthquake or other natural disaster; terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations; any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent; collapse of buildings, fire, explosion or accident; any labour or trade dispute, strikes, industrial action or lockouts; non-performance by suppliers or subcontractors; and interruption or failure of utility service ("**Force Majeure Event**"). In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed.

13. INTERPRETATION

13.1 In these terms and conditions, capitalised terms not otherwise defined or defined in the applicable Schedule shall have the following meanings:

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Customer: the person described in the signature boxes below.

Data Protection Legislation: (a) Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) including the recitals (the “**GDPR**”) and any equivalent or implementing legislation; (b) if and to the extent that the UK Data Protection Act 2018 (“**DPA 2018**”) applies to any processing of Personal Data: (i) the GDPR as applied by the DPA 2018; and (ii) the DPA 2018; and (c) all other applicable laws (including judgments of any relevant court of law) and regulations relating to the processing of personal data, data privacy, electronic communications, marketing and/or data security.

Deliverables: all documentation, information, reports, analysis and other material (whether in printed or electronic form) provided by the Supplier to the Customer arising out of provision of the Support and Maintenance Services.

Documentation: means and any standard user instructions and/or functional specification as described on a Schedule or embedded within the Standard Software, any additions and updates thereto.

Goods: means any and all goods, materials or products of whatever description to be purchased by the Customer as listed in the relevant Schedule.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications 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.

Personal Data means all personal data in respect of which Buyer is a controller (“**controller**”, “**processor**”, “**personal data**”, “**Personal Data Breach**”, “**data subject**”, and “**processing**” have the meanings given to them in the GDPR) to which the Supplier and/or any subcontractor has been given access in the course of performing its obligations under the Agreement.

Schedule: means a schedule attached hereto and any Schedule(s) signed by both parties on or after the commencement of this Agreement that references this Agreement. Each Schedule is incorporated into the Agreement by this reference.

Software: means the Standard Software, Updates, Documentation and any copies, translations, derivations, adaptations or modifications thereof and any portion of any of the foregoing.

Standard Software: means the software to be provided by the Supplier as listed in the relevant Schedule.

Supplier: Studio B01 Ltd T/A The Flash Pack registered in England and Wales with company number 13915512 whose registered office is at Kings Parade, Lower Coombe Street, Croydon, England, CR0 1AA.

Support and Maintenance Services: means the services to be provided by the Supplier as described in the relevant Schedule.

Support Term: the term during which the parties agree that the Supplier shall provide the Support and Maintenance Services and the Customer shall pay for the Support and Maintenance Services and the Maintenance for the Software as detailed in the Schedule.

Updates: means all new releases, program fixes or patches, if any, to the Standard Software that are provided by the Supplier, when and if available, to its Customers who are current in paying any fees that are applicable for the Maintenance for the Software.

13.2 **Construction.** In these terms and conditions, the following rules apply:

- (a) a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (b) a reference to a party includes its successors or permitted assigns;
- (c) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- (d) any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- (e) a reference to writing or written includes e-mail.

STUDIO B01 LTD

Signature _____

Name _____

Title _____

Date _____

CUSTOMER

Company name: _____

Company registered number: _____

Address: _____

Signature _____

Signatory Name _____

Title _____

Date _____