

Outsourcery Hosting Limited

**Reseller Agreement
for
Hosted Services**

THIS AGREEMENT is made the day of 2011

Between:

- (1) **Outsourcery Hosting Limited** (registered number 06854066) of Waterfold Park, Rochdale Road, Bury BL9 7BJ
- (2) (registered number) of. ("**The Reseller**").

Whereas

- A. The definitions in clause 1 apply to the defined terms used in these recitals.
- B. Outsourcery wishes to provide the Services to Customers via the Reseller, such Services being provided under the Customer Contract.
- C. The Reseller wishes to promote the sale of those Services on the terms and conditions set out in the Customer Contract.

IT IS AGREED as follows:

1 Definitions

In this Agreement the following words and expressions shall, unless the context otherwise requires, have the following meanings:

Expression	Meaning
Acquisition Arrangements	the arrangements described at Clauses 2 to 7;
Additional Services	any services (whether hosted services or otherwise) other than Hosted Business Email, Hosted CRM, Hosted Email Archival, Hosted Enterprise BlackBerry TM , and Hosted SharePoint Services offerings as Outsourcery may elect to make available to the Reseller and as approved in accordance with Clause 6
Affiliate	in respect of any party means any entity which Controls, is Controlled by, or is under common Control with such party;
BtoB End Users	the individual users associated with specific Reseller Customers receiving Services pursuant to the terms of this Agreement
BtoB Charges	the prices and charges for the Services to be paid by the Reseller to Outsourcery as set out in the Price List and as the same may be replaced, amended or varied by Outsourcery from time to time;
Business Customer	a customer who is not an individual consumer, that is to say a customer who is <ul style="list-style-type: none">(a) a company within the meaning of section 1 (1) of the Companies Act 2006; or(b) a company incorporated in pursuance of a royal charter or letters patent; or(c) a partnership; or(d) a corporation sole; or(e) a government or other subscription or publicly funded enterprise; or

	(f)	any other body corporate or other entity which is a legal person distinct from the persons (if any) of which it is composed ;or
	(g)	any subscriber that Outsourcery in its absolute discretion agrees is a Business Customer
Change Control Procedures		the change control procedures set out at Schedule 2;
Co-Branding Guidelines		any guidelines for co-branding agreed between the parties from time to time ;
Commencement Date		the date of this Agreement ;
Competitor		any provider of the Services (other than the parties) who may from time to time be carrying on business in competition (or who, within the knowledge of the Reseller, intends to carry on business in competition) with Outsourcery or any Affiliate of Outsourcery in the Territory;
Confidential Information		all information, whether orally or in writing, which relates to the business affairs, products, product development, trade secrets, know how, personnel, customers and suppliers of either party and including the Customer Data (which shall be treated as Confidential Information of Outsourcery), whether or not designated as Confidential Information by a party, together with all information derived from the foregoing which is by its nature confidential or proprietary;
Control		shall have the meaning attributed to it in Section 840 of the Income and Corporation Taxes Act 1988;
Customer Contract		any contract entered into between the Reseller and the Reseller Customer as a result of the activities of the Reseller pursuant to this Agreement on substantially similar terms to the standard terms and conditions set out in Schedule 7 (Form of Customer Contract) (as such standard and terms and conditions may be amended or replaced by Outsourcery from time to time)
Customer Data		the data relating to Reseller Customers and/or BtoB End Users, including billing information but excluding any such data that has come into Outsourcery' possession other than through disclosure of such data to Outsourcery from the Reseller
Customer Licence Terms		the terms of the Microsoft licence and the Ensim electronic agreement as set out in Schedule 1A and 1B (as such terms may be amended from time to time as required by the Licensor and communicated to the Reseller by Outsourcery) and the licence terms in respect of any other Third Party Software as such terms shall be communicated to the Reseller from time to time by Outsourcery
Customer Services		the range of managed customer services provided by the Reseller for the benefit of Reseller Customers and/or BtoB End Users in accordance with this Agreement as a whole as set out in the Customer Services Description;
Customer Services Description		the description of the Customer Services to be provided by the Reseller hereunder for the benefit of Reseller Customers and/or BtoB End Users which is set out in Schedule 6;
Data Protection Legislation		means all legislation relating to data protection including Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data, the Data Protection Act 1998 and all subordinate legislation relating thereto, Director 2002/58/EC on privacy and electronic communications and the Privacy and Electronic Communications (EC Directive) Regulations 2003;

Data Controller	Outsourcery Hosting Limited, Waterfold Park, Rochdale Road, Bury or as otherwise notified in writing by Outsourcery to the Reseller;
Data Security Policy	the security policy with regard to Customer Data referred to at Clause 34.3 and paragraph 7 of Schedule 6 as such policy may be amended, updated or replaced from time to time in accordance with this Agreement
Deliverables	the deliverables to be provided to a Reseller Customer under a Statement of Work
Direct Channel	the direct sales teams operated by Outsourcery and/or any Outsourcery Affiliate;
Disconnection	the disconnection of any Reseller Customer and/or BtoB Subscriber from the Services;
Ensim	Ensim Corporation, 3945 Freedom Circle Suite 1100, Santa Clara, CA, USA, 95054
Escalation and Dispute Procedures	the escalation and dispute resolution procedures referred to at Clause 21 and described at Schedule 3
Force Majeure	shall have the meaning set out in clause 23
Outsourcery Billing Platform	the Outsourcery administration billing system
Outsourcery Website	http://www.outsourcery.co.uk/terms/services or such replacement URL as communicated to the Reseller from time to time
Good Industry Practice	all relevant practices and professional standards that would be expected of a well managed expert commercial enterprise performing services substantially similar to the Customer Services (taking into account factors such as the service levels, term and pricing) and promoting the sale of services substantially similar to the Services, to customers of the same nature and size as the Reseller Customers
Group Company	either a subsidiary or a holding company of any company, "subsidiary" and "holding company" bearing the meaning assigned to them in s.1159 and Schedule 6 Companies Act 2006 (as amended)
Hosted Business Email	the Microsoft Hosted Exchange service as detailed on the Outsourcery Website and as amended from time to time in accordance with this Agreement
Hosted CRM	the Microsoft hosted CRM service as detailed on the Outsourcery Website and as amended from time to time in accordance with this Agreement
Hosted Enterprise Blackberry™	the Hosted Blackberry™ Enterprise service as detailed on the Outsourcery Website and as amended from time to time in accordance with this Agreement
Hosted Email Archival	the Hosted Email Archival service as detailed on the Outsourcery Website and as amended from time to time in accordance with this Agreement
Hosted Sharepoint Services	the Hosted Windows SharePoint Services as detailed on the Outsourcery Website and as amended from time to time in accordance with this Agreement
Intellectual Property Rights	patent rights, registered and unregistered design rights, rights relating to semiconductor chip topography, copyrights including rights in computer software, database rights, rights relating to software, rights relating to registered and unregistered trademarks or service marks or logos, jingles, get-up, livery, trade names, domain names, applications or rights to apply for any of the foregoing rights of confidentiality in information of any kind including the Confidential Information and any similar rights to any of the foregoing anywhere in the world

Joint Sales and Marketing Plan	the plan for the sales and marketing of the Services agreed between the parties as referred to at Clause 13 and described at Schedule 5 and as the same may be amended or substituted from time to time by written agreement between the parties
Licensors	the licensors of Software (including Third Party Software) to Outsourcery for the provision of the Services under this Agreement including Microsoft, Ensim and RIM
Losses	all losses, liabilities (including provision for contingent liabilities), fines, damages, costs and expenses including legal fees on a solicitor/client basis and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties.
Microsoft	Microsoft Ireland Operations Limited of 70 Sir John Rogerson's Quay, Dublin 2, Ireland
Microsoft Service Provider Licence Agreement	the service provider licence agreement with Microsoft which enables Outsourcery to provide the Services relating to the Third Party Software the Intellectual Property Rights in which are owned by Microsoft and any agreement with Microsoft that replaces such agreement from time to time;
Minimum Sales Target	the minimum BtoB Charges to be generated within the specified period as set out within Clause 4 of this agreement
New Provider Sub-contractor	any sub-contractor of the New Provider
Payment and Accounting Procedures	the procedures referred to at Clause 14 and as described at Schedule 4 and as the same may be amended or substituted from time to time by written agreement between the parties
Price List	the published price list for the provision of the Services and ancillary services in relation thereto, as may be amended by Outsourcery from time to time and as communicated to the Reseller by Outsourcery from time to time
Professional Services	professional services in connection with the implementation of the Services as set out in a Statement of Work
Professional Services Charges	the charges in respect of the Professional Services as set out in the Statement of Work together with all reasonable related expenses;
Quarter or Quarterly	the following calendar quarter periods – 1 January to 31 March; 1 April to 30 June; 1 July to 30 September; and 1 October to 31 December
Quarterly Review Meeting	the regular review meetings held between the parties each Quarter as described at Clause 22.
Reseller Billing Platform	the Reseller's administration billing system
Reseller Charges	the charges made by the Reseller (in its absolute discretion) in connection with the provision of the Services to Reseller Customers
Reseller Customer	the Business Customer(s) who are to receive the Services pursuant to a Customer Contract

Reseller Employee	the employees of the Reseller together with any other persons engaged or assigned in whole or in part to the performance of the Customer Services and Services, whether engaged or employed by the Reseller or any Reseller Sub-contractor.
Reseller Sub-contractor	any sub-contractor of the Reseller
Reseller Systems	the computer and information systems owned, controlled and/or used by the Reseller in the provision of the Services and/or Customer Services to Reseller Customers, excluding any such systems owned and/or controlled by Outsourcery
RIM	Research In Motion Limited of 295 Phillip Street, Waterloo, Ontario, N2L 3W8, Canada
Service Change	any change in the nature or description of the Services as the same are described and set out on the Outsourcery Website as at the date of this Agreement
Security Document	any document creating or evidencing any financial security (including any guarantee) entered into by the Reseller in favour of Outsourcery pursuant to paragraph 1.7 of Schedule 4 or otherwise, which is intended to secure all or any monies due or to become due from the Reseller to Outsourcery including under or in respect of this Agreement
Services	Hosted Business Email, Hosted CRM, Hosted Email Archival, Hosted Enterprise Blackberry TM Hosted SharePoint Services offerings and any Additional Services as such services may be amended from time to time in accordance with this Agreement
Service Levels	the service levels in the form attached as Schedule 6 and as the same may be amended or substituted from time to time by written agreement between the parties
Service Relationship Arrangements	the arrangements for provision by the Reseller to BtoB End Users and/or Reseller Customers of the Customer Services and any other Services to be provided (or envisaged to be provided) to such entities and individuals
Service Revenue	all revenue received in respect of the sale or supply to Reseller Customers of Services pursuant to Customer Contracts comprising the BtoB Charges and the Reseller Charges (if any) but excluding any VAT, customer equipment charges, one off charges or any termination charges stipulated in the Customer Contract
Statement of Work	a statement of work in substantially the form set out in Schedule 9 (or in such other form as may from time to time be agreed in writing) setting out the Professional Services, as approved by the Reseller Customer and signed by Outsourcery and the Reseller
Software	machine-readable instructions and data (and copies thereof) including middleware and firmware and related updates and upgrades, licensed materials, user documentation, user manuals, and operating procedures
Territory	England, Scotland, Wales, Northern Ireland and the Isles of Scilly, but excluding the Channel Islands and the Isle of Man
Term	as set out at Clause 2

Third Party Software	any Software used or required to be used in the provision of or for the Reseller Customer to access the Services, the Intellectual Property Rights in which are owned by a party other than Outsourcery or its Affiliates
Transfer Regulations	the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended from time to time
VAT	value added tax or other similar tax, charge or levy
Working Day	any day (other than a Saturday or Sunday) on which banks are open for the conduct of normal banking business in the City of London
Year	the period of 12 calendar months from the date of this Agreement and each subsequent consecutive period of 12 calendar months during the Term

- 1.1 The expressions Reseller and Outsourcery include their respective successors and permitted assigns.
- 1.2 The headings in this Agreement are for convenience only and shall not affect its interpretation.
- 1.3 Unless the context otherwise requires, singular shall include the plural and vice versa.
- 1.4 References to Clauses, Schedules and Paragraphs shall be to Clauses, Schedules and Paragraphs in this Agreement.
- 1.5 The Schedules and Appendices form part of this Agreement and shall have effect as if set out in full in the body of this Agreement and any reference to this Agreement includes the Schedules and Appendices.
- 1.6 In this Agreement unless otherwise specified, reference to a statute or statutory instrument or accounting standard or any of their provisions is to be construed as a reference to that statute or statutory instrument or accounting standard or such provision as the same may have been or may from time to time hereafter be amended or re-enacted.

PART A: ACQUISITION ARRANGEMENT

2 Term

- 2.1 This Agreement will commence on the Commencement Date and will continue (subject to earlier termination in accordance with clause 16) for an initial period of two (2) years (**Initial Period**) and thereafter until either party terminates this Agreement giving 90 days' written notice to the other party, such notice expiring on the date of expiry of the Initial Period or any subsequent anniversary thereof.

3 Appointment and Channel Conflict

- 3.1 For the Term Outsourcery hereby appoints the Reseller as a non-exclusive reseller of the Services to Business Customers in the Territory upon and subject to the terms and conditions set out in this Agreement and the Reseller accepts its appointment on such terms.
- 3.2 Subject to clause 3.3, Outsourcery reserves the right (subject to the terms of this Agreement) to promote the sale of the Services itself through its Direct Channel or its Affiliates, to Business Customers in the Territory, whether or not such Business Customers have the benefit of existing sales or account relationships with the Reseller.
- 3.3 Subject to Clause 17.5, during the Term, Outsourcery shall not actively promote or solicit the transfer of Reseller Customers to its Direct Channel:
 - (a) if such Reseller Customer received services for the first time from Outsourcery due to the introduction to Outsourcery from the Reseller; and/or

- (b) while such Reseller Customers are within their minimum period of connection pursuant to a Customer Contract unless a Reseller Customer has expressed dissatisfaction with Customer Services and/or other services being supplied by the Reseller pursuant to this Agreement and specifically requests such a transfer to Outsourcery.

3.4 For a maximum of five (5) years during the Term , the Reseller shall:

- (a) not actively promote or solicit the transfer of any Reseller Customer and/or BtoB End User to another provider of the Services (other than Outsourcery) while such Reseller Customer is connected pursuant to a Customer Contract (including for the avoidance of doubt any amended, varied or modified Customer Contract)
- (b) not actively promote or solicit the transfer of customers that are contracted to receive services of a similar nature to the Services pursuant to an agreement with Outsourcery or any other Outsourcery sales agents, dealers and/or distributors (**Outsourcery Customers**) while such Outsourcery Customers are within their minimum period of connection pursuant to the relevant contract.

