



**SOFTWARE LICENCE, HARDWARE, SERVICES AND SUPPORT AGREEMENT**

This Agreement is dated ..... of..... 20....., between:

Name and Address of Trapeze: <b>Trapeze Group (UK) Limited</b> , registered under number 4160790, whose registered office is Brook Suite, Ground Floor, Bewley House, Marshfield Road, Chippenham, Wiltshire, SN15 1JW (“Trapeze”)	Name and Address of Customer: « <b>OrgName</b> » registered under number [ <i>insert company number</i> ] whose registered office is at [ <i>insert registered office details</i> ] or [ <i>where organisation is not a registered company</i> ]« <b>OrgName</b> » whose principal place of business is at [ <i>insert address</i> ] (“ <b>Customer</b> ”)
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**PRODUCTS AND SERVICES TO BE PROVIDED**

Product/service	Included in this contract?		Further detail
	YES	NO	
Software			See Schedule A
Hardware			See Schedule B
Support & Maintenance			See Schedule C & D
Services			See Schedule F
Hosting Services			See Schedule G

This Agreement, including the Schedules hereto, represents the complete and exclusive agreement between Trapeze and the Customer with respect to the licensing of the Software (as defined below and if provided under this Agreement), the Hardware (as defined below and if provided under this Agreement), and various services which Trapeze may provide to the Customer. This Agreement supersedes all prior agreements, negotiations, or understandings between Trapeze and the Customer in any way relating to the subject matter of this Agreement. In the event of any conflict or inconsistency between the provisions of this Agreement and the Schedules, the terms and conditions of this Agreement will govern to the extent of such inconsistency. This Agreement may not be modified except by a later written amendment signed by both parties. Trapeze and the Customer acknowledge having read and understood this Agreement that they hereby agree to be bound by its terms and conditions.

The Customer’s attention is drawn in particular to the following clauses:

- 8.3, which limits Trapeze’s obligation to provide support in respect of non-current versions of its software; and
- 15, which limits Trapeze’s liability in relation to this agreement.

Signed for and on behalf of  
**TRAPEZE GROUP (UK) LIMITED**

Signed for and on behalf of  
 <<ORG NAME>>

Signature: \_\_\_\_\_  
 Name: Tim Porter  
 Title: Managing Director

Signature: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_

The parties agree as follows:

1. **Definitions**

1.1. In this Agreement, unless the context requires otherwise, the capitalised words set out below shall have the following meanings:

“Agreement”	this agreement and the attached Schedules;
“Business Days”	a day (other than a Saturday, Sunday or public holiday in England) when banks in London are open for business;
“Customer Data”	the data inputted by the Customer, the Customer’s end users or Trapeze on the Customer’s behalf, for the purposes of the Customer’s use of the Software;
“Documentation”	the user documentation pertaining to the Software and Hardware (if provided under this Agreement) as supplied by Trapeze;
“Go Live Date”	the earlier of the date of User Acceptance and the date on which Customer first uses the Software in an operational environment;
“Group”	in relation to either party, that company, any company of which it is a Subsidiary (its holding company or companies) and any other Subsidiaries of any such holding company(ies); and each company in a group is a member of the group. Unless the context otherwise requires, the application of the definition of Group to any company at any time will apply to the company as it is at that time;
“Hardware”	the computer hardware or any other related items to be provided by Trapeze, if applicable, the quantity and description of which is identified in Schedule B of this Agreement;
“Hosting Services”	the hosting services provided by Trapeze in respect of the Software, as specified in Schedule G;
“Initial Term”	[Three (3) years from the date of this Agreement.]
“Intellectual Property”	patents, copyright and related rights, trade marks, domain names, designs, database rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered, registrable or not and including all applications (or rights to apply) for, and renewals or extensions of, 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;
“New Product”	any update, new feature or major enhancement to the Software that Trapeze markets and licenses for additional fees separately from Upgrades;
“Normal Business Hours”	9.00am to 5.00pm local UK time on Business Days;
“Project Plan”	the project plan describing the nature of the Services, any specification for the Services (if appropriate) and setting out the estimated timetable and responsibilities for the provision of the Services by Trapeze in accordance with this Agreement;
“Services”	the Hosting Services and any services set out in Schedule F, if applicable;
“Software”	the Trapeze software identified in Schedule A of this Agreement, including any Upgrades which are provided to the Customer during the term of this Agreement, but not including any Third Party Software;
“Software Licence Fee”	the fees payable by the Customer to Trapeze in respect of the licence to use the Software granted under this Agreement;
“Subsidiary”	a "subsidiary" as defined in section 1159 of the Companies Act 2006 (as amended or re-enacted) and any other company which is a subsidiary (as so defined) of a company which is itself a subsidiary of such holding company. Unless the context otherwise requires, the

application of the definition of Subsidiary to any company at any time will apply to the company as it is at that time;

- “Summary of Pricing” the summary of pricing and payment information attached as Schedule E to this Agreement;
- “Support and Maintenance” the support and maintenance services in respect of the Software as set out in clause 8 and Schedule D.
- “Territory” [the United Kingdom];
- “Third Party Software” means the software owned and controlled by third parties, identified in [Schedule A];
- “Third-Party Additional Terms” the additional terms and conditions referred to or set out in [Schedule A] relating to Third-Party Software.
- “Trade Secrets” the Software, the Documentation, and other related information (including all customisations and modifications developed by Trapeze pursuant to this Agreement whether through the provision of the Services or otherwise) including all Intellectual Property therein, and all confidential and proprietary information of Trapeze disclosed or supplied to the Customer;
- “Upgrades” generic enhancements to the Software that Trapeze makes available to its customers generally as part of its support and maintenance services;
- “Virus” any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, Trojan horses, viruses and other similar things or devices; and
- “User Acceptance” as defined in Clause 6.2.

## 2. **Licence**

- 2.1. If set out on the front page on this Agreement and as further specified in Schedule A, Trapeze shall supply the Software to the Customer and in consideration of the payment of the Software Licence Fee hereby grants to the Customer a personal, perpetual, non-transferable, and non-exclusive licence which may not be sub-licensed where such licence is restricted for use by the Customer at their place of business within the Territory for the period of this Agreement, to enable the Customer:
- to use one production copy of the executable code version of the Software, in the form supplied by Trapeze, on hardware approved by Trapeze, and in accordance with the further specifications set out in Schedule A attached hereto; and
  - if the licence is for multi-user software, to use the Software for the number of users set out in Schedule A; and
  - to use the Documentation, but only as required to exercise this licence.
- 2.2. The Customer may use the production copy of the Software solely for the Customer’s own internal business purposes.
- 2.3. Except as expressly stated in this clause 2.3, the Customer has no right (and shall not permit any third party) to copy, adapt, reverse engineer, decompile, disassemble, modify, adapt or make error corrections to the Software in whole or in part except to the extent that any reduction of the Software to human readable form (whether by reverse engineering, decompilation or disassembly) is necessary for the purposes of integrating the operation of the Software with the operation of other software or systems used by the Customer, unless Trapeze is prepared to carry out such action at a reasonable commercial fee or has provided the information necessary to achieve such integration within a reasonable period, and the Customer shall request Trapeze to carry out such action or to provide such information (and shall meet Trapeze’s reasonable costs in providing that information) before undertaking any such reduction.
- 2.4. Other than the rights of use expressly conferred upon the Customer by this clause 2, the Customer will have no further rights to use the Software or Documentation. The Customer will not copy, reproduce, modify, adapt, translate or add new features to the Software or the Documentation. The Customer shall not permit disclosure of, access to, or use of the Software by any third party unless authorized in writing by Trapeze.

