

TERMS AND CONDITIONS OF SUPPLY – SOFTWARE LICENSING

INTRODUCTION:

The Licensor, has developed a system (the Licensed Product) to be hosted at each Site or remotely. The Licensee wishes to access and use such software products and accordingly, the Licensor has agreed to grant the Licensee a non-exclusive licence to use the computer software programs and products together with associated documentation (if any) listed or identified in the Quotation upon the terms and subject to the terms and conditions of this Licence and the Site.

OPERATIVE PROVISIONS:

1 INTERPRETATION AND UNDERSTANDING

The meanings of some of the specially defined words (which begin with a capital letter) and other guides to understanding this Licence can be found at the end of this Licence agreement.

2 LICENCE GRANT

2.1 Subject to the terms and conditions (Conditions) of this Licence agreement:

2.1.1 The Licensor in consideration of the payment by the Licensee from time to time of the Licence Fee in accordance with this Licence hereby grants to the Licensee a non-exclusive, non-transferable and non-assignable licence to Use the Licensed Products on the Site (and where appropriate the Program Documentation) and to possess and refer to the Program Documentation.

2.1.2 The Licensor grants the Licensee the right to issue sub-licences on payment of the appropriate fees set and agreed by Licensor from time to time on terms set by the Licensor.

2.2 The Licensed Products are licensed and not sold. Accordingly, all rights not expressly granted in this Licence agreement are expressly reserved by the Licensor and/or its suppliers.

2.3 Without limiting the generality of the foregoing the Licensee shall ensure that the total number of users of the Licensed Products shall not exceed the number set out in the Quotation and included in the Licence Fee. Additional users for the Use of the Licensed Products may be added upon application to and upon payment of additional user licence fees on the terms of the Licence agreement.

2.4 Any computer methodology, code and/or documentation created by the Licensor specifically for the Licensee under this Licence agreement and any pre-existing works used in the creation of or delivery of such services or Products by the Licensor shall be owned exclusively by the Licensor including all intellectual property and proprietary rights therein. All intellectual property rights or title incorporating third party owned items shall belong to the Licensor as between the parties.

3 LICENCE FEE

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- 3.1 The Licence Fee shall include the cost of the delivery of and access to the Licensed Products and any New Release thereof to or at the Site (if appropriate) provided always that new releases which in the Licensor's opinion may offer new features may be launched as a separate module and priced separately. Any such new module can be separated from the main licence granted under this Licence agreement and declined accordingly by the Licensee.
- 3.2 The Licence Fee (together with value added tax thereon, if applicable) shall be levied by the Licensor annually in advance and in accordance with the provisions of the Quotation with effect from the Acceptance Date and shall be payable by the Licensee immediately upon delivery of the Licensor's invoice therefor and in any event prior to the software application constituting the Licensed Products being activated by the Licensor to enable the Licensee's access to the Licensed Products or the Site.
- 3.3 Payment shall be made in cleared funds and shall not be subject to the right of set off or deductions.
- 3.4 The Licensor shall be entitled to vary the Licence Fee not more than once in every successive period of twelve (12) months during the term of this Licence agreement without notice thereof to the Licensee.
- 3.5 All payments of the Licence Fee or other charges payable by the Licensee under this Licence shall be made in pounds sterling and in accordance with the terms of this Licence although the Licensor may agree to accept either euros by prior written agreement with the Licensee.
- 3.6 Any other fees payable from time to time under this Licence agreement shall be made monthly in advance by standing order and to the account specified by the Licensor.
- 3.8 Annual Fees paid in advance of receipt of the License for the License period are non-refundable in their entirety or in part.

4 DELIVERY AND ACCESS

- 4.1 The Licensor shall use all reasonable endeavours to provide access to the Licensed Products on the date agreed for access or as soon thereafter as is possible.
- 4.2 Access to the Site to use the Licensed Products shall only be granted to the Licensee following payment in full and receipt by the Licensor of such payment in cleared funds into its bank account. In any event access to the system will be suspended without notification if payment is not cleared in the Licensor bank account within 60 days of the date of invoice.
- 4.3 The Licence granted to the Licensee entitles the Licensee to Use the Licensed Products on the Site subject to the limitations set out in this Licence. Access to the Site and Use of the Licensed Products shall be subject to registration on or off the Site and compliance with the Licensor terms, conditions and policies applicable to the Site or governing access and use of the Licensed Products which are incorporated by reference.
- 4.4 Where any unauthorised Use of the Licensed Products occurs and such Use is attributable to the act or omission of the Licensee or its

employees and representatives, then without prejudice to the Licensor's other rights and remedies, the Licensee shall be liable to pay the Licensor an amount equal to the fees (calculated on the Licensor's standard practice and rate) that would be payable had such use been properly licensed from the beginning of the unauthorised Use.

5 TESTING AND ACCEPTANCE

The Licensee may (prior to Use of the Licensed Products on the Site being activated in full) be provided with an opportunity to use the Licensed Products for a short period on a Licensor test site for the sole purpose of testing and assessing whether it meets their requirements (and not for the purposes of its trade or business) in accordance with Licensor standard practice.

6 SERVICES AND SUPPORT

The Licensor shall for the duration of this Licence agreement upon payment of the relevant fee or Additional Charges make available or provide to the Licensee in respect of the Licensed Products certain Services upon request of the Licensee on the terms of the relevant Terms of Supply which are publicly available at www.vericool.co.uk .

7 PROPRIETARY RIGHTS AND RESTRICTIONS

7.1 The Licensed Products contain confidential information of the Licensor and all right, title, ownership, interest, copyright, database right, trade marks and other intellectual property rights in and to the Licensed Products and any New Releases are the exclusive property of the Licensor.

7.2 The Licensee shall not:

7.2.1 in any other manner directly or indirectly agree with any third party to or enter into any arrangement which effect is to circumvent the Licensor in connection with the Services and Licensed Products and the intent of this Licence agreement;

7.2.2 save as provided herein or by law make back-up copies of the Licensed Products and shall not be entitled to rent, lease or lend the Licensed Products; or reverse compile, copy or adapt the whole or any part of the Licensed Products for the purposes of correcting errors in the Licensed Products;

7.2.3 modify, port, translate, localise or create derivative works of the Licensed Products or incorporate the Licensed Products into another platform, software application or software program except as expressly permitted under this Licence agreement or in writing by the Licensor;

7.2.4 Assign, transfer, sell, lease, rent, charge or otherwise deal in or encumber the Licensed Products or use the Licensed Products on behalf of any third party or make available the same to any third party; or remove or alter any copyright or other proprietary notice on any of the Licensed Products;

7.2.5 during the term of this Licence Agreement or for two years after its termination enter into any contract or other arrangement with any agents or representatives of the Licensor for the provision of the

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Services or the Licensed Products (or similar services or products) without the prior written consent of Licensor.

- 7.3 The Licensee shall:
- 7.3.1 keep confidential the Licensed Products and limit access to the same to those of its employees agents and sub-contractors who either have a need to know or who are engaged in the Use of the Licensed Products (including where appropriate the Program Documentation);
 - 7.3.2 maintain an up-to-date written record of the number of copies of the Program Documentation and the names and appointments of the persons accessing the Site to Use the Licensed Products and their location and upon request forthwith produce such record to the Licensor; and
 - 7.3.3 notify the Licensor immediately if the Licensee becomes aware of any unauthorised Use or Use of the whole or any part of the Licensed Products by any third party; and
- 7.4 This Licence agreement grants no additional express or implied licence, right or interest in any copyright, patent, trade secret, trade mark, database right, invention or other intellectual property or proprietary right of the Licensor.

8 **COPIES**

The Licensee shall not be entitled to copy in whole or in part the Program Documentation or any software or database constituting the Licensed Products or the Site save to the extent permitted under this Licence or by English law.

9 **WARRANTY**

- 9.1 Subject to the exceptions set out in clauses 9.4 and 9.5 below and the limitations upon its liability in clause 10.3 below the Licensor warrants that:
- 9.1.1 its title to and property in the Licensed Products is free and unencumbered and that it has the right, power and authority to license the same upon the terms and conditions of this Licence agreement;
 - 9.1.2 it will perform the Services (if requested) with reasonable care and skill subject to the relevant conditions for the provision of such Services, if applicable.
- 9.2 The Licensee shall give notice to the Licensor as soon as it is reasonably able upon becoming aware of a breach of warranty.
- 9.3 Licensor shall have no liability to remedy a breach of warranty where such breach arises as a result of any of the circumstances involving fault resulting from the improper use, operation or neglect of either the Licensed Products or the Licensee's equipment or the modification of the Licensed Products or the merger (in whole or in part) with any other software or media.
- 9.4 Without prejudice to the foregoing the Licensor does not warrant that the Use of the Licensed Products will meet the Licensee's data processing or other requirements or that the operation of the Licensed Products (including where in machine-readable form the Program Documentation)

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- will be uninterrupted or error free.
- 9.5 Subject to the foregoing all conditions, warranties, terms and undertakings express or implied, statutory or otherwise (including but not limited to satisfactory quality or fitness for purpose) in respect of the Licensed Products and the provision of the Services are hereby excluded to the fullest extent permitted by law.
- 9.6 The Licensed Products contain third party software licensed to the Licensor under agreements that could terminate prior to this Licence agreement. Upon termination of any such agreement or licences to the effect that third-party software granted to the Licensee under this Licence agreement shall terminate according to the provisions of such third party licence agreement.
- 9.7 The Licensor warrants and represents that the rights of Use and access are only granted to the Licensee and its licensed users and that it shall maintain reasonable security measures as required under this Licence agreement.

10 **LIMITATION OF LIABILITY**

- 10.1 The Licensor's liability to the Licensee or the Licensee's liability to the Licensor for death or injury resulting from its own or that of its respective employees' agents' or sub-contractors' negligence shall not be limited.
- 10.2 Subject to the limits set out in clause 10.3 below, the Licensor shall accept liability to the Licensee in respect of damage to the tangible property of the Licensee resulting from the direct negligence of the Licensor or its employees agents or sub-contractors. The Licensor shall have no liability or any responsibility whatsoever for any loss of performance of an existing IT network if the Licensed Product is loaded thereon or interfaces with another system or network.
- 10.3 Subject to the provisions of clause 10.2 above the Licensor's entire liability in respect of any Event of Default shall be limited to damages of an amount equal to the lesser of the Contract Price paid since the anniversary of the Contract or paid within the last 12 months.
- 10.4 The Licensor (and its suppliers) shall not be liable to the Licensee in respect of any Event of Default for loss of business revenue, loss of profits (whether categorised as direct or indirect) goodwill or any type of special, indirect, incidental or consequential loss (including loss or damage suffered by the Licensee as a result of an action brought by a third party) losses arising from business interruption, or losses whether or not occurring in the normal course of business or loss or corruption of data even if such loss was reasonably foreseeable or the Licensor had been advised of the possibility of the Licensee incurring the same or any losses incurred as a result of or relating to breach of security, hacking or computer espionage or as a result of any actions by a tax or social security or governmental authority.
- 10.5 The Licensee hereby agrees to allow the Licensor not less than Sixty (60) days (following notification thereof by the Licensee) in which to remedy any Event of Default hereunder.
- 10.6 Licensor shall have no liability to the Licensee in respect of any Event of Default unless the Licensee shall have served notice of the same upon Licensor within seven (7) days of the date it became aware of the

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circumstances giving rise to the Event of Default or the date when it ought reasonably to have become so aware.

- 10.7 The Licensor shall have no liability other than that set out in clause 10.1 under this agreement for the effect on the Licensed Product of any third-party software, hardware or services either used in conjunction with or interfacing with the Licensed Product.
- 10.7 The Licensee shall procure that all sub-licensees will be bound by terms no less restrictive than this clause 10.

11 INTELLECTUAL PROPERTY RIGHTS AND INDEMNITIES

- 11.1 The Licensor shall have no liability to the Licensee in respect of an Intellectual Property Infringement if the same results from any breach of the Licensee's obligations under this Licence or the acts, omission or negligence of the Licensee, its employees, agents and representatives.
- 11.2 In the event of an Intellectual Property Infringement the Licensor shall be entitled at its own expense and option either to:
 - 11.2.1 procure the right for the Licensee to continue using the Licensed Products; or
 - 11.2.2 make such alterations, modifications or adjustments to the Licensed Products so that they become non-infringing without incurring a material diminution in performance or function; or
 - 11.2.3 replace the Licensed Products with non-infringing substitutes provided that such substitutes do not entail a material diminution in performance or function.
- 11.3 The Licensee shall indemnify and hold the Licensor, its employees and suppliers harmless from and against any cost, losses, liabilities and expenses (including legal costs) arising directly or indirectly from any claimed infringement or violation by the Licensee of any intellectual property right.

12 RISK

- 12.1 Risk in the Licensed Products will pass to the Licensee upon commencement of Use by the Licensee of the Licensed Products or activation of the right to Use the Licensed Products on the Site.
- 12.2 Save as otherwise expressly provided in this License, the Licensor will not be liable for any indirect, special or consequential damages, or for any loss of revenue, profits, business or data, arising out of or in connection with the Licensed Products or the Site.

13 CONFIDENTIALITY

- 13.1 Each of the parties hereto undertakes to the other to keep confidential all information (written or oral) concerning the business and affairs of the other (including Licensor proprietary information and technical data) that it shall have obtained or received as a result of the discussions leading up to or the entering into of this Licence agreement save that which is already in its possession other than as a result of a breach of this clause or in the public domain other than as a result of a breach of this clause.

14 TERM

- 14.1 This Licence shall be for an initial period of Three (3) years and shall

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continue thereafter on a rolling 12-month term until terminated in accordance with the provisions of this Licence agreement.

- 14.2 This Licence may be terminated:
- 14.2.1 by the Licensee upon giving not less than Thirty (30) days' notice in writing to Licensor prior to the expiry of the initial period;
 - 14.2.2 forthwith by Licensor if the Licensee fails to pay any sum to the Licensor or payable under this Licence agreement on the due date therefor;
 - 14.2.3 forthwith by either party if the other commits any material breach of any term of this Licence and which (in the case of a breach capable of being remedied) shall not have been remedied by the Licensor within Sixty (60) working days of a written request to remedy the same or by the Licensee within Thirty (30) days of a written request to remedy the same;
 - 14.2.4 forthwith by either party if the other shall convene a meeting of its creditors or if a proposal shall be made for a voluntary arrangement within Part I of the Insolvency Act 1986 or a proposal for any other composition scheme or arrangement with (or assignment for the benefit of) its creditors or if the other shall be unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or if a trustee receiver, administrative receiver or similar officer is appointed in respect of all or any part of the business or assets of the other or if a petition is presented or a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding up of the other or for the making of an administration order (otherwise than for the purpose of an amalgamation or reconstruction).
- 14.3 Any termination of this Licence pursuant to this clause shall be without prejudice to any other rights or remedies a party may be entitled to hereunder or at law and shall not affect any accrued rights or liabilities of either party nor the coming into or continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.
- 14.4 Within Thirty (30) days of the termination of this Licence (howsoever and by whomsoever occasioned) the Licensee shall cease any Use of the Licensed Products and at Licensor's sole option either return all copies of the Program Documentation and any software or database comprised in the Licensed Products in its possession or control or shall destroy and erase all copies of such documents or the materials comprised in the Licensed Products in its possession or control.
- 14.5 A duly authorised officer of the Licensee shall certify in writing to the Licensor that the Licensee has complied with its obligation as aforesaid and agrees to indemnify Licensor against any losses that are either foreseeable or consequential as a result of such termination or non-compliance.

15 MISCELLANEOUS

- 15.1 **Force Majeure:** [Neither party hereto shall be liable for any breach of its obligations hereunder (other than in respect of payment obligations)]

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resulting from causes beyond its reasonable control (“Event of Force Majeure”). Each of the parties agrees to give notice forthwith to the other upon becoming aware of an Event of Force Majeure, such notice to contain details of the circumstances giving rise to the Event of Force Majeure.

If a default due to an Event of Force Majeure shall continue for more than six (6) weeks then the party not in default shall be entitled to terminate this Licence. Neither party shall have any liability to the other in respect of the termination of this Licence as a result of an Event of Force Majeure.

- 15.2 **Waiver:** The waiver by either party of a breach or default of any of the provisions of this Licence by the other party shall not be construed as a waiver of any succeeding breach of the same or other provisions nor shall any delay or omission on the part of either party to exercise or avail itself of any right, power or privilege that it has or may have hereunder operate as a waiver of any breach or default by the other party.
- 15.3 **Notices:** Any notice, request or other communication to be served under this Licence agreement may be delivered or sent by first class prepaid recorded delivery post (or if the recipient is in a different country by airmail post) or by e-mail or fax transmission to the other party to be served at its address appearing in this Licence agreement or in the event that another address is notified in writing to the other party in accordance with and making specific reference to this clause then to that other address provided that a paper copy of any communication which is sent by e-mail or fax transmission is also sent by first class prepaid recorded delivery post (or if the recipient is in a different country by airmail post) within 24 hours of the e-mail or fax transmission having been sent.
- 15.4 **Invalidity and Severability:** If any provision of this Licence shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable the invalidity or unenforceability of such provision shall not affect the other provisions of this Licence and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect.
- 15.5 **Entire Licence:** The Licensor shall not be liable to the Licensee for loss arising from or in connection with any representations, licences, statements or undertakings made prior to the date of execution of this Licence other than those representations, licences, statements or undertakings confirmed by a duly authorised representative of the Licensor in writing or expressly incorporated or referred to in this Licence.
- 15.6 **Successors, Assignment and Sub-Licensing:** This Licence shall be binding upon and enure for the benefit of the successors in title of the parties. The Licensee shall not be entitled to assign or otherwise transfer this Licence nor any of its rights or obligations hereunder nor sub-license the Use (in whole or in part) of the Licensed Products or access to the Site without the prior written consent of the Licensor.
- 15.7 **VAT:** All amounts stated in this Licence are expressed exclusive of value added tax and any value added tax arising in respect of any supply made shall on the issue of a valid tax invoice in respect of the same be paid.

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- 15.8 **Third Party Rights:** The parties to this Licence agreement do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 but this does not affect any right or remedy of any third party which exists or is available apart from that Act.
- 15.9 **Survival and Conflicts:** All provisions of this Licence agreement intended to survive or capable of surviving termination shall so survive and remain in full force and effect.
In the event of any conflict between this Licence agreement, the Quotations or the provisions of the Site or any other terms, the provisions of this Licence agreement shall prevail.
- 15.10 **Independent Contractors:** The parties will at all times be independent contractors and will so represent themselves to all third parties. Neither party has granted to the other party the right to bind it in any manner whatsoever and nothing in this Licence agreement will be deemed to constitute either party the agent, employee or legal representative of the other nor to constitute the parties as partners or joint venturers.
- 15.11 **Variation:** The Licensor shall be entitled from time to time to modify the conditions and provisions of this Licence at any time in its sole discretion by notifying the Licensee. If any notification is unacceptable to the Licensee, its only recourse is to terminate the Licence in accordance with its terms. The Licensee's continued Use of the Licensed Products will constitute its agreement with and acceptance of such modification.
- 16 **Law:** This Licence shall be governed by and construed in accordance with English law and the parties hereto agree to submit to the non-exclusive jurisdiction of the English courts.

DEFINITIONS AND INTERPRETATION:

In this Licence unless the context otherwise requires:

“**Additional Charges**” means the charges at Licensor's hourly or other specified rates from time to time for work undertaken on a time and materials basis and/or pursuant to provision of the Services;

“**Acceptance Date**” means the date upon which the Sign-Off Certificate is executed.

“**Agreement**” means the collective term for the Proposal, the Quotation and these Terms of Supply.

“**Business Day**” means any day (other than Saturday and Sunday) on which the clearing banks are open for business in the City of London;

“**Licensor**” means Vericool Limited a company registered in England with registration number 07683425

“**Licence Fee**” means the fees for the licence set out in the Quotation as the same may be varied from time to time in accordance with this Licence;

“**Licensed Products**” means the software programs, services, databases and/or products and/or applications identified or referred to in greater detail in the Quotation using the software and databases and made available to the Licensee and other users on the Site together with the relevant Program Documentation (if any) including any New Release (if appropriate) of the same made or issued pursuant to this Licence;

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“New Release” means any improved, modified or corrected version of any of the Licensed Products from time to time issued by or on behalf of the Licensor pursuant to this Licence other than a version identified by Licensor as providing substantial new features sufficient to be separately priced and launched as a separate module;

“Program Documentation” means the instruction manuals, user guides and other information (if any) identified in the Quotation to be made available from time to time during the term of this Licence by or on behalf of Licensor at its discretion in either printed or machine readable form to the Licensee;

“Services” means the provision of consultancy and/or other services set out in the Quotation or requested by the Licensee from time to time in accordance with this Licence;

“Site” means the address for delivery of and access to the Licensed Products whether by electronic or other means specified by the Licensee and set out in the Quotation;

“Use” means the installation, use, storage, access, display, running or otherwise interacting with the Licensed Products, processing or transmission of the Licensed Products on the Site or (where in machine-readable form) the Program Documentation for the processing of the instructions contained in the Licensed Products or (as the case may be) the Program Documentation on the Site;