

Software Product License and Maintenance Agreement

v1.6

1 INTRODUCTION

- 1.1 This Software Product License and Maintenance Agreement (the "Agreement") sets out the terms and conditions the parties have agreed in relation to licensing and maintenance of the Software.

2 DEFINITIONS

In this Software Product License and Maintenance Agreement (this "Agreement"), unless the context otherwise requires or unless expressly stated otherwise within the Agreement, the following words have the following meanings:

- 2.1 "Annual Maintenance Fee" means the annual charge for the Maintenance service.
- 2.2 "Confidential Information" means in respect of each party, any data and information relating to or belonging to that party or any other third party, which is represented to be proprietary or confidential or is by its nature proprietary or confidential, disclosed by or on behalf of such party to the other by any means or otherwise obtained by the other party in relation to or in connection with this Agreement.
- 2.3 "Customer" means the party named as the customer in this Agreement.
- 2.4 "Documentation" means the documentation that is supplied by SEATTLE SOFTWARE with the Software. Installation documents will be supplied, however user documentation will be hosted online in the Orbus "Learning Center".
- 2.5 "Force Majeure Event" means anything outside the reasonable control of a party, including acts of God, strikes by employees of the Customer or any third party, acts or omissions of any government or government agency (including laws, regulations, disapprovals or failures to approve), unavoidable accident, explosion, public mains electrical supply failure, sabotage, riot, civil disturbance, insurrection, epidemic, national emergency, act of terrorism or act of war (whether declared or not), but does not include a lack of funds for any reason or any other inability to pay.

- 2.6 "Initial Invoice" means the original invoice issued by SEATTLE SOFTWARE to Customer for the initial licensing of the software.
- 2.7 "Licence" shall have the meaning set forth at Clause 3.1
- 2.8 "Maintenance" means the maintenance service provided by SEATTLE SOFTWARE to Customer in relation to the Software as further described at Clause 5.
- 2.9 "Proprietary Materials" means the Software, Documents and any other information, documents or materials of whatsoever nature provided or created by or on behalf of SEATTLE SOFTWARE in connection with this Agreement including (without limitation) as part of the Maintenance.
- 2.10 "SEATTLE SOFTWARE" means Seattle Software Limited registered in England, with Company Number 5196435, trading as "Orbus Software".
- 2.11 "Services" means any services Customer engages SEATTLE SOFTWARE to provide, and SEATTLE SOFTWARE shall provide the services described in the applicable Statement(s) of Work ("SoW").
- 2.12 "Software" means the software product or products listed on the Initial Invoice in object code form only, including any modifications or releases to that Software.
- 2.13 "Software License Fee" means the license fee for the Software specified in the Initial Invoice.

3 GRANT OF LICENCE

- 3.1 Subject to and in consideration of Customer paying the Software Licence Fee and the Annual Maintenance Fee and complying with all of the terms of this Agreement, SEATTLE SOFTWARE hereby grants to Customer a perpetual, personal, worldwide, non-exclusive, non-transferable license to use the Software and Documentation on and subject to the terms of this Agreement (the "Licence").
- 3.2 The Licence shall commence upon the delivery to Customer of the Software and shall terminate upon termination of this Agreement (howsoever caused), including termination pursuant to Clause 16.
- 3.3 If Customer wishes to upgrade or change the Software then Customer must inform SEATTLE SOFTWARE in writing. SEATTLE SOFTWARE will then issue a licence for the upgraded or changed Software after receiving payment of any applicable licence or administrative fee from Customer.
- 3.4 Customer may not use the Software or Documentation other than as specified in this Agreement without the prior written consent of SEATTLE SOFTWARE and Customer acknowledges that additional fees may be payable on any change of use approved by SEATTLE SOFTWARE.

4 RESTRICTIONS AND SCOPE

- 4.1 The license to use the Software and Documents is limited in scope. The Licence can only be used:
- (a) in object code form for Customer's internal business purposes and for no other purpose;
 - (b) by the number of users as set out in the Initial Invoice (or as otherwise subsequently agreed to in writing by SEATTLE SOFTWARE), on a per nominated user basis.
 - (c) in the case of an on premises installation, on one server as agreed between the parties, except that Customer may use the Software on multiple servers as part of Customer's data backup, archiving, quality assurance, disaster recovery, internal testing, and business continuity plan. It is also understood and agreed that Customer can make the necessary number of copies it needs in connection with the transfer, migration, distribution, and/or movement of the Software between hardware and/or servers that the Software is designed to be installed and/or run on. Customer may request changes to the nominated server and such change is subject to the prior written approval of SEATTLE SOFTWARE. Customer may also use a second server on a temporary basis for internal testing or disaster recovery only.
- 4.2 The Software is licensed on a per nominated user basis. The Software may not be accessed by more users than Customer has paid for. Customer shall inform SEATTLE SOFTWARE of those of its employees, agents, consultants, representatives and contractors permitted to use the Software upon SEATTLE SOFTWARE's request. Customer shall not be permitted to let any person who is not an employee, agent, consultant, representative or contractor of Customer use the Software. Customer shall not be entitled to any rebate, discount or refund if the Software is actually used by fewer users than the number paid for by Customer.
- 4.3 Customer expressly agrees and acknowledges that any use not in accordance with Clauses 4.1 or 4.2, shall be deemed to be an unauthorised use of the Software.
- 4.4 Customer shall not:
- (a) rent, lease sub-license, loan, assign, sell, transfer, pledge or charge, the Software or Documentation without SEATTLE SOFTWARE's prior written consent;
 - (b) translate, merge, adapt, vary, alter or modify the whole or any part of the Software or Documentation without SEATTLE SOFTWARE's prior written consent;
 - (c) disassemble, decompile, reverse-engineer or create derivative works based on the whole or any part of the Software or otherwise translate the object code or