- 2.5. The Customer shall notify Trapeze as soon as it becomes aware of any unauthorized use of the Software by any person.
- 2.6. The Customer shall pay, for broadening the scope of the licences granted under this licence to cover the unauthorised use, an amount equal to the fees which Trapeze would have levied (in accordance with its normal commercial terms then current) had it licensed any such unauthorised use on the date when such use commenced together with interest at the rate provided for in clause 10.6, from such date to the date of payment.
- 2.7. The Third-Party Software shall not be deemed to be incorporated within the Software for the purposes of this licence and use of the Third-Party Software shall be subject to the Third-Party Additional Terms.
- 2.8. The Customer shall indemnify and hold Trapeze harmless against any loss or damage which it may suffer or incur as a result of the Customer's breach of any Third-Party Additional Terms howsoever arising.
- 2.9. Trapeze may treat the Customer's breach of any Third-Party Additional Terms as a breach of this Agreement.

### 3. **Hardware**

- 3.1. If set out on the front page of this Agreement and as further specified in Schedule B, Trapeze shall supply the Hardware to the Customer which may be delivered by separate instalments. Each separate instalment shall be invoiced by Trapeze and paid for by Customer in accordance with this Agreement.
- 3.2. Trapeze reserves the right (but does not assume the obligation) to make any changes in the specification of the Hardware which are required to conform to any applicable legislation. Trapeze shall use reasonable endeavours to transfer to the Customer the benefit of any warranty or guarantee given by the manufacturer to Trapeze.
- 3.3. Trapeze shall use all reasonable endeavours to deliver the Hardware on the date or dates agreed between the parties. Time is not of the essence as to the delivery of the Hardware.
- 3.4. The Customer shall be responsible (at the Customer's cost) for preparing the delivery location for the delivery of the Hardware and for the provision of all necessary access and facilities reasonably required for delivering and installing the Hardware.
- 3.5. The Hardware shall be at the risk of Trapeze until the goods are delivered or placed at the Customer's disposal at a location agreed between the parties. The Customer shall own the Hardware on the later of (i) completion of delivery (including off-loading), or Hardware being placed at the disposal of the Customer at the location agreed between the parties; and (ii) Trapeze receiving in full in cleared funds all sums due to it in respect of the Hardware.
- 3.6. Until ownership of the Hardware has passed to the Customer under this Agreement, the Customer shall:
  - a) hold the Hardware on a fiduciary basis as Trapeze's bailee;
  - b) store the Hardware (at no cost to Trapeze) in satisfactory conditions and separately from all the Customer's other equipment or that of a third party, so that it remains readily identifiable as Trapeze's property;
  - c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Hardware; and
  - d) keep the Hardware insured on Trapeze's behalf for its full price against all risks to the reasonable satisfaction of Trapeze, and hold the proceeds of such insurance on trust for Trapeze and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.
- 3.7. The Customer's right to possession of the Hardware before ownership has passed to it shall terminate immediately if the Customer breaches any term of this Agreement, encumbers or in any way charges the Hardware, or if the Customer fails to make any payment to Trapeze on the due date.
- 3.8. The Customer grants Trapeze, its agents and employees an irrevocable licence at any time to enter any premises where the Hardware is or may be stored in order to inspect it, or where the Customer's right to possession has terminated, to remove it. All costs incurred by Trapeze in repossessing the Hardware shall be borne by the Customer.
- 3.9. If set out in the description of the Services in Schedule F, Trapeze shall install and/or assemble the Hardware.
- 3.10. If the Customer fails to take delivery of Hardware on the scheduled delivery date, then, except where such failure or delay is caused by Trapeze's failure to comply with its obligations under this agreement:
  - a) delivery of the Hardware shall be deemed to have been completed at 9.00 am on the day on which delivery was attempted; and
  - b) Trapeze shall store the Hardware until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 3.11. Trapeze shall have no liability for any failure or delay in delivering Hardware to the extent that such failure or delay is caused by the Customer's failure to comply with its obligations under this Agreement.

#### **4. Services**

- 4.1. If set out on the front page of this Agreement and as further specified in Schedule F (or as otherwise agreed between the parties in writing), Trapeze will perform for the benefit of the Customer various services related to the Customer's use of the Software and /or Hardware (as the case may be). Such Services may include, but are not limited to, Hardware installation, Hardware assemblage, Software installation, configuration, modification, testing, training and additional services. The Services will be performed in accordance with a Project Plan to be agreed to by the parties at the conclusion of the initial operational review where such review shall take place at a time and date to be agreed between the parties. When the Project Plan is agreed, it shall be attached to this Agreement in Schedule H.
- 4.2. Trapeze shall use all reasonable endeavours to provide the Services including any times for delivery of the Services, in all material respects in accordance with the Project Plan.
- 4.3. The Customer acknowledges that the ability of Trapeze to provide the Software, the Services, and/or the Hardware in a timely manner requires the Customer to:
  - a) co-operate with Trapeze in all matters relating to this Agreement;
  - b) provide in a timely manner such access to the Customer's premises, data and other facilities, as is reasonably requested by Trapeze;
  - c) provide in a timely manner such information as Trapeze may request, and ensure that such information is accurate in all material respects; and
  - d) be responsible at its own cost for preparing the relevant premises and IT facilities for the supply of the Services.
- 4.4. If Trapeze's performance of its obligations under the Agreement is prevented or delayed by any act or omission of the Customer or its agents, sub-contractors or employees, Trapeze shall not be in breach of this Agreement as a result of such act or omission and the Customer shall be liable to pay to Trapeze on demand all reasonable costs, charges or losses sustained or incurred by Trapeze (including the cost of storage and insurance of any Hardware) subject to Trapeze confirming such costs, charges and losses to the Customer in writing.

#### **5. Customer Data**

- 5.1. The Customer shall own all rights, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.
- 5.2. Trapeze shall follow its archiving procedures for Customer Data as set out in its Back-Up Policy available upon request. Such document may be amended by Trapeze in its sole discretion from time to time. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for Trapeze to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by Trapeze in accordance with the archiving procedure described in its Back-Up Policy. Trapeze 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 Trapeze to perform services related to Customer Data maintenance and back-up).
- 5.3. If Trapeze processes any 'personal data' (as defined in applicable UK data protection laws) on the Customer's behalf when performing its obligations under this Agreement, the provisions of Schedule I shall additionally apply.

#### **6. User Acceptance Procedure**

- 6.1. After delivering the Hardware (if applicable), supplying or providing access to the Software, and carrying out any other Services which are appropriate and relevant as set out in the Project Plan, Trapeze will notify the Customer in writing that it can conduct its acceptance tests. The content of such acceptance tests and the acceptance criteria are subject to approval by Trapeze. The Customer will then have ten (10) Business Days in which to conduct acceptance tests to verify that the Software and Hardware (if provided under this Agreement) operates materially in accordance with the Documentation. At the end of this period, the Customer will be deemed to accept the Software and Hardware (if applicable) unless Trapeze receives prior written notice outlining the nature of the perceived defects in the Software and Hardware (if applicable). Such notice shall specify the defect and details as to why the Software and Hardware (if applicable) does not comply with the Documentation. Trapeze shall use its reasonable endeavours to remedy such Software defects of which it is notified in accordance with this clause. In relation to any Hardware defects of which Trapeze is notified in accordance with this clause, Trapeze shall use its reasonable endeavours to procure for the Hardware manufacturer to repair or replace the defective Hardware as appropriate.
- 6.2. Notwithstanding the above, the Customer will be deemed to accept the Software and the Hardware (if provided) when the Customer first uses the Software and Hardware (if applicable) to support its then current operations in any capacity. Upon the actual or deemed acceptance of the Software and Hardware (if applicable) in accordance with this section 6 ("User Acceptance"), Trapeze shall be entitled to request a written acknowledgement of acceptance from the Customer and the Customer shall immediately provide it.