4 Reseller Obligations

4.1 During the Term, the Reseller shall:

- (a) act at all times in its relations with Outsourcery, Reseller Customers, BtoB End Users, and Business Customers in good faith and in accordance with Good Industry Practice;
- (b) act in accordance with sound commercial principles in its relations with Business Customers and Outsourcery Customers and BtoB End Users and to do nothing which Outsourcery or its Licensors may reasonably consider may be prejudicial to its or their respective goodwill or commercial interests;
- (c) comply with all reasonable and lawful instructions of Outsourcery from time to time concerning the sale of the Services in the Territory to Business Customers;
- (d) promote the sale of the Services only to Business Customers and only in the Territory with due skill, care and diligence and so as to seek to improve the goodwill of Outsourcery;
- (e) bring to the attention of Reseller Customers the Customer Contract and its standard terms together with the Customer Licence Terms and ensure that each Reseller Customer enters into and remains party to and are bound by both the Customer Contract and the Customer Licence Terms during the Term;
- (f) not install, use, copy or access the Microsoft Third Party Software except as authorised by Microsoft;
- (g) not without Outsourcery's prior written consent make or give any representations, warranties or other promises concerning the Services provided by Outsourcery or its Licensors beyond those contained in the Customer Contract, Customer Licence Terms or the BtoB Charges;
- (h) not procure Business Customers to become customers or users of the Services for any improper, immoral or unlawful purpose;
- (i) so far as the Reseller might reasonably be aware not directly or indirectly be involved or knowingly recklessly or negligently permit any other person to be involved in any fraud and the Reseller shall promptly upon becoming aware of any such fraud notify Outsourcery and comply with such procedures and rules adopted by or binding on Outsourcery from time to time concerning fraud;
- (j) not agree to provide or procure the provision of the Services to Business Customers other than pursuant to a Customer Contract or connect any customer to Outsourcery pursuant to this Agreement who is not a Business Customer;
- (k) except as authorised by Outsourcery not to act in any way which will incur any liabilities on behalf of, nor to pledge the credit of, Outsourcery or its Licensors;

- (l) and hereby does consent to any uploads or remote access by Outsourcery and/or its Licensors to the Reseller Systems as are reasonably required in connection with the Services;
- (m) provide Outsourcery and its Licensors upon request with all reasonably requested information and access to Reseller Customers and/or BtoB End Users if required at the sole discretion of Outsourcery and/or its Licensors;
- (n) account and pay to Outsourcery in accordance with the Payment and Accounting Procedures all sums billed to the Reseller by Outsourcery in respect of the Services to the Reseller Customers and any other payments due from the Reseller to Outsourcery pursuant to the terms of this Agreement;
- (o) refrain from action that is likely to bring Outsourcery or it's Licensors into disrepute with regard to the collection of monies from the Reseller Customers. The Reseller will ensure that any debt collection or credit risk contractor engaged by it will not engage in harassment, intimidation or threats against Reseller Customers and will comply with Office of Fair Trading and Credit Risk Association guidelines;
- (p) unless otherwise agreed in writing between the parties, send a completed original of each Customer Contract and Customer Licence Terms to Outsourcery via post within 7 Working Days following signature of the said Customer Contract by the Reseller Customer. Such Customer Contracts must be sent to Channel Services c/o Outsourcery Hosting Limited, Waterfold Park, Rochdale Road, Bury BL9 7BJ;
- (q) comply with all legal and regulatory requirements from time to time in force in relation to the Services inter alia the Data Protections Act 1998, and the Telecommunications (Data Protection and Privacy) (Direct Marketing) Regulations 1998;
- (r) be responsible for ensuring that it has obtained all the necessary licences, permits and approvals that are required under this Agreement and/or are otherwise required for the Reseller to perform its obligations under this Agreement;
- (s) not in any way and/or for any reason whatsoever make any amendments to the standard terms and conditions set out in Schedule 7 without the prior written consent of Outsourcery;
- (t) not enter Customer Contract to provide Services to a Business Customer that wishes to use the Services in respect of hazardous environments requiring fail-safe performance in which the failure of the Services or Software could lead to death, personal injury or severe physical, property or environmental damage. Examples of these environments include the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control or life support systems;
- (u) achieve the Minimum Sales Target of 0 per annum.
- (v) not install, use, copy, access or distribute any Software (including Third Party Software), nor allow any third party to do so, nor appoint any reseller to do so, except as expressly permitted in accordance with this Agreement or as otherwise authorised by Outsourcery or (in respect of Third Party Software) the relevant Licensor;
- (w) not separate the components of the Software by installing them on different servers, or by upgrading or downloading them at different times; and
- (x) not remove, modify or obscure any copyright, trademark or other proprietary rights notices that are contained in or on the Software.
- (y) The Reseller shall not during the Term resell Services for another provider of the Services (or provider of similar Services) other than Outsourcery.

4.2 If and to the extent that the Reseller uses the Ensim Third Party Software in the course of performing its obligations under this Agreement (including in providing the Customer Services), the Reseller shall comply with terms and conditions that are no less restrictive or protective of Ensim's and its licensor's rights than those set forth in the agreement between Outsourcery and Ensim, including but not limited to the obligation to report the usage of

the Ensim Third Party Software (and related documentation) and the obligations with respect to license keys for such Ensim Third Party Software. Such terms and conditions are set out in schedule 9 of this Agreement.

- 4.3 The Reseller shall notify Outsourcery of any order for Services placed by a Reseller Customer prior to entering into any Customer Contract and in respect of subsequent orders for Services placed by a Reseller Customer following the execution of a Customer Contract, the Reseller shall notify Outsourcery of any such order prior to agreeing to the provision of the relevant Services ordered by the relevant Reseller Customer. Outsourcery may, in its reasonable discretion, refuse to accept any order for Services placed by any Reseller Customer for any reason whatsoever.

5 Outsourcery' Obligations

- 5.1 Provided the relevant Reseller Customer(s) have entered into a Customer Contract, Outsourcery undertakes to be responsible for:
- (a) the procurement of Services to the Reseller Customer, unless the provision of such Services has been refused by Outsourcery pursuant to clause 4.3;
 - (b) where applicable the maintenance of existing Services to the Reseller Customer;
 - (c) the provision of a response to reported faults with respect to Services in accordance with the Service Levels.
- 5.2 Outsourcery further undertakes to supply the Reseller on a monthly basis with all requisite data to ensure that the Resellers' information in respect of the Services is up to date, accurate and complete so as to enable the Reseller to bill Reseller Customers for their use of Services.
- 5.3 Outsourcery agrees that details of customers connected via the Reseller are, to the extent Outsourcery holds such details, to be held confidentially by Outsourcery and access to this data will not be given to the Direct Channels or any other sales channel within the Outsourcery business.

6 Changes to Services and Additional Services

- 6.1 Outsourcery shall be entitled to effect a Service Change without the consent of the Reseller and/or the Reseller Customer provided that:
- (a) the quality of the Services is not adversely affected; and
 - (b) the availability of the Services is not reduced,
- Otherwise Outsourcery shall only be entitled to implement a Service Change with the consent in writing of the Reseller Customer following a written request for the same from Outsourcery.
- 6.2 Outsourcery shall give the Reseller as much notice as is reasonably practicable of its intention to effect a Service Change under clause 6.1.
- 6.3 In the event that any Service Change implemented in accordance with clause 6.1 requires any amendment to the Services descriptions as set out on the Outsourcery Website, Outsourcery shall amend such Services descriptions and re-issue the same to the Reseller. Such re-issued Services description shall be deemed to replace any previous Services description.
- 6.4 From time to time Outsourcery may make Additional Services available to the Reseller for sale to Reseller Customers.
- 6.5 If any Reseller Customer requests the provision of any Additional Services, Outsourcery shall, within a reasonable time, provide a proposal to the Reseller outlining:

- (a) a service description in respect of such Additional Services;
- (b) an estimate the likely time required to implement the Additional Services;
- (c) an updated Price List containing the charges in respect of the Additional Services;
- (d) any other impact of the Additional Services on this Agreement which are to be agreed in accordance with the Change Control Procedure.

6.6 Upon the Reseller Customer agreeing in writing to the proposal provided in accordance with clause 6.5, the Customer Agreement being amended accordingly and any other impact on this Agreement being agreed pursuant to the Change Control Procedure, Outsourcery shall provide the Additional Services in accordance with such proposal and in accordance with the terms of this Agreement (as amended pursuant to the Change Control Procedure).

7 Professional Services

7.1 From time to time the parties may agree that Outsourcery provide or procure the provision of Professional Services to a Reseller Customer. Any such Professional Services shall be set out in a sequentially numbered Statement of Work setting out:

- (a) the scope of the services to be provided (or procured) by Outsourcery;
- (b) the Deliverables to be delivered to the reseller Customer;
- (c) the identity of any specific individual(s) to be allocated to the provision of the Professional Services;
- (d) the period during which the Professional Services are to be provided;
- (e) the specification for the Professional Services;
- (f) any acceptance tests to be carried out in respect of the Professional Services; and
- (g) the Charges to be paid to Outsourcery in respect of those Professional Services.

7.2 No Statement of Work shall be binding until approved in writing by the relevant Reseller Customer and signed by a duly authorised representative of both parties.

7.3 Outsourcery shall perform (or procure the provision of) the Professional Services and deliver the Deliverables in each case in accordance with the terms of this Agreement and shall use all reasonable endeavours to do so in accordance with any timescales identified in the relevant Statement of Work.

7.4 Outsourcery shall perform (or shall procure the provision of) the Professional Services in a workmanlike and professional manner and exercise reasonable skill and care.

7.5 The Reseller may, by written notice to Outsourcery, cancel a Statement of Work at any time prior to the commencement of the Professional Services the subject of that Statement of Work. If such notice is received by Outsourcery more than 30 days prior the scheduled commencement date of the Professional Services, no charges or other sums shall be payable by the Reseller in respect of the cancelled Professional Services. In all other cases, cancellation charges may be invoiced by Outsourcery as set out in the Statement of Work (or as otherwise communicated to the Reseller in writing) and such invoices shall be payable by the Reseller within 30 days of receipt.

- 7.6 Outsourcery hereby grants (or shall procure the grant of) to the Reseller a right to grant a non-exclusive, personal sub-licence to the relevant Reseller Customer to use, maintain, update and/or copy the Deliverables to the extent necessary to gain the full benefit of the Services, such sub-licence to terminate automatically upon the termination of the relevant Customer Agreement.

PART B: PRICING AND BTOB CHARGES MANAGEMENT

8 Pricing and BtoB Charges Management

- 8.1 For the Acquisition Arrangements during the Term, the parties agree as follows:
- (a) Management of BtoB Charges is the responsibility of Outsourcery;
 - (b) Outsourcery will connect Reseller Customers and/or BtoB End Users onto the Outsourcery Billing Platform on and against the appropriate BtoB Charges;
 - (c) Outsourcery will from time to time review (inter alia) the BtoB Charges and/or the Price List and identify any changes required to respond to market circumstances or at Outsourcery's absolute discretion to reflect changes to BtoB Charges and/or fees and/or rewards introduced by the relevant Licensors.
- 8.2 Outsourcery will provide the Reseller with reasonable notice of any changes or additions to BtoB Charges and/or the Price List and will permit the Reseller to promote such new or amended BtoB Charges and/or Price List provisions immediately on any change or addition taking effect;
- 8.3 Except as expressly provided in this Agreement the Reseller shall not be entitled to any payment (including without limitation reimbursement of any costs or expense) in relation to the performance of this Agreement

9 Customer Service

- 9.1 The Reseller agrees and undertakes that it will on and with effect from the Commencement Date and thereafter during the Term:
- (a) provide the Customer Services fully in accordance with this Agreement;
 - (b) not be involved in or knowingly, recklessly or negligently permit or negligently allow any other party to be involved in any fraudulent or other unauthorised use of the Services provided under this agreement or attempted use of the Services by corrupt or dishonest or illegal means at any time and by any person and will notify Outsourcery immediately on becoming aware of or suspecting such activity;
- 9.2 Sums billed to Reseller Customers by the Reseller shall be collected by the Reseller.
- 9.3 The Reseller undertakes to provide the Customer Services in accordance with the Customer Service Description.
- 9.4 The Reseller undertakes that each bill sent to a Reseller Customer shall contain such information as Outsourcery may from time to time require in order to afford the Reseller Customer complete transparency including, but not limited to, minimum charges, methodology of calculation, and mechanics of the Outsourcery and/or Reseller Billing Platforms

10 Customer Equipment and Connection

- 10.1 The Reseller may obtain all customer equipment for supply to Reseller Customers either through the Reseller's own distribution channels and commercial arrangements or from Outsourcery. In relation to each Customer Contract entered into by the Reseller pursuant to this Agreement, the Reseller shall assume all obligations of the Reseller for the supply of any Reseller Equipment (as defined in the relevant Customer Contract) to the Reseller Customers(s) and the replacement of faulty Reseller Equipment (as defined in the Relevant Customer Contract) and warranty claims in relation thereto, in each case in accordance with the relevant Customer Contract. In the

event that the Reseller purchases from sources other than Outsourcery, then Outsourcery accepts no liability for replacement of faulty equipment or warranty claims in relation thereto.

- 10.2 In the event that the Reseller obtains customer equipment from Outsourcery the Reseller agrees to make payment for such equipment within 14 days of the date of the Outsourcery invoice and the Reseller agrees that it shall have no right whatsoever to set-off or deduct monies due to Outsourcery in relation to any such invoice rendered to the Reseller by Outsourcery for the supply of such equipment.
- 10.3 Title to all Reseller Equipment (as defined in each Reseller Customer Contract) shall except to the extent that title thereto is or becomes vested in any Reseller Customer become the property of Outsourcery upon termination of this Agreement for any reason. The Reseller shall do such acts and execute such documents as may be necessary to vest title in the Equipment in Outsourcery in accordance with this clause.

11 Claims

- 11.1 The Reseller shall indemnify Outsourcery against any claims or legal proceedings brought by a third party including a Customer and/or BtoB End Users because the Reseller has or has failed to comply with Clauses 4.1(e); 4.1(f); 4.1(g); 4.1(h); 4.1(i); 4.1(j); 4.1(k); 4.1(q); 4.1(u); 4.1(w); 4.1(x); 4.2 or any of its other obligations under this Agreement.
- 11.2 The Reseller shall give such assistance as Outsourcery may reasonably require for the purpose of resolving faults or failures in respect of the Services or in recalling as a matter of urgency from use by Reseller Customers and/or BtoB End Users the Services or any of them.
- 11.3 The Reseller shall when it becomes aware of a matter which may result in a claim in respect of the supply of Services (whether against the Reseller or against Outsourcery or against any or all of the Licensors):
- (a) Give immediate notice to Outsourcery (or at Outsourcery's request to the relevant Licensor) of the details of the claim;
 - (b) afford reasonable access to Outsourcery (or at Outsourcery's request to the relevant Licensor) and permit copies to be taken of any materials, records or documents as Outsourcery and/or the relevant Licensor may reasonably require;
 - (c) allow Outsourcery or the relevant Licensor the exclusive conduct of any proceedings or part of the proceedings which constitute a claim against Outsourcery or the relevant Licensor (as appropriate) and/or take whatever action as Outsourcery or the relevant Licensor (as appropriate) shall reasonably direct to defend or resist the matter; and
 - (d) not admit liability or settle the matter without the prior written consent of Outsourcery and/or the relevant Licensor.

