

Software as a Service Subscription Agreement

DATE: DD/MM/YYYY

(1) TRIASTER LTD

and

(2) CUSTOMER

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THIS AGREEMENT IS DATED XX MONTH 2018**Parties**

1. **Triaster Ltd** incorporated and registered in England and Wales with company number 02911867 whose registered office is at Fugro House, Hithercroft Road, Wallingford, Oxfordshire, OX10 9RB (the **Supplier**); and
2. **[FULL COMPANY NAME]** incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at **[REGISTERED OFFICE ADDRESS]** (the **Customer**).

Background

1. The Supplier has developed certain software applications and platforms which it makes available to subscribers via the internet for the purpose of Business Process Management system for organisations.
2. The Customer wishes to use the Supplier's service in its business operations.
3. The Supplier has agreed to provide and the Customer has agreed to take and pay for the Supplier's service subject to the terms and conditions of this agreement.

Agreed Terms**1. INTERPRETATION**

- 1.1. The definitions and rules of interpretation in this clause apply in this agreement.

Activate: the upload or input of an Activation Key into the Software Services by the Customer in relation to a Process Library and **Activated** and **Activating** shall be construed accordingly.

Activation Date: either the date on which a Process Library is activated by the Customer in accordance with clause 3.2.

Activation Guide: http://www.triaster.co.uk/lp/suite/latest/hh_goto.htm?hh_start.htm#Process%20Library/Activation.htm or such other web address notified by the Supplier to the Customer from time to time which sets out the process by which a Customer may Activate a Process Library.

Activation Key the activation key required to activate the Software Services in relation to a Process Library provided by the Supplier to the Customer from time to time.

Active Process Library: a Process Library that has been **Activated**.

Active Process Library Month:	the period of one calendar month during which the relevant Process Library is an Active Process Library beginning on either: <ul style="list-style-type: none">a) the Activation Date; orb) the day after the end of the previous Active Process Library Month in any given Active Process Library Period, (as the case may be).
Active Process Library Period:	has the meaning given to it in clause 3.2.
Authorised Users:	those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Software Services and the Documentation.
Available Services:	the Software Services, Support Services and the Professional Services.
Business Day:	a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.
Change of Control:	shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression change of control shall be construed accordingly.
Confidential Information:	information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 14.6 or clause 14.7.
Content:	any deliverables to be provided as part of, or any output of, the Content Services to be provided by the Supplier to the Customer as specified in a Customer Order Form.
Content Services:	the creation of bespoke templates, content or other materials to populate the Software on behalf of the Customer as specified in a Customer Order Form.
Customer Data:	the data inputted by the Customer, Authorised Users, or the Supplier on the Customer's behalf for the purpose of using the Software Services or facilitating the Customer's use of the Software Services.
Customer Key:	the key required by the Customer to access and use the Software Services provided by the Supplier to the Customer from time to time.
Customer Materials:	all materials, drawings, images and data supplied by the Customer to the Supplier for inclusion in the Content.

Customer Order Form:	a quotation and subsequent order outlining the details of the Services to be delivered by the Supplier to the Customer under the terms of this agreement.
Customisation Services:	the customisation of the stencils, templates, Process Libraries, user interface and/or the other parts of the Software to customise the Software Services as set out in a Customer Order Form.
Data Protection Legislation:	up to but excluding 25 May 2018, the Data Protection Act 1998 and thereafter: <ul style="list-style-type: none">a) unless and until the General Data Protection Regulation ((EU) 2016/679) (GDPR) is no longer directly applicable in the UK, the GDPR and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK; and thenb) any successor legislation to the GDPR or the Data Protection Act 1998.
Documentation:	the document made available to the Customer by the Supplier online via www.triaster.co.uk/lp/suite/latest/hh_start.htm or such other web address notified by the Supplier to the Customer from time to time which sets out a description of the Software Services and the user instructions for the Software Services.
Effective Date:	the date of this agreement.
Implementation Deliverables:	any deliverables to be provided as part of, or any output of, any Customisation Services to be provided by the Supplier to the Customer as specified in a Customer Order Form.
Intellectual Property Rights:	patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
Microsoft:	Microsoft Corporation or such other provider of Virtual Machines as the Supplier may use from time to time.