## 7. **Warranties**

- 7.1. Trapeze warrants the Software to operate materially in accordance with the Documentation from the date upon which the Software is accepted or deemed accepted, as set out in section 6 above. The sole remedy of the Customer for any breach of this warranty will be for Trapeze to use reasonable efforts to correct, at its own expense, any applicable material defects in the Software that are brought to Trapeze's attention by the Customer, in the context of the Support and Maintenance it provides under this Agreement.
- 7.2. The Customer accepts responsibility for the selection of the Software to achieve its intended results and acknowledges that the Software has not been developed to meet the individual requirements of the Customer.
- 7.3. Trapeze:
  - a) does not warrant that the Hosting Services will be uninterrupted or error-free; nor that the Hosting Services will meet the Customer's requirements; and
  - b) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Hosting Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 7.4. Neither party shall export, directly or indirectly, any technical data acquired from the other party under this agreement (or any products, including Software, incorporating any such data) in breach of any applicable laws or regulations, including United States export laws and regulations, to any country for which the government or any agency thereof at the time of export requires an export licence or other governmental approval without first obtaining such licence or approval.

## 8. **Support and Maintenance**

- 8.1. Upon acceptance of the Software in accordance with this Agreement, and subject to clause 17.4 of this Agreement, Trapeze agrees to provide the following Support and Maintenance:
  - a) Trapeze will provide Support and Maintenance in respect of errors or defects in the Software which cause the Software to not comply in all material respects with the descriptions and specifications set out in the Documentation;
  - b) Trapeze will provide the support services specified in Schedule D in respect of such errors or defects, subject to clause 8.2. Upon registration by the Customer or a third party acting on behalf of the Customer, Trapeze will also provide the Customer with access to its support website. Trapeze will also use remote connection facilities to make investigations and share information remotely; and
  - c) Upgrades and (if applicable) updated Documentation will be provided free of charge.
- 8.2. Trapeze shall have no obligation to provide such support services if the fault is not reported through Trapeze's telephone support line or via Trapeze's support website or where faults arise from:
  - a) misuse, incorrect use of or damage to the Software; or
  - b) failure to maintain the necessary environmental conditions for use of the Software; or
  - c) use of the Software in combination with any equipment or software not provided by Trapeze, or any fault in any such equipment or software; or
  - d) relocation or installation of the Software by any person other than Trapeze or a person acting under Trapeze's instructions; or
  - e) the Customer's failure to follow Trapeze's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Hardware or (if there are none) good trade practice; or
  - f) the Customer altering or repairing the relevant Hardware without the written consent of Trapeze; or
  - g) any breach of the Customer's obligations under this Agreement.
- 8.3. Trapeze shall have no obligation to provide Support and Maintenance and shall be entitled to terminate this Agreement on one month's written notice to the Customer if the Customer fails to acquire and install Upgrades such that the Software operated by the Customer is more than one version behind Trapeze's latest issued version.
- 8.4. If the Customer detects any errors in the performance of the Hardware, Trapeze will provide reasonable assistance to the Customer in assessing the cause of any error and procuring for the manufacturer to repair or replace if appropriate. However, the Customer acknowledges that the Hardware is manufactured by third parties and accordingly Trapeze is not liable for any defects with the Hardware.

- 8.5. The Customer shall:
- a) provide Trapeze, its employees and all other persons duly authorised by Trapeze with full, safe and uninterrupted access including remote access to the Customer's premises and the Software and Hardware (if provided under this Agreement) as may reasonably be required for the purpose of performing the support services;
  - b) ensure that appropriate environmental conditions are maintained for the Software and Hardware (if applicable) and shall take all reasonable steps to ensure that the Software and Hardware (if applicable) is operated in a proper manner by the Customer's employees;
  - c) nominate a manager to be available to liaise with, and respond to queries from, Trapeze's support manager (for example, as to the resolution of conflicting priorities between two or more items of support or maintenance);
  - d) co-operate with Trapeze in performing the support services and provide any assistance or information as may reasonably be required by Trapeze;
  - e) ensure that no Customer Data is sent to or made available to Trapeze for the purposes of addressing any fault, except where either (i) such Customer Data has been fully anonymised such that it cannot identify any living individual; or (ii) if such anonymisation is not possible, Trapeze provides its prior written consent to receiving such Customer Data (or access to it, as applicable). In the event that Trapeze provides such consent, the Customer shall notify any requirements it has in relation to retention and deletion of such Customer Data by Trapeze; and
  - f) report faults promptly to Trapeze.
- 8.6. The Customer is entitled to acquire a licence to New Products in return for payment of Trapeze's then-current licence fees.
- 8.7. To the extent that Trapeze is called upon to provide support services in respect of any matter specified in clause 8.2, Trapeze reserves the right to charge a reasonable fee (based upon its then-current standard daily rates) in respect of any such support services provided.

## 9. **Change Control**

- 9.1. If either party wishes to change the scope of the Services, the Software, or the Hardware (as the case may be), or the scope of the support provided under this Agreement, it shall submit details of the requested change to the other in writing.
- 9.2. If either party requests a change, Trapeze shall, within a reasonable time, provide a written estimate to the Customer of:
- a) the likely time required to implement the change;
  - b) any variations to Trapeze's charges arising from the change;
  - c) the likely effect of the change on the Project Plan; and
  - d) any other impact of the change on the terms of the Agreement.
- 9.3. If Trapeze requests a change to the scope of the Services, the Software, or the Hardware (as the case may be) or the scope of the support provided under this Agreement, the Customer shall not unreasonably withhold or delay consent to it.
- 9.4. If the Customer wishes Trapeze to proceed with the change, Trapeze has no obligation to do so unless and until the parties have agreed in writing on the necessary variations to its charges, the Project Plan and any other relevant terms of the Agreement to take account of the change.

## 10. **Payment**

- 10.1. Trapeze will invoice the Customer for the Software licence fee(s), the Hardware and for the Services (as the case may be) provided as set out in and according to the Summary of Pricing in Schedule E.
- 10.2. Trapeze will also invoice the Customer for related expenses that will be calculated based on actual expenses incurred. Expenses related to the Services are not to exceed any limits set out in the Summary of Pricing in respect of expenses.
- 10.3. Commencing from the date of installation of the Software, Trapeze shall issue an invoice annually in advance specifying the amount for Support and Maintenance fees, in accordance with Schedule C. This fee is subject to change as set out in and in accordance with Schedule C.
- 10.4. The Customer will pay all invoices within thirty (30) days of receipt.

- 10.5. The Customer will also be responsible for payment of all applicable taxes and other levies, including sales and use taxes, and this obligation will survive termination of this Agreement.
- 10.6. Trapeze may charge the Customer interest on the overdue amount at the rate of 6% per annum above Barclays Bank base lending rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment.

#### **11. Trade Secrets**

- 11.1. The Customer acknowledges that all Trade Secrets are owned by Trapeze or Trapeze has the applicable rights of use in respect of such Trade Secrets. The Customer further acknowledges that all Intellectual Property subsisting in the Software, the Hardware (if provided under this Agreement), and the Documentation, throughout the world belongs to Trapeze or the Hardware manufacturers, that rights in the Software are licensed (not sold) to the Customer, and that the Customer has no rights in, or to, the Software or the Documentation, other than the right to use them or have access to them in accordance with the terms of this Agreement. At Trapeze's expense, the Customer agrees to sign such documents and do such things as are reasonably required by Trapeze to give effect to the terms of this clause.
- 11.2. The Customer will only use the Trade Secrets as permitted by this Agreement, shall maintain the Trade Secrets in strict confidence and not disclose the Trade Secrets to any third party without Trapeze's prior written consent. The Customer shall restrict the disclosure and dissemination of all Trade Secrets to the Customer's employees who are bound to respect the confidentiality of such Trade Secrets. The provisions of this clause shall not apply to any Trade Secrets which are or become generally available to the public other than through disclosure by the Customer in breach of this Agreement. At the request of Trapeze and in any event on termination of this Agreement, the Customer shall return to Trapeze all documents and materials (and any copies) containing or reflecting the Trade Secrets. These obligations of confidentiality will survive termination of this Agreement.
- 11.3. If any part of the Software is protected by technical protection measures (TPM) so that the Intellectual Property, including copyright, in the Software of Trapeze is not misappropriated, the Customer must not attempt in any way to remove or circumvent any such TPM, nor to apply, manufacture for sale, hire, import, distribute, sell, nor let, offer, advertise or expose for sale or hire, nor have in its possession for private or commercial purposes, any means whose intended purpose is to facilitate the unauthorised removal or circumvention of such TPM.