12 Data and Security

- 12.1 The parties have agreed that subject to clause 12.5, as between Outsourcery and the Reseller, the Reseller shall own all Customer Data.
- 12.2 Except where the provisions of clause 12.5 apply, to the extent that ownership of any Customer Data vests in Outsourcery, Outsourcery hereby assigns to the Reseller all its rights, title and interest in and to such Customer Data and all Intellectual Property Rights relating thereto (free from any encumbrances and third party rights). This clause 12.2 shall operate as a present and (except where the provisions of clause 12.5 apply) future assignment of Intellectual Property Rights and Outsourcery shall do all such things and execute all such documents as the Reseller may reasonably require in order to give effect to any assignment under this clause.
- 12.3 The Reseller hereby grants to Outsourcery during the term of this Agreement a non-exclusive, licence to use the Customer Data and/or any database containing Customer Data for the purpose of providing the Services or as otherwise required in connection with this Agreement together with a right to grant sub-licences to permit any third

party to use the same for the purpose of assisting Outsourcery in the provision of the Services or as otherwise required in connection with this Agreement.

- 12.4 The Reseller shall supply the Customer Data to Outsourcery at such frequency and in such format required by Outsourcery from time to time.
- 12.5 In the event of termination of this Agreement by Outsourcery pursuant to clauses 16.2 and/or 16.3 and with effect upon termination of this Agreement by Outsourcery pursuant to clauses 16.2 and/or 16.3, the Reseller hereby assigns to Outsourcery all its rights, title and interest in and to the Customer Data and databases and all Intellectual Property Rights relating thereto (free from any encumbrances and third party rights). This clause 12.5 shall operate as a present and future assignment of Intellectual Property Rights and the Reseller shall do all such things and execute all such documents as Outsourcery may reasonably require in order to give effect to any assignment under this clause.
- 12.6 Following the assignment of the Customer Data to Outsourcery pursuant to clause 12.5, the Reseller shall cease to use the Customer Data except to the extent that the Reseller is required to use such data to provide services other than services of a similar nature to the Services

13 Joint Sales and Marketing Plan and Co Branding

- 13.1 The parties agree to undertake all marketing and sales activities with respect to the Acquisition Arrangements and Service Relationship Arrangements in accordance with both:
- (a) the Joint Sales and Marketing Plan; and
 - (b) the Co-Branding Guidelines.
- 13.2 The Reseller undertakes that it will not use any trade names, trademarks or service marks of Outsourcery or its Licensors other than those whose use by the Reseller is expressly authorised by Outsourcery (in respect of any trade names, trademarks or service marks owned by Outsourcery) or the relevant Licensor (in respect of any trade names, trademarks or service marks owned by any Licensor).
- 13.3 If and to the extent that the Reseller receives authorisation to use the trade names, trademarks or service marks owned by Outsourcery pursuant to clause 13.2, the Reseller undertakes that it will:
- (a) not use such names or marks in any way which allow them to lose their distinctiveness, be liable to mislead the public, or be materially detrimental to or inconsistent with the goodwill, reputation or image of Outsourcery or its Licensors or any affiliate or group company thereof;
 - (b) cease to use such names or marks immediately upon termination of this Agreement (howsoever caused);
 - (c) only use such names and marks for the specific purpose of complying with its obligations pursuant to this Agreement.

Any breach by the Reseller of this clause 13.3 shall be a material breach of this Agreement.

- 13.4 Except to the extent that the Reseller is authorised by Outsourcery pursuant clause 13.2 to use any trade names, trademarks or service marks owned by Outsourcery, nothing in this Agreement shall grant nor shall any approval by Outsourcery be deemed to grant any rights to the Reseller to use any trade names, trademarks or service marks. In respect of any proposed use by the Reseller of any trade names, trademarks or service marks owned by a Licensor, the Reseller shall comply with any licence terms and/or guidelines of the Licensor which are applicable to such use. The logo licence information and standard trademark licence guidelines of Microsoft can be obtained from <http://www.microsoft.com/about/legal/trademarks>.
- 13.5 The Reseller agrees and acknowledges that its use of any trade names, trade marks or service marks of either Outsourcery or its Licensors shall not create for itself any rights or goodwill in or to any of the same, and in the event that any such rights or goodwill are created then the Reseller shall promptly on request assign such rights and goodwill to Outsourcery or its Licensors (as appropriate).

- 13.6 The Reseller hereby grants a non-exclusive licence to Outsourcery to use such trade names, trade marks, logos or service marks of the Reseller as is authorised by the Reseller from time to time in connection with the marketing, sale and promotion of the Services and in any press releases in connection with the Services. Any such press releases shall be drafted and approved in accordance with the Joint Sales and Marketing Plan.

PART C: PAYMENT AND ACCOUNTING PROCEDURES

14 Payment and Accounting Procedures

- 14.1 In relation to each Customer Contract the Reseller shall pay to Outsourcery the BtoB Charges in accordance with the Payment and Accounting Procedures.
- 14.2 In relation to each Statement of Work the Reseller shall pay to Outsourcery the Professional Services Charges set out in such Statement of Work at the times set out in such Statement of Work and otherwise in accordance with the Payment and Accounting Procedures

PART D: SUSPENSION OF SERVICE AND TERMINATION ARRANGEMENTS

15 Suspension of Service

- 15.1 Outsourcery may suspend the provision of the Services or any part thereof if:
- (a) the Reseller fails to meet any of its obligations under this Agreement including, but not limited to, failure to make payment pursuant to Clause 14.1 and/or Schedule 4;
 - (b) the Reseller Customer fails to meet any of its obligations under the Customer Contract;
 - (c) in the opinion of Outsourcery the Reseller's or the Reseller Customer's conduct may result in the breach of any law or is otherwise prejudicial to the interests of Outsourcery; or
 - (d) this is required by Outsourcery in order for Outsourcery to comply with any order, instruction or request of a competent governmental, regulatory or other authority or the Licensors.
- 15.2 Outsourcery will, where practical, give the Reseller notice of intention to suspend any Services and, in relation to suspension for the reasons stated in Clauses 15.1(d) above, will restore the Service as soon as Outsourcery are reasonably able to do so.
- 15.3 If Outsourcery exercise their right to suspend any Services this will not restrict their right to terminate this Agreement.
- 15.4 The Reseller shall and shall procure that all Reseller Customers shall indemnify and hold Outsourcery harmless against any claim or demand of whatsoever nature and howsoever arising as a result of suspension pursuant to this Clause.

16 Termination

- 16.1 Outsourcery may terminate this Agreement (or any part thereof) at any time upon giving 90 days written notice to the Reseller.
- 16.2 Either party may terminate this Agreement (or any part thereof) at any time with immediate effect (and/or in the case of Outsourcery upon such date as is notified to the Reseller by Outsourcery) upon giving written notice to the other party if:
- (a) the other party commits a material breach of any of its obligations or undertakings under this Agreement and, where such breach is capable of remedy, the other party fails to remedy such breach within twenty (20) Working Days after the date on which the first party served written notice on the other party in relation to such breach;
 - (b) the other party ceases or threatens to cease to carry on business or is or becomes unable to pay its debts;

- (c) any meeting of creditors of the other party is held or any arrangement or composition with or for the benefit of its creditors (including any voluntary arrangement under the Insolvency Act 1986) is proposed or entered into by or in relation to the other party;
- (d) a supervisor, receiver, administrator, administrative receiver or other encumbrance takes possession of or is appointed over or any distress, execution or other process is levied or enforced (and is not discharged within seven (7) Working Days) upon the whole or a substantial part of the assets of the other party;
- (e) a petition is presented or a meeting is convened for the purpose of considering a resolution for the making of an administration order in respect of, or for the winding-up or dissolution of, the other party; or
- (f) the other party has been prevented by an event of Force Majeure from materially performing its obligations under this Agreement for a continuous period of more than forty (40) Working Days.

16.3 Outsourcery shall be entitled to terminate this Agreement (or any part thereof) with immediate effect or upon such date as notified to the Reseller by Outsourcery by giving notice of such termination if :

- (a) there is a change of Control of the Reseller; or
- (b) any agreement between Outsourcery and any of its Licensors (excluding Microsoft) is terminated (for any reason), or any agreement between Outsourcery and any of its Licensors is varied in a manner that means Outsourcery can no longer comply with any provision of this Agreement;
- (c) the Reseller commits an irremediable breach of this Agreement; or
- (d) the Reseller commits a material breach of any of its obligations or undertakings under this Agreement.

16.4 This Agreement shall terminate automatically upon the termination or expiration of the Microsoft Service Provider Licence Agreement unless such agreement is replaced by a new agreement (whether between Outsourcery and Microsoft or otherwise) which permits Outsourcery to continue to comply with its obligations to the Reseller under this Agreement. In the event of the automatic termination of this Agreement pursuant to this clause 16.4, Outsourcery shall notify the Reseller of such automatic termination as soon as is reasonably practicable following such automatic termination of this Agreement.

16.5 For the purposes of clause 16.3(d), the Reseller shall be deemed to be in material breach of this Agreement if:

- (a) the Reseller fails to pay invoices within the timescales specified in paragraph 2.1(d) of Schedule 4 (Payment and Accounting Procedures); or
- (b) the Reseller breaches its obligations set out in clauses 4.1(e) to 4.1(h) (inclusive); 4.1(o); 4.1(r) to 4.1(x) (inclusive); 4.2; 13.2; 13.3 and/or 26.

16.6 Each right of termination contained in Clauses 16.1, 16.2, 16.3 and 16.4 is a separate and independent right the exercise of which shall not affect or prejudice any other right or remedy which the party exercising such right may have under this Agreement or at law.

16.7 The Reseller shall, if requested by Outsourcery, terminate a Customer Contract in the event of an event or default of the relevant Reseller Customer that would entitle the Reseller to terminate the Customer Contract, including without limitation in the event of a breach by the Reseller Customer of the Customer Licence Terms.

17 Effects of Termination

17.1 Termination of this Agreement by either party pursuant to Clauses 16.1, 16.2, 16.3 or 16.4 shall automatically terminate the Acquisition Arrangements but shall be without prejudice to any claims or remedies that either party may have against the other accrued up to the date of termination.

17.2 The provisions of Clauses 10.1, 10.3, 11, 12.1, 12.2, 12.5, 12.6, 13.2, 13.5, 17 to 20 (inclusive), 25 to 30 (inclusive), 32 to 38 (inclusive) shall survive and remain in full force and effect notwithstanding any such

termination. Termination of this Agreement shall not affect the continuing rights and obligations under any Clauses which are expressed to survive termination.

- 17.3 The parties shall continue to use and protect the Customer Data in accordance with clause 12.
- 17.4 Following service by Outsourcery of notice of termination of this Agreement pursuant to clauses 16.2, 16.3 or 16.4 the Reseller shall immediately (or on such date as Outsourcery may direct) at Outsourcery option either:
- (a) procure the novation of the Customer Contract to Outsourcery or such third party as Outsourcery may in its sole discretion select on such terms as Outsourcery may reasonably require; or
 - (b) issue a notice of termination of any Customer Contract to the Reseller Customer.
- 17.5 Upon issue of a notice to terminate the Customer Contract by the Reseller in accordance with clause 17.4(b), notwithstanding clause 3.3, Outsourcery shall have the right to approach the relevant Reseller Customer(s) in order to solicit the transfer of the relevant Reseller Customers to the provision of services similar to the Services directly by Outsourcery.
- 17.6 Following service by Outsourcery of notice of termination of this Agreement pursuant to clause 16.1 or service by the Reseller of notice of termination of this Agreement pursuant to clauses 2 or 16.2 , the Reseller shall issue a notice to the Reseller Customer to terminate any Customer Contract on the date directed by Outsourcery.
- 17.7 In the event of termination of this Agreement by Outsourcery pursuant to clauses 16.2, 16.3 or 16.4, the Reseller shall immediately upon demand by Outsourcery provide Outsourcery, or the Licensors if so requested, with all such assistance and access as Outsourcery and/or its Licensors (as appropriate) may reasonably require in order to permit Outsourcery to facilitate a smooth and orderly transfer of the provision of Customer Services (including billing) from the Reseller to Outsourcery or such third parties as Outsourcery in its sole discretion shall select (herein there after referred to as the "**Handover**"). The Reseller shall ensure that Handover is completed within the period prior to the date of termination or novation as Outsourcery may specify being a period of no more than 3 months after the date of the notice of termination of this Agreement issued by Outsourcery (herein referred to as the "**Termination Assistance Period**").
- 17.8 During the term of this Agreement and for 12 months after the date of termination of this Agreement, the Reseller shall continue to hold and shall continue to allow Outsourcery access to information held by the Reseller as Outsourcery may reasonably require to facilitate invoicing and debt recovery with respect to Reseller Customers.
- 17.9 Following termination of this Agreement, the Reseller shall cease to use the Software (including Third Party Software) and all related documentation provided to the Reseller for use in connection with the Services.
- 17.10 Within 10 days of termination of this Agreement each party shall, at Outsourcery' option, either
- (a) return to each other any property in its possession or control owned by and belonging to the other party or the Licensors (including all media containing the Customer Data (if the same is assigned to Outsourcery pursuant to clause 12.5), Third Party Software or Confidential Information of the other party or the Licensors); or
 - (b) destroy such property referred to in clause 17.10(a) and/or irretrievably delete the same if stored on electronic or magnetic media and certify to Outsourcery that this has been done.
- 17.11 Following termination of this Agreement the Reseller shall upon Outsourcery's request forthwith supply to Outsourcery such data relating to each Customer Contract and/or the provision or use of any Services and/or Customer Services in its possession or control as Outsourcery may require and in such format as Outsourcery may reasonably stipulate.

PART E: MISCELLANEOUS

18 Indemnities and Non-Performance

18.1 The Reseller shall indemnify in full, keep indemnified and hold harmless Outsourcery and pay to Outsourcery such sums as would if paid to each of its Licensors indemnify in full, keep indemnified and hold harmless each of its Licensors from and against all losses, damages, demands, liabilities and associated costs and expenses which may be suffered, paid or incurred by Outsourcery and/or its Licensors as a consequence of:

- (a) any material breach by the Reseller of any of its obligations under this Agreement;
- (b) any material breach of the Customer Contract by any Reseller Customer and/or any BtoB End User ;
- (c) any failure by the Reseller to comply with its obligations (in full or in part) pursuant to clause 17.7.

whether or not such losses, damages, demands, liabilities and associated costs and expenses were foreseeable at the date of entering this Agreement.

