

## **Free software maintenance agreement: cover**

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# Software maintenance agreement

## DATE

[Date]

## PARTIES

1. [[INDIVIDUAL NAME] of [address]] OR [[COMPANY NAME], a company incorporated in [jurisdiction] (registration number [number]) having its registered office at [address]] ("**the Provider**"); and
2. [[INDIVIDUAL NAME] of [address]] OR [[COMPANY NAME], a company incorporated in [jurisdiction] (registration number [registration number]) having its registered office at [address]] ("**the Customer**").

## AGREEMENT

### 1. Definitions

- 1.1 In this Agreement[, except to the extent expressly provided otherwise]:

"**Agreement**" means this agreement including any Schedules, and any amendments to this Agreement from time to time;

"**Business Day**" means any weekday other than a bank or public holiday in [[England]] OR [[jurisdiction]];

"**Business Hours**" means the hours of [09:00 to 17:00] [GMT/BST] OR [[time zone]] on a Business Day;

"**Charges**" means:

- (a) [the charges and other payable amounts specified in Part 2 of Schedule 1 (Software Particulars) and elsewhere in this Agreement];
- (b) [charges calculated by multiplying [the standard time-based charging rates of the Provider (as notified by the Provider to the Customer before the date of this Agreement)] by the time spent by the personnel of the Provider performing [the Services] (rounded [down by the Provider to the nearest quarter hour])]; and
- (c) [such other charges and payable amounts as may be agreed in writing by the parties from time to time];

[additional list items]

"**Effective Date**" means [the date of execution of this Agreement];

"**Force Majeure Event**" means [an event, or a series of related events, that is outside the reasonable control of the party affected (which may include failures of the internet or any public telecommunications network, hacker attacks, denial of service attacks, virus or other malicious software attacks or infections, power failures, industrial disputes affecting any third party,

changes to the law, disasters, epidemics, pandemics, explosions, fires, floods, riots, terrorist attacks and wars));

**"Maintenance Services"** means the [supply to the Customer] OR [application to the Software] OR [supply to the Customer and application to the Software] of Updates and Upgrades;

**"Release"** means[, in respect of an Update or Upgrade, the release of that Update or Upgrade (as the case may be) to the customers of the Provider generally] (and **"Released"** shall be construed accordingly);

**"Schedule"** means any schedule attached to the main body of this Agreement;

**"Services"** means [any services that the Provider provides to the Customer, or has an obligation to provide to the Customer, under this Agreement];

**"Software"** means the software identified in Part 1 of Schedule 1 (Software Particulars);

**"Term"** means [the term of this Agreement, commencing in accordance with Clause 3.1 and ending in accordance with Clause 3.2];

**"Update"** means [a hotfix, patch or minor version update to the Software]; and

**"Upgrade"** means [a major version upgrade of the Software].

## **2. Credit**

- 2.1 This document was created using a template from Docular (<https://seqllegal.com/free-legal-documents/software-maintenance-agreement>).

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## **3. Term**

- 3.1 This Agreement shall come into force upon the Effective Date.
- 3.2 This Agreement shall continue in force [indefinitely] OR [until *[date]*, at the beginning of which this Agreement shall terminate automatically] OR [until *[event]*, upon which this Agreement shall terminate automatically], subject to termination in accordance with Clause 11 or any other provision of this Agreement.

## **4. Maintenance Services**

- 4.1 The Provider shall provide the Maintenance Services to the Customer [during the Term].
- 4.2 The Provider shall provide the Maintenance Services [with reasonable skill and care] OR [in accordance with the standards of skill and care reasonably

expected from a leading service provider in the Provider's industry] OR  
[[specify standard(s)]].

- 4.3 The Provider shall provide the Maintenance Services in accordance with Schedule 2 (Maintenance SLA).
- 4.4 The Provider may suspend the provision of the Maintenance Services if any amount due to be paid by the Customer to the Provider under this Agreement is overdue, and the Provider has given to the Customer at least [30 days'] written notice, following the amount becoming overdue, of its intention to suspend the Maintenance Services on this basis.