#### **12. Media and Publication**

- 12.1. Upon reasonable notice and consultation with the Customer, Trapeze shall be entitled to publish press releases and other general marketing information related to this Agreement and the work done hereunder.

#### **13. Software Intellectual Property Claims**

- 13.1. Trapeze will defend or, at its option, settle any claim against, the Customer in respect of any claims brought against the Customer by a third party based on the claim that the Software infringes the Intellectual Property of that third party, provided that the Customer gives Trapeze prompt written notice of the claim, does not make any admission of liability, agreement or compromise in relation to the claim, provides all such assistance and documents at Trapeze's request and expense and Trapeze is permitted to have full control of the claim. If all or any part of the Software becomes, or in Trapeze's opinion is likely to become, the subject of such a claim, Trapeze may, at its sole discretion, either: (a) modify the Software to make it non-infringing; or (b) reimburse all licence fees paid by the Customer in relation to the Software that is alleged to infringe or terminate this Agreement as it relates to the infringing portion of the Software.
- 13.2. Trapeze will not be liable for any infringement or claim based upon:
  - a) any modification of the Software developed by the Customer; or
  - b) use of the Software in combination with software or other technology not supplied or approved in advance by Trapeze; or
  - c) use of the Software contrary to this Agreement or the Documentation; or
  - d) use of a non-current release of the Software.
- 13.3. Notwithstanding any other provision in this agreement, clause 13.1 shall not apply to the extent that any claim or action referred to in that clause arises directly or indirectly through the possession or use of any Third-Party Software or through the breach of any Third-Party Additional Terms by the Customer.
- 13.4. This clause 13 constitutes the Customer's exclusive remedy and Trapeze's only liability in respect of claims relating to third party Intellectual Property and, for the avoidance of doubt, is subject to clause 15.



#### **14. Hosting Services Indemnity**

- 14.1. The Customer shall defend, indemnify and hold harmless Trapeze against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Hosting Services, provided that
- a) the Customer is given prompt notice of any such claim;
  - b) Trapeze provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
  - c) the Customer is given sole authority to defend or settle the claim.

#### **15. Limitation of Liability**

- 15.1. This clause 15 sets out the entire financial liability of Trapeze (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:
- a) any breach of the Agreement;
  - b) any liability arising under clause 13.1 (Software Intellectual Property Claims);
  - c) any use made by the Customer of the Services, the Software, Support and Maintenance, the Documentation, the Hardware or any part of them; and
  - d) any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Agreement.
- 15.2. All warranties, clauses and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Agreement. In particular, Trapeze does not warrant that:
- a) the Software and Hardware (if provided under this Agreement) will meet any or all of the Customer's particular requirements because Trapeze has not assessed the Customer's specific individual requirements;
  - b) the Software and Hardware (as the case may be) will operate error free or uninterrupted; or
  - c) all programming errors in the Software can be found in order to be corrected.
- 15.3. Nothing in these clauses excludes the liability of Trapeze:
- a) for death or personal injury caused by Trapeze's negligence; or
  - b) for fraud or fraudulent misrepresentation.
- 15.4. Subject to clause 15.2 and clause 15.3:
- a) Trapeze shall not be liable, whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation or otherwise for:
    - i) loss of profits; or
    - ii) loss of business; or
    - iii) depletion of goodwill or similar losses; or
    - iv) loss of anticipated savings; or
    - v) loss of goods; or
    - vi) loss of contract; or
    - vii) loss of use; or
    - viii) loss or corruption of data or information; or
    - ix) loss resulting from the Customer's use of map or geographical data, owned by the Customer or any third party, in conjunction with the Software or otherwise; or
    - x) loss resulting from the Customer's use of Third Party Software; or
    - xi) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses; and
  - b) Trapeze's total aggregate liability (including under clause 13.1 (Software Intellectual Property Claims)) in contract, tort (including negligence, negligent misstatement or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Agreement shall be limited to the price paid for the Software Licence Fee and the

Support and Maintenance fees paid in the twelve months prior to the date of the event (or first of the events) giving rise to such liability.

## 16. **Confidentiality**

- 16.1. For the purposes of this Clause 16, "Confidential Information" means all or any information of every kind supplied to or received by one Party (the "Receiving Party") from the other Party (the "Disclosing Party"), whether directly or indirectly, pertaining to the Disclosing Party's business including without limitation all information relating to the business, activities, products, software, hardware, copyright, trademarks, service-marks, processes, operations and related affairs of the Disclosing Party and including any goods, hardware, software or other property supplied by the Disclosing Party to the Receiving Party pursuant to the terms of this Agreement but excluding:
- a) Information which at the time of disclosure by the Disclosing Party to the Receiving Party is in the public domain as evidenced by written publication;
  - b) Information which after disclosure by the Disclosing Party to the Receiving Party becomes part of the public domain by written publication through no fault of the Receiving Party;
  - c) Information which the Receiving Party can show by written document was in its possession at the time of disclosure to it by the Disclosing Party and was not acquired directly or indirectly from the Disclosing Party;
  - d) Information which the Receiving Party can show was acquired after disclosure by the Disclosing Party to the Receiving Party from a third party who did not receive it, directly or indirectly, from the Disclosing Party and who did not require the Receiving Party to hold such information in confidence; and
  - e) Information which has at any time been independently developed by the Receiving Party by persons having no access to the Disclosing Party's Confidential Information.
- 16.2. Each Party shall keep secret and confidential, and shall not directly or indirectly disclose to any third party without the prior written consent of Disclosing Party and shall not use or attempt to use except for the sole benefit of the Disclosing Party and for the purpose of this Agreement, the Disclosing Party's Confidential Information supplied to or made available by the Disclosing Party to the Receiving Party. The Receiving Party shall take or cause to be taken all reasonable precautions necessary to maintain the secrecy and confidentiality and prevent the disclosure of the Confidential Information.
- 16.3. Except as otherwise approved in writing by the Disclosing Party, all of the Disclosing Party's Confidential Information and the Disclosing Party's Intellectual Property Rights and all reproductions thereof shall be and remain the property of the Disclosing Party.
- 16.4. Except as permitted by the express terms of this agreement the Receiving Party shall not reproduce or attempt to reproduce in any manner or form any of the Disclosing Party's Confidential Information and items in which the Disclosing Party holds Intellectual Property without the prior written consent of the Disclosing Party. Any such reproduction shall on request by the Disclosing Party be immediately delivered up to the Disclosing Party and be the absolute property of the Disclosing Party.
- 16.5. The Receiving Party will hold all the Disclosing Party's Confidential Information and the Disclosing Party's Intellectual Property upon trust for the exclusive benefit of the Disclosing Party.
- 16.6. On termination of this Agreement, each Party will return all copies of documents and materials containing the Disclosing Party's Intellectual Property Rights and/or Confidential Information to the Disclosing Party as directed by the Disclosing Party.
- 16.7. The Receiving Party shall take all reasonable and proper measures and precautions against unauthorised disclosures of the Disclosing Party's Confidential Information by its personnel and to restrict their use thereof within the terms of this Agreement.
- 16.8. The confidentiality obligations under this Agreement shall not apply to any of the Disclosing Party's Confidential Information which the Receiving Party and its personnel (or any of its directors, officers, employees, agents, contractors or professional advisers) is or are required by statute or law (including the Listing Rules of the relevant stock exchange) to disclose and then only to the limited extent required by law.
- 16.9. Except as expressly provided herein, no license or right is granted by the Disclosing Party to the Receiving Party under any patent, patent application, trademark, copyright, software or Trade Secret. Any such grant shall be made in a separate written agreement.
- 16.10. Each Party agrees not to publicize or disclose the existence or terms of this Agreement to any third Party without the prior consent of the other Party except as required by law (in which case, the Party seeking to disclose the information shall give reasonable notice to the other Party of its intent to make such a disclosure). Subject to clause 12, neither Party shall make any press release or similar public statement in respect of the subject matter of this Agreement without the prior consent of the other Party.
- 16.11. This clause 16 shall survive termination of the Agreement, up to a period of three (3) years after termination.