18.2 For the avoidance of doubt, the provisions of clause 19 shall not be effective to in any way restrict or limit the liability of the Reseller under any indemnity in this clause 18.

18.3 Neither party shall be responsible for any failure to perform its obligations under this Agreement to the extent caused or otherwise directly attributable to non-performance by the other party of that party's obligations under this Agreement.

19 Limitations on Liabilities

19.1 Subject to clause 18, neither party shall be liable to the other party under this Agreement for any indirect or consequential loss or damage, or for any loss of profits, Service Revenue or goodwill suffered by the other party whether such loss is caused by that party's breach of its contractual obligations or by any tortious act or omission (including negligence) or in any other way; provided that nothing contained in this clause shall limit liability in relation to the payment of the BtoB Charges to Outsourcery.

19.2 Notwithstanding Clause 19.1 neither party excludes or limits liability for death or personal injury to persons resulting from its negligence, or any liability resulting from fraud by that party.

19.3 Subject to clause 18.2 and without prejudice to the provisions of Clause 19.1 the quantum of any claim or claims which the Reseller may have against Outsourcery (whether pursuant to the terms of this Agreement at common law or in tort; and whether caused by negligence or otherwise; and specifically including any indemnities provided by Outsourcery under this Agreement) shall be limited in any Year to a maximum aggregate amount of the greater of:

- (a) the annual Minimum Sales Target set out in clause 4.1(u) in respect of causes of action arising in such Year; and
- (b) 100% of the BtoB Charges paid to Outsourcery in the 12 months prior to such Year in respect of causes of action arising in that Year.

19.4 Outsourcery shall not be liable to the Reseller for any breach of its obligations under this Agreement to the extent that any such breach is caused by a breach of the Reseller's obligations under this Agreement.

19.5 To the maximum extent permissible in law all conditions and warranties which are implied by statute or otherwise by general law into this Agreement are hereby excluded.

20 Transfer of Employees

20.1 For the purpose of this Clause 19 the terms, "**appropriate representatives**", "**contract of employment**", "**collective agreement**" and "**trade union**" shall have the same meanings respectively as in the Transfer Regulations and "**New Provider**" shall mean any alternative provider of the Services (or any part thereof) or Customer Services, following the termination or expiry in whole or in part of this Agreement.

- 20.2 The parties accept that on the expiry, variation or termination of this Agreement and/or the transfer of Customer Services with respect to Customers and/or BtoB End Users (in whole or part) to a New Provider (or a New Provider Sub-contractor) or Outsourcery (a “**Transfer Event**”) the Transfer Regulations may apply in which event the provisions of this clause 19 shall apply in connection therewith.
- 20.3 Notwithstanding the provisions of the Transfer Regulations, the parties intend that no contract of employment of any Reseller Employee will transfer to the New Provider (or a New Provider Sub-contractor) or Outsourcery on a Transfer Event.
- 20.4 If any contract of employment of any Reseller Employee or former Reseller Employee shall on a Transfer Event have effect as if originally made between the New Provider (or a New Provider Sub-contractor) or Outsourcery and that individual as a result of the provisions of the Transfer Regulations (without prejudice to any other rights or remedies which may be available to Outsourcery or a New Provider) (or a New Provider Sub-contractor):
- (a) Outsourcery or the New Provider (or a New Provider Sub-contractor) may, subject to it complying with its obligations under Clause 19.4(b) and 19.4(c) below, upon becoming aware of the application or alleged application of the Transfer Regulations to any such contract of employment terminate such contract as soon as is reasonably practicable or, at the latest, within 30 days of becoming aware of such transfer or alleged transfer;
 - (b) Outsourcery or the New Provider (or New Provider Sub-contractor) (as applicable) shall inform the Reseller of any termination of employment it proposes to make under Clause 19.5(a) as soon as reasonably practicable and in any event prior to the termination;
 - (c) The Reseller shall indemnify Outsourcery for itself and on behalf of any New Provider or any New Provider Sub-contractor and keep Outsourcery indemnified against any Losses which Outsourcery or the New Provider or a New Provider Sub-contractor incurs including Losses incurred relating to or arising out of such termination of employment and in respect of all costs and expenses (including, without limitation, any taxation) incurred in employing such employee up to such termination.
- 20.5 The indemnity in clause 19.5 shall not have effect in relation to any Reseller Employee in respect of whom the New Provider (or any New Provider Sub-contractor) or Outsourcery inform the Reseller in writing that it agrees to continue to employ or engage that person, whether as an employee, consultant or otherwise, and where that Reseller Employee accepts such offer of continued employment or engagement.
- 20.6 The Reseller shall indemnify Outsourcery and keep Outsourcery indemnified for itself and on behalf of any New Provider (or any New Provider Sub-contractor) against any Losses which Outsourcery incurs itself or as a result of having indemnified and having kept the New Provider (or any New Provider Sub-contractor) indemnified against any Losses which relate to or arise out of any act or omission by the Reseller or any Reseller Sub-contractor (including, but not limited to, any failure to inform and consult with appropriate representatives) or any other event or occurrence which took place during the period between the Commencement Date and the date of any actual or alleged Transfer Event which the New Provider (or a New Provider Sub-contractor) or Outsourcery may incur in relation to the employment or termination of employment of any Reseller Employee or former Reseller Employee pursuant to the provisions of the Transfer Regulations or otherwise.

21 Escalation and Dispute Procedures

The parties shall resolve any dispute, arising in connection with this Agreement by application of the Escalation and Disputes Procedures.

22 Quarterly Review Meetings

22.1 The parties shall each appoint a representative in respect of this Agreement. Such representatives may be appointed or removed from time to time by the appointing party by notice in writing to the other party.

22.2 The identity of the parties’ nominees shall be as follows:

- (a) For Outsourcery Channel Manager

(b) For the Reseller Signatory of this Agreement, successor or permitted assign.

22.3 In relation to the implementation and operation of this Agreement, the parties shall procure that the representatives will meet no less than once each Quarter to:

(a) measure, track and evaluate each party's performance of its obligations in respect of this Agreement; and

(b) particularly in the first three (3) months of operation of this Agreement to consider changes to this Agreement, which are appropriate in the light of experience.

22.4 The parties will also use the Quarterly Review Meetings to consider the extension of this Agreement, and the application of the terms and processes set out in this Agreement, to any relevant new products or services for Business Customers.

23 Force Majeure

23.1 Without prejudice to the provisions of Clause 19, neither party to this Agreement shall be deemed to be in breach of this Agreement or otherwise liable to the other party in any manner whatsoever for any failure or delay in performing its obligations under this Agreement due to Force Majeure.

23.2 If a party's performance of its obligations under this Agreement is affected by Force Majeure, then:-

(a) it shall give written notice to the other party, specifying the nature or extent of the Force Majeure as soon as possible on becoming aware of the Force Majeure and will at all times use all reasonable endeavours to mitigate the severity of the Force Majeure and its effects;

(b) the date for performance of such obligation shall be deemed suspended only for a period equal to the delay caused by such event;

(c) it shall not be entitled to payment from the other party in respect of extra costs and expenses incurred by virtue of the Force Majeure event.

23.3 For the purposes of this Clause 23 "Force Majeure" means, in relation to either party, circumstances beyond the reasonable control of that party including, without limitation, acts of God, acts of any governmental or supra-national authority, war or national emergency, riots, civil commotion, fire, explosion, flood, epidemic, lock-outs (whether or not by that party), strikes and other industrial disputes (in each case, whether or not relating to that party's workforce), restraints or delays affecting carriers, inability or delay in obtaining suppliers or adequate or suitable materials and lawful refusal by any relevant Licensors to supply the Services to Outsourcery to in turn supply to the Reseller Customers and/or BtoB End Users.

24 Sub Contracting and Assignment

24.1 The Reseller shall not sub-contract, delegate, transfer or assign the benefit of its rights or (as appropriate) the obligation to perform any or all of its obligations under this Agreement to any third party without the prior written consent of Outsourcery.

24.2 Outsourcery shall be entitled to assign the benefit of and/or its obligations under this Agreement to any Affiliate of Outsourcery or any other person or entity acquiring the majority of the shares or business and assets of Outsourcery which (in the case of an assignment of Outsourcery's obligations hereunder) undertakes with the Reseller to perform such obligations in lieu of Outsourcery.

25 VAT

25.1 VAT or any other similar tax which shall replace or be introduced in addition to VAT shall where applicable be applied to all sums of money expressed to be payable under this Agreement and all such sums of money are expressed in this Agreement are exclusive of VAT or any such other tax.

25.2 Where under this Agreement the Reseller makes any supply to Outsourcery for VAT purposes and VAT is properly chargeable on such supply, then:

- (a) The Reseller shall issue to Outsourcery a valid VAT invoice in respect of such supply, complete in all respects and stating inter-alia the VAT properly chargeable thereon; and
- (b) Outsourcery shall pay to the Reseller, against receipt of such VAT invoice, a sum equal to the VAT so chargeable (the "VAT Amount").

Provided Always That;

Where Outsourcery has paid any VAT Amount to the Reseller pursuant to the provisions of this clause, or has otherwise made any payment to the Reseller in respect of VAT, and it subsequently transpires that the VAT in respect of which any such payment was made was not properly chargeable, the Reseller shall refund to Outsourcery forthwith, an amount equal to the sum paid by Outsourcery in respect of such VAT, along with any interest accrued thereon and other sums necessary to ensure that Outsourcery is in the same position after the refund as it would be had it not made any payment to the Reseller in respect of the VAT wrongly charged.

26 Confidentiality

26.1 Subject to Clauses, 26.2 and 26.3 each party hereto agrees that it will not (except as expressly authorised by the other party in writing) at any time disclose to any third party (other than an Affiliate and provided that such Affiliate is bound by the terms of this Clause 26) or use for any purpose other than in accordance with this Agreement any Confidential Information of other party obtained by it and that it will keep confidential all such Confidential Information.

26.2 Clause 26.1 shall not have effect if and to the extent that the Confidential Information:

- (a) has been published or has otherwise come into the public domain, other than by a breach of confidentiality by the receiving party;
- (b) was known to the receiving party prior to the parties first contact with each other when negotiating the terms of this Agreement without any restriction of confidentiality as evidenced by that party's written records and was not acquired prior to that date directly or indirectly from the disclosing party or its predecessor in title to such information;
- (c) has been lawfully acquired by the receiving party without any restriction of confidentiality from a source other than the disclosing party, its predecessor in title, or a source who was directly or indirectly bound by an agreement with the disclosing party or its predecessor in title to maintain the confidentiality of such information;
- (d) is required to be disclosed in order to enable the receiving party to perform its obligations under this Agreement (provided that the recipient is bound by confidentiality obligations equivalent to this Clause 26);
- (e) is required to be disclosed by an order of any court of competent jurisdiction, provided that each party shall forthwith notify the other upon becoming aware of such an order being applied for against it;
- (f) is required to be disclosed pursuant to any law or regulation from time to time in force in England and Wales or to or on the request of any competent regulatory authority; or
- (g) is appropriately disclosed to its professional advisers and auditors provided that such professional advisers and auditors agree to be bound by the terms of this Clause 26.
- (h) is Customer Data supplied by the Reseller to Outsourcery and Outsourcery is the receiving party.

26.3 Each party shall restrict disclosure of Confidential Information to the minimum number of its employees of suitable standing and training required to enable it to carry out its obligations under this Agreement.

- 26.4 Neither party shall issue or allow its employees or agents to issue any press release advertisement, announcement or circular regarding the subject matter of this Agreement, or ancillary matter without the prior written consent of the other party (not to be unreasonably delayed or withheld).
- 26.5 Each party shall ensure that its officers, employees, subcontractors and agents to whom Confidential Information is disclosed in accordance with this clause 25 are bound by a legal duty to it, sufficient to ensure that such persons observe the same duties with regard to the Confidential Information as the party is obliged to do and the party shall be jointly and severally liable for any breach of those duties by such persons.

27 Notices

Any notice or other communication given or made in connection with this Agreement shall be in writing and shall be given or made to the Reseller or Outsourcery, as the case may be, at its address stated at the head of this Agreement and sent to the Reseller marked for the attention of the Chief Executive of the Reseller or sent to Outsourcery marked for the attention of the Managing Director of Outsourcery as the case may be, or to any other address or facsimile number in England as either party to this Agreement may from time to time notify to the other. Any notice or other communication, if so addressed, shall be deemed to have been duly given or made, if delivered by hand, upon delivery at the address of the relevant party, if sent by prepaid first class post, two Working Days after the date of posting and if transmitted by facsimile, at the time of transmission, (provided a confirmatory letter is sent by prepaid first class post) provided that where, in accordance with the above provisions, any notice or other communication would otherwise be deemed to be given or made on a day which is not a Working Day or after 4.00pm on a Working Day, such notice or other communication shall be deemed to be given or made at 9.00am on the next Working Day.

28 Invalidity and Severability

If at any time any clause or part of this Agreement is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid or unenforceable in any respect:

- (a) that shall not affect or impair the legality, validity or enforceability of any other provision of this Agreement;
- (b) the parties shall in good faith amend this Agreement to reflect as nearly as possible the spirit and intention behind that illegal, invalid or unenforceable provision to the extent that that spirit and intention is consistent with English law and jurisdiction so that the amended clause complies with English law; and
- (c) if the parties cannot agree upon the terms of any amendment within one (1) month of the date upon which a clause was determined to be wholly or partly illegal, invalid or unenforceable by any court, tribunal or administrative body then the parties agree to submit the terms of the amendment for resolution in accordance with the Escalation and Disputes Procedures.

29 No Partnership

Each of the parties hereto is an independent contractor and nothing contained in this Agreement, and no action taken by the parties pursuant to this Agreement, shall be construed to imply that there is any relationship between the parties of partnership or of principal/agent or of employer/employee nor are the parties hereby engaging in a joint venture, association or other co-operative venture and accordingly neither of the parties shall have any right or authority to act on behalf of the other to bind the other by contract or otherwise unless expressly permitted by the terms of this Agreement.

30 Waiver

No failure, delay or indulgence by either party in enforcing any right, power or privilege under this Agreement shall operate as a waiver thereof nor shall any single or partial exercise or waiver of any right, power or privilege preclude or restrict any further exercise thereof or the exercise of any other right, power or privilege.