Monthly Allowance:	the sum shown in a Customer Order Form for the allowance for the cost to the Supplier of providing the relevant Virtual Machine and access thereto to the Customer.
Normal Business Hours:	9.00 am to 5.00 pm local UK time, each Business Day.
Process Library:	a collection of end-to-end processes, policies, forms and guidance documents managed and used by Authorised Users within the Customer's organisation.
Process Library Subscription Fees:	the subscription fees payable by the Customer to the Supplier for the Process Library Months as set out in a Customer Order Form.
Process Library Month:	the non-exclusive, non-transferable right, without the right to grant sublicenses, to permit the Authorised Users to use the Software Services and the Documentation in relation to a Process Library for a period of one calendar month.
Professional Services:	any and all of the Content Services, the Customisation Services or Training Services (but, for the avoidance, not including Software Services or the Support Services) and any other services specified in a Customer Order Form.
Professional Services Day:	a day on which the Supplier is to provide Professional Services to the Customer.
Professional Services Fees:	the fees payable by the Customer to the Supplier for the Professional Services as set out in the Customer Order Form.
Server State:	the following application files held in a Virtual Machine, as more particularly described in the Supplier's back up policy: <ul style="list-style-type: none">a) settings.xml;b) libraries.xml;c) indexablesourcerecord.xml; andd) properties.xml.
Service Level Arrangements:	the service level arrangements set out in Schedule 2.
Services:	any and all of the Software Services, Support Services, Professional Services and Content Services which provided by the Supplier to the Customer under a Customer Order Form.
Software:	the online software applications provided by the Supplier as part of the Software Services.

- Software Services:** the subscription services in relation to each Active Process Library provided by the Supplier to the Customer under this agreement via the Sub-Domain or any other website notified to the Customer by the Supplier from time to time, as more particularly described in the Documentation.
- Sub-Domain:** the sub-domain of triaster.cloud set out in the relevant Customer Order Form or as notified to the Customer by the Supplier in writing from time to time.
- Subscription:** the subscription purchased by the Customer pursuant to clause 12.2 which entitles Authorised Users to access and use the Software Services and the Documentation in accordance with this agreement.
- Subscription Term:** has the meaning given in clause 17.1 (being the Initial Subscription Term together with any subsequent Monthly Renewal Periods or Annual Renewal Periods (as the case may be)).
- Support Services Policy:** the Supplier's policy for providing support in relation to the Software Services as made available at www.triaster.co.uk or such other website address as may be notified to the Customer from time to time.
- Training Services:** the training services in relation to the use of the Software Services specified in a Customer Order Form.
- Unused Process Library Month:** a Process Library Month that has not been Activated.
- Virtual Machine:** the virtual machine from which the Supplier provides the Software Services in respect of a Process Library to the Customer.
- Virus:** any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.
- 1.2. Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3. A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality).

- 1.4. A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5. Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7. A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this agreement.
- 1.8. A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this agreement under that statute or statutory provision.
- 1.9. A reference to writing or written includes faxes but not e-mail.
- 1.10. References to clauses and schedules are to the clauses and schedules of this agreement; references to paragraphs are to paragraphs of the relevant schedule to this agreement.

2. CUSTOMER ORDER

- 2.1. Each Customer Order Form shall be agreed in the following manner:
 - a) the Customer shall ask the Supplier to provide any or all of the Available Services and provide the Supplier with as much information as the Supplier reasonably requests in order to prepare a draft Customer Order Form for the Available Services requested;
 - b) following receipt of the information requested from the Customer the Supplier shall, as soon as reasonably practicable either:
 - i. inform the Customer that it declines to provide the requested Available Services; or
 - ii. provide the Customer with a draft Customer Order Form;
 - c) if the Supplier provides the Customer with a draft Customer Order Form pursuant to clause a)ii, the Supplier and the Customer shall discuss and agree that draft Customer Order Form; and
 - d) both parties shall sign the draft Customer Order Form when it is agreed.
- 2.2. A Customer Order Form shall not enter into force, be legally binding or have any other effect unless:
 - a) the Customer Order Form has been signed by the authorised representatives of both parties to it; and
 - b) as at the date the Customer Order Form is signed, this agreement has not been terminated.
- 2.3. Each Customer Order Form shall be part of this agreement and shall not form a separate contract to it.