make any use of the source (human readable format) code or replicate or attempt to replicate the function of the Software nor in each case attempt to do any such thing except to the extent that (by virtue of section 296A of the Copyright, Designs and Patents Act 1988) such actions cannot be prohibited because they are essential for the purpose of achieving inter-operability of the Software with another software program, and provided that the information obtained by Customer during such activities (i) is used only for the purpose of achieving inter-operability of the Software with another software program, (ii) is not unnecessarily disclosed or communicated without SEATTLE SOFTWARE'S prior written consent to any unaffiliated third party; and (iii) is not used to create any software which is substantially similar to the Software.

4.5 Customer shall:

- (a) not copy the whole or any part of the Software or Documents or permit them to be copied except as permitted in Section 4.1;
- (b) ensure that all copies remain under Customer's control at all times and that an accurate record is maintained of the number and location of copies; and
- (c) ensure that all of SEATTLE SOFTWARE'S copyright and proprietary notices are not removed or concealed.

4.6 Customer shall take all reasonable precautions to safeguard the Software and Documentation, including protecting against unauthorised access by unaffiliated third parties. Customer shall take all commercially reasonable steps to ensure that all employees, agents, consultants, representatives and contractors authorised to use the Software and Documentation do so in full compliance with the terms of this Agreement

5 SOFTWARE MAINTENANCE

5.1 SEATTLE SOFTWARE shall bill an Annual Maintenance Fee in advance as set out in the Initial Invoice. The fee is based on a sum that is equal to 20% of the then current RRP of the Software supplied. The initial maintenance fee is based on the sum that is equal to 20% of the list price at that time

5.2 The Maintenance shall commence on the date of this Agreement and shall continue for an initial term of one year (unless otherwise stated on the Initial Invoice). On each successive anniversary of such date (or other period stated on the Initial Invoice), the term will be automatically renewed and the annual fee for the following year shall be invoiced in advance of the anniversary date. On each successive anniversary of such date (or other period stated on the Initial Invoice), an invoice for the maintenance fee shall be sent to the customer for review. Should it meet all applicable criteria, the

customer will submit the invoice for approvals and a Purchase Order will subsequently be issued.

- 5.3 The Maintenance shall commence on the date of this Agreement and shall continue for an initial term of one year (unless otherwise stated on the Initial Invoice). On each successive anniversary of such date (or other period stated on the Initial Invoice), the term will be automatically renewed and the annual fee for the following year shall be invoiced in advance of the anniversary date.
- 5.4 The Maintenance will continue to be provided until terminated by either party upon at least ninety (90) days' written notice expiring on an anniversary of the commencement of the Maintenance. Payments for Maintenance are not prorated or refunded for any purported termination of the Maintenance prior to the end of any term, whether or not the service is provided during this period.
- 5.5 SEATTLE SOFTWARE reserves the right to refuse to provide the Maintenance at any time (without any obligation to cease charging or to refund any monies paid by Customer) if:
- (a) Any Maintenance is carried out by any person other than SEATTLE SOFTWARE, including any attempt by any person to correct any defects or remove any errors in the Software;
 - (b) Any development, enhancement or variation of the Software is carried out other than by SEATTLE SOFTWARE;
 - (c) Customer is not using the latest version of the Software within twelve (12) months after the release of such updated version is notified in writing and made available to Customer;
 - (d) Customer fails or refuses to implement any releases or changes in relation to the Software issued by SEATTLE SOFTWARE as set forth under Clause 7.3;
 - (e) Customer is in material breach of any of the terms of this Agreement relating to the Licence; or
 - (f) Customer fails to make timely payment of the Annual Maintenance Fee subject to notice obligations contained in Section 6.5.
- 5.6 SEATTLE SOFTWARE shall not be liable for any loss or liability arising in relation to or in connection with the Software in respect of any of the circumstances set out at Clauses 5.5(a) to (f)
- 5.7 New versions of the Software may require new versions of other related software and may require additional or different computer equipment in order to function. Provisions of such new versions of related software or such computer equipment is not covered by this Agreement.

- 5.8 If Customer terminates Maintenance, if subsequently Customer wants to reinstate Maintenance at a later date, Customer shall pay the Maintenance Fee payable from the date of original termination.