31 Amendment

- 31.1 Save as otherwise provided in this Agreement, no provision of this Agreement may be amended otherwise than by the express written agreement of the parties hereto.
- 31.2 Outsourcery may at any time and from time to time vary and/or replace with immediate effect any provision of this Agreement where such variation or replacement is required as a result of any amendment to any Agreement between Outsourcery and its Licensors or otherwise in order to avoid a breach by Outsourcery of any such agreement with its Licensors provided that Outsourcery shall endeavour to give at least seven (7) days prior written notice of any such variation and/or replacement.

32 Entire Agreement

- 32.1 Each party acknowledges that:
- (a) this Agreement, together with the agreements and documents expressly referred to in it and any agreements executed pursuant to it, sets forth the entire agreement between the parties with respect to the subject matter covered by them and they supersede and replace all prior communications, drafts, representations, warranties, stipulations, undertakings, understandings, arrangements and agreements of whatsoever nature, whether oral or written between the parties relating thereto.
 - (b) it does not enter into this Agreement or any other documents referred to herein in reliance on any warranty, representation, undertaking, stipulation or agreement other than those contained in this Agreement, or relevant document;
 - (c) with the exception of the specific remedies identified in this Agreement, its only remedies are for breach of contract;
 - (d) it has no right to rescind this Agreement for negligent or innocent misrepresentation;

provided that the provisions of this Clause 32 shall not exclude any liability which either party would otherwise have to the other or any right which either party may have to rescind this Agreement in respect of any statements made fraudulently by the other prior to the execution and delivery of this Agreement.

33 Third Party Rights

- 33.1 Each of the Licensors may in its own right enforce the provisions of this Agreement in accordance with the Contracts (Rights of Third Parties) Act 1999 ("the Act") which shall apply to this Agreement, except that the parties may rescind or vary this Agreement (and any documents entered into pursuant to or in connection with it) without the consent of any of the Licensors.
- 33.2 Subject to clause 33.1, a person who is not a party to this Agreement has no right under the Act to enforce any term of this Agreement but this does not effect any right or remedy of a third party which exists or is available apart from that Act.

34 Data Protection

- 34.1 The provisions of this clause 34 apply to the extent that the Reseller processes the Customer Data in the capacity of processor for Outsourcery. References to "processing" in this clause 34 shall have the meaning set out in the Data Protection Act 1998 (Act) and "process" and "processor" shall have a corresponding meaning.
- 34.2 The Reseller undertakes to ensure that appropriate technical and organisational measures are adopted by it against unauthorised or unlawful processing of Customer Data and against accidental loss or destruction of, or damage to the Customer Data.
- 34.3 Without limiting the application of Clause 34.2 above, the Reseller undertakes to implement and to maintain the Data Security Policy in respect of the Customer Data. The Reseller further undertakes to ensure the compliance with such Data Security Policy by its officers, employees, agents and sub-contractors at all times.

- 34.4 The parties agree to review and update the Data Security Policy at Outsourcery's reasonable request so that the Data Security Policy is in line with Outsourcery's own data security policies.
- 34.5 The Reseller undertakes to inform Outsourcery promptly in the event of any breach of the Data Security Policy which comes to their attention and to provide Outsourcery with the Reseller's proposals to remedy the breach.
- 34.6 The Reseller undertakes to inform Outsourcery promptly in the event of any unauthorised or unlawful processing of Customer Data ("an unauthorised event") and in the event of any accidental loss, destruction or damage to Data ("an accidental event") and to provide Outsourcery with its proposals to remedy the unauthorised or accidental event.
- 34.7 The Reseller undertakes:
- (a) to use the Customer Data solely for the purpose of performing the Acquisition Arrangements in accordance with the Data Ownership Principles. Use of the Customer Data for any other purpose, in particular for its own purposes, is expressly prohibited;
 - (b) subject to Clause 34.2 to process the Customer Data only in accordance with the instructions of Outsourcery;
 - (c) to provide to Outsourcery from time to time as part of the Agreement such information which the Reseller has in its possession as Outsourcery may require in relation to the Customer Data, including without limitation information as to any specific individual to whom the Customer Data relates;
 - (d) to correct, suppress, delete and block Customer Data from further processing and/or use, if requested by Outsourcery;
 - (e) to submit to Outsourcery's right of audit as set out in Clause 34.9 below; and
 - (f) to comply with the Data Protection Legislation and not to do anything or omit to do anything which it is obliged to do that would cause Outsourcery (or its Affiliates) to be in breach of the Data Protection Legislation.
- 34.8 If a request is made by Outsourcery for the correction, suppression, blocking or deletion of any Customer Data, then within five (5) Working Days from receipt of a written notice from Outsourcery containing the relevant request, the Reseller shall confirm in writing to Outsourcery that the request has been carried out.
- 34.9 The Reseller shall permit Outsourcery or its agent or representative at all reasonable times and on reasonable notice to enter any place where the processing of the Customer Data shall be carried on for the purpose of inspecting and verifying the compliance of the Reseller with its obligations under this Clause 34. Furthermore, the Reseller undertakes to give Outsourcery access to all relevant documentation, computers, word processors or other similar machines in its possession, custody or control for such purpose.
- 34.10 The rights of Outsourcery set out in Clause 34.9 shall continue for a period of six (6) months after the date of termination of this Agreement irrespective of the cause of termination.
- 34.11 The Reseller undertakes to use its reasonable endeavours to ensure that its officers, employees, agents and sub-contractors engaged in the performance of this Agreement are reliable and trustworthy individuals and further undertakes to make those individuals aware of its obligations under this Agreement particularly with regard to the confidentiality of the Customer Data, and the requirement to process the Customer Data only in accordance with the instructions of Outsourcery.
- 34.12 In the event that the Reseller receives a request for subject access from an individual about whom it holds Customer Data for the purposes of fulfilling its obligations under this Agreement, the Reseller shall promptly forward such request to Outsourcery for the attention of the Data Controller. Outsourcery shall from time to time notify the Reseller of the identity and contact details of the Data Controller.

35 Compliance

- 35.1 Each party shall comply with all relevant legislation, regulations, and codes of practice, guidance and other requirements of any relevant government or government agency together with any reasonable Outsourcery compliance requirements notified to the Reseller which Outsourcery applies from time to time within its business and which originates with any such legal or regulatory requirements.
- 35.2 The Reseller shall ensure that any employee, independent contractor or agency worker engaged by the Reseller receives adequate training to ensure compliance with this Clause 35.

36 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of England and the parties hereby submit to the jurisdiction of the English Courts.

37 Counterparts

This Agreement may each be executed in two counterparts, and by the parties on separate counterparts, each of which so executed and delivered shall constitute an original of the relevant agreement, but all the counterparts of the relevant agreement shall together constitute one and the same instrument, which shall only be deemed executed when the counterparts have been delivered.

38 Records

- 38.1 During the term of this Agreement and for a period of 12 months after the termination of this Agreement the Reseller shall keep separate accounts and records giving correct and adequate details of:

- (a) all enquiries received and transactions conducted in respect of the Payment and Accounting Procedures;
- (b) the Reseller's use of the Software (including Third Party Software);
- (c) the Services provided by the Reseller in accordance with this Agreement

and shall upon request report to Outsourcery in respect of the above and/or permit Outsourcery, the Licensors and its and their duly appointed representatives at all reasonable times to inspect all such accounts and records and to take copies thereof.

- 38.2 In the event that an audit conducted in accordance with clause 36.1 uncovers a payment shortage of BtoB Charges, the Reseller shall pay Outsourcery:

- (a) in respect of Microsoft Third Party Software, 15% per unit price for each Microsoft Third Party Software product which was not paid for. In such circumstances Outsourcery shall presume that such unreported use of the relevant Third Party Software began upon commencement of this agreement unless the Reseller can reasonably demonstrate a different scope and duration of usage. or
- (b) in respect of any other Software or other element of the B2B Charges, any unpaid amount which is due and payable in accordance with the terms of this Agreement.

- 38.3 In the event that an audit conducted in accordance with clause 36.1 uncovers a payment shortage of BtoB Charges of 5% or more, the Reseller shall reimburse Outsourcery and/or its Licensors for the expenses incurred in conducting such audit.

Schedule 1A

Customer Licence Terms

TERMS AND CONDITIONS REGARDING USE OF MICROSOFT SOFTWARE

This document governs the use of Microsoft software, which may include associated media, printed materials, and "online" or electronic documentation (individually and collectively, "Licensed Products") provided by Outsourcery Hosting Limited (hereinafter referred to as "**Company**"). Company does not own the Licensed Products and the use thereof is subject to certain rights and limitations of which Company must inform you. Your right to use the Licensed Products is subject to the terms of your agreement with Company, and to your understanding of, compliance with, and consent to the following terms and conditions, which Company does not have authority to vary, alter, or amend.

1 DEFINITIONS

"**Client Software**" means software that allows a Device to access or utilize the services or functionality provided by the Server Software.

"**Device**" means each of a computer, workstation, terminal, handheld PC, pager, telephone, personal digital assistant, "smart phone," server or other electronic device.

"**Server Software**" means software that provides services or functionality on a computer acting as a server.

"**Software Documentation**" means any end user document included with server software.

"**Redistribution Software**" means the software described in Paragraph 4("Use of Redistribution Software") below.

2 OWNERSHIP OF LICENSED PRODUCTS. The Licensed Products are licensed to Company from an affiliate of the Microsoft Corporation (collectively "Microsoft"). All title and intellectual property rights in and to the Licensed Products (and the constituent elements thereof, including but not limited to any images, photographs, animations, video, audio, music, text and "applets" incorporated into the Licensed Products) are owned by Microsoft or its suppliers. The Licensed Products are protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. Your possession, access, or use of the Licensed Products does not transfer any ownership of the Licensed Products or any intellectual property rights to you.

3 USE OF CLIENT SOFTWARE. You may use the Client Software installed on your Devices by Company only in accordance with the instructions, and only in connection with the services, provided to you by

Company. The terms of this document permanently and irrevocably supersede the terms of any Microsoft End User License Agreement that may be presented in electronic form during your use of the Client Software.

4 USE OF REDISTRIBUTION SOFTWARE. In connection with the services provided to you by Company, you may have access to certain "sample", "redistributable" and/or software development ("SDK") software code and tools (individually and collectively "Redistribution Software"). **YOU MAY NOT USE, MODIFY, COPY, AND/OR DISTRIBUTE ANY REDISTRIBUTION SOFTWARE UNLESS YOU EXPRESSLY AGREE TO AND COMPLY WITH CERTAIN ADDITIONAL TERMS CONTAINED IN THE SERVICES PROVIDER USE RIGHTS ("SPUR") APPLICABLE TO COMPANY, WHICH TERMS MUST BE PROVIDED TO YOU BY COMPANY.** Microsoft does not permit you to use any Redistribution Software unless you expressly agree to and comply with such additional terms, as provided to you by Company.

5 COPIES. You may not make any copies of the Licensed Products; provided, however, that you may (a) make one copy of Client Software on your Device as expressly authorized by Company; and (b) you may make copies of certain Redistribution Software in accordance with Paragraph 4 (Use of Redistribution Software). You must erase or destroy all such Client Software and/or Redistribution Software upon termination or cancellation of your agreement with Company, upon notice from Company or upon transfer of your Device to another person or entity, whichever occurs first. You may not copy any printed materials accompanying the Licensed Products.

6 LIMITATIONS ON REVERSE ENGINEERING, DECOMPILATION AND DISASSEMBLY. You may not reverse engineer, decompile, or disassemble the Licensed Products, except and only to the extent that applicable law, notwithstanding this limitation, expressly permits such activity.

7 NO RENTAL. You may not rent, lease, lend, pledge, or directly or indirectly transfer or distribute the Licensed Products to any third party, and may not permit any third party to have access to and/or use the functionality of the Licensed Products except for the sole purpose of accessing the functionality of the Licensed Products in the form of software services in accordance with the terms of this agreement and any agreement between you and Company.

8 TERMINATION. Without prejudice to any other rights, Company may terminate your rights to use the Licensed Products if you fail to comply with these terms and conditions. In the event of termination or cancellation of your agreement with Company or Company's agreement with Microsoft under which the Licensed Products are licensed, you must stop using and/or accessing the Licensed Products, and destroy

all copies of the Licensed Products and all of its component parts.

9 NO WARRANTIES, LIABILITIES OR REMEDIES BY MICROSOFT. ANY WARRANTIES, LIABILITY FOR DAMAGES AND REMEDIES, IF ANY, ARE PROVIDED SOLELY BY COMPANY AND NOT BY MICROSOFT, ITS AFFILIATES OR SUBSIDIARIES.

10 PRODUCT SUPPORT. Any support for the Licensed Products is provided to you by Company and is not provided by Microsoft, its affiliates or subsidiaries.

11 NOT FAULT TOLERANT. THE LICENSED PRODUCTS MAY CONTAIN TECHNOLOGY THAT IS NOT FAULT TOLERANT AND ARE NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE IN ENVIRONMENTS OR APPLICATIONS IN WHICH THE FAILURE OF THE LICENSED PRODUCTS COULD LEAD TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL, PROPERTY OR ENVIRONMENTAL DAMAGE.

12 EXPORT RESTRICTIONS. The Licensed Products are of U.S. origin for purposes of U.S. export control laws. You agree to comply with all applicable international and U.S. laws that apply to the Licensed Products, including the U.S. Export Administration Regulations, as well as end-user, end-use and destination restrictions issued by the U.S. and other governments. For additional information, see <http://www.microsoft.com/exporting/>.

13 LIABILITY FOR BREACH. In addition to any liability you may have to Company, you agree that you will also be legally responsible directly to Microsoft for any breach of these terms and conditions.

Schedule 1B

Customer Licence Terms

ENSIM UNIFY ELECTRONIC AGREEMENT

TERMS OF USE

IMPORTANT: Please Read Carefully

You are granted a personal, non-transferable, nonexclusive license to use the software solely for your internal business purposes. You may not (a) modify, translate, decompile, disassemble, reverse engineer or otherwise attempt to derive source code or create derivative works based upon the software, (b) sell, lease, rent, license, sublicense or otherwise distribute the software or (c) remove, alter or destroy any proprietary, trademark or copyright markings or notices used in conjunction with, placed upon or contained within the software or any related documentation. You will comply with the terms and conditions of all Ensim and third-party software supplier license agreements provided with or embedded in any software.

You do not acquire any rights of any kind in and to any Ensim or third-party software supplier trademark, trade name, logo or product designation. IN NO EVENT WILL ENSIM OR ANY THIRD-PARTY SOFTWARE SUPPLIER BE LIABLE TO YOU FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATING TO YOUR USE OF THE SOFTWARE INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, BUSINESS INTERRUPTION OR LOSS OF DATA OR BUSINESS INFORMATION, EVEN IF ENSIM OR SUCH SUPPLIER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. REGARDLESS OF THE CAUSE OR FORM OF ACTION, NEITHER ENSIM'S NOR ITS SUPPLIER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO YOUR USE OF THE SOFTWARE SHALL EXCEED THE TOTAL AMOUNT PAID BY YOU FOR THE SOFTWARE.