3. ACTIVATING PROCESS LIBRARIES

- 3.1. Within two Business Days of the parties signing a Customer Order Form in accordance with clause 2, the Supplier shall either:
- a) if the Supplier has not issued a Customer Key to the Customer, send, or make available to, the Customer its Customer Key and update its database within the Software so that the Customer Key carries the number of Process Library Months (if any) purchased by the Customer in the relevant Customer Order Form as Unused Process Library Months; or
 - b) if the Supplier has previously issued a Customer Key to the Customer, update its database within the Software so that the Customer Key carries the number of Process Library Months (if any) purchased by the Customer in the relevant Customer Order Form as Unused Process Library Months.
- 3.2. When the Customer wishes to Activate a Process Library it shall request an Activation Key (**Activation Request**) and apply the Activation Key to the Process Library that it wishes to Activate by following the process set out in the Activation Guide. The Customer's Activation Request shall include details of the number of Process Library Months for which the Customer wishes the Process Library to be an Active Process Library (**Active Process Library Period**).
- 3.3. The Customer shall not submit an Activation Request for more than the total number Unused Process Library Months it has in its Customer Key at the time it make the Activation Request.
- 3.4. Once a Process Library has been Activated for the Active Process Library Period set out in the Activation Key the Customer shall not be entitled to:
- a) de-Activate the relevant Process Library;
 - b) apply or re-deploy such Process Library Months to another Process Library; or
 - c) any refund in respect of any Process Library Months during which it has not used the relevant Process Library.
- 3.5. If the Customer wishes a Process Library to remain Active after the end of any Active Process Library Period, it may submit an Activation Request and apply the relevant Activation Key in accordance with clause 3.2 in relation to that Process Library before the end of the last day in the relevant Active Process Library Period (**Active Process Library Extension**). If an Active Process Library Period has not ended at the time that the Customer applies an Active Process Library Extension, the Active Process Library Extension shall extend the relevant Active Process Library Period by the number of Process Library Months specified in the Active Process Library Extension. For the avoidance of doubt, the Process Library Months set out in an Active Process Library Extension shall be considered and the extended Active Process Library Period shall begin

on the day after the last of the Active Process Library Period in which the Active Process Library Extension is applied.

4. SUBSCRIPTION

4.1. Subject to:

- a) the Customer purchasing Process Library Months in accordance with clause 12.2,
- b) the Customer Activating the Process Library in accordance with clause 3; and
- c) the restrictions set out in this clause 4 and the other terms and conditions of this agreement,

the Supplier hereby grants to the Customer a non-exclusive, non-transferable right, without the right to grant sublicenses, to permit the Authorised Users to use the Software Services and the Documentation in relation to each Active Process Library during each Active Process Library Month solely for the Customer's internal business operations.

4.2. In relation to the Authorised Users, the Customer undertakes that each Authorised User required to have a password for the purposes of accessing the Software Services shall keep a secure password for his use of the Software Services and Documentation, that such password shall be changed no less frequently than monthly and that each Authorised User shall keep his password confidential.

4.3. The Customer shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Software Services that:

- a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
- b) facilitates illegal activity;
- c) depicts sexually explicit images;
- d) promotes unlawful violence;
- e) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
- f) is otherwise illegal or causes damage or injury to any person or property;

and the Supplier reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any material that breaches the provisions of this clause.

4.4. The Customer shall not:

- a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under this agreement:
 - i. attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the

Software and/or Documentation (as applicable) in any form or media or by any means; or

- ii. attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or
- b) access all or any part of the Software Services and Documentation in order to build a product or service which competes with the Software Services and/or the Documentation; or
- c) use the Software Services and/or Documentation to provide services to third parties; or
- d) subject to clause 25.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Software Services and/or Documentation available to any third party except the Authorised Users, or
- e) attempt to obtain, or assist third parties in obtaining, access to the Software Services and/or Documentation, other than as provided under this clause 4.

4.5. The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Software Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify the Supplier.

5. SOFTWARE SERVICES

- 5.1. The Supplier shall, during each Active Process Library Month, provide the Software Services in relation to the relevant Active Process Library to the Customer on and subject to the terms of this agreement.
- 5.2. The Supplier shall make the Software Services in relation to a Process Library available in accordance with the Service Level Arrangements during the relevant Active Process Library Month.
- 5.3. The Supplier will during each Active Process Library Month and in relation to the relevant Process Library, as part of the Software Services and in consideration of the support fees set out in the Customer Order Form, provide the Customer with the Supplier's standard customer support services during Normal Business Hours in accordance with the Supplier's Support Services Policy in effect at the time that the Software Services are provided. The Supplier may amend the Support Services Policy in its sole and absolute discretion from time to time. The Customer may purchase enhanced support services separately at the Supplier's then current rates.