6 PRICE, PAYMENT AND EXPENSES

- 6.1 SEATTLE SOFTWARE shall bill Customer the Software Licence Fee and the Annual Maintenance Fee in accordance with section 6.4.
- 6.2 All sums payable under this Agreement are exclusive of VAT or any other applicable local sales taxes, for which Customer shall be responsible.
- 6.3 Customer shall not be liable to SEATTLE SOFTWARE for any expenses paid or incurred by SEATTLE SOFTWARE unless reasonable and approved in advance in writing by Customer. SEATTLE SOFTWARE shall provide Customer with reasonable documentation evidencing all such approved reasonable expenses, and for such expenses, agree to abide by Customer's travel and expense reimbursement policies which shall be made available to SEATTLE SOFTWARE in connection with the execution of this Agreement.
- 6.4 Customer shall pay the undisputed amount on each invoice properly submitted hereunder within forty five (45) of receipt thereof.
- 6.5 If Customer fails to make any payment due to SEATTLE SOFTWARE under this Agreement by the due date for payment then, without prejudice to any other right or remedy, Customer shall pay interest on the overdue amount at the rate of one and one half per cent (1.5%) per annum above HSBC'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 and any accrued interest whether before or after judgment.
- 6.6 SEATTLE SOFTWARE may elect to vary the Maintenance Fee by giving to the Customer not less than 30 days' written notice of the variation expiring after the third anniversary of the date of execution of this Agreement, providing that no such variation shall result in an aggregate percentage increase in the relevant element of the charges during the term that exceeds 2% over the percentage increase, during the same period, in the Retail Prices Index (all items) published by the UK Office for National Statistics.
- 6.7 Notwithstanding the above provisions for late payment, if any payment due to SEATTLE SOFTWARE under this Agreement is overdue or not paid, then after fourteen (14) days advance written notice to Customer of such without prejudice to any other right or remedy it may have, SEATTLE SOFTWARE may terminate or temporarily suspend the provision of Maintenance.

- 6.8 If SEATTLE SOFTWARE terminates this Agreement for any reason, any sums then due to SEATTLE SOFTWARE will immediately be payable in full.

7 SEATTLE SOFTWARE UNDERTAKINGS

- 7.1 SEATTLE SOFTWARE will supply the programs comprising the Software in compiled code only. SEATTLE SOFTWARE will also supply one copy of the Documentation.
- 7.2 SEATTLE SOFTWARE warrants that (i) it has good title and/or valid legal agreements to license the Software to Customer, and (ii) the Software shall operate in all material respects in accordance with the Documentation
- 7.3 SEATTLE SOFTWARE reserves the right to issue maintenance releases to correct faults, issue fixes or patches, make improvements, substitutions, modifications or enhancements to any part of the Software (which do not constitute a new version of the Software) as part of the Maintenance and support services at no cost to Customer. SEATTLE SOFTWARE shall use its reasonable efforts to ensure that such maintenance releases do not materially adversely affect the performance of the Software to the detriment of Customer. Customer shall install such maintenance releases as soon as reasonably practicable after receipt of such maintenance releases from SEATTLE SOFTWARE.
- 7.4 SEATTLE SOFTWARE offers a range of additional services, which are optional for the Customer at an additional charge as set forth in a written quotation, Purchase Order or Invoice signed by the parties, including:
- (a) Installation service for the Software at Customer's site, or remotely. Customer must have fully completed a pre-installation questionnaire which has been accepted by SEATTLE SOFTWARE prior to commencement of installation and that Customer's infrastructure must be in line with the minimum software and hardware requirements as stated in the iServer Pre-Installation Checklist Document (available upon request from SEATTLE SOFTWARE).
 - (b) Remedial work on Customer's database. SEATTLE SOFTWARE does not guarantee successful reconstruction of the Customer's data and does not accept any liability for loss or damage to data.
 - (c) To provide Maintenance at the Customer's site.
 - (d) To provide training on the use of the Software
 - (e) To provide an advice service for any advice outside the scope of the Maintenance service provided under this Agreement.
- 7.5 Each of the services set forth in Clause 7.3 are subject to an additional charge at SEATTLE SOFTWARE's standard rates and are subject to SEATTLE SOFTWARE's standard terms of sale.

8 CUSTOMER UNDERTAKINGS

- 8.1 Customer warrants and undertakes to SEATTLE SOFTWARE that it shall:
- (a) Ensure that individuals authorised by Customer to operate or use the Software have first been trained in regard to their respective duties.
 - (b) Create an appropriate test environment in order to satisfy itself that the Software meets the needs of its business before use in a live environment. It is the sole responsibility of Customer to determine that the Software is ready for operational use in the Customer's business before it is so used and SEATTLE SOFTWARE accepts no responsibility for any loss or liability in relation to or in connection with the Software where Customer has failed to carry out appropriate testing.
 - (d) In the event that SEATTLE SOFTWARE support team requires direct access to any of the iServer servers for training, troubleshooting and diagnosis, a Customer representative may provide access to SEATTLE SOFTWARE to the iServer environment via screen sharing capabilities.
 - (e) Allow SEATTLE SOFTWARE to have access to Customer's information and data for the purpose of rectifying problems with the Software or any data used with the Software.
 - (f) Ensure that the software operating system and any other software with which the Software will be used is either the property of Customer or is legally licensed to Customer.