## **5. Customer obligations**

- 5.1 Save to the extent that the parties have agreed otherwise in writing, the Customer must provide to the Provider, or procure for the Provider, such:
  - (a) [co-operation, support and advice];
  - (b) [information and documentation]; and
  - (c) [governmental, legal and regulatory licences, consents and permits],as are reasonably necessary to enable the Provider to perform its obligations under this Agreement.
- 5.2 The Customer must provide to the Provider, or procure for the Provider, such access to the Customer's computer hardware, software, networks and systems as may be reasonably required by the Provider to enable the Provider to perform its obligations under this Agreement.

## **6. Charges**

- 6.1 The Customer shall pay the Charges to the Provider in accordance with this Agreement.
- 6.2 If the Charges are based in whole or part upon the time spent by the Provider performing the Services, the Provider must obtain the Customer's written consent before performing Services that result in any estimate of time-based Charges given to the Customer being exceeded or any budget for time-based Charges agreed by the parties being exceeded; and unless the Customer agrees otherwise in writing, the Customer shall not be liable to pay to the Provider any Charges in respect of Services performed in breach of this Clause 6.2.
- 6.3 All amounts stated in or in relation to this Agreement are, unless the context requires otherwise, stated [inclusive of any applicable value added taxes] OR [exclusive of any applicable value added taxes, which will be added to those amounts and payable by the Customer to the Provider].
- 6.4 The Provider may elect to vary [any element of the Charges] by giving to the Customer not less than [30 days'] written notice of the variation[ expiring on [any anniversary of the date of execution of this Agreement]][, providing that no such variation shall constitute a percentage increase in [the relevant

element of the Charges] that exceeds[ [2]% over] the percentage increase, since the date of the most recent variation of [the relevant element of the Charges][ under this Clause 6.4] (or, if no such variation has occurred, since the date of execution of this Agreement), in [the Retail Prices Index (all items) published by the UK Office for National Statistics].]

## **7. Payments**

- 7.1 The Provider shall issue invoices for the Charges to the Customer [from time to time during the Term] OR [on or after the invoicing dates set out in Part 2 of Schedule 1 (Software Particulars)] OR *[[dates for invoicing]]*.
- 7.2 The Customer must pay the Charges to the Provider within the period of [30 days] following [the issue of an invoice in accordance with this Clause 7] OR [the receipt of an invoice issued in accordance with this Clause 7].
- 7.3 The Customer must pay the Charges by [debit card, credit card, direct debit or bank transfer] (using such payment details as are notified by the Provider to the Customer from time to time).
- 7.4 If the Customer does not pay any amount properly due to the Provider under this Agreement, the Provider may:
- (a) charge the Customer interest on the overdue amount at the rate of [8% per annum above the Bank of England base rate from time to time] (which interest will accrue daily until the date of actual payment and be compounded at the end of each calendar month); or
  - (b) claim interest and statutory compensation from the Customer pursuant to the Late Payment of Commercial Debts (Interest) Act 1998.

### **OR**

- 7.4 If the Customer does not pay any amount properly due to the Provider under this Agreement, the Provider may charge the Customer interest on the overdue amount at the rate of [2% per annum above the Bank of England base rate from time to time] (which interest will accrue daily until the date of actual payment and be compounded at the end of each calendar month).[ The Provider acknowledges and agrees that it shall have no right to claim interest or statutory compensation under the Late Payment of Commercial Debts (Interest) Act 1998, and that its contractual rights under this Clause 7.4 constitute a substantial remedy within the meaning of that Act.]

## **8. Warranties**

- 8.1 The Provider warrants to the Customer that:
- (a) [the Provider has the legal right and authority to enter into this Agreement and to perform its obligations under this Agreement];
  - (b) [the Provider will comply with all applicable legal and regulatory requirements applying to the exercise of the Provider's rights and the fulfilment of the Provider's obligations under this Agreement]; and

- (c) [the Provider has or has access to all necessary know-how, expertise and experience to perform its obligations under this Agreement].

*[additional list items]*

- 8.2 The Customer warrants to the Provider that it has the legal right and authority to enter into this Agreement and to perform its obligations under this Agreement.
- 8.3 All of the parties' warranties and representations in respect of the subject matter of this Agreement are expressly set out in this Agreement. To the maximum extent permitted by applicable law, no other warranties or representations concerning the subject matter of this Agreement will be implied into this Agreement or any related contract.