You acknowledge that the software is subject to United States export control laws and regulations which restrict exports, reexports and disclosures to foreign persons of cryptographic items and are also subject to certain foreign laws which may restrict the export, reexport, import and/or use of such items. Your right to use the software hereunder is expressly made subject to any export laws, regulations, orders or other restrictions imposed by the United States or by any other country or governmental entity on the software. You will not import, export or reexport, directly or indirectly, any software or related information to any country or foreign person to which such import, export or reexport is restricted or prohibited, or as to which such country, government or any agency thereof requires an export license or other governmental approval at the time of import, export or reexport without first obtaining such license or approval. You unconditionally accept full responsibility for your compliance with these requirements. The foregoing contains the complete agreement between you and Ensim with respect to the licensing of the software; it is to be interpreted and governed in accordance with the laws of the State of California and can be amended or modified only in a writing signed on behalf of you and Ensim. US Government Restricted Rights. Notice - Distribution and use of products including computer programs and any related documentation and derivative works thereof, to and by the United States Government, are subject to the Restricted Rights provisions of FAR 52.227-19, paragraph (c)(2) as applicable, except for purchases by agencies of the Department of Defense (DOD). If the software is acquired under the terms of a Department of Defense or civilian agency contract, the software is "commercial item" as that term is defined at 48 C.F.R. 2.101 (Oct. 1995), consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212 of the Federal Acquisition Regulations and its successors and 48 C.F.R. 227.7202-1 through 227.7202-4 (June 1995)

of the DOD FAR Supplement and its successors. All U.S. Government end users acquire the software with only those rights set forth in this Agreement. Unpublished - rights reserved under the copyright laws of the United States.

Schedule 2

Change Control Procedures

- 1 The provisions of this Schedule govern changes to the Payment and Accounting Procedures and any other processes or provisions identified in this Agreement as subject to Change Control Procedures. Changes will only be effective if they are conducted in accordance with these procedures.
- 2 Either Outsourcery or the Reseller may request a change. Change requests may be made at any time and for any reason. Requests should be in writing. A change request must specify in reasonable detail:
 - (a) a description of any proposed change;
 - (b) any proposed variations or amendments to the Payment and Accounting Procedures and/or any other provisions of this Agreement;
 - (c) any other details which the other party might reasonably want to know and which relate to the change proposed.
- 3 If Outsourcery submits a change request, the Reseller must evaluate it and, within 10 Working Days, submit a response setting out in reasonable detail:
 - (a) responses to this information supplied under paragraph 2 above;
 - (b) If relevant, Outsourcery's opinion of the technical feasibility of the proposed change;
 - (c) Whether or not it is prepared in principle to agree to the proposed changes;
 - (d) Any additional changes or terms which it would propose.
- 4 When a change request is submitted by the Reseller, Outsourcery must evaluate it and, within 10 Working Days, submit a response setting out in reasonable detail:
 - (a) responses to this information supplied under paragraph 2 above;
 - (b) if relevant, Outsourcery's opinion of the technical feasibility of the proposed change;
 - (c) Whether or not it is prepared in principle to agree to the proposed changes; and
 - (d) Any additional changes or terms which it would propose.
- 5 All change requests from Outsourcery shall be submitted to the Reseller's nominee and all change requests from the Reseller shall be submitted to Outsourcery's nominee, both as referred to at clause 22.2 of the agreement.
- 6 Once a response has been submitted, the parties will then discuss the proposed changes and any related matters. If agreement is reached on any changes, a document will be prepared which specifies all relevant changes to the Payment and Accounting Procedures and/or any other provisions of this Agreement by the party requesting such change.
- 7 All changes will be subject to final approval and signature on behalf of both the Reseller and Outsourcery. Once signed on behalf of both the Reseller and Outsourcery, the change will be binding and will form part of this Agreement.

- 8 If the parties fail to reach agreement as to any change request in accordance with this Appendix then the party requesting the change may refer such matter to be resolved in accordance with the Escalation and Disputes Procedures.
- 9 In respect of any changes to the Payment and Accounting Procedures only, if the Reseller fails to respond to a change request from Outsourcery within the 10 working days stipulated, Outsourcery reserves the right to implement the change thereof without further notice.
- 10 All change requests must be sent by 1st class post or email to the respective postal or email address of the parties.

Schedule 3

Escalation and Dispute Procedures

1 General escalation process

1.1 Subject to paragraph 1.3 below, the parties shall, in respect of all disputes between the parties arising under this Agreement and provided a party has served written and dated notice on the other party that it requires an identified dispute to be resolved in accordance with the terms of this schedule, use best endeavours to resolve such dispute in accordance with the following procedures:

(a) a dispute which has not been resolved by the parties nominated representatives within 5 (five) Working Days may be escalated by either party to the first level by written notice to the other party.

(b) if the dispute is not resolved at the First Level within ten (10) Working Days, either party may refer the dispute to the Second Level by written notice to the other party.

Outsourcing

First level: Channel Manager

Second Level Director

Third Level Managing Director

The Reseller

First level: Signatory, successor or assigned

Second level: Minimum level of board level director

1.2 If such a dispute is not resolved within twenty (20) Working Days (or within such other period as the parties may agree in writing) of its referral by written notice to the Second Level for resolution in accordance with this schedule then the dispute shall be referred and dealt with in accordance with Paragraph 2 below.

1.3 Each Party shall be entitled to disregard this Escalation and Dispute Procedure and such action and steps as is permitted by law (including obtaining judgment in a court of competent jurisdiction) where it can show that principal subject matter of the relevant dispute concerns:

(a) non-payment of any sum due or payable pursuant to this Agreement and which is not disputed in good faith; or

(b) a breach, or threatened breach, of this Agreement in respect of which a party wishes to claim injunctive relief, including (without limitation) to protect its Intellectual Property Rights or those of the Licensors.

2 Unresolved disputes

2.1 If a dispute is not resolved using the general escalation process described in Paragraph 1, the dispute will be resolved in accordance with the following:

(a) Where the parties agree that the dispute concerns a technical matter (such as the operation of IT systems) or is otherwise appropriate for alternative dispute resolution, the dispute will be referred to the Centre for Dispute Resolution ("CEDR") for

appointment of an individual with suitable expertise and experience to assist the parties in resolving the dispute.

(b) Any negotiations connected with the dispute shall be conducted in confidence and without prejudice to the rights of the parties in any future proceedings.

(c) If the parties reach agreement on the resolution of any such dispute the agreement will be put in writing and once signed by the parties will be binding on them.

2.2 The parties agree that neither of them will commence legal proceedings on a dispute until the escalation process described at paragraph 1 of this Schedule has been complied with. If the parties do not agree to a dispute being referred for alternative dispute resolution in accordance with paragraph 2.1, or if the parties fail to reach agreement in the course of any such negotiation within sixty (60) days of the dispute being referred for resolution, then either party may commence proceedings regarding the dispute in the English courts.

2.3 Unless otherwise agreed the parties shall fulfil their respective obligations under this Agreement insofar as possible regardless of any dispute which is proceeding under the dispute resolution processes described in paragraphs 1 and 2.1 of this Schedule.

Schedule 4

Payment and Accounting Procedures

1 Acquisition Arrangements

- 1.1 The Reseller shall issue invoices to Reseller Customers on a monthly basis or such other basis as Outsourcery may direct.
- 1.2 The Reseller shall pay Outsourcery the BtoB Charges and any Professional Services Charges (where applicable). Service Revenue is determined and based on billed Service Revenue (not received Service Revenue), with bad debt being the risk and responsibility of the Reseller.
- 1.3 All charges of Outsourcery shall be paid by the Reseller together with VAT at the appropriate rate.
- 1.4 Payment of all sums due from the Reseller to Outsourcery shall be made by such reasonable methods as may be agreed between the parties hereto.
- 1.5 Where charges are not paid by the Reseller in accordance with this paragraph 1 Outsourcery reserve the right to charge:
 - (a) interest (both before and after any judgment) on all amounts overdue from the Reseller pursuant to The Late Payment of Commercial Debts (Interest) Act 1998 at a rate of 4% per annum above the Bank of England base rate to run from the due date of payment until receipt by Outsourcery of the overdue amount (including any accrued interest and compensation) PLUS
 - (b) compensation arising out of late payment pursuant to Clause 5A of The Late Payment of Commercial Debts Regulations 2002.
- 1.6 Outsourcery shall be entitled to set off any payments to the Reseller against any other sums owed or liable to be paid to Outsourcery by the Reseller.
- 1.7 Outsourcery may at any time require the Reseller to enter into bank or other guarantees (or to provide some other form of financial security) which in the reasonable opinion of Outsourcery is/are appropriate as security against the Reseller's non-compliance with or non observance of any provision of this Agreement (including failure to pay charges due). Refusal to provide such security or failure to provide such security within thirty (30) days (or such longer period as Outsourcery may reasonably allow) of the date of Outsourcery's request for the same shall be deemed to be a breach of a condition of this Agreement by the Reseller which is incapable of remedy.
- 1.8 Without prejudice to Outsourcery's rights under this Agreement, in the event that the Reseller at any time fails to make payments in accordance with this Agreement Outsourcery shall be entitled to exercise all or any of its rights under any Security Document.

2 Additional Invoicing and Payment Terms

- 2.1 Payment in connection with this Agreement will be subject to the following additional requirements:

- (a) Each of Outsourcery and the Reseller shall supply information to be reported under this Schedule in accordance with the requirements of this Schedule. All such reports will be provided within seven (7) Working Days of the end of the relevant month or other reporting period.
 - (b) Each of Outsourcery and the Reseller shall identify a "nominated representative" for information reporting and reconciliation under this Schedule.
 - (c) Each of Outsourcery and the Reseller shall verify reported information and raise related (VAT compliant) invoices identifying any amounts payable by the other party within seven (7) Working Days of receipt of the relevant report.
 - (d) Payment of invoiced amounts (or amounts identified in billing statements) shall be due within fifteen (15) days of the date of the invoice unless specifically stated otherwise in this Agreement.
- 2.2 Where charges are not paid by the Reseller in accordance with paragraph 2.1(c) above Outsourcery reserve the right to charge:
- (a) interest (both before and after any judgment) on all amounts overdue from the Reseller pursuant to The Late Payment of Commercial Debts (Interest) Act 1998 at a rate of 4% per annum above the Bank of England base rate to run from the due date of payment until receipt by Outsourcery of the overdue amount (including any accrued interest and compensation) PLUS
 - (b) compensation arising out of late payment pursuant to Clause 5A of The Late Payment of Commercial Debts Regulations 2002.
- 2.3 Any payment or acceptance of payment by either party to or from the other shall be without prejudice to any claims or rights it may have against the other and shall not constitute an admission as to the performance by the other of its obligations pursuant to the Agreement.
- 2.4 The Reseller shall pay amounts due to Outsourcery in accordance with the payment terms of this Schedule 4 and without delay, set-off, holdback or other adjustment resulting from any payment or accounting dispute.
- 2.5 In other respects, any payment or accounting disputes are to be resolved in accordance with the Escalation and Dispute Procedures.
- 2.6 Initially, Outsourcery will perform one (1) bill run per month relevant to these Payment and Accounting Procedures. Changes in the number of bill runs will be subject to the Change Control Procedures.
- 2.7 Any changes to billing practices, billing formats or billing relating reporting will be made pursuant to the Change Control Procedures.

Schedule 5

Joint Sales and Marketing Plan and Brand Guidelines

1. Co Branding

- 1.1. The Reseller will comply with such other co branding guidelines as may be specified by Outsourcery from time to time.

2. Customer Relationship Management

- 2.1. The Reseller shall maintain and operate a Customer Relationship Management ("CRM") programme for dealing with Reseller Customers.
- 2.2. The quarterly meeting as provided for at Clause 21 of this Agreement shall include the formulation of a detailed CRM plan to be implemented by the Reseller for the following Quarter.
- 2.3. Product and/or service information and/or details of promotional activity shall be provided to the Reseller by Outsourcery from time to time.
- 2.4. The Reseller will use its best endeavours proactively to promote the provision and development of the Services to Reseller Customers including, but not limited to, contact with Reseller Customers within the last two months of "minimum period" of their Customer Contract in order to extend the said contract for a further "minimum period".
- 2.5. Any failure by the Reseller to comply with the terms of this paragraph 3 may be deemed, in the sole discretion of Outsourcery, a material breach of this Agreement.

Schedule 6

Customer Services, Customer Service Descriptions, Service Levels.

1. Introduction

PART A - CUSTOMER SERVICES

2. System Availability
3. Provision of Customer Equipment
4. Business Customer Service
5. The Reseller Team and Contact Strategy
6. Customer Care
7. Customer Data and Security
8. Archiving of Customer Contracts
9. Disaster Recovery
10. Change Control
11. First Line Support

PART B – OUTSOURCERY SERVICE LEVEL AGREEMENT: SECOND AND THIRD LINE SUPPORT

12. Outsourcery Service Level Agreement: Second and Third Line Support

The following words and expressions used in this Schedule shall, unless the context otherwise requires, have the following meanings:

Definitions

"Complaint"	means where a Reseller Customer has expressed dissatisfaction with any element of the Service
"Control Panel"	Online portal with access to Outsourcery provisioning systems
"Core Hours of Service"	09.00 – 17.30 Monday to Thursday 09.00 – 17.00 Friday
"Emergency Maintenance"	Scheduled Maintenance tasks which in the opinion of Outsourcery need to be performed within a shorter period than the normal 48 hour notice period would allow
"First Line Support"	Support services provided by the Reseller to the Reseller Customer as further described in paragraphs 1.5 and 14
"Material Change"	means significant changes to the Customer Services, which are to be made in accordance with the Change Control Procedures
"Non Core Hours of Service"	All hours outside of Core Hours of Service. These must be logged by Telephone. All other Severity Code incidents will be responded to during the next period of Core Hours of Service
"Scheduled Maintenance"	Tasks which need to be performed for the ongoing security, stability and reliability of the Services
"Second Line Support"	Support services provided by Outsourcery to the Reseller as further described in paragraphs 1.5 and 15
"Service Desk"	The team of support staff from Outsourcery, who shall provide support service through the following means, with the recommended means being Control Panel or Email.