9 TITLE

- 9.1 Customer acknowledges and agrees that (i) all intellectual property and other ownership rights and interests in the Proprietary Materials belong and shall continue to belong to SEATTLE SOFTWARE, including all copyright, patent rights, trademarks and trade secrets; and (ii) the Software and Documentation is being licensed (not sold) to Customer on a restricted basis based on the terms of this Agreement; and (iii) Customer does not have and will not acquire any other right, title or entitlement in any of the Proprietary Materials and will not claim or represent to any person that it has such right, title or entitlement.
- 9.2 Customer undertakes not to remove, modify or tamper with any proprietary marking, including any copyright notice or trademark appearing on the Proprietary Materials

10 INTELLECTUAL PROPERTY RIGHTS

- 10.1 SEATTLE SOFTWARE undertakes at its own expense to defend Customer or, at its option, settle any claim or action brought against Customer (an "IP Claim") alleging

that the possession or use of the Software in accordance with the terms of this Agreement infringes any patent, copyright or registered design of a third party in the country in which the Software has been supplied by SEATTLE SOFTWARE to Customer and shall be responsible for any reasonable losses, damages, costs and expenses incurred by or awarded against Customer as a result of such IP Claim.

- 10.2 If any third party makes or threatens an IP Claim, SEATTLE SOFTWARE's obligations under Clause 10.1 are conditional on Customer: (i) as soon as reasonably practicable, giving written notice of the IP Claim to SEATTLE SOFTWARE, giving full details; (ii) allowing SEATTLE SOFTWARE to take full conduct of the IP Claim; (iii) not making any admission of liability, agreement or compromise in relation to the IP Claim without the prior written consent of SEATTLE SOFTWARE; and (iv) giving its reasonable co-operation to SEATTLE SOFTWARE in dealing with the IP Claim, subject to SEATTLE SOFTWARE reimbursing Customer for any reasonable costs of such co-operation. SEATTLE SOFTWARE WILL NOT BE LIABLE UNDER ANY CIRCUMSTANCES FOR ANY COSTS OR EXPENSES INCURRED BY CUSTOMER WITHOUT SEATTLE SOFTWARE'S PRIOR WRITTEN AUTHORISATION.
- 10.3 If any IP Claim is made, or in SEATTLE SOFTWARE's reasonable opinion is likely to be made, against Customer, SEATTLE SOFTWARE may at its sole option and expense procure for Customer the right to continue to use the Software, replace or modify the Software so that it ceases to be infringing or if none of the aforementioned options are reasonably feasible, terminate this Agreement by notice in writing to Customer and upon return by Customer of the Software and all copies thereof refund a proportionate amount of the Software Licence Fee, subject to straight-line depreciation over a two (2) year period.
- 10.4 SEATTLE SOFTWARE will have no liability whether under this Clause 10 or otherwise for any claim or infringement arising from or in connection with (i) a combination of the Software with software or products not supplied by SEATTLE SOFTWARE; or (ii) use of the Software that is a non-current release or without any modifications or replacements recommended by SEATTLE SOFTWARE; or (iii) any modification to the Software unless carried out by SEATTLE SOFTWARE; or (iv) any use or possession of the Software other than in accordance with the terms of this Agreement.
- 10.5 This Clause 10 constitutes Customer's exclusive remedy and SEATTLE SOFTWARE's only liability in respect of any IP Claims.

11 DATA SECURITY

- 11.1 The parties agree that Customer is the best judge of the value and importance of any data held on the computer system and will be solely responsible for:

- (a) instituting and operating all necessary backup procedures to ensure that data security and integrity can be maintained in the event of loss of data for any reason, and
 - (b) taking out any insurance policy or other financial cover for loss or damage which may arise from loss of data for any reason.
- 11.2 SEATTLE SOFTWARE shall not be liable for any loss or damage to data, whether belonging to Customer or to any third party.
- 11.3 SEATTLE SOFTWARE shall not be liable for any loss or damage to data that has occurred during the transmission to, or from, any third party system.
- 11.4 Customer will indemnify, keep indemnified and hold harmless SEATTLE SOFTWARE against any claims, allegations, proceedings, actions, demands, damages, fines, penalties, costs, expenses and any other losses and liabilities, in connection with any third party claims relating to loss or damage to data arising out of Customer's use of the Software.

12 CONFIDENTIAL INFORMATION

- 12.1 Each party shall hold the other's Confidential Information in confidence and not disclose the other's Confidential Information to any third party or use the other's Confidential Information for any purpose, other than disclosure and use as required for the purpose of fulfilling its obligations under this Agreement or as otherwise expressly permitted under this Agreement
- 12.2 The restrictions at Clause 12.1 shall not apply if and to the extent that:
- (a) a party is required to disclose any information pursuant to a valid court order;
 - (b) the information is or becomes widely available to the public (other than as a result of any breach of the recipient under this Agreement);
 - (c) the information was lawfully in the possession of the recipient prior to it being disclosed to the recipient by the disclosing party.
- 12.3 Customer acknowledges that the Software and Documents constitute valuable assets and trade secrets of SEATTLE SOFTWARE and Customer further acknowledges that the Software, Documents and all information and data relating to the Software and the provision of Maintenance, including any information, flow charts, logic diagrams, source code, test materials is SEATTLE SOFTWARE'S confidential trade secret information and will fall under the scope of "Confidential Information".
- 12.4 Each party shall inform its employees and contractors of the confidentiality of the other party's Confidential Information and shall be responsible for their compliance with such confidentiality obligations
- 12.5 Each party will immediately notify the other if it becomes aware of any actual or potential breach by such party of this Clause 12 and will co-operate with the disclosing party in any investigation, prosecution, litigation or other action taken by the disclosing party regarding the breach.
- 12.6 This Clause 12 will survive the termination of this Agreement.