## 17. **Termination**

- 17.1. Without prejudice to any other rights or remedies to which Trapeze may be entitled, Trapeze may terminate the Agreement without liability to the Customer if:
- a) the Customer fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than seven days after being notified in writing to make that payment;
  - b) the Customer commits a material breach of the Agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of the Customer being notified in writing of the breach; or
  - c) an order is made or a resolution is passed for the winding up of the Customer, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order of the Customer; or
  - d) an order is made for the appointment of an administrator to manage the affairs, business and property of the Customer, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the Customer, or notice of intention to appoint an administrator is given by the Customer or its directors or by a qualifying floating charge holder (as defined in paragraph 15 of Schedule B1 to the Insolvency Act 1986); or
  - e) a receiver is appointed of any of the Customer's assets or undertaking, or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the Customer, or if any other person takes possession of or sells the Customer's assets; or
  - f) the Customer makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way, or becomes bankrupt; or
  - g) the Customer ceases, or threatens to cease, to trade; or
  - h) the Customer takes or suffers any similar or analogous action in any jurisdiction in consequence of debt; or
  - i) the Customer develops software that is competitive with the Software; or
  - j) there is a change of control of the other party (within the meaning of section 1124 of the Corporation Tax Act 2010) such that control of the Customer is acquired by, or the Customer or a member of its Group acquires control of, a competitor of Trapeze.
- 17.2. Without prejudice to the foregoing, either party may terminate the Agreement on 12 months' written notice to the other party [to expire at any time following expiry of the Initial Term]. For the avoidance of doubt, any Support and Maintenance fees becoming due in such notice period will remain due and payable without discount notwithstanding any notice of termination.
- 17.3. Termination of the Agreement, however arising, shall not affect or prejudice the accrued rights of the parties as at termination or the continuation of any provision expressly stated to survive, or implicitly surviving, termination and without prejudice to the foregoing:
- a) by the date of termination, the Customer will return to Trapeze all copies of the Software, the Documentation and other materials provided to the Customer pursuant to this Agreement and will certify in writing to Trapeze that all copies or partial copies of the Software, the Documentation and such other materials have been returned to Trapeze or destroyed; and
  - b) all licences granted under this Agreement shall cease on the date of termination; and
  - c) the Customer shall pay all sums due up until the date of termination of this Agreement; and
  - d) Trapeze may destroy or otherwise dispose of any of the Customer Data in its possession unless Trapeze receives, no later than ten days after the effective date of the termination of this Agreement, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. Trapeze shall use reasonable commercial endeavours to deliver the back-up to the Customer within 30 days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by Trapeze in returning or disposing of Customer Data.
- 17.4. The Customer may discontinue the Support and Maintenance services described in Section 8 and Schedule D of this Agreement by notifying Trapeze in writing of its intention to discontinue its usage of such services not less than 12 months prior to the intended discontinuation date, such date to occur at any time following completion of the Initial Term. Should the Customer exercise this right, the Customer shall be entitled to continue to use the Software, on the last version of the Software provided to the Customer prior to the discontinuation date and only in accordance with the provisions of Section 2 of this Agreement. For the avoidance of doubt, all of Trapeze's obligations stated in Section 8 of this Agreement and the Services and Service Levels specified in Schedule D shall cease to apply as of the date of discontinuance and the Customer shall pay to Trapeze all Support and Maintenance fees set out in this Agreement for the contract year in which the discontinuance will take effect. If

Customer wishes to resume receiving Support and Maintenance after such discontinuance, Customer will first pay to Trapeze all fees which would have been applicable in consideration of the Support and Maintenance during the period of the discontinuation had the Support and Maintenance not been so discontinued.

## 18. **Force Majeure**

18.1. Trapeze will not be responsible for, and its performance of obligations will automatically be postponed as a result of any circumstances beyond Trapeze's reasonable control, provided that Trapeze notifies the Customer of its inability to perform with reasonable promptness and performs its obligations hereunder as soon as circumstances permit. For the purposes of this clause, circumstances beyond Trapeze's reasonable control shall include without limitation act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood or storm.

## 19. **Assignment**

19.1. Subject to Clause 19.2, this Agreement is for the sole benefit of the parties and may not be assigned by either party without the prior written consent of the other, where such consent shall not be unreasonably withheld or delayed.

19.2. Trapeze may, at any time, assign any of its obligations or any benefit arising under or out of this Agreement to a member of the Group. Trapeze may also sub-contract or delegate any of its obligations under this Agreement to a selected third party or agent.

19.3. If there is an assignment pursuant to clause 19.2:

- a) the Customer may discharge its obligations under this Agreement to Trapeze until it receives written notice of the assignment;
- b) the assignee may enforce this Agreement as if it were a party to it, but Trapeze will remain liable for its obligations under this Agreement; and
- c) the liability of the Customer to any assignee cannot be greater than its liability to Trapeze.

## 20. **Applicable Law**

20.1. In performing its obligations under this Agreement, Trapeze shall comply with the Bribery Act 2012 and the Modern Slavery Act 2015.

20.2. This Agreement and any dispute or claim arising out of or in connection with it will be governed by and construed in accordance with the laws of England. Subject to the provisions of this clause, 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.

20.3. In the event of any dispute arising between the parties in connection with this Agreement which cannot be settled by negotiation, the parties shall in good faith, seek to resolve that dispute through mediation under the auspices of the ADR Group (UK). The mediator shall be agreed upon within 15 days of one party requesting mediation, failing which the mediator will be appointed by the then Chairman of ADR Group. Unless otherwise agreed the parties shall share equally the costs of the mediation. If the dispute is not resolved within 30 days, or one of the parties refuses to participate in mediation, the dispute may be referred to litigation. No party may commence any court proceedings in relation to any dispute arising out of this Agreement until it has attempted to settle the dispute by mediation and either the mediation has terminated or the other party has failed to participate in the mediation, provided that nothing in this clause shall prevent either party seeking a preliminary injunction or other judicial relief at any time if in its judgement such action is necessary to prevent irreparable damage.

## 21. **Notices**

21.1. All notices must be in writing and will be duly given if delivered personally or sent by registered or certified mail to the respective addresses of the parties appearing on page one of this Agreement. Any notice given will be deemed to have been received on the date it is delivered if delivered personally, or if mailed, on the fifth Business Day following its mailing. If deemed receipt under this clause is not within business hours (meaning 9.00 am to 5.00 pm Monday to Friday on a day that is not a public holiday in the place of receipt), the notice is deemed to have been received when business next starts in the place of receipt. Either party may change its address for notices by giving notice of such change, as required in this section.