## **9. Limitations and exclusions of liability**

- 9.1 Nothing in this Agreement will:
  - (a) limit or exclude any liability for death or personal injury resulting from negligence;
  - (b) limit or exclude any liability for fraud or fraudulent misrepresentation;
  - (c) limit any liabilities in any way that is not permitted under applicable law; or
  - (d) exclude any liabilities that may not be excluded under applicable law.
- 9.2 The limitations and exclusions of liability set out in this Clause 9 and elsewhere in this Agreement:
  - (a) are subject to Clause 9.1; and
  - (b) govern all liabilities arising under this Agreement or relating to the subject matter of this Agreement, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty, except to the extent expressly provided otherwise in this Agreement.
- 9.3 [Neither party shall be liable to the other party] OR [The Provider shall not be liable to the Customer] OR [The Customer shall not be liable to the Provider] in respect of any loss of profits or anticipated savings.
- 9.4 [Neither party shall be liable to the other party] OR [The Provider shall not be liable to the Customer] OR [The Customer shall not be liable to the Provider] in respect of any loss of revenue or income.
- 9.5 [Neither party shall be liable to the other party] OR [The Provider shall not be liable to the Customer] OR [The Customer shall not be liable to the Provider] in respect of any loss of use or production.
- 9.6 [Neither party shall be liable to the other party] OR [The Provider shall not be liable to the Customer] OR [The Customer shall not be liable to the Provider] in respect of any loss of business, contracts or opportunities.

- 9.7 [Neither party shall be liable to the other party] OR [The Provider shall not be liable to the Customer] OR [The Customer shall not be liable to the Provider] in respect of any loss or corruption of any data, database or software.
- 9.8 [Neither party shall be liable to the other party] OR [The Provider shall not be liable to the Customer] OR [The Customer shall not be liable to the Provider] in respect of any special, indirect or consequential loss or damage.

## **10. Force Majeure Event**

- 10.1 If a Force Majeure Event gives rise to a failure or delay in either party performing any obligation under this Agreement[ (other than any obligation to make a payment)], that obligation will be suspended for the duration of the Force Majeure Event.
- 10.2 A party that becomes aware of a Force Majeure Event which gives rise to, or which is likely to give rise to, any failure or delay in that party performing any obligation under this Agreement, must:
- (a) promptly notify the other; and
  - (b) inform the other of the period for which it is estimated that such failure or delay will continue.
- 10.3 A party whose performance of its obligations under this Agreement is affected by a Force Majeure Event must take reasonable steps to mitigate the effects of the Force Majeure Event.

## **11. Termination**

- 11.1 Either party may terminate this Agreement by giving to the other party [at least 30 days'] written notice of termination.
- 11.2 Either party may terminate this Agreement immediately by giving written notice of termination to the other party if the other party commits a material breach of this Agreement.
- 11.3 Subject to applicable law, either party may terminate this Agreement immediately by giving written notice of termination to the other party if:
- (a) the other party:
    - (i) is dissolved;
    - (ii) ceases to conduct all (or substantially all) of its business;
    - (iii) is or becomes unable to pay its debts as they fall due;
    - (iv) is or becomes insolvent or is declared insolvent; or
    - (v) convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;

- (b) an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party;
- (c) an order is made for the winding up of the other party, or the other party passes a resolution for its winding up[ (other than for the purpose of a solvent company reorganisation where the resulting entity will assume all the obligations of the other party under this Agreement)]; or
- (d) [if that other party is an individual:
  - (i) that other party becomes incapable of managing his or her own affairs as a result of illness or incapacity; or
  - (ii) that other party is the subject of a bankruptcy petition or order,and if that other party dies then this Agreement shall automatically terminate].

## **12. Effects of termination**

- 12.1 Upon the termination of this Agreement, all of the provisions of this Agreement shall cease to have effect, save that the following provisions of this Agreement shall survive and continue to have effect (in accordance with their express terms or otherwise indefinitely): [Clauses 1, 7.2, 7.4, 9, 12, 15 and 16].
- 12.2 Except to the extent expressly provided otherwise in this Agreement, the termination of this Agreement shall not affect the accrued rights of either party.
- 12.3 Within [30 days] following the termination of this Agreement for any reason:
  - (a) the Customer must pay to the Provider any Charges in respect of Services provided to the Customer before the termination of this Agreement; and
  - (b) the Provider must refund to the Customer any Charges paid by the Customer to the Provider in respect of Services that were to be provided to the Customer after the termination of this Agreement,without prejudice to the parties' other legal rights.

