

1. PARTIES AND INTRODUCTION

1.1 **Parties.** This Maintenance and Support Agreement (**Agreement**) is entered into between

Matrix42 AG

Incorporated and registered in Frankfurt, Germany
with company number HRB 100049
whose registered office is at Elbinger Strasse 7, 60487 Frankfurt, Germany

(Matrix42)

And

_____ [full legal name]
incorporated and registered in the State/Commonwealth of _____, United States
whose principal office address is

(Customer).

1.2 **Introduction.** Matrix42 has licensed certain software products to the Customer under the terms of the License Agreement (defined below) and the Customer wishes to use Matrix42's support and maintenance services in its business operations. Matrix42 has agreed to provide and the Customer has agreed to take and pay for Matrix42's services subject to the terms and conditions of this Agreement.

2. INTERPRETATION

2.1 **Definitions.** The definitions in this clause apply in this Agreement:

Business Day: any day which is not a Saturday, Sunday or U.S. Federal public holiday;

Confidential Information: information that is proprietary or confidential, including trade secrets, and is either clearly labelled as such or which ought reasonably to be considered proprietary or confidential;

Customer Contacts: has the meaning given in clause 6.4(b);

Data Controller: has the meaning given in the United States Federal Trade Commission's Fair Information Practice Principles (FIPPs);

Data Processor: has the meaning given in the Fair Information Practice Principles (FIPPs);

Deliverables: any Documentation, Software, know-how or other works created or supplied by Matrix42 (whether alone or jointly) in the course of providing the Services;

Documentation: has the same meaning as in the License Agreement;

Effective Date: _____, 201_, the effective date of this Agreement;

Fees: the fees payable for the Services under this Agreement, as set out in the Offer, as the same may be amended from time to time in accordance with the provisions of clause 8.9 together with such other charges as may be payable pursuant to this Agreement;

Initial Term: the period of 12 months starting on the Effective Date;

Intellectual Property Rights: means rights in and/or to any patents, trade secrets, trademarks, service marks, rights (registered or unregistered) in any designs, applications for any of the foregoing, trade or business names, copyright (including rights in computer software) and topography rights, know-how, secret formulae and processes, lists of suppliers and customers and other proprietary knowledge and information, internet domain names, rights protecting goodwill and reputation, database rights (including rights of extraction) and all rights and forms of protection of a similar nature to any of the foregoing or having equivalent effect anywhere in the world and all rights under licenses and consents in respect of any of the rights and forms of protection mentioned in this definition;

License Agreement: the Software License Agreement of _____ made between Matrix42 and Customer;

Manager: the person appointed by the Customer from time to time in order to fulfil the role described in clause 6.4;

Modification: has the same meaning as in the License Agreement;

Offer: the offer made by Matrix42 to Customer in respect of the provision of the Services pursuant to this Agreement, which was dated on the date set out in Schedule 1;

Personal Data: has the meaning given in the Fair Information Practice Principles (FIPPs);

Renewal Period: has the meaning given in clause 17.1;

Services: includes (as appropriate) the Support Service, the Updating Service and other services agreed in writing between the parties from time to time;

Software: has the same meaning as in the License Agreement;

Support Hours: 7.30 am to 4.00 pm Monday to Friday (United Kingdom time). The inquiries must be directed to the support department of Matrix42 at: **+49 (0) 6102 816 140** or helpdesk@matrix42.com;

Support Manager: the person appointed by Matrix42 from time to time in order to fulfil the role described in clause 7.1;

Support Service: the support service as set out in the Offer as further described in paragraph 2 of Schedule 1.

Support Staff: those individuals who perform Matrix42's obligations under this Agreement including (where the context permits) the Support Manager;

Updating Service: the updating service to be supplied by Matrix42 to the Customer as further described in clause 3.4;

2.2 Interpretation. The rules of interpretation in this clause apply in this Agreement:

- (a) clause, schedule and paragraph headings shall not affect the interpretation of this Agreement;
- (b) a person includes an individual, corporate or unincorporated body (whether or not having separate legal personality), a limited liability company, a partnership, whether limited or otherwise, and its successors or permitted assigns;
- (c) a reference to a company shall include any company, corporation, a limited liability company, a partnership, whether limited or otherwise, or other body corporate, wherever and however incorporated or established;

- (d) words in the singular shall include the plural and vice versa;
- (e) a reference to one gender shall include a reference to the other genders;
- (f) a reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it;
- (g) a reference to writing or written includes faxes but not e-mail; and
- (h) references to clauses and schedules are to the clauses and schedules of this Agreement; references to paragraphs are to paragraphs of the relevant schedule to this Agreement.

2.3 **Schedules.** Each of the schedules shall have effect as if set out in this Agreement.

2.4 **Conflict.** In the case of conflict or ambiguity between any provision contained in the body of this Agreement and any provision contained in the schedules, the provision in the body of this Agreement shall take precedence.

3. OFFER VALIDITY AND SERVICES

3.1 **Offer validity.** The Customer acknowledges and agrees that the Offer shall be valid for the period set out in the Offer or, if no such period is set out, for a period of four weeks starting on the date of the Offer.

3.2 **Services.** Matrix42 shall supply, and the Customer shall take and pay for, the Services.

3.3 **Support Service.** The Support Service shall comprise:

- (a) a self-service portal;
- (b) a telephone help desk to provide first-line technical support to users of the Software; and
- (c) remote diagnosis and, where possible, correction of faults in the Software of

Matrix42, all as more particularly defined in paragraph 2 of Schedule 1.

3.4 **Updating Service.** Matrix42 shall:

- (a) issue Modifications of the Software as and when required in the absolute discretion of Matrix42;
- (b) issue all revisions to the Documentation which are necessary in order to reflect any Modification acquired by the Customer, and for the avoidance of doubt, the cost of the Updating Service is included in the Fees payable for the Support Service.

3.5 **No obligation.** Matrix42 shall have no obligation to provide the Services where:

- (a) faults arise from:
 - (i) misuse, incorrect use of or damage to the Software from whatever cause (other than any breach of this Agreement by Matrix42), including failure or fluctuation of electrical power;
 - (ii) failure to maintain the necessary environmental conditions for use of the Software;
 - (iii) any act or omission of the Customer or any third parties;
 - (iv) a failure to observe installation instructions in relation to the Software;

- (v) use of the Software in combination with any equipment or software not provided by Matrix42 or not designated or approved by Matrix42 for use with the Software;
 - (vi) any fault in any equipment or software other than the Software;
 - (vii) relocation of the Software by any person other than Matrix42 or a person acting in accordance with Matrix42's instructions;
 - (viii) any breach of the Customer's obligations under this Agreement howsoever arising or having the Software maintained by a third party;
 - (ix) any modification of the Software not authorized by Matrix42; or
 - (x) operator error; and
- (b) the version of the Software in use is older than the version preceding the current version or any version which is more than 18 months older than the current version.

4. ADDITIONAL SERVICES

4.1 **Purchase of additional services.** If the Customer wishes to purchase services that are not covered under this Agreement, then the Customer shall notify Matrix42 in writing. Matrix42 shall evaluate such request and, if it agrees to the request, the parties shall document the purchase of additional services through a written amendment to this Agreement.

5. MATRIX42'S OBLIGATIONS

5.1 **Performance of the Services.** Matrix42 undertakes that the Services will be performed with reasonable skill and care. If Matrix42 breaches this clause 5.1, Matrix42 will, at its expense, use commercially reasonable endeavors to correct any such breach promptly. Such correction constitutes the Customer's sole and exclusive remedy for any breach of this clause 5.1. Notwithstanding the foregoing, Matrix42:

(a) DOES NOT WARRANT THAT THE SERVICES, DELIVERABLES AND/OR THE INFORMATION OBTAINED BY THE CUSTOMER THROUGH THE SERVICES WILL MEET THE CUSTOMER'S REQUIREMENTS;

(b) EXCEPT AS EXPRESSLY SET FORTH HEREIN, EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THE SERVICES, DELIVERABLES OR ANY OTHER SERVICES HEREUNDER AND THE INTELLECTUAL PROPERTY INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE AND NO REPRESENTATIVE OF MATRIX42 IS AUTHORIZED TO GIVE ANY ADDITIONAL WARRANTY; and

(c) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services and Deliverables may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

5.2 Excused breach. Matrix42 shall be excused from, and not liable for, any breach of clause 5.1 to the extent that any non-conformance of the Services with the Documentation which is caused by use of the Services contrary to Matrix42's instructions or the terms of this Agreement, or modification or alteration of the Services by any party other than Matrix42 or Matrix42's duly authorized personnel, contractors or agents.

5.3 Similar documentation, products and services. This Agreement shall not prevent Matrix42 from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this Agreement.

5.4 Customer Contacts. Matrix42 shall provide the Service only at the request of the Customer Contacts or the Manager.

6. CUSTOMER'S OBLIGATIONS

6.1 Customer's Obligations. The Customer shall:

- (a) provide Matrix42 with:
 - (i) all necessary co-operation in relation to this Agreement; and
 - (ii) all necessary access to such information as may be required by Matrix42;
- (b) comply with all applicable laws and regulations with respect to its activities under this Agreement;
- (c) carry out all other Customer responsibilities set out in this Agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, Matrix42 may adjust any agreed timetable or delivery schedule as reasonably necessary; and
- (d) permit Matrix42 to access its records, systems and premises in order to audit its use of the Services to establish whether the terms of this Agreement are being complied with. Such audit may be conducted no more than once in any three month period, at Matrix42's expense, (unless an audit is conducted due to a breach of any term of this Agreement by the Customer in which case it shall not be so numerically restricted), and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially and materially interfere with the Customer's normal conduct of business.

6.2 Provision of access. The Customer shall provide Matrix42, the Support Manager and all other persons duly authorized by Matrix42