By Control Panel
www.outsourcery.co.uk/login

By Email
*****@outsourcery.co.uk

By Telephone *****

By Fax *****

"Service Page"	Online information portal available at http://www.outsourcery.co.uk/servicestatus which provides updates on all Severity Code 1 incidents
"Service Hours"	means the Customer Service team hours of availability as set out at paragraph 6 of this Schedule
"Service Reviews"	means the review of the Customer Services to be undertaken by the parties pursuant to Clause 21 of the Agreement and paragraph 13 of this Schedule
"Severity Code"	The classification system for all incidents raised with the Service Desk as defined under 14.11 of this Schedule
"Spam"	unsolicited e-mail containing commercial messages and/or advertisements sent to individual e-mail subscribers or simultaneously multiple e-mail subscribers that have not consented to receive it
"Third Line Support"	Support services provided by Outsourcery to the Reseller as further described in paragraphs 1.5 and 15
"Reseller Systems Availability"	means the Customer Services and Reseller System availability required to manage Reseller Customers so as to achieve the KPIs' and service levels under the Customer Contract during the Service Hours and excluding planned outage periods
"Web Ticket System"	online portal for logging customer support incidents
"Defect"	any defect or error in the Software (including Third Party Software) supplied by or used by Outsourcery in the provision of the Services

1 Introduction

1.1 This Schedule 6 outlines the service and details the service levels to be provided by the Reseller on behalf of Outsourcery to Customers and the obligations of both parties. In addition it provides useful contact information.

1.2 Scope

It incorporates: -

1.2.1 Definitions and descriptions of Customer Services

1.2.2 Management processes and procedures

1.2.3 Requirement for regular reviews of performance and trends

1.3 Customer Services

1.3.1 The Reseller will provide Customers with a designated point of contact and all necessary and/or associated services that shall support billing; fault reporting, general enquiries and value add services for Customers.

1.3.2 The Reseller shall provide services to enable the billing of Customers in accordance with the performance and service levels requirements detailed within this Schedule 6.

1.4 Resourcing and forecast levels

1.4.1 It will be the responsibility of the Reseller to ensure that at all times there are sufficient resources, including but not limited to manpower, systems etc, to meet the likely demand for Customer Services in accordance with the terms of this Agreement.

1.4.2 It will be the responsibility of the Reseller to ensure that Reseller Employees working on the Customer Services have sufficient skills to meet the current and where applicable future service levels in order to achieve the likely demand for Customer Services in accordance with the terms of the Agreement.

1.4.3 The Reseller will closely monitor the demand for Customer Services and will use its reasonable endeavours to forecast the demand for Customer Services so as to achieve the service levels and KPIs the Reseller is obliged to achieve under the Customer Contract. In doing so the Reseller will take into account any reasonable representations made by Outsourcery in this regard.

1.5 The responsibility for the first, second and third line support to be provided to Reseller Customers and/or Resellers shall be as follows:

	Description	Services provided by	Services provided to
First Line Support	Operation of helpdesk to take all support calls from Reseller Customers and B2B End Users. Resolve all non-Defect related incidents reported. Account management activities including password changes, new user account setup.	Reseller	Reseller Customer
Second Line	Defect that the Reseller	Outsourcery	Reseller

Support	service team is unable to resolve as part of First Line Support		
Third Line Support	Defect that cannot be resolved by Outsourcery' service team which requires referral to Licensors or other third parties	Outsourcery	Outsourcery

PART A - CUSTOMER SERVICES

2 System Availability

- 2.1 The Reseller will ensure Reseller Systems Availability for the Customer Services during the Service Hours.
- 2.2 The Resellers shall notify the appropriate Reseller Customers of Scheduled Maintenance periods of the Services.

3 Provision of Customer Equipment

- 3.1 Customer Equipment
 - 3.1.1 Subject to Clause 9 of the Agreement, the Reseller will be responsible for the supply of customer equipment and contracts with customers for the supply of such customer equipment. The Reseller shall make available to Customers all appropriate sales, service and general information concerning customer equipment
 - 3.1.2 The Reseller shall ensure that any customer equipment is sent to Customers using reputable courier services, which may be Outsourcery, and who provide satisfactory delivery confirmation systems.

4 Business Customer Services

- 4.1 Activations
 - 4.1.1 The Reseller shall comply with its obligations under Clause 4.1(e) of this Agreement and ensure that the Customer is aware, understands and is legally bound by the Customer Contract and the Customer Licence Terms and the nature of its commitments.
- 4.2 Fraud Management
 - 4.2.1 to the Reseller will comply with its obligations under Clause 4(i) of this Agreement, and will be solely responsible for fraud management and will implement its existing policies and all reasonable practices and checking mechanisms to prevent misuse of the Services, including for the avoidance of doubt, the use of the Services to send Spam. The Reseller shall maintain a written record of its policies regarding such matters. The Reseller will supply Outsourcery with a copy of such policies. Any changes to Reseller policies will be a Material Change.

Outsourcery shall not be liable to pay the Reseller in respect of any goodwill credits or compensation which the Reseller agrees to pay Reseller Customers, including any such credits or compensation offered by the Reseller in respect of Complaints which concern (principally) the quality of the Services provided under this Agreement.

- 6.2.3 The Reseller agrees to bring to the attention of Outsourcery Complaints which raise issues affecting the Outsourcery business as a whole.
- 6.2.4 The Reseller may escalate to Outsourcery Complaints which concern (principally) the quality of the Services provided under this Agreement. As and between the Reseller and Outsourcery, Outsourcery shall assume responsibility for the resolution of such cases. In respect of such cases, the Reseller shall provide Outsourcery with such information and assistance as is reasonably requested by Outsourcery in order to assist Outsourcery in resolving such cases.
- 6.2.5 In the event that the Reseller resolves a Complaint concerning (principally) the quality of Services by way of a compensation payment or other goodwill gesture then the Reseller will provide details of such Complaints so resolved to Outsourcery at Service Review Meetings. Any dispute concerning such matters shall be resolved in accordance with the Escalation and Disputes Procedures.
- 6.2.6 In the event that a Complaint is made to Outsourcery direct, including a High Level Complaint then the Reseller will promptly provide Outsourcery with dedicated contacts in the Reseller team, with individual email addresses, direct dial telephone numbers and names, who will respond to requests for information which would include copies of system notes etc in order to resolve such High Level Complaint. On receipt of appropriate information the Outsourcery complaints team may provide advice on appropriate resolution of such High Level Complaint. A High Level Complaint is defined as a Customer who addresses their letter to one of the following:
- Chairman of the Licensor or Outsourcery
 - MD of the Licensor or Outsourcery
 - Board Member of the Licensor or Outsourcery
 - Press Office of the Licensor or Outsourcery
 - Legal and Regulatory of the Licensor or Outsourcery
 - Any regulatory body associated with the provision of the Services
- 6.2.7 The parties agree that any change to these Complaints handling procedures shall be a Material Change.

7 Customer Data and Security

- 7.1 The Reseller will be solely responsible for data security and data access management and will implement its existing policies and all reasonable practices to prevent misuse or unauthorised access to Customer Data. The Reseller shall maintain a written record of its internal data security policy. The Reseller will supply Outsourcery with a copy of such policy. The Data Security Policy shall take account of the policies and practices set out in the Reseller's own data security policy. Any changes to the Data Security Policy shall be a Material Change.
- 7.2 The Reseller agrees to manage Customer Data and to control access to Customer Data in accordance with the Data Security Policy.

- 7.3 The Reseller undertakes to inform Outsourcery promptly in the event of any breach of Data Security Policy which comes to their attention and provide Outsourcery with proposals to remedy the breach and such assistance as Outsourcery may require to resolve it.

8 Archiving of Customer Contracts

- 8.1 The Reseller will store hard copies of Customer Contracts along with all hard copy correspondence and will provide copies to Outsourcery within 2 working days upon request.

9 Disaster Recovery

- 9.1 The Reseller will recover operations (relocation, systems and telephony) if its main site or operational building is a total loss due to fire/flood etc. in five (5) Working Days.
- 9.2. The Reseller will be solely responsible for disaster recovery and will implement its existing policies and all reasonable practices to ensure disaster recovery is provided in accordance with paragraph 16.1. The Reseller shall maintain a written record of its Disaster Recovery Policy. The Reseller will supply Outsourcery with a copy of such policy. Any changes to the Disaster Recovery Policy shall be a Material Change.

10 Change Control

- 10.1 In relation to Material Changes the parties shall comply with the Change Control Procedures.
- 10.2. In relation to all other procedural or minor changes to the Customer Services then the Reseller shall notify Outsourcery of such changes when they are implemented and in any event at Quarterly Review Meetings.
- 10.3 In the event that Outsourcery (acting reasonably) does not accept a change referred to at 13.2 above, the Reseller will refrain from implementing such change until it has been the subject of the Change Control Procedures.

11 First Line Support

- 11.1 In respect of all calls received by the Reseller's service team during the times set out in paragraph 5.1, the Reseller shall use all commercially reasonable efforts to resolve any incidents and/or Defects reported by Reseller Customers prior to referring any incident or Defect to Outsourcery for Second and/or Third Line Support pursuant to paragraph 12
- 11.2 In providing First Line Support the Reseller shall provide the services identified in paragraph 1.5.

PART B – OUTSOURCERY SERVICE LEVEL AGREEMENT: SECOND AND THIRD LINE SUPPORT

12 Outsourcery Service Levels: 2nd and 3rd line support

- 12.1 The Service Desk provides a single point of contact for Resellers and is available for the purpose of the reporting of incidents and the handling of enquiries from the Reseller, or other personnel as expressly authorised by the Reseller and notified to Outsourcery.

- 12.2 Upon referring any incident or Defect to Outsourcery, the Reseller shall provide Outsourcery with all information reasonably required by Outsourcery in order for Outsourcery to provide Second and/or Third Line Support.
- 12.3 During Core Hours, all Severity Code incidents will be responded to.
- 12.4 During Non-Core Hours, the Service Desk telephone number shall transfer to a 24-hour emergency Service Desk for the progression of Severity Code 1 incidents (as defined below) only. Severity Code 1 incidents should be logged by telephoning *****. Incidents or enquiries that are designated as Severity Code 2 or below shall be taken, but the restoration time shall not commence until the next period of Core Hours of Service. Severity Code 2 or below incidents should be logged by logging an incident from within Web Ticket System.
- 12.5 Where the Service Desk identifies that a specific query relates to the use of an associated product rather than the Service, the Service Desk reserves the right to refer the Reseller to the appropriate website that details relevant technical or training information.
- 12.6 Upon request at the end of a calendar month, the Service Desk shall provide the Reseller with a report detailing:
- Service availability;
 - incidents reported;
 - severity category of incidents;
 - incidents resolved; and
 - resolution time for each incident.
- 12.7 Upon request at the end of the month, Outsourcery will endeavour to provide the Reseller with a report detailing the level of usage of the system and the space used compared to the space contracted for.
- 12.8 On receipt of a notification of an incident or Defect or a request for assistance:
- 12.8.1 an initial assessment shall be immediately undertaken by Outsourcery,
 - 12.8.2 an incident reference provided and a Severity Code level shall be allocated by Outsourcery in accordance with the table in paragraph 15.12 unless it is clearly inconsistent with the nature of the Defect in which case a revised Severity Code Level will be discussed and promptly agreed with the Reseller.
 - 12.8.3 The Reseller should retain a record of the incident reference.
- 12.9 Outsourcery will endeavour to provide the Reseller with progress updates promptly upon:
- 12.9.1 resolution of the incident;
 - 12.9.2 any change of resolution target time, which can only occur with the agreement of the Reseller;
 - 12.9.3 on a 1 hourly basis or as otherwise agreed for Severity Code 1 incidents;
- 12.10 Up to date information on all Severity Code 1 incidents will be available on the Service Page.
- 12.11 Outsourcery shall acknowledge via email to the designated Reseller the receipt of all calls or emails to the Service Desk.

12.12 Outsourcery shall comply with the following Service Levels in relation to the corresponding Severity Level:

SEVERITY CODE	BUSINESS IMPACT	TARGET RESPONSE TIME	TARGET RESOLUTION TIME
1	<ul style="list-style-type: none"> An unplanned incident causing loss of service to multiple Users Designated Priority User unable to work 	1 hr	2 hrs
2	<ul style="list-style-type: none"> Individual User unable to work Reduced functionality causing severe disruption to the completion of business critical tasks 	2 hrs	4 hrs
3	<ul style="list-style-type: none"> User experiencing a problem Reduced functionality causing some disruption to the completion of business critical tasks 	4 hrs	8 hrs
4	<ul style="list-style-type: none"> Non-urgent query or request Reduced functionality resulting in minimal impact to Users 	1 day	5 days
IMAC	<ul style="list-style-type: none"> Chargeable service request for Installations, Moves, Additions and Changes 	2 days	As agreed with User

12.13 The availability of each Service is as defined on the Outsourcery Website, measured per Calendar month, provided that:

12.13.1 any period of unavailability shall commence from when the Reseller first reports the incident or Defect or when Outsourcery identifies an incident (whichever is sooner).

12.14 Following investigation and resolution of the incident, the Reseller will be promptly informed of normal service via email, SMS or the Service Page. This shall be deemed to be the end of the period of unavailability.

12.15 Outsourcery shall use all reasonable endeavours to ensure that the Services are available 24 hours per day, 7 days a week, 365/366 days per year.

12.16 Scheduled Maintenance shall be required at regular intervals. Outsourcery will endeavour to:

12.16.1 carry out scheduled maintenance at weekends and where that is not possible, then to carry out maintenance outside of Core Hours of Service;

12.16.2 ensure that scheduled maintenance causes the minimum possible disruption to the Reseller Customers use of the Services; and

12.16.3 shall be completed as quickly as is reasonably practicable.

12.17 Scheduled Maintenance may include inter alia the following:

12.17.1 Server and network maintenance;

12.17.2 Software upgrades (Operating System and Application Software);

12.17.3 Hardware upgrades;

12.17.4 Bug fixes; and

12.17.5 Security fixes.

12.18 Resellers shall be notified by Outsourcery of Scheduled Maintenance by email at least forty eight (48) hours prior to each period of Scheduled Maintenance save when in the reasonable opinion of Outsourcery Emergency Maintenance is required in which case, where the Reseller shall be given the greatest possible advance notice by Outsourcery. Without prejudice to the foregoing, the Reseller acknowledges that Outsourcery is obliged only to provide as much prior notice of any maintenance likely to disrupt the Service as is reasonably practicable under the circumstances.

12.19 The Reseller acknowledges that the Services are backed up for the purposes of data recovery, where such recovery is required from a failure of one or more Service components.