## **13. Notices**

- 13.1 Any notice from one party to the other party under this Agreement must be given by one of the following methods (using the relevant contact details set out in Clause 13.2):
  - (a) [[delivered personally or sent by courier], in which case the notice shall be deemed to be received [upon delivery]]; or
  - (b) [sent by [recorded signed-for post], in which case the notice shall be deemed to be received [2 Business Days following posting]],



*[additional list items]*

providing that, if the stated time of deemed receipt is not within Business Hours, then the time of deemed receipt shall be when Business Hours next begin after the stated time.

13.2 The parties' contact details for notices under this Clause 13 are as follows:

- (a) in the case of notices sent by the Customer to the Provider, *[contact details]*; and
- (b) in the case of notices sent by the Provider to the Customer, *[contact details]*.

13.3 The addressee and contact details set out in Clause 13.2 may be updated from time to time by a party giving written notice of the update to the other party in accordance with this Clause 13.

#### **14. Subcontracting**

14.1 The Provider must not subcontract any of its obligations under this Agreement without the prior written consent of the Customer[, providing that the Customer must not unreasonably withhold or delay the giving of such consent].

#### **OR**

14.1 Subject to any express restrictions elsewhere in this Agreement, the Provider may subcontract any of its obligations under this Agreement[, providing that the Provider must give to the Customer, promptly following the appointment of a subcontractor, a written notice specifying the subcontracted obligations and identifying the subcontractor in question].

14.2 The Provider shall remain responsible to the Customer for the performance of any subcontracted obligations.

#### **15. General**

15.1 No breach of any provision of this Agreement shall be waived except with the express written consent of the party not in breach.

15.2 If any provision of this Agreement is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions of this Agreement will continue in effect. If any unlawful and/or unenforceable provision would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect (unless that would contradict the clear intention of the parties, in which case the entirety of the relevant provision will be deemed to be deleted).

15.3 This Agreement may not be varied except by a written document signed by or on behalf of each of the parties.

- 15.4 Neither party may without the prior written consent of the other party assign, transfer, charge, license or otherwise deal in or dispose of any contractual rights or obligations under this Agreement.
- 15.5 This Agreement is made for the benefit of the parties and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree any amendment, waiver, variation or settlement under or relating to this Agreement are not subject to the consent of any third party.
- 15.6 Subject to Clause 9.1, this Agreement shall constitute the entire agreement between the parties in relation to the subject matter of this Agreement, and shall supersede all previous agreements, arrangements and understandings between the parties in respect of that subject matter.
- 15.7 This Agreement shall be governed by and construed in accordance with [English law].
- 15.8 The courts of [England] shall have exclusive jurisdiction to adjudicate any dispute arising under or in connection with this Agreement.

## **16. Interpretation**

- 16.1 In this Agreement, a reference to a statute or statutory provision includes a reference to:
- (a) that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and
  - (b) any subordinate legislation made under that statute or statutory provision.
- 16.2 The Clause headings do not affect the interpretation of this Agreement.
- 16.3 References in this Agreement to "calendar months" are to [the 12 named periods (January, February and so on) into which a year is divided].
- 16.4 In this Agreement, general words shall not be given a restrictive interpretation by reason of being preceded or followed by words indicating a particular class of acts, matters or things.

## **EXECUTION**

The parties have indicated their acceptance of this Agreement by executing it below.

**SIGNED BY** *[[individual name]* on [.....], the Provider] OR *[[individual name]* on [.....], duly authorised for and on behalf of the Provider]:

.....

**SIGNED BY** *[[individual name]* on [.....], the Customer] OR *[[individual name]* on [.....], duly authorised for and on behalf of the Customer]:

.....

## **SCHEDULE 1 (SOFTWARE PARTICULARS)**

### **1. Identification of Software**

*[Identify Software]*

### **2. Financial provisions**

*[Insert financial provisions]*

## **SCHEDULE 2 (MAINTENANCE SLA)**

### **1. Introduction**

- 1.1 This Schedule 2 sets out the service levels applicable to the Maintenance Services.