## 22. **Audits**

22.1. Trapeze may perform audit(s) on the use of the Software and Documentation upon giving the Customer written notice of at least five (5) Business Days. The Customer agrees to make the necessary operational records, databases, equipment, employees and facilities available to Trapeze for the audit(s). The purpose of the audit will be to verify compliance with the terms and conditions of this Agreement.

**23. General**

- 23.1. All amounts due under this Agreement shall be paid in full without any deduction or withholding other than as required by law. The Customer shall not be entitled to assert any credit, set-off or counterclaim against Trapeze in order to justify withholding payment of any such amount in whole or in part.
- 23.2. No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy and the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.
- 23.3. Each party acknowledges that, in entering into this Agreement, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in this Agreement. Nothing in this clause shall limit or exclude any liability for fraud.
- 23.4. If any provision of this Agreement (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of this Agreement, and the validity and enforceability of the other provisions of this Agreement shall not be affected.
- 23.5. This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one Agreement.
- 23.6. No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 23.7. A person who is not a party to this Agreement shall not have any rights under or in connection with it.

**SCHEDULE A: THE SOFTWARE**

Item	Software Product	Product Description	Licence Allocation (in trips per day, licensed users, or other measure)	Configuration
1				
2				

Notes:

[the wording below may change for each Agreement]

- a) Unless specified, third party data, hardware and system/operating software are not included within the licence granted under this Agreement and are not included in the Licence fees.
- b) Any components may be operated on any of the licensed workstations within a configuration approved by Trapeze. Licences for additional local or remote workstations may be purchased at the then current rates.
- c) Unless stated above, fees payable for Third Party Software licences, if required to operate the Software, are not included.
- d) Third Party Additional terms: The following Third Party Software is required: [e.g. Progress for DAS or DRAMS]. Its use is governed by the terms and conditions annexed to this Agreement as Annex A.



**ANNEX A**

Third Party Software Licence Terms:

[insert e.g. Progress EULA terms for DAS].



**SCHEDULE B: HARDWARE**

[Insert]



**SCHEDULE C: SUPPORT & MAINTENANCE FEES**

<b>Item</b>	<b>Software</b>	<b>Licence Allocation</b>	<b>Current Year Maintenance Fee*</b>
1.			
2.			

\*First 12 months only, based on rates current on the date of the Agreement. For all subsequent years, the annual maintenance fee will be the then current standard maintenance fee for the Hardware and Software increased by inflation as calculated by reference to the Average Weekly Earnings index as published by the Office for National Statistics or any replacement or substitute for it.

## **SCHEDULE D: SUPPORT LEVELS**

### **SUPPORT PROCESS**

#### Contacting Support

- Technical Helpdesk Support (UK based team)
- **Normal Business Hours** are Mon - Fri 9:00 – 17:00

The following methods of contacting Customer Care are available:

- By phone to +44 (0) 808 28 11 039
- By email to [ccuk@trapezegroup.com](mailto:ccuk@trapezegroup.com)
- Via [www.trapezecomunity.co.uk](http://www.trapezecomunity.co.uk) (Passwords emailed on request)

### **SEVERITY LEVELS**

<b>1</b>	A reported problem in the Software, or one of its necessary components, has caused the Software to cease function or has caused a complete system shutdown. The incident may result in a downtime and prohibit the Customer from carrying on procedures crucial to its operations.
<b>2</b>	A reported problem in the Software or one of its necessary components has caused a serious disruption of a major business function and cannot be temporarily solved by an alternative method or 'work around'.
<b>3</b>	A reported problem in the Software, or one of its necessary components, for which a temporary 'work around' is readily known and available.
<b>4</b>	A reported problem, question, desire, request, etc. which is not included in the definitions of Priority 1-3 and demands less immediate attention than said priorities.
<b>5</b>	A problem of cosmetic nature may be corrected in the next release of an Upgrade.

### **RESPONSE TIMES AND RESOLUTION TIMES**

<b>Priority</b>	<b>Acknowledgement</b>	<b>Target Resolution Time</b>	<b>Coverage</b>
<b>1</b>	1 Hour	48 Hours	Normal Business Hours
<b>2</b>	1 Hour	5 Days	Normal Business Hours
<b>3</b>	8 Hours	25 Days	Normal Business Hours
<b>4</b>	12 Hours	Next Upgrade	Normal Business Hours
<b>5</b>	12 Hours	Next Upgrade	Normal Business Hours

- All times are measured from the time and date that Trapeze is informed of the problem.
- Target Acknowledgement: Trapeze shall acknowledge queries and problems logged by email or telephone to the person who logged the problem.
- Target Resolution: Trapeze shall use all reasonable endeavours to resolve the problem or to provide a workaround.
  - Based upon the assumption that the cause for the problem is within the control of Trapeze.
  - Where a workaround is identified, and implemented but a permanent solution requires development, an implementation date will be mutually agreed and the ticket frozen until that date.

**SCHEDULE E: SUMMARY OF PRICING**

	Year 1	Year 2	Year 3	Year 4	Year 5
<b>SOFTWARE LICENCE FEE</b>					
<b>HARDWARE</b>					
<b>MAINTENANCE AND SUPPORT FEES</b>					
<b>SERVICES</b>					

Invoices will be issued as follows:

Licence Fees	On Installation
Services	Monthly as rendered
Hardware	On delivery
Maintenance	Annually in advance, commencing from [Go Live Date] [the date of this Agreement] [other date]
Expenses	At cost, as incurred

**SCHEDULE F: SERVICES**

[insert details of any implementation or other Services]

**Postponement Policy:**

In the event of the Customer postponing all or any part of the Services for which the dates have been agreed between the parties according to the terms of this Agreement, the Customer shall provide written notice of such postponement in accordance with clause 21 of this Agreement. In the event of such postponement, the Customer shall pay Trapeze on demand the sums set out below by way of liquidated damages. The parties acknowledge that if the Customer postpones all or any part of the Services with less than 15 days' notice, then Trapeze will suffer loss as its employees will need to be re-deployed and/or Trapeze will have already undertaken preparatory work for providing the Services. Accordingly, the parties confirm that the sums below represent a genuine pre-estimate of the loss that Trapeze would suffer in the event the Customer postpones all or any part of the Services. For the avoidance of doubt, the Customer shall not be entitled to either:

- Postpone or cancel the provision of support and maintenance services, the Hardware or the provision of the Software (if such are agreed to be provided under this Agreement); or
- cancel all or any part of the Services;

and if the Customer purports to do so, this shall be considered a material breach of this Agreement.

<b>Amount of notice</b>	<b>Payment due</b>
Greater than 14 days' notice	Nil charge
Between 8 -14 days' notice (inclusive)	25 % of the amount payable for the Services set out in Schedule E, or if part of the Services is being cancelled, 25% of the amount attributable to that part
2-7 days' notice (inclusive)	50% of the amount payable for the Services set out in Schedule E, or if part of the Services is being cancelled, 50% of the amount attributable to that part
less than or equal to 24 hours' notice	100 % of the amount payable for the Services set out in Schedule E, or if part of the Services is being cancelled, 100% of the amount attributable to that part



**SCHEDULE G: HOSTING SERVICES**

**SCHEDULE H :PROJECT PLAN**

[insert any agreed Project Plan]

## **SCHEDULE I : PERSONAL DATA PROCESSING**

### **Definitions**

In this Schedule:

- Applicable Law** means as applicable and binding on the Customer, Trapeze and/or the Services:
- a) any law, statute, regulation, by-law or subordinate legislation in force from time to time to which a party is subject and/or in any jurisdiction that the Services are provided to or in respect of;
  - b) the common law and laws of equity as applicable to the parties from time to time;
  - c) any binding court order, judgment or decree; or
  - d) any applicable direction, policy, rule or order that is binding on a party and that is made or given by any regulatory body having jurisdiction over a party or any of that party's assets, resources or business;
- Appropriate Safeguards** means such legally enforceable mechanism(s) for transfers of Personal Data as may be permitted under Data Protection Laws from time to time;
- Data Controller** has the meaning given to that term (or to the term 'controller') in Data Protection Laws;
- Data Processor** has the meaning given to that term (or to the term 'processor') in Data Protection Laws;
- Data Protection Laws** means as applicable and binding on the Customer, Trapeze and/or the Services: in the United Kingdom:
- a) the Data Protection Act 2018 and any laws or regulations implementing Directive 95/46/EC (Data Protection Directive); and/or
  - b) the GDPR, and/or any corresponding or equivalent national laws or regulations;
  - c) in member states of the European Union: the Data Protection Directive or the GDPR, once applicable, and all relevant member state laws or regulations giving effect to or corresponding with any of them; and
  - d) any Applicable Laws replacing, amending, extending, re-enacting or consolidating any of the above Data Protection Laws from time to time;
- Data Protection Losses** means all liabilities, including all:
- a) costs (including legal costs), claims, demands, actions, settlements, interest, charges, procedures, expenses, losses and damages (including relating to material or non-material damage); and
  - b) to the extent permitted by Applicable Law:
    - i. administrative fines, penalties, sanctions, liabilities or other remedies imposed by a Supervisory Authority;
    - ii. compensation which is ordered by a Supervisory Authority to be paid to a Data Subject; and
    - iii. the reasonable costs of compliance with investigations by a Supervisory Authority;
- Data Subject** has the meaning given to that term in Data Protection Laws;
- Data Subject Request** means a request made by a Data Subject to exercise any rights of Data Subjects under Data Protection Laws;
- GDPR** means the General Data Protection Regulation (EU) 2016/679;
- GDPR Date** means from when the GDPR applies on 25 May 2018;

<b>International Organisation</b>	means an organisation and its subordinate bodies governed by public international law, or any other body which is set up by, or on the basis of, an agreement between two or more countries;
<b>International Recipient</b>	has the meaning given to that term in paragraph 6.1;
<b>Personal Data</b>	has the meaning given to that term in Data Protection Laws;
<b>Personal Data Breach</b>	means any breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, any Protected Data;
<b>processing</b>	has the meanings given to that term in Data Protection Laws (and related terms such as <b>process</b> have corresponding meanings);
<b>Processing Instructions</b>	has the meaning given to that term in paragraph 2.1.1;
<b>Protected Data</b>	means Personal Data received from or on behalf of the Customer in connection with the performance of Trapeze's obligations under this Agreement;
<b>Services</b>	means the services to be provided under this Agreement.
<b>Sub-Processor</b>	means another Data Processor engaged by Trapeze for carrying out processing activities in respect of the Protected Data on behalf of the Customer; and
<b>Supervisory Authority</b>	means any local, national or multinational agency, department, official, parliament, public or statutory person or any government or professional body, regulatory or supervisory authority, board or other body responsible for administering Data Protection Laws.

### Specific interpretive provision(s)

In this Addendum:

- (a) references to any Applicable Laws (including to the Data Protection Laws and each of them) and to terms defined in such Applicable Laws shall be replaced with or incorporate (as the case may be) references to any Applicable Laws replacing, amending, extending, re-enacting or consolidating such Applicable Law (including the GDPR and any new Data Protection Laws from time to time) and the equivalent terms defined in such Applicable Laws, once in force and applicable;
- (b) a reference to a law includes all subordinate legislation made under that law; and
- (c) references to "paragraph numbers" are to paragraphs of this Schedule.

### Data processing provisions

#### 1 Data Processor and Data Controller

- 1.1 The parties agree that, for the Protected Data, the Customer shall be the Data Controller and Trapeze shall be the Data Processor.
- 1.2 Trapeze shall process Protected Data in compliance with:
  - 1.2.1 the obligations of Data Processors under Data Protection Laws in respect of the performance of its obligations under this Agreement; and
  - 1.2.2 the terms of this Agreement.
- 1.3 The Customer shall comply with:
  - 1.3.1 all Data Protection Laws in connection with the processing of Protected Data, the Services and the exercise and performance of its respective rights and obligations under this Agreement, including maintaining all relevant regulatory registrations and notifications as required under Data Protection Laws; and
  - 1.3.2 the terms of this Agreement.
- 1.4 The Customer warrants, represents and undertakes, that:



- 1.4.1 all data sourced by the Customer for use in connection with the Services, prior to such data being provided to or accessed by Trapeze for the performance of the Services under this Agreement, shall comply in all respects, including in terms of its collection, storage and processing (which shall include the Customer providing all of the required fair processing information to, and obtaining all necessary consents from, Data Subjects), with Data Protection Laws;
- 1.4.2 all instructions given by it to Trapeze in respect of Personal Data shall at all times be in accordance with Data Protection Laws; and
- 1.4.3 it has undertaken due diligence in relation to Trapeze's processing operations, and it is satisfied that:
  - (a) Trapeze's processing operations are suitable for the purposes for which the Customer proposes to use the Services and engage Trapeze to process the Protected Data; and
  - (b) Trapeze has sufficient expertise, reliability and resources to implement technical and organisational measures that meet the requirements of Data Protection Laws.
- 1.5 The Customer shall not withhold, delay or condition its agreement to any Change requested by Trapeze in order to ensure the Services and Trapeze (and each Sub-Processor) can comply with Data Protection Laws.

## **2 Instructions and details of processing**

- 2.1 Insofar as Trapeze processes Protected Data on behalf of the Customer, Trapeze:
  - 2.1.1 unless required to do otherwise by Applicable Law, shall (and shall take steps to ensure each person acting under its authority shall) process the Protected Data only on and in accordance with the Customer's documented instructions as set out in this paragraph 2 and Attachment I data processing details, as updated from time to time in accordance with the Change Control Procedure (**Processing Instructions**);
  - 2.1.2 if Applicable Law requires it to process Protected Data other than in accordance with the Processing Instructions, shall notify the Customer of any such requirement before processing the Protected Data (unless Applicable Law prohibits such information on important grounds of public interest); and
  - 2.1.3 shall inform the Customer if Trapeze becomes aware of a Processing Instruction that, in Trapeze's opinion, infringes Data Protection Laws, provided that:
    - (a) this shall be without prejudice to paragraphs 1.3 and 1.4;
    - (b) to the maximum extent permitted by mandatory law, Trapeze shall have no liability howsoever arising (whether in contract, tort (including negligence) or otherwise) for any losses, costs, expenses or liabilities (including any Data Protection Losses) arising from or in connection with any processing in accordance with the Customer's Processing Instructions following the Customer's receipt of that information; and
    - (c) this paragraph 2.1.3 shall only apply from the GDPR Date.
- 2.2 The processing of Protected Data to be carried out by Trapeze under this Agreement shall comprise the processing set out in Attachment I data processing details, as may be updated from time to time in accordance with the Change Control Procedure.

## **3 Technical and organisational measures**

- 3.1 Trapeze shall implement and maintain, at its cost and expense, the technical and organisational measures:
  - 3.1.1 in relation to the processing of Protected Data by Trapeze, as set out in Attachment II technical and organisational measures; and
  - 3.1.2 from the GDPR Date, taking into account the nature of the processing, to assist the Customer insofar as is possible in the fulfilment of the Customer's obligations to respond to Data Subject Requests relating to Protected Data.
- 3.2 Any additional technical and organisational measures shall be at the Customer's cost and expense.