6. PROFESSIONAL SERVICES

- 6.1. The Supplier shall provide the Professional Services (if any) specified in a Customer Order Form and, in relation to any Customisation Services included in a Customer Order Form, use reasonable endeavours to deliver the Implementation Deliverables in accordance with any timetable set out in the relevant Customer Order Form;

- 6.2. Subject to clause 6.3 and clause 6.4, the Supplier shall provide the Professional Services at such times and dates which the Customer books through the Supplier's advanced booking system or as otherwise agreed with the Customer in writing.
- 6.3. The Supplier shall not be liable for any delay in the delivery of the Professional Services if the Customer does not comply with its obligations in clause 6.2 or clause 6.4.
- 6.4. In relation to any Professional Services which include any Customisation Services, Content Services or any other services that the Supplier agrees to provide which require access to the relevant Process Library, the relevant Process Library must be any Active Process Library at the time that the Supplier provides those Professional Services and the Customer shall ensure that the Process Library in relation to the which it has ordered Professional Services has been Activated before the date on which the Supplier is due to provide the Professional Services.
- 6.5. Where a Customer Order Form includes Professional Services without a specific time at which the Professional Services must be delivered, the Customer shall book the Professional Services Days within six months of the date of the relevant Customer Order Form (**Booking Period**). If the Customer fails to book the Professional Services Day within the relevant Booking Period, the obligation on the Supplier to provide those Professional Services which have not been booked shall lapse and the Customer shall not be entitled to book those days.
- 6.6. If the Customer postpones or cancels a Professional Services Day that it has booked:
- a) less than 30 days but not less than 14 days before the date it has booked, the Customer shall pay the Supplier a fee equal to 50% of the fee payable for the Professional Services that the Supplier was due to provide on that date; or
 - b) 14 days or less before it has booked, the Customer shall pay the Supplier a fee equal to 100% of the fee payable for the Professional Services that the Supplier was due to provide on that date.

7. CONTENT

- 7.1. All Intellectual Property Rights in or arising out of or in connection with, or any output of, the Professional Services specified in a Customer Order Form (including the Implementation Deliverables but excluding the Content) (**Deliverables**) shall be owned by the Supplier.
- 7.2. The Supplier grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free, perpetual licence to copy and modify the Deliverables for the purpose of receiving and using the Deliverables.
- 7.3. The Intellectual Property Rights in the Content shall, at the date on which this agreement becomes effective or (if later) on creation of the rights, vest in the Customer. The Supplier hereby assigns (by way of present and, where appropriate, future assignment) all such Intellectual Property Rights with full title guarantee to the Customer.

- 7.4. The Customer grants the Supplier a fully-paid, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the Customer to the Supplier (including the Customer Materials and the Content) for the term of this agreement for the purpose of providing the Services to the Customer.
- 7.5. All Customer Materials are the exclusive property of the Customer and the Customer and its licensors shall retain all Intellectual Property Rights in the Customer Materials

8. CUSTOMER DATA

- 8.1. The Customer shall own all right, title and interest in and to all of the Customer Data that is not personal data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Customer Data.
- 8.2. The Supplier shall follow its archiving procedures for each Server State as set out in its back-up policy, as such document may be amended by the Supplier in its sole discretion from time to time. In the event of any loss or damage to a Server State, the Customer's sole and exclusive remedy against the Supplier shall be for the Supplier to use reasonable commercial endeavours to restore the lost or damaged Server State from the latest back-up of such Server State maintained by the Supplier in accordance with the archiving procedure described in its back-up policy. The Supplier shall not be responsible for any loss, destruction, alteration or disclosure of the Server State caused by any third party (except those third parties sub-contracted by the Supplier to perform services related to the Server State maintenance and back-up for which it shall remain fully liable under clause 8.10).
- 8.3. The Supplier will not back up the Customer Data. The Customer is responsible for backing up the Customer Data.
- 8.4. The Supplier shall, in providing the Software Services, comply with its Privacy Policy relating to the privacy of the Customer Data available at **[INSERT WEB ADDRESS]** or such other website address as may be notified to the Customer from time to time, as such document may be amended from time to time by the Supplier in its sole discretion.
- 8.5. Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 8 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 8.6. The parties acknowledge that:
- a) if the Supplier processes any personal data on the Customer's behalf when performing its obligations under this agreement, the Customer is the data controller and the Supplier is the data processor for the purposes of the Data Protection Legislation (where **Data Controller** and **Data Processor** have the meanings as defined in the Data Protection Legislation); and
 - b) the Customer acknowledges and agrees that the personal data may be transferred or stored outside the EEA or the country where the Customer and the Authorised Users

are located in order to carry out the Software Services and the Supplier's other obligations under this agreement.