13 NON-SOLICIT

- 13.1 SEATTLE SOFTWARE and Customer undertake to each other that during the period of this Agreement and for a period of six (6) months after termination (howsoever caused) neither party will, directly or indirectly, either on its own account or jointly with or for any other person, employ, engage as a consultant, solicit, interfere with or otherwise endeavour to entice away any employees or consultants of the other party who have been involved in the fulfilment of either party's obligations under or pursuant to this Agreement.

13.2 Without prejudice to any other right or remedy, if a party recruits any individual that falls within the scope of the restriction at Clause 13.1, that party shall pay a recruitment fee to the other party of a sum equal to twelve (12) months' of the total gross salary and benefits offered by the party to the relevant individual.

14 LIMITATIONS OF LIABILITY

A. INTELLECTUAL PROPERTY & OPEN SOURCE; TITLE TO GOODS.

i. Definitions. As used in this Agreement, the following terms have the meanings set forth below:

a. "Contractor Intellectual Property" means any intellectual property owned by SEATTLE SOFTWARE and developed independently from Services provided by SEATTLE SOFTWARE to Customer.

b. "Open Source Elements" means any Work Product subject to any open source initiative certified license, including Work Product based upon any open source initiative certified licensed work.

c. "Third Party Intellectual Property" means any intellectual property owned by parties other than Customer or SEATTLE SOFTWARE.

d. "Work Product" means all Services and Goods SEATTLE SOFTWARE delivers or is required to deliver to Customer pursuant to this Agreement under an applicable and valid SoW.

ii. New Works. All intellectual property rights in any new Work Product created by SEATTLE SOFTWARE under this Agreement and as described in accordance with a SoW shall be the exclusive property of Customer. All new Work Products authored by SEATTLE SOFTWARE under this Agreement shall be deemed "works made for hire" to the extent permitted by the United States Copyright Act. To the extent Customer is not the owner of the intellectual property rights in such Work Product, SEATTLE SOFTWARE hereby irrevocably assigns to Customer any and all of its rights, title, and interest in such Work Product. Upon Customer's reasonable request, SEATTLE SOFTWARE shall execute such further documents and instruments reasonably necessary to fully vest such rights in Customer. SEATTLE SOFTWARE forever waives any and all rights relating to such new Work Product created under this Agreement, including without limitation, any and all rights arising under 17 USC §106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent

modifications. For the avoidance of doubt, SEATTLE SOFTWARE shall not pass Customer any ownership of intellectual property rights to the Software,

iii. Contractor Intellectual Property. If intellectual property rights in the new Work Product are Contractor Intellectual Property, SEATTLE SOFTWARE hereby grants to Customer an irrevocable, non-exclusive, perpetual, royalty-free license to use, make, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Contractor Intellectual Property, and to authorize others to do the same on Customer's behalf.

iv. Third Party Intellectual Property. To the extent SEATTLE SOFTWARE has the authority, SEATTLE SOFTWARE shall sublicense or pass through to Customer all Third Party Intellectual Property. SEATTLE SOFTWARE represents and warrants that it has provided written disclosure to Customer of all Third Party Intellectual Property that must be independently licensed by Customer to fully enjoy the benefit of the Work Product. If SEATTLE SOFTWARE failed to provide such written disclosure, SEATTLE SOFTWARE shall secure on the Customer's behalf and in the name of the Customer, an irrevocable, non-exclusive, perpetual, royalty-free license to use, make, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Third Party Intellectual Property, and to authorize others to do the same on Customer's behalf.

v. Open Source Approval and Notice. Any Open Source Elements in the Work Product must be approved in advance and in writing by Customer. If Customer approves the use of Open Source Elements, SEATTLE SOFTWARE shall upon written request from Customer:

- a. Confirm to Customer in writing that the Work Product contains Open Source Elements,
- b. Identify the specific portion of the Work Product that contain Open Source Elements, and
- c. Provide a copy of the applicable license for each Open Source Element to Customer.

vi. Title to Goods. Title to Goods passes to Customer in accordance with ORS 72.4010 following full payment from Customer to SEATTLE SOFTWARE for the Goods.