## **4 Using staff and other processors**

- 4.1 Trapeze shall not engage any Sub-Processor for carrying out any processing activities in respect of the Protected Data without the Customer's written authorisation of that specific Sub-Processor (such authorisation not to be unreasonably withheld, conditioned or delayed) provided that the Customer authorises the appointment of any of the Sub-Processors listed [below: **insert**] OR in **insert**].
- 4.2 Trapeze shall:
  - 4.2.1 prior to the relevant Sub-Processor carrying out any processing activities in respect of the Protected Data, appoint each Sub-Processor under a written contract containing materially the same obligations as under paragraphs 1 to 11 (inclusive) that is enforceable by Trapeze;

- 4.2.2 ensure each such Sub-Processor complies with all such obligations; and
- 4.2.3 remain fully liable for all the acts and omissions of each Sub-Processor as if they were its own.
- 4.3 From the GDPR Date, Trapeze shall ensure that all persons authorised by it (or by any Sub-Processor) to process Protected Data are subject to a binding written contractual obligation to keep the Protected Data confidential (except where disclosure is required in accordance with Applicable Law, in which case Trapeze shall, where practicable and not prohibited by Applicable Law, notify the Customer of any such requirement before such disclosure).

## 5 Assistance with the Customer's compliance and Data Subject rights

- 5.1 Trapeze shall refer all Data Subject Requests it receives to the Customer within [*three*] Business Days of receipt of the request, provided that if the number of Data Subject Requests exceeds [*Insert*] per [*calendar month*], the Customer shall pay Trapeze's charges calculated on a time and materials basis at Trapeze's then current rates for recording and referring the Data Subject Requests in accordance with this paragraph 5.1.
- 5.2 From the GDPR Date, Trapeze shall provide such reasonable assistance as the Customer reasonably requires (taking into account the nature of processing and the information available to Trapeze) to the Customer in ensuring compliance with the Customer's obligations under Data Protection Laws with respect to:
  - 5.2.1 security of processing;
  - 5.2.2 data protection impact assessments (as such term is defined in Data Protection Laws);
  - 5.2.3 prior consultation with a Supervisory Authority regarding high risk processing; and
  - 5.2.4 notifications to the Supervisory Authority and/or communications to Data Subjects by the Customer in response to any Personal Data Breach,

provided the Customer shall pay Trapeze's charges for providing the assistance in this paragraph 5.2, such charges to be calculated on a time and materials basis at Trapeze's then-current rates.

## 6 International data transfers

- 6.1 The Customer agrees that Trapeze may transfer Protected Data that is [*identify data*] for [*insert description*] purposes to countries outside the United Kingdom or to any International Organisation(s) (an **International Recipient**), provided all transfers by Trapeze of Protected Data to an International Recipient shall (to the extent required under Data Protection Laws) be effected by way of Appropriate Safeguards and in accordance with Data Protection Laws. The provisions of this Agreement shall constitute the Customer's instructions with respect to transfers in accordance with paragraph 2.1.

## 7 Records, information and audit

- 7.1 Trapeze shall maintain, in accordance with Data Protection Laws binding on Trapeze, written records of all categories of processing activities carried out on behalf of the Customer.
- 7.2 Trapeze shall, in accordance with Data Protection Laws, make available to the Customer such information as is reasonably necessary to demonstrate Trapeze's compliance with the obligations of Data Processors under Data Protection Laws, and allow for and contribute to audits by the Customer (or another auditor mandated by the Customer) for this purpose, subject to the Customer:
  - 7.2.1 giving Trapeze reasonable prior notice of such information request, audit and/or inspection being required by the Customer;
  - 7.2.2 ensuring that all information obtained or generated by the Customer or its auditor(s) in connection with such information requests, inspections and audits is kept strictly confidential (save for disclosure to the Supervisory Authority or as otherwise required by Applicable Law);
  - 7.2.3 ensuring that such audit or inspection is undertaken during normal business hours, with minimal disruption to Trapeze's business, the Sub-Processors' business and the business of other customers of Trapeze; and
  - 7.2.4 paying Trapeze's reasonable costs for assisting with the provision of information and allowing for and contributing to inspections and audits.

## 8 Breach notification

- 8.1 In respect of any Personal Data Breach involving Protected Data, Trapeze shall, without undue delay:
  - 8.1.1 notify the Customer of the Personal Data Breach; and
  - 8.1.2 provide the Customer with details of the Personal Data Breach.

**9 Deletion or return of Protected Data and copies**

9.1 Trapeze shall, at the Customer's written request, either delete or return all the Protected Data to the Customer in such form as the Customer reasonably requests within a reasonable time after the earlier of:

9.1.1 the end of the provision of the relevant Services related to processing; or

9.1.2 once processing by Trapeze of any Protected Data is no longer required for the purpose of Trapeze's performance of its relevant obligations under this Agreement,

and delete existing copies (unless storage of any data is required by Applicable Law and, if so, Trapeze shall inform the Customer of any such requirement).

**10 Liability, indemnities and compensation claims**

10.1 The Customer shall indemnify and keep indemnified Trapeze in respect of all Data Protection Losses suffered or incurred by, awarded against or agreed to be paid by, Trapeze and any Sub-Processor arising from or in connection with any:

10.1.1 non-compliance by the Customer with the Data Protection Laws;

10.1.2 processing carried out by Trapeze or any Sub-Processor pursuant to any Processing Instruction that infringes any Data Protection Law; or

10.1.3 breach by the Customer of any of its obligations under paragraphs 1 to 11 (inclusive),

except to the extent Trapeze is liable under paragraph 10.2.

10.2 Trapeze shall be liable for Data Protection Losses (howsoever arising, whether in contract, tort (including negligence) or otherwise) under or in connection with this Agreement:

10.2.1 only to the extent caused by the processing of Protected Data under this Agreement and directly resulting from Trapeze's breach of paragraphs 1 to 11 (inclusive); and

10.2.2 in no circumstances to the extent that any Data Protection Losses (or the circumstances giving rise to them) are contributed to or caused by any breach of this Agreement by the Customer (including in accordance with paragraph 2.1.3(b)).

10.3 If a party receives a compensation claim from a person relating to processing of Protected Data, it shall promptly provide the other party with notice and full details of such claim. The party with conduct of the action shall:

10.3.1 make no admission of liability nor agree to any settlement or compromise of the relevant claim without the prior written consent of the other party (which shall not be unreasonably withheld or delayed); and

10.3.2 consult fully with the other party in relation to any such action, but the terms of any settlement or compromise of the claim will be exclusively the decision of the party that is responsible under this Agreement for paying the compensation.

10.4 The parties agree that the Customer shall not be entitled to claim back from Trapeze any part of any compensation paid by the Customer in respect of such damage to the extent that the Customer is liable to indemnify Trapeze in accordance with paragraph 10.1.

10.5 This paragraph 10 is intended to apply to the allocation of liability for Data Protection Losses as between the parties, including with respect to compensation to Data Subjects, notwithstanding any provisions under Data Protection Laws to the contrary, except:

10.5.1 to the extent not permitted by Applicable Law (including Data Protection Laws); and

10.5.2 that it does not affect the liability of either party to any Data Subject.

**11 Survival of data protection provisions**

11.1 Paragraphs 1 to 11 (inclusive) shall survive termination (for any reason) or expiry of this Agreement and continue:

11.1.1 indefinitely in the case of paragraphs 9 to 11 (inclusive); and

11.1.2 until 12 months following the earlier of the termination or expiry of this Agreement in the case paragraphs 1 to 8 (inclusive),

provided always that any termination or expiry of paragraphs 1 to 8 (inclusive) shall be without prejudice to any accrued rights or remedies of either party under any such paragraphs at the time of such termination or expiry.

**Subject-matter of processing:**

[Insert]

**Duration of the processing:**

[Insert]

**Nature and purpose of the processing:**

[Insert]

**Type of Personal Data:**

[Insert]

**Categories of Data Subjects:**

[Insert]

**Processing Instructions**

[Insert, including any specific security measures that are required to be taken, eg encryption]

*[Insert relevant details]*