- 8.7. Without prejudice to the generality of clause 8.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Supplier for the duration and purposes of this agreement so that the Supplier may lawfully use, process and transfer the Personal Data in accordance with this agreement on the Customer's behalf.
- 8.8. Without prejudice to the generality of clause 8.1, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under this agreement:
- a) process that Personal Data only on the written instructions of the Customer unless the Supplier is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Supplier to process Personal Data (**Applicable Laws**). Where the Supplier is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, the Supplier shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Supplier from so notifying the Customer;
 - b) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
 - c) not transfer any Personal Data outside of the EEA unless the following conditions are fulfilled:
 - i. the Customer or the Supplier has provided appropriate safeguards in relation to the transfer;
 - ii. the data subject has enforceable rights and effective legal remedies;
 - iii. the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - iv. the Supplier complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
 - d) assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
 - e) notify the Customer without undue delay on becoming aware of a Personal Data breach;

- f) at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the agreement unless required by Applicable Law to store the Personal Data; and
 - g) maintain complete and accurate records and information to demonstrate its compliance with this clause 8 .
- 8.9. Each party shall ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the other party, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it).
- 8.10. The Customer consents to the Supplier appointing any third-party processor of Personal Data under this agreement, as the Supplier may choose from time to time. The Supplier confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement substantially on that third party's standard terms of business. As between the Customer and the Supplier, the Supplier shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 8.

9. THIRD PARTY PROVIDERS

- 9.1. The Customer acknowledges that the Software Services may enable or assist it to access the website content of, correspond with, and purchase products and services from, third parties via third-party websites and that it does so solely at its own risk. The Supplier makes no representation, warranty or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by the Customer, with any such third party. Any contract entered into and any transaction completed via any third-party website is between the Customer and the relevant third party, and not the Supplier. The Supplier recommends that the Customer refers to the third party's website terms and conditions and privacy policy prior to using the relevant third-party website. The Supplier does not endorse or approve any third-party website nor the content of any of the third-party website made available via the Software Services.

10. SUPPLIER'S OBLIGATIONS

- 10.1. The Supplier undertakes it will perform the Services with reasonable skill and care and that it will perform the Software Services substantially in accordance with the Documentation.

- 10.2. In relation to the Professional Services, the Supplier shall use reasonable endeavours to meet any performance dates specified in the Customer Order Form or otherwise agreed by the parties in writing, but any such dates are estimates only and time shall not be of essence in relation to such performance dates.
- 10.3. The undertaking at clause 10.1 shall not apply to the extent of any non-conformance which is caused by use of the Software Services contrary to the Supplier's instructions, or modification or alteration of the Software Services by any party other than the Supplier or the Supplier's duly authorised contractors or agents. If the Software Services do not conform with the foregoing undertaking, Supplier will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance within a reasonable period of time, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 10.1. Notwithstanding the foregoing, the Supplier:
- a) does not warrant that the Customer's use of the Software Services will be uninterrupted or error-free; or that the Software Services, Documentation and/or the information obtained by the Customer through the Software Services will meet the Customer's requirements; and
 - b) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Software Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 10.4. This agreement shall not prevent the Supplier from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this agreement.
- 10.5. The Supplier warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this agreement.

11. CUSTOMER'S OBLIGATIONS

- 11.1. The Customer shall:
- a) provide the Supplier with:
 - i. all necessary co-operation in relation to this agreement; and
 - ii. such access to its employees, facilities and information as may be required by the Supplier;
- in order to provide the Services, including but not limited to Customer Data, security access information and configuration services, in a timely manner;

- b) in relation to any Training Services, provide access to a suitable training facility for the provision of any class-based training set up in the layout and with such equipment as the Supplier may request from time to time;
- c) comply with all applicable laws and regulations with respect to its activities under this agreement;
- d) carry out all other Customer responsibilities set out in this agreement or a Customer Order Form in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance, the Supplier may adjust any agreed timetable or delivery schedule as reasonably necessary;
- e) ensure that the Authorised Users use the Software Services and the Documentation in accordance with the terms and conditions of this agreement and shall be responsible for any Authorised User's breach of this agreement;
- f) obtain and shall maintain all necessary licences, consents, and permissions necessary for the Supplier, its contractors and agents to perform their obligations under this agreement, including without limitation the Software Services;
- g) ensure that its network and systems comply with the relevant specifications provided by the Supplier from time to time; and
- h) be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to the Supplier's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