- 15.1 Notwithstanding any other term of this Agreement, nothing in this Agreement (including the remainder of this Clause 14), shall limit or exclude either party's liability for (i) damage to the other's tangible property but subject to the aggregate cap at Clause 14.2; (ii) death or personal injury caused by the negligence of either party; (iii) fraud or fraudulent misrepresentation; (iv) breach of the obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or (v) any other liability which may not be excluded by law.
- 15.2 The total liability of either party under or in connection with this Agreement, whether in contract, tort (including negligence) or otherwise shall in no circumstances exceed a sum equal to the total amount paid by Customer to SEATTLE SOFTWARE under this Agreement, except for those liabilities resulting from SEATTLE SOFTWARE'S obligations in Section 10 and any breaches of Section 12.
- 15.3 Except as expressly stated in Clause 14.1, neither party shall in any circumstances have any liability for any losses or damages which may be suffered by the other party (or any person claiming under or through the other party), whether in contract, tort (including negligence), breach of statutory duty or otherwise and whether advised of the possibility of such losses, arising under or in connection with this Agreement for any (i) loss of profits, sales, business or revenue; (ii) loss of anticipated savings; (iii) loss or damage to data; (iv) loss of business opportunity, goodwill or reputation; (v) any special damage; or (vi) any indirect or consequential loss or damage.
- 15.4 This Agreement sets out the full extent of the party's obligations and liabilities in respect of the Software and Maintenance and all other conditions, warranties, representations or other terms, express or implied by statute, common law or otherwise are hereby excluded to the fullest extent permitted by law. Both parties agree that, in entering into this Agreement, such party did not rely on any representations (whether written or oral) of any kind or of any person other than those expressly set out in this Agreement or (if it did rely on any representations, whether written or oral, not expressly set out in this Agreement) that it shall have no remedy in respect of such representations and (in either case) neither party shall have any liability in any circumstances otherwise than in accordance with the express terms of this Agreement.
- 15.5 Customer acknowledges that it is entering into this Agreement for the purposes of its business and that Customer is not a "consumer" for any statutory purposes.

I. INDEMNIFICATION.

i. GENERAL INDEMNITY. SEATTLE SOFTWARE SHALL DEFEND, SAVE, HOLD HARMLESS, AND INDEMNIFY STATE, ITS AGENCIES, OFFICERS, DIRECTORS, AGENTS AND EMPLOYEES FROM AND AGAINST ALL CLAIMS, SUITS, ACTIONS, LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES OF ANY NATURE WHATSOEVER ("CLAIMS") RESULTING FROM, ARISING OUT OF, OR RELATING TO THE ACTS OR OMISSIONS OF SEATTLE SOFTWARE OR ITS OFFICERS, EMPLOYEES, SUBCONTRACTORS, OR AGENTS UNDER THIS CONTRACT.

ii. INDEMNITY FOR INFRINGEMENT CLAIMS. WITHOUT LIMITING THE GENERALITY OF SECTION 3.1.i, SEATTLE SOFTWARE SHALL DEFEND, SAVE, HOLD HARMLESS AND INDEMNIFY STATE, ITS AGENCIES, OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES FROM AND AGAINST ALL CLAIMS, SUITS, ACTIONS, LOSSES, DAMAGES, LIABILITIES, COSTS, AND EXPENSES, INCLUDING ATTORNEYS FEES, ARISING OUT OF OR RELATING TO ANY CLAIMS THAT THE WORK, THE WORK PRODUCT OR ANY OTHER TANGIBLE OR INTANGIBLE ITEM DELIVERED UNDER THIS CONTRACT BY SEATTLE SOFTWARE THAT MAY BE THE SUBJECT OF PROTECTION UNDER ANY STATE OR FEDERAL INTELLECTUAL PROPERTY LAW OR DOCTRINE, OR CUSTOMER'S REASONABLE USE THEREOF, INFRINGES ANY PATENT, COPYRIGHT, TRADE SECRET, TRADEMARK, TRADE DRESS, MASK WORK, UTILITY DESIGN, OR OTHER PROPRIETARY RIGHT OF ANY THIRD PARTY ("INFRINGEMENT CLAIM"); PROVIDED, THAT STATE SHALL PROVIDE SEATTLE SOFTWARE WITH PROMPT WRITTEN NOTICE OF ANY INFRINGEMENT CLAIM.

iii. STATE SHALL REASONABLY COOPERATE IN GOOD FAITH, AT SEATTLE SOFTWARE'S REASONABLE EXPENSE, IN THE DEFENSE OF CLAIMS AND INFRINGEMENT CLAIMS, AND SEATTLE SOFTWARE SHALL SELECT COUNSEL REASONABLY ACCEPTABLE TO THE OREGON ATTORNEY GENERAL TO DEFEND SUCH CLAIMS AND INFRINGEMENT CLAIMS AND SHALL BEAR ALL COSTS OF SUCH COUNSEL. COUNSEL MUST ACCEPT APPOINTMENT AS A SPECIAL ASSISTANT ATTORNEY GENERAL UNDER ORS CHAPTER 180 BEFORE COUNSEL MAY ACT IN THE NAME OF, OR REPRESENT THE INTERESTS OF, STATE, ITS AGENCIES, OFFICERS, EMPLOYEES OR AGENTS. STATE MAY ELECT TO ASSUME ITS OWN DEFENSE WITH AN ATTORNEY OF ITS OWN CHOICE AND AT ITS OWN EXPENSE AT ANY TIME STATE DETERMINES IMPORTANT GOVERNMENTAL INTERESTS ARE AT STAKE. SUBJECT TO THE LIMITATIONS NOTED ABOVE, SEATTLE SOFTWARE MAY DEFEND SUCH CLAIMS AND INFRINGEMENT CLAIMS WITH COUNSEL OF ITS OWN