Schedule 7

Form of Customer Contract

Schedule 8

Form of Statement of Work

Reference Number: ♦

This **Statement of Work** is made pursuant to the Agreement dated [] and made between **Outsourcery Hosting Limited** ("Outsourcery") and ♦ ("Reseller")

Part 1 The Services

- 1.1 Scope of the Services
- 1.2 Individuals

Part 2 Customer

Part 3 Charges (Fees and Expenses)

- 3.1 The Charges
- 3.2 Payment Profile

The Reseller shall pay the Professional Service Charges to Outsourcery in accordance with the following milestones:

Milestone	% of Charges payable upon achieving Milestone
♦	♦
♦	♦
♦	♦

Part 4
Period of engagement

Part 5
Specification

Part 6
The Acceptance Tests

- 6.1 In the absence of any express Acceptance Tests in respect of a Deliverable, the relevant Deliverable shall be deemed to be accepted either:
- (a) when the Reseller Customer's nominated representative provides the Reseller and/or Outsourcery with a written notification of acceptance, having conducted reasonable examination and for testing of the Deliverable against the relevant Specification. The Reseller shall communicate such notification of acceptance to Outsourcery promptly after receiving the same; or
 - (b) in absence of such written acceptance, 21 days after the delivery of the relevant Deliverable (or such other period as agreed between the Reseller Customer, Outsourcery and the Reseller).

Signed

Signed.....

Duly authorised for and on behalf of

◆

Duly authorised for and on behalf of
Outsourcery Hosting Limited

Dated.....

Dated.....

Schedule 9

Reseller Licence Terms for Ensim Third Party Software

1. Interpretation and Definitions

1.1 In these License Terms the following terms shall have the following meaning:

Deliverables means specified deliverables provided by Ensim to Outsourcery under the Ensim Agreement;

Ensim means Ensim Corporation a Delaware corporation having its principal place of business at 3945 Freedom Circle, Suite 1100, Santa Clara CA USA 95054, and its affiliates and subsidiaries;

Ensim Agreement means the master licence and services agreement between Outsourcery Hosting Ltd and Ensim, as amended, varied, assigned and/or novated from time to time;

Outsourcery means Outsourcery Hosting Limited (registered number 6027036) of Waterfold Park, Rochdale Road, Bury BL9 7BJ;

Outsourcery Services the Services as defined in the Reseller Agreement;

Licensee means a contractor of Outsourcery which is appointed by Outsourcery to resell the Outsourcery Services and/or any other contractor of Outsourcery which is appointed by Outsourcery and authorised by Ensim to perform services incidental to or connected with the Outsourcery Services;

License Terms means sections 1 to 10 hereto;

Reseller Agreement the agreement in respect of the resale of Outsourcery Services between Outsourcery and the relevant reseller, such reseller being a Licensee under these License Terms.

1.2 Any term defined in sections 2 to 9 shall have the meaning set out in such section.

1.3 These License Terms are the terms and conditions referred to in clause 4.2 of the Reseller Agreement and in respect of any Licensee that is a party to a Reseller Agreement, these License Terms shall form part of such Reseller Agreement.

2. License: Proprietary Rights

2.1 **License** Subject to the terms and conditions of these License Terms, Outsourcery grants Licensee a non-exclusive, non-transferable, limited license to use the Ensim software product(s), in binary form, (or, in the case of Ensim software add-ons, tools or toolkits, in binary and source form as provided by Ensim), that are made available to the Licensee by Outsourcery under the Reseller Agreement ("**Software**") and related documentation ("**Documentation**") (Software and Documentation are together referred to as the "**Product(s)**") solely to use, sublicense and/or resell the Products in accordance with the Reseller Agreement (or such other agreement between licensee and Outsourcery) and only to the extent Licensee has paid Outsourcery the charges due and payable to Outsourcery under the Reseller Agreement (if applicable). Licensee acknowledges and agrees that Licensee's use of the Software is subject to any limitations described in the Documentation, as communicated to Licensee by Outsourcery from time to time, and/or as otherwise agreed in writing by the parties. These License Terms control Licensee's use of the Product notwithstanding any electronic software license agreement that may be included as part of the downloading, installation or use of the Product ("**Electronic Agreement**") and in the event of any conflict or inconsistency between these License Terms and any such Electronic Agreement, these License Terms shall prevail to the extent of the conflict or inconsistency.

2.2 **Authorized License Keys** In respect of all license keys ("**License Keys**") required from Ensim in order to activate or expand Licensee's use of the Software, Licensee agrees (i) not to tamper with the Software to avoid the requirement of a License Key, (ii) to install and use each License Key for only one instance ("**Instance**") of the Product(s) (unless otherwise authorized by Ensim in writing) and only for the purpose for which it was issued by Ensim during the term of the Ensim Agreement, and (iii) to treat

the License Keys as Confidential Information. License Keys may limit or govern use of the Products as specified by Ensim installation instructions and/or Schedule(s) to the Ensim Agreement such as (a) per installation on a single machine, networked systems, server, whether virtual or physical, or the like; (b) per user, individual, subscriber, organization, seat, or the like; (c) per managed object, site, sub-site, mailbox database, or the like; (d) per delivered module, language, or the like; (e) or other term as referenced in the installation instructions and/or Schedule(s) to the Ensim Agreement ("**Unit**").

2.3 Proprietary Rights The Product contains proprietary and trade secret information of Ensim. Except for the limited license granted to Licensee under Section 2.1, Ensim and its licensors retain all ownership and proprietary rights in and to the Product, including any and all copies made by Licensee, notwithstanding the use of the term "purchase," "sell" and derivations of such terms in any part of this Agreement. Licensee will have no right and will not, nor will it

authorize or assist, any third party to: (a) copy the Documentation, (b) disassemble, reverse engineer, modify, translate, alter or decompile all or any portion of the Software or otherwise discern the source code of the Software, (c) adapt, modify, translate, or create derivative works of the Product (unless to the extent authorized by Ensim) or (d) distribute, copy, rent, lease, sublicense, assign, transmit, sell or otherwise transfer the Product or any of Licensee's rights therein, in each case except as expressly permitted under these License Terms (and in particular under Sections 2.1 and 2.2). Licensee must erase or otherwise destroy all portions of the Product installed or contained on any media prior to disposing of such media.

2.4 Resellers and Customers Licensee will ensure that all of Licensee's customers ("**Customers**") and Customers' internal users ("**Users**") to whom Licensee resells or provides services using the Product ("**Licensee Services**"), as well as intermediaries through whom Licensee resells the Product and/or Outsourcery Services ("**Resellers**"), are bound by the Electronic Agreement, if applicable, or other agreements containing terms that are no less restrictive or protective of Outsourcery' and its licensors' (including Ensim's) rights than those set forth in these License Terms, including but not limited to the obligation to report usage of the Product and the obligations with respect to License Keys for the Product. Licensee will use all efforts to enforce such agreements similar to those efforts Licensee uses to enforce its own terms and agreements for the protection of its own proprietary interests, but in no event less than reasonable efforts.

3. Open Source Software As a convenience to licensees, Ensim and/or Outsourcery may make available with the Product certain third party software or modifications licensed under the GNU General Public License (Version 2, 1991) or other open source license terms ("**Open Source Software**"), and if so, will notify the Licensee prior to making the Product available. Such Open Source Software shall be specifically identified in the applicable Documentation and, notwithstanding any other term of these License Terms, is licensed pursuant to the applicable open source terms ("**Open Source Terms**") and not the terms set forth in Section 2 of these License Terms. If any Open Source Term conflicts with a term of these License Terms, the Open Source Term controls with respect to the applicable Open Source Software only.

4.

4.1 Software Releases. Any and all bug fixes, patches, workarounds, updates, upgrades, enhancements, modifications, and other new versions of the Product provided to Licensee under these License Terms and (unless otherwise agreed with Ensim) any software Deliverables provided to Licensee by Outsourcery under these License Terms, are all considered part of the "Software." Any updates, modifications and other revisions to the Documentation, and (unless otherwise agreed with Ensim) any non-software Deliverables provided to Licensee by Outsourcery under these License Terms all considered part of the "Documentation."

5.

5.1 Uploads. The Product(s) may automatically upload information to Ensim on a periodic basis specifically relating to Licensee's usage of the Product for the purpose of verification of Licensee's compliance with these License Terms and for calculation of fees owed to Ensim. Licensee agrees not to tamper with the collection or transmission to Ensim of any such information, and to work with Outsourcery and/or Ensim to facilitate these uploads. If such uploads are not available for any reason, Licensee shall (a) promptly notify Outsourcery and/or Ensim and reasonably cooperate with Outsourcery and/or Ensim in correcting the problem, and (b) on a timely basis, provide a detailed report, as specified by Outsourcery and/or Ensim, of all use of the Product(s) for each month in order to assist

Outsourcery and Ensim in the calculation of the fees due to Ensim based on that usage.

5.2 **Audit** During the term of the Ensim Agreement and for 3 years after its termination (as such date of termination is communicated to the Licensee by Outsourcery), Licensee will ensure that all books, records and other data (either in electronic form or as hard copies, as applicable) with respect to the Product and all of Licensee's activities relating to these License Terms are maintained in accordance with customary accounting principles. Ensim and Outsourcery have the right to inspect and audit such books, records and other data at Ensim's expense during the term of the Ensim Agreement and for 3 years thereafter. Such audit will take place at the locations where the applicable books, records and other data are maintained, upon not less than 30 days prior notice, during normal business hours and in a manner that does not unreasonably interfere with Licensee's operations. If the audit reveals unauthorized use of the Product, then, in addition to all other rights and remedies of Outsourcery, including but not limited to termination of the rights granted to Licensee under these License Terms, Licensee must pay to Outsourcery, or at Outsourcery' option, to Ensim within 5 business days all required fees to cover the unauthorized use and, if the shortfall exceeds 10% of the amounts owed by Outsourcery to Ensim for the audited period, the costs incurred by Ensim to conduct the verification and any applicable late fees.

6. **Disclaimer of Warranties.**

6.1 **Exclusions.** Outsourcery makes no warranties under these License Terms with respect to any third party software or other product embedded in or included with the software and/or furnished to Licensee by Outsourcery, including but not limited to Open Source Software and any hardware. Open Source software is provided "as is" without any warranties, express or implied. Further, Outsourcery will not have any liability if any alleged defect in the Product is due to causes not within Outsourcery' reasonable control, including but not limited to any defect caused by (a) any negligent act or omission by anyone other than Outsourcery, (b) modification or misuse of the Software (including use in an operating environment not specified by the Documentation or otherwise not in accordance with these License Terms), (c) alteration or abuse of media on which the Software is stored, (d) failure to follow Ensim's instructions for installation, operation or maintenance, or (d) third party products, power failure or surges, fire, flood or the like.

6.2 **Disclaimer.** The Product(s) and Deliverables are provided "as is," and Outsourcery and its licensors, if any, make no warranty of any kind, whether express or implied, regarding the Product(s) and Deliverables and specifically disclaim the warranties and/or conditions of merchantability, fitness for a particular purpose and satisfactory quality, to the maximum extent possible by law. Outsourcery does not warrant that the products or services will meet Licensee's (or its resellers' or customers') requirements, operate without interruption, or be error free or secure and hereby disclaim all liability on account thereof.

6.3 **Licensee's Responsibilities.** Licensee is solely responsible for: (a) purchasing and obtaining from third parties, and for maintaining during the term of the Reseller Agreement (or, if the Licensee is not party to a Reseller Agreement, the term of such other relevant agreement between Outsourcery and Licensee), all applicable licenses and consents for third party technology needed to install, execute, market, sell, sublicense, distribute, provide services with respect to, and otherwise use the Product (unless provided by Ensim and paid for by Outsourcery or Licensee to Ensim); (b) proper configuration of all equipment, software and systems used with the Product; and (c) Licensee's warranties to third parties, including Resellers, Customers and Users, with respect to the Licensee Services or the Product.

7.

7.1 **Infringement Claim Options.** If the Product (excluding third party products) becomes, or in Outsourcery and/or Ensim's opinion is likely to become, the subject of an infringement claim, Outsourcery may, at its option and sole discretion, (i) obtain for Licensee the right to continue to use the Product as provided in these License Terms; (ii) replace the Product with another software product that provides similar functionality; or (iii) if Outsourcery determines that neither of the foregoing options are reasonably available, Outsourcery may require that Licensee cease use of the Product.

8. **Confidentiality**

8.1 Confidentiality Obligations. During the term of the Ensim Agreement (as communicated to Licensee by Outsourcery) and for a period of 3 years thereafter, each party agrees to keep confidential and not disclose to any third party, and to use only for purposes of performing or otherwise permitted under these License Terms, all proprietary or confidential information disclosed or made available by the other party pursuant to these License Terms that, if disclosed in written or tangible form, is labeled confidential or proprietary, or if disclosed in oral, or intangible form, is identified as confidential or proprietary at the time of disclosure and confirmed in writing as confidential within 30 business days after disclosure ("**Confidential Information**"). In the case of Outsourcery, all proprietary or confidential information relating to the Product disclosed or made available by Outsourcery and/or Ensim, including without limitation the Product and technical information about the Product, and these License Terms, shall be deemed Confidential Information of Outsourcery, whether or not so labeled or identified. The receiving party shall protect the Confidential Information using measures similar to those it takes to protect its own confidential and proprietary information of a similar nature but not less than reasonable measures. The Confidential Information shall only be disclosed to the receiving party's employees and contractors who are bound by obligations of confidentiality and non-use no less restrictive than these License Terms.

8.2 Exceptions. These obligations shall not apply to information which is publicly available other than through unauthorized disclosure by the receiving party, is known by the receiving party at the time of disclosure as evidenced in writing, is rightfully obtained by the receiving party from a third party who has the right to disclose it, or which is required by law, government order or request to be disclosed by the receiving party (in which case such party must use its best efforts to give the disclosing party notice of the requirement so that disclosure can be contested by the disclosing party and receiving party agrees to seek to obtain (or to cooperate with disclosing party in obtaining) confidential treatment of such information.

9. Export. The parties will comply with all applicable laws, rules and regulations, including export laws, in its performance under these License Terms. In particular, Licensee acknowledges and agrees that the Products and other materials provided by Outsourcery by Ensim and subsequently provided by Outsourcery to Licensee are subject to regulation by U.S. Government agencies and other governmental authorities, and Licensee agrees not to directly or indirectly export, re-export or import any such materials without first obtaining all required licenses and permissions.

10. Termination. The licence granted to the Licensee pursuant to section 2.1 shall terminate automatically upon the termination of the whole or the relevant part of Reseller Agreement in accordance with its terms or, in the event that a Licensee is not party to a Reseller Agreement, upon termination of the whole or the relevant part of such other agreement between the Licensee and Outsourcery pursuant to which Licensee is granted access to the Products. In respect of any Licensee that is the party to a Reseller Agreement, the provisions of clause 16 (Effects of Termination) of the relevant Reseller Agreement shall apply upon the termination of the licence granted to such Licensee pursuant to section 2.1.

Signed for and on behalf of the parties by their duly authorised representatives.

For and on behalf of (the Reseller)

Name (print).....Position.....

Signature.....Date.....

For and on behalf of Outsourcery Hosting Limited

Name (print).....Position.....
.....

Signature.....Date.....
.....