12. CHARGES AND PAYMENT

- 12.1. The Customer shall pay the Professional Services Fees set out in each Customer Order Form for the Professional Services. The Supplier may invoice the Customer for the Professional Services Fees in accordance with the payment schedule set out in the relevant Customer Order Form. The Customer shall pay all invoices for the Professional Services Fees within 30 days of the date of the invoice.
- 12.2. The Customer shall pay the Process Library Subscription Fees to the Supplier for the Process Library Months in accordance with this clause 12 and the support fees in accordance with clause 5.3.
- 12.3. The Customer shall pay the Process Library Subscription Fees in advance or at such other times specified in the relevant Customer Order Form. The Customer shall pay all invoices for the Process Library Subscription Fees on receipt of the invoice.
- 12.4. If the Supplier has not received payment for the Process Library Subscription Fees or the Professional Services Fees on or before the due date, and without prejudice to any other rights and remedies of the Supplier:

- a) the Supplier may, without liability to the Customer, disable the Customer's password, account and access to all or part of the Software Services and the Supplier shall be under no obligation to provide any or all of the Software Services while the invoice(s) concerned remain unpaid; and
- b) interest shall accrue on a daily basis on such due amounts at an annual rate equal to 4% over the then current base lending rate of the Supplier's bankers in the UK from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.

12.5. All amounts and fees stated or referred to in this agreement:

- a) shall be payable in pounds sterling;
- b) are, subject to clause b), non-cancellable and non-refundable;
- c) are exclusive of value added tax, which shall be added to the Supplier's invoice(s) at the appropriate rate.

12.6. If, at any time whilst the Customer is using an Active Process Library, the costs incurred by the Supplier in providing the Virtual Machine to the Customer exceed the Monthly Allowance during the relevant Process Library Month, the Supplier shall charge the Customer, and the Customer shall pay on demand, the costs and expenses that Microsoft charges the Supplier (or any reseller or contractor who manages the Virtual Machine on behalf of the Supplier) for providing the Virtual Machine which is directly attributable to the Customer's use of the Virtual Machine, in excess of the Monthly Allowance, at cost.

13. PROPRIETARY RIGHTS

13.1. The Customer acknowledges and agrees that the Supplier and/or its licensors own all Intellectual Property Rights in the Software Services and the Documentation. Except as expressly stated herein, this agreement does not grant the Customer any rights to, under or in, any Intellectual Property Rights, or any other rights or licences in respect of the Software Services or the Documentation.

13.2. The Supplier confirms that it has all the rights in relation to the Software Services and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this agreement.

14. CONFIDENTIALITY

14.1. Each party may be given access to Confidential Information from the other party in order to perform its obligations under this agreement. A party's Confidential Information shall not be deemed to include information that:

- a) is or becomes publicly known other than through any act or omission of the receiving party;
- b) was in the other party's lawful possession before the disclosure;

- c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
 - d) is independently developed by the receiving party, which independent development can be shown by written evidence.
- 14.2. Subject to clause 14.4, each party shall hold the other's Confidential Information in confidence and not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this agreement.
- 14.3. Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this agreement.
- 14.4. A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 14.4, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.
- 14.5. Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.
- 14.6. The Customer acknowledges that details of the Software Services, and the results of any performance tests of the Software Services, constitute the Supplier's Confidential Information.
- 14.7. The Supplier acknowledges that the Customer Data is the Confidential Information of the Customer.
- 14.8. Subject to clause 14.9, no party shall make, or permit any person to make, any public announcement concerning this agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.
- 14.9. The Supplier may publicise the fact that it provides services to the Customer in such manner as it sees fit.
- 14.10. The above provisions of this clause 14 shall survive termination of this agreement, however arising.

15. INDEMNITY

- 15.1. The Customer shall defend, indemnify and hold harmless the Supplier against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation

court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Software Services and/or Documentation, provided that:

- a) the Customer is given prompt notice of any such claim;
- b) the Supplier provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
- c) the Customer is given sole authority to defend or settle the claim.