CHOOSING PROVIDED THAT NO SETTLEMENT OR COMPROMISE OF ANY SUCH CLAIMS AND INFRINGEMENT CLAIMS SHALL OCCUR WITHOUT THE CONSENT OF STATE, WHICH CONSENT SHALL NOT BE UNREASONABLY WITHHELD, CONDITIONED OR DELAYED.

iv. THE STATE OF OREGON AGREES TO INDEMNIFY, DEFEND, AND HOLD HARMLESS RSI, ITS DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS, AND DEFEND ANY ACTION BROUGHT AGAINST SAME WITH RESPECT TO ANY CLAIM, DEMAND, CAUSE OF ACTION, DEBT OR LIABILITY, INCLUDING REASONABLE ATTORNEYS' FEES, TO THE EXTENT THAT SUCH ACTION IS BASED UPON A CLAIM THAT: (I) IF TRUE, WOULD CONSTITUTE A BREACH OF ANY OF THE STATE OF OREGON'S REPRESENTATIONS, WARRANTIES, OR AGREEMENTS HEREUNDER; (II) ARISES OUT OF THE NEGLIGENCE OR WILLFUL MISCONDUCT OF THE STATE OF OREGON; OR (III) ANY OF THE STATE OF OREGON INFORMATION TO BE PROVIDED BY THE STATE OF OREGON HEREUNDER OR OTHER STATE OF OREGON MATERIAL RELEVANT TO RSI'S SERVICES INFRINGES OR VIOLATES ANY RIGHTS OF THIRD PARTIES, INCLUDING WITHOUT LIMITATION, RIGHTS OF PUBLICITY, RIGHTS OF PRIVACY, PATENTS, COPYRIGHTS, TRADEMARKS, TRADE SECRETS, AND/OR LICENSES.

NOTICE: IN CLAIMING ANY INDEMNIFICATION HEREUNDER, THE INDEMNIFIED PARTY SHALL PROMPTLY PROVIDE THE INDEMNIFYING PARTY WITH WRITTEN NOTICE OF ANY CLAIM WHICH THE INDEMNIFIED PARTY BELIEVES FALLS WITHIN THE SCOPE OF THE FOREGOING PARAGRAPHS. THE INDEMNIFIED PARTY MAY, AT ITS OWN EXPENSE, ASSIST IN THE DEFENSE IF IT SO CHOOSES, PROVIDED THAT THE INDEMNIFYING PARTY SHALL CONTROL SUCH DEFENSE AND ALL NEGOTIATIONS RELATIVE TO THE SETTLEMENT OF ANY SUCH CLAIM AND FURTHER PROVIDED THAT ANY SETTLEMENT INTENDED TO BIND THE INDEMNIFIED PARTY SHALL NOT BE FINAL WITHOUT THE INDEMNIFIED PARTY'S WRITTEN CONSENT, WHICH SHALL NOT BE UNREASONABLY WITHHELD.

J. ASSIGNMENT OF ANTITRUST RIGHTS.

i. SEATTLE SOFTWARE IRREVOCABLY ASSIGNS TO STATE ANY CLAIM FOR RELIEF OR CAUSE OF ACTION WHICH SEATTLE SOFTWARE NOW HAS OR WHICH MAY ACCRUE TO SEATTLE SOFTWARE IN THE FUTURE BY REASON OF ANY VIOLATION OF 15 U.S.C. § 1-15 OR ORS 646.725 OR ORS 646.730, IN CONNECTION WITH ANY GOODS OR SERVICES PROVIDED TO SEATTLE SOFTWARE FOR THE PURPOSE OF CARRYING OUT SEATTLE SOFTWARE'S OBLIGATIONS UNDER THIS CONTRACT, INCLUDING, AT STATE'S OPTION, THE RIGHT TO CONTROL ANY SUCH LITIGATION ON SUCH CLAIM FOR RELIEF OR CAUSE OF ACTION

ii SEATTLE SOFTWARE SHALL REQUIRE ANY SUBCONTRACTORS HIRED TO PERFORM ANY OF SEATTLE SOFTWARE'S DUTIES UNDER THIS CONTRACT TO IRREVOCABLY ASSIGN TO STATE, AS THIRD PARTY BENEFICIARY, ANY RIGHT, TITLE OR INTEREST THAT HAS ACCRUED OR WHICH MAY ACCRUE IN THE FUTURE BY REASON OF ANY VIOLATION OF 15 U.S.C. § 1-15 OR ORS 646 725 OR ORS 646 730, IN CONNECTION WITH ANY GOODS OR SERVICES PROVIDED TO THE SUBCONTRACTOR FOR THE PURPOSE OF CARRYING OUT THE SUBCONTRACTOR'S OBLIGATIONS TO SEATTLE SOFTWARE IN PURSUANCE OF THIS CONTRACT. INCLUDING, AT STATE'S OPTION, THE RIGHT TO CONTROL ANY SUCH LITIGATION ON SUCH CLAIM FOR RELIEF OR CAUSE OF ACTION