### **2. Updates**

- 2.1 The Provider shall give to the Customer [at least 10 Business Days'] prior written notice of [the Release of an Update].
- 2.2 The Provider shall provide to the Customer [2 copies of each Update on optical disk, together with written instructions sufficient to enable a reasonably skilled systems administrator to apply the relevant Update to the Software,] within the period of [10 Business Days following Release].

**OR**

- 2.2 The Provider shall apply each Update to the Software within the period of [20 Business Days following Release][ unless the Customer gives to the Provider prior written notice that the Provider should not apply the Update to the Software].

**OR**

- 2.2 The Provider shall provide to the Customer [2 copies of each Update on optical disk, together with written instructions sufficient to enable a reasonably skilled systems administrator to apply the relevant Update to the Software,] within the period of [10 Business Days following Release]; and the Provider shall apply each Update to the Software within the period of [20 Business Days following Release][ unless the Customer gives to the Provider prior written notice that the Provider should not apply the Update to the Software].
- 2.3 If[, as a consequence of any request, act or omission of the Customer,] an Update[ that has been Released] is not applied to the Software within the period of [40 Business Days following such Release], then [*detail consequences*].

### **3. Upgrades**

- 3.1 The Provider shall keep the Customer reasonably informed during the Term of its plans for the release of Upgrades; however, except to the extent that the parties agree otherwise in writing, the Provider shall have no obligation to release Upgrades with features requested by the Customer or to take into account the opinions of the Customer in relation to plans for the release of Upgrades.
- 3.2 The Provider shall produce Upgrades at least [once in each calendar year] during the Term, and shall make such Upgrades available to the Customer in accordance with the provisions of this Schedule 2.

- 3.3 The Provider shall give to the Customer [at least 10 Business Days'] prior written notice of [the Release of an Upgrade].
- 3.4 The Provider shall provide to the Customer [2 copies of each Upgrade on optical disk, together with written instructions sufficient to enable a reasonably skilled systems administrator to apply the relevant Upgrade to the Software,] within the period of [10 Business Days following Release].

**OR**

- 3.4 The Provider shall apply each Upgrade to the Software within the period of [20 Business Days following Release][ unless the Customer gives to the Provider prior written notice that the Provider should not apply the Upgrade to the Software].

**OR**

- 3.4 The Provider shall provide to the Customer [2 copies of each Upgrade on optical disk, together with written instructions sufficient to enable a reasonably skilled systems administrator to apply the relevant Upgrade to the Software,] within the period of [10 Business Days following Release]; and the Provider shall apply each Upgrade to the Software within the period of [20 Business Days following Release][ unless the Customer gives to the Provider prior written notice that the Provider should not apply the Upgrade to the Software].
- 3.5 If[, as a consequence of any request, act or omission of the Customer,] an Upgrade[ that has been Released] is not applied to the Software within the period of [40 Business Days following such Release], then [*detail consequences*].

# **Free software maintenance agreement: drafting notes**

Software maintenance agreements are legally-binding documents that regulate the provision and receipt of maintenance services relating to software.

Maintenance services typically include the supply of software upgrades and updates, and may also include the installation of those upgrades and updates by the service provider.

Under this agreement, the charges payable with respect to the maintenance services may be fixed, periodic or time-based.

This straightforward software maintenance agreement is identical to the our basic agreement, but as it is free-of-charge it does include credit/attribution text which, under our licensing terms, you need to retain in the document.

## **DATE**

- Insert the date of execution of the document.

## **PARTIES**

### **Subsection 1**

- Is the Provider an individual or a company?
- What is the full name of the individual (including middle names)?
- What is the postal address of the Provider?
- What is the full company name of the Provider?
- In which jurisdiction is the Provider incorporated?
- What is the registration number of the Provider?
- What is the registered office address of the Provider?

### **Subsection 2**

- Is the Customer an individual or a company?
- What is the full name of the individual (including middle names)?
- What is the postal address of the Customer?
- What is the full company name of the Customer?
- In which jurisdiction is the Customer incorporated?
- What is the registration number of the Customer?
- What is the registered office address of the Customer?

# **AGREEMENT**

## **Clause 1: Definitions**

### **Clause 1.1**

#### *Definition of Business Day*

- The bank and public holidays of which jurisdiction should be excluded from the definition of "Business Day"?

#### *Definition of Business Hours*

- What are business hours for the purposes of this document?

#### *Definition of Charges*

- What charges are payable under this document?
- How should the time-based charging rates be described or specified?
- Will all the services be subject to time-based charging, or only some of the services?
- How are time-based charging units to be rounded?

#### *Definition of Effective Date*

- When will the contract come into force?

#### *Definition of Force Majeure Event*

- Specify particular examples of force majeure events.

#### *Definition of Maintenance Services*

- Will the Provider supply updates/upgrades to the Customer, apply them to the software, or both?

#### *Definition of Release*

- What constitutes a "Release"?

#### *Definition of Services*

- Define "Services".

#### *Definition of Term*

- Define "Term", the period during which the contract will subsist.

#### *Definition of Update*

- Define "Update".

#### *Definition of Upgrade*



- Define "Upgrade".

## **Clause 2: Credit**

### **Clause: Free documents licensing warning**

Optional element. Although you need to retain the credit, you should remove the inline copyright warning from this document before use.

## **Clause 3: Term**

### **Clause 3.2**

- Is the term of the contract indefinite, or will it come to an end upon some agreed date, or upon the occurrence of a defined event?
- Upon what date will the contract terminate?
- Upon the occurrence of what event will the contract terminate?

## **Clause 4: Maintenance Services**

### **Clause 4.1**

- During what period will the maintenance services be provided?

### **Clause 4.2**

- What standard(s) must the maintenance services meet?
- Specify the standard or standards the services must meet.

### **Clause 4.3**

Optional element.

### **Clause 4.4**

Optional element. Will the Provider have a right to suspend the maintenance services in the event that the Customer fails to pay any amount due under the contract?

- How much notice of an intention to suspend the maintenance services must the Provider give to the Customer?

## **Clause 5: Customer obligations**

Optional element.

### **Clause 5.1**

- What must the Customer provide to the Provider?

### **Clause 5.2**

Optional element.

## **Clause 6: Charges**

### **Clause 6.2**

Optional element.

### **Clause 6.3**

Optional element.

- Are payment amounts stated inclusive or exclusive of VAT?

### **Clause 6.4**

Optional element. Will the Provider be permitted to vary the charges, or any element of the charges, in any circumstances?

- Which elements of the charges may be varied?
- What notice period should apply to the variation of charges?
- Will variations only take effect upon a particular date?
- Should variations be subject to a cap?

## **Clause 7: Payments**

### **Clause 7.1**

- When should invoices be issued?
- Specify invoicing dates.

### **Clause 7.2**

- What is the period for payment of invoices?
- When does the period for payment of an invoice begin to run?

### **Clause 7.3**

Optional element.

- Using what methods should payments be made?

### **Clause 7.4**

- What contractual interest rate should apply to late payments?
- *Late Payment of Commercial Debts (Interest) Act 1998 - <https://www.legislation.gov.uk/ukpga/1998/20>*

### **Clause 7.4**

- What interest rate will apply here?

- Consider whether to include this acknowledgement.

## **Clause 8: Warranties**

### **Clause 8.1**

Optional element.

- What general warranties will the Provider give to the Customer?

### **Clause 8.2**

Optional element.

## **Clause 9: Limitations and exclusions of liability**

Contractual limitations and exclusions of liability are regulated and controlled by law, and the courts may rule that particular limitations and exclusions of liability in contracts are unenforceable.

The courts are particularly likely to intervene where a party is seeking to rely on a limitation or exclusion of liability in its standard terms and conditions, but will also sometimes intervene where a term has been individually negotiated. The courts may be more likely to rule that provisions excluding liability, as opposed to those merely limiting liability, are unenforceable. If there is a risk that any particular limitation or exclusion of liability will be found to be unenforceable by the courts, that provision should be drafted as an independent term, and be numbered separately from the other provisions. It may improve the chances of a limitation or exclusion of liability being found to be enforceable if the party seeking to rely upon it specifically drew it to the attention of the other party before the contract was entered into.

Exclusions and limitations of liability in UK contracts are primarily regulated by the Unfair Contract Terms Act 1977 ("UCTA"). Contracts regulated by UCTA cannot exclude or restrict a party's liability for death or personal injury resulting from negligence (Section 2(1), UCTA). Except insofar as the relevant term satisfies the requirements of reasonableness, such contracts cannot exclude or restrict liability: (i) for negligence (which includes a breach of an express or implied contractual obligation to take reasonable care or exercise reasonable skill) (Section 2(2), UCTA); or (ii) for misrepresentation (Section 3, Misrepresentation Act 1967).

In addition, if a contract is regulated by UCTA, and one of the parties is dealing on the other's written standard terms of business, then except insofar as the relevant contractual term satisfies the requirements of reasonableness the other party cannot: (i) exclude or restrict its liability in respect of a breach of contract; or (ii) claim to be entitled to render a contractual performance substantially different from that which was reasonably expected of it; or (iii) claim to be entitled, in respect of the whole or any part of its contractual obligation, to render no contractual performance at all (see Section 3, UCTA).

UCTA includes various other restrictions, particularly in the case of contracts for the sale of goods and contracts under which possession or ownership of goods passes.

Somewhat different rules apply to limitations of liability in contracts with consumers, and these provisions should not be used in relation to such contracts.

These guidance notes provide a very incomplete and basic overview of a complex subject. Accordingly, you should take legal advice if you may wish to rely upon a limitation or exclusion of liability.

- *Unfair Contract Terms Act 1977 -*  
*<https://www.legislation.gov.uk/ukpga/1977/50>*

### **Clause 9.1**

Do not delete this provision (except upon legal advice). Without this provision, the specific limitations and exclusions of liability in the document are more likely to be unenforceable.

### **Clause 9.3**

Optional element.

- Which of the parties will be the beneficiary of this limitation of liability?

### **Clause 9.4**

Optional element.

- Which of the parties will be the beneficiary of this limitation of liability?

### **Clause 9.5**

Optional element.

- Which of the parties will be the beneficiary of this limitation of liability?

### **Clause 9.6**

Optional element.

- Which of the parties will be the beneficiary of this limitation of liability?

### **Clause 9.7**

Optional element.

- Which of the parties will be the beneficiary of this limitation of liability?

### **Clause 9.8**

Optional element.

- Which of the parties will be the beneficiary of this limitation of liability?

### **Clause 10: Force Majeure Event**

Optional element.

### **Clause 10.1**

- Will obligations to make payments be excluded from the scope of the force majeure exception?

### **Clause 10.2**

Optional element.

### **Clause 10.3**

Optional element.

## **Clause 11: Termination**

### **Clause 11.1**

- What notice period will apply to termination without cause by either party?

### **Clause 11.3**

Depending upon the status of the parties, the circumstances of the termination and the applicable law, some of the rights to terminate set out here may be unenforceable.

- Will the winding up of a party as part of a solvent company reorganisation give rise to a right of termination for the other party?

## **Clause 12: Effects of termination**

### **Clause 12.3**

Optional element.

This provision will not be suitable in all circumstances. The appropriate treatment of charges upon termination will vary from contract to contract. Note, also, that this provision only deals with charges in respect of services.

- Within what period following termination must charges in respect of services be settled?

## **Clause 13: Notices**

Optional element.

### **Clause 13.2**

- Insert all required addressee, address and contact details for contractual notices sent to the Provider.
- Insert all required addressee, address and contact details for contractual notices sent to the Customer.

## **Clause 14: Subcontracting**

Optional element.

#### **Clause 14.1**

- Will the Customer only be permitted to withhold consent to subcontracting where it is reasonable to do so?

#### **Clause 14.1**

- Will the Provider be obliged to notify the Customer of any subcontracting arrangements?

#### **Clause 15: General**

##### **Clause 15.1**

Optional element.

##### **Clause 15.2**

Optional element.

##### **Clause 15.3**

Optional element.

This is intended to prevent, for example, one party wrongfully claiming that a term of the contract was changed in a telephone call.

##### **Clause 15.4**

Optional element.

##### **Clause 15.5**

Optional element.

This provision is designed to exclude any rights a third party may have under the Contracts (Rights of Third Parties) Act 1999.

- *Contracts (Rights of Third Parties) Act 1999 - <https://www.legislation.gov.uk/ukpga/1999/31>*

##### **Clause 15.6**

Optional element.

##### **Clause 15.7**

This template has been drafted to work in the English law context. If you plan to change the governing law, you should have the document reviewed by someone with expertise in the law of the relevant jurisdiction.

- Which law will govern the document?

##### **Clause 15.8**

Optional element.

As a practical matter, it makes sense for the courts with expertise in the relevant law to have the right to adjudicate disputes. Where one of the parties is outside England (or at least the UK), you may want to grant the courts of their home jurisdiction the right to adjudicate disputes, as this could ease enforcement in some circumstances.

- The courts of which jurisdiction will have the exclusive right to adjudicate disputes relating to the document (subject to applicable law)?

### **Clause 16: Interpretation**

Should provisions concerning the interpretation of the document be included?

#### **Clause 16.1**

Optional element.

#### **Clause 16.2**

Optional element.

#### **Clause 16.3**

Optional element.

#### **Clause 16.4**

Optional element.

This provision is designed to exclude the application of a rule of interpretation known as the ejusdem generis rule. That rule may affect the interpretation of contractual clauses that list particular examples or instances of some more general idea, by limiting the scope of the general idea by reference to those particular examples or instances.

## **EXECUTION**

### **Subsection: Execution of contract by First Party (individual or company)**

- Will the contract be signed by a contracting individual, or an individual on behalf of a contracting company?
- What is the full name of the Provider signatory?
- On what date is the Provider signing the contract?
- Add the full name of the person who will sign the document on behalf of the Provider.
- On what date is the contract being signed on behalf of the Provider?

### **Subsection: Execution of contract by Second Party (individual or company)**

- Will the contract be signed by a contracting individual, or an individual on behalf of a contracting company?

- What is the full name of the Customer signatory?
- On what date is the Customer signing the contract?
- Add the full name of the person who will sign the document on behalf of the Customer.
- On what date is the contract being signed on behalf of the Customer?

## **SCHEDULE 1 (SOFTWARE PARTICULARS)**

### **Part 1: Identification of Software**

- Identify the relevant software.

### **Part 2: Financial provisions**

- Insert financial provisions.

## **SCHEDULE 2 (MAINTENANCE SLA)**

Optional element.

### **Part 2: Updates**

#### **Unit 2.1**

- How much prior written notice of the release of an update must be given to the Customer?
- What event will trigger the notice obligation?

#### **Unit 2.2**

- What exactly will the Provider provide to the Customer in relation to updates?
- When must updates and related materials be supplied?

#### **Unit 2.2**

- When must updates be applied to the software?
- Will the Customer have a right to require the Provider to refrain from applying updates to the software?

#### **Unit 2.2**

- What exactly will the Provider provide to the Customer in relation to updates?
- When must updates and related materials be supplied?
- When must updates be applied to the software?



- Will the Customer have a right to require the Provider to refrain from applying updates to the software?

### **Unit 2.3**

Optional element.

- In what specific circumstances will this provision be engaged?
- To which types of update (if not all) will this provision relate?
- After what period will this provision be engaged?
- What will be the consequences of the non-application of a software update in accordance with this provision?

## **Part 3: Upgrades**

### **Unit 3.1**

Optional element.

### **Unit 3.2**

Optional element.

- How often must the Provider produce upgrades?

### **Unit 3.3**

- How much prior written notice of the release of an upgrade must be given to the Customer?
- What event will trigger the notice obligation?

### **Unit 3.4**

- What exactly will the Provider provide to the Customer in relation to upgrades?
- When must upgrades and related materials be supplied?

### **Unit 3.4**

- When must upgrades be applied to the software?
- Will the Customer have a right to require the Provider to refrain from applying upgrades to the software?

### **Unit 3.4**

- What exactly will the Provider provide to the Customer in relation to upgrades?
- When must upgrades and related materials be supplied?

- When must upgrades be applied to the software?
- Will the Customer have a right to require the Provider to refrain from applying upgrades to the software?

### **Unit 3.5**

Optional element.

- In what specific circumstances will this provision be engaged?
- To which types of upgrade (if not all) will this provision relate?
- After what period will this provision be engaged?
- What will be the consequences of the non-application of a software upgrade in accordance with this provision?