15.2. The Supplier shall defend the Customer, its officers, directors and employees against any claim that the Software Services or Documentation infringes any United Kingdom and European patent effective as of the Effective Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:

- a) the Supplier is given prompt notice of any such claim;
- b) the Customer provides reasonable co-operation to the Supplier in the defence and settlement of such claim, at the Supplier's expense; and
- c) the Supplier is given sole authority to defend or settle the claim.

15.3. In the defence or settlement of any claim, the Supplier may procure the right for the Customer to continue using the Software Services, replace or modify the Software Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this agreement on two Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.

15.4. In no event shall the Supplier, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:

- a) a modification of the Software Services or Documentation by anyone other than the Supplier; or
- b) the Customer's use of the Software Services or Documentation in a manner contrary to the instructions given to the Customer by the Supplier; or
- c) the Customer's use of the Software Services or Documentation after notice of the alleged or actual infringement from the Supplier or any appropriate authority.

15.5. The foregoing states the Customer's sole and exclusive rights and remedies, and the Supplier's (including the Supplier's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

16. LIMITATION OF LIABILITY

16.1. Except as expressly and specifically provided in this agreement:

- a) the Customer assumes sole responsibility for results obtained from the use of the Software Services and the Documentation by the Customer, and for conclusions drawn from such use. The Supplier shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Supplier by the Customer in connection with the Software Services, or any actions taken by the Supplier at the Customer's direction;
- b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this agreement; and
- c) the Software Services and the Documentation are provided to the Customer on an "as is" basis.

16.2. Nothing in this agreement excludes the liability of the Supplier:

- a) for death or personal injury caused by the Supplier's negligence; or
- b) for fraud or fraudulent misrepresentation.

16.3. The Service Level Arrangements state the Customer's full and exclusive right and remedy, and the Supplier's only obligation and liability in respect of, the performance and/or availability of the Software Services, or their non-performance and non-availability.

16.4. Subject to clause 16.1 and clause 16.2:

- a) the Supplier shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any:
 - i. loss of profits;
 - ii. loss of business;
 - iii. depletion of goodwill and/or similar losses;
 - iv. loss or corruption of data or information;
 - v. pure economic loss, or
 - vi. special, indirect or consequential loss, costs, damages, charges or expenses however arising under this agreement; and
- b) the Supplier's total aggregate liability in contract (including in respect of the indemnity at clause 15.2), tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this agreement shall be limited to the total Process Library Subscription Fees and Professional Services Fees paid for the Services during the 12 months immediately preceding the date on which the claim arose.

17. TERM AND TERMINATION

17.1. This agreement shall, unless otherwise terminated as provided in this clause 17, commence on the Effective Date and shall continue until either party gives to the other

party written notice to terminate it. Such notice shall be served no earlier than the first anniversary of the Effective Date and shall expire at the end of the last Active Process Library Period to end in accordance with the terms of this agreement.

- 17.2. If the Customer has no Unused Process Library Months as at the date notice to terminate is served under clause 17.1, such notice shall terminate this agreement with immediate effect.
- 17.3. Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party if:
- a) the other party fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 10 days after being notified in writing to make such payment;
 - b) the other party commits a material breach of any other term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 10 days after being notified in writing to do so;
 - c) the other party repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;
 - d) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
 - e) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
 - f) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
 - g) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party;
 - h) the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
 - i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
 - j) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or

sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;

- k) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause d) to clause j) (inclusive); or
- l) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

17.4. Without affecting any other right or remedy available to it, the Supplier may terminate this agreement with immediate effect by giving written notice to the Customer if:

- a) there is a Change of Control of the Customer; or
- b) the Customer has not Activated any Process Library Months for a period of six months or more.

17.5. On termination of this agreement for any reason:

- a) all existing Customer Order Forms shall terminate automatically;
- b) all licences granted under this agreement shall immediately terminate and the Customer shall immediately cease all use of the Software Services and/or the Documentation;
- c) any Unused Process Library Months shall lapse and the Customer shall not be entitled to Activate a Process Library using such Unused Process Library Months and shall not be entitled to a refund in respect of such Unused Process Library Months;
- d) each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party;
- e) the Supplier may destroy or otherwise dispose of any of the Customer Data in its possession unless the Supplier receives, no later than ten days after the effective date of the termination of this agreement, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. The Supplier shall use reasonable commercial endeavours to deliver the back-up to the Customer within 30 days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by the Supplier in returning or disposing of Customer Data; and
- f) any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination shall not be affected or prejudiced.

18. FORCE MAJEURE

The Supplier shall have no liability to the Customer under this agreement if it is prevented from or delayed in performing its obligations under this agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that the Customer is notified of such an event and its expected duration.

19. CONFLICT

If there is an inconsistency between any of the provisions in the main body of this agreement and the Schedules, the provisions in the main body of this agreement shall prevail.

20. VARIATION

No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

21. WAIVER

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. RIGHTS AND REMEDIES

Except as expressly provided in this agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

23. SEVERANCE

- 23.1. If any provision (or part of a provision) of this agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.
- 23.2. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

24. ENTIRE AGREEMENT

- 24.1. This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 24.2. Each party acknowledges that in entering into this agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement.

24.3. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

24.4. Nothing in this clause shall limit or exclude any liability for fraud.

25. ASSIGNMENT

25.1. The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.

25.2. The Supplier may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.

26. NO PARTNERSHIP OR AGENCY

Nothing in this agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

27. THIRD PARTY RIGHTS

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.

28. NOTICES

28.1. Any notice required to be given under this agreement shall be in writing and shall be

a) delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its registered office (if a company) or its principal place of business (in any other case) or such other address as may have been notified by that party for such purposes;

b) sent by email to:

i. in the case of the Supplier; info@triaster.co.uk; or

ii. i

c) or such other email address as may have been notified by that party for such purposes.

28.2. Any notice shall be deemed to have been received:

a) if delivered by hand when delivered (or if delivery is not in business hours, at 9 am on the first Business Day following delivery);

b) if sent by pre-paid first-class post or recorded delivery post, at 9.00am on the second Business Day after posting or at the time recorded by the delivery service; and

c) if sent by email, 9:00am on the Business Day after transmission.

28.3. This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

29. GOVERNING LAW

This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

30. JURISDICTION

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

This agreement has been entered into on the date stated at the beginning of it.

SCHEDULE 2 SERVICE LEVEL ARRANGEMENTS

1. SERVICE AVAILABILITY

- 1.1. In respect of an Active Process Library, the Supplier shall provide at least a 99.7% uptime service availability level (**Uptime Service Level**) during each Active Process Library Month.
- 1.2. The Uptime Service Level refers to an access point on the Supplier's hosting provider's backbone network. It does not apply to the portion of the circuit that does not transit the hosting provider's backbone network, as the Customer is responsible for its own internet access. Availability does not include:
- a) planned maintenance carried out during the maintenance window of 10.00 pm to 6.00 am UK time;
 - b) unscheduled maintenance provided that the Supplier has used reasonable endeavours to give the Customer at least two Normal Business Hours' notice in advance;
 - c) the Customer's use of the Software Services in a manner inconsistent with any instruction about their use issued to the Customer by the Supplier from time to time;
 - d) Customer-caused or third party-caused outages or disruptions (except to the extent that such outages or disruptions are caused by those duly authorised third parties sub-contracted by the Supplier to perform the Software Services), or
 - e) outages or disruptions attributable in whole or in part to force majeure events within the meaning of clause 18.

2. Availability measurement

All availability measurements shall be carried out by Microsoft and are based on the monthly average percentage availability, calculated at the end of each calendar month as the total actual uptime minutes divided by total possible uptime minutes in the month.

3. Service credits

- 3.1. If availability falls below the Uptime Service Level (as defined in paragraph 1 of Schedule 2) in a given Active Process Library Month (**Service Delivery Failure**), the Supplier shall credit the Customer's account by an amount calculated as the product of the total cumulative downtime (expressed as a percentage of the total possible uptime minutes in the month concerned) and the relevant Process Library Subscription Fee for that Active Process Library Month (**Service Credit**).
- 3.2. A Service Credit shall not be payable unless the Customer requests it within 40 Business Days of the service-affecting event(s). The maximum Service Credit allowable in a given month is limited to an amount equal to the Subscription Fee owed or paid by the Customer for that Active Process Library Month.

- 3.3. The Customer acknowledges and agrees that the terms of this Schedule 2 relating to Service Credits constitute a genuine pre-estimate of the loss or damage that the Customer would suffer as a result of the Supplier's Service Delivery Failure and are not intended to operate as a penalty for the Supplier's non-performance.

[INSERT DOCUSIGN COMPATIBLE SIGNATURE BLOCKS]