15.6

16 TERMINATION

16.1 Without prejudice to any other right or remedy available to it, either party may terminate this Agreement with immediate effect on written notice to the other party if the other party:

- (a) commits a material breach of this Agreement which it fails to remedy (if capable of remedy) within thirty (30) days of written notice of the breach. For the avoidance of doubt, a material breach includes failure by Customer to make any payment due to SEATTLE SOFTWARE on a timely basis, failure to comply with the provisions of Clause 9 or Clause 12 and/or a failure to update the Software on a timely basis after notification by SEATTLE SOFTWARE;
- (b) becomes insolvent or is involved in any legal proceedings concerning its solvency, or commences liquidation or winding up (except for purposes of a voluntary and solvent reconstruction) or ceases or threatens to cease trading, or if serious doubt arises as to its solvency.

- 16.2 On termination of this Agreement (howsoever caused):
- (a) each party will return any Confidential Information of the other in its possession which is capable of being delivered or destroy any Confidential Information of the other party which is not capable of delivery to it, and
 - (c) Customer will reasonably satisfy SEATTLE SOFTWARE that all the Software, and any information derived therefrom, has been returned or completely and permanently erased or destroyed and that Customer has no ability to reproduce or use the Software.
- 16.3 Termination of this Agreement (howsoever caused) shall be without prejudice to any right, obligation or remedy accrued as at the date of termination and shall be without prejudice to any provisions of this Agreement which are, expressly or impliedly, intended to continue in effect notwithstanding the termination of this Agreement.

17 PUBLICITY

18 FORCE MAJEURE

- 18.1 Neither party shall be liable to the other for any delay or non-performance of its obligations under this Agreement arising from a Force Majeure Event.

19 NOTICES

- 19.1 Any notice given under this Agreement by either party to the other must be in writing in the English language and delivered to the address shown in this Agreement, or to any other address notified in writing by one party to the other for the purpose of receiving notices or to the registered office of the party for the time being, by personal delivery, or courier, or registered mail; or fax, and will be deemed to have been given in the case of registered mailing, three (3) working days after the date of mailing (unless mailed internationally, in which case seven (7) working days after the date of mailing), and otherwise, when actually delivered. All notices, consents and demands hereunder shall be in writing and shall be personally delivered or sent by certified or registered mail, return receipt requested, addressed to the other party at its address set forth in this Agreement, and shall be deemed given upon receipt.

20 TRANSFER

- 20.1 The Licence is personal for the benefit only of Customer and Customer may not at any time assign, transfer, charge or deal in any other manner with all or any of its

rights or obligations under this Agreement without the prior written consent of SEATTLE SOFTWARE.

- 20.2 SEATTLE SOFTWARE may sub-contract any part of its obligations under this Agreement, provided SEATTLE SOFTWARE shall continue to be responsible to Customer for such sub-contracted obligations in accordance with the terms of this Agreement notwithstanding such sub-contracting.

21 ENTIRE AGREEMENT, VARIATION AND CONFLICTS

- 21.1 This Agreement, and any documents referred to in it constitute the whole agreement between the parties and supersede any previous communications, representations, arrangement, understanding or agreement between them relating to the subject matter they cover, whether written or oral. SEATTLE SOFTWARE may make additions and/or changes to the Agreement from time to time upon giving written notice to Customer. No variation of this Agreement shall be effective until it is in writing and signed by an authorised representative of both parties.
- 21.2 In the event of any conflict or inconsistency, the following order of precedence shall apply to the extent of such conflict or inconsistency (i) the terms of any variation approved by both parties in accordance with Clause 21.1; (ii) the terms set out in this document.

22 GENERAL

- 22.1 No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 22.2 In the event any provision of this Agreement is found to be legally unenforceable, such unenforceability shall not prevent the enforcement of any other provision.
- 22.3 Each party is an independent contractor of the other. Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the parties or constitute one party the agent of the other or give authority for one party to any way commit or bind the other.
- 22.4 This Agreement does not confer any rights on any person or party (other than the parties to this Agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

23 GOVERNING LAW AND JURISDICTION

Any claim, action, suit or proceeding (collectively, "Proceeding") between State and Contractor that arises from or relates to this Contract shall be brought and conducted solely and exclusively within the Circuit Court of State for Marion County; provided, however, if a Proceeding must be brought in a federal forum, then unless otherwise prohibited by law, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. CONTRACTOR HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF THESE COURTS AND WAIVES ANY OBJECTION TO VENUE IN THESE COURTS AND ANY CLAIM THAT THE FORUM IS AN INCONVENIENT FORUM. Nothing in these provisions shall be construed as a waiver of State's sovereign or governmental immunity, whether derived from the Eleventh Amendment to the United States Constitution or otherwise, or a waiver of any defenses to Proceedings or jurisdiction based thereon.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above.

SEATTLE SOFTWARE Ltd.

By: [Signature]

(Signature)

Name: RUPERT COLBOURNE

(Printed)

Title: CTO

Date: 17- AUG 2016

State of Oregon
Public Employees Retirement System

By: [Signature]

(Signature)

Name: Kyle Knoll

(Printed)

Title: Chief Administration Officer

Date: 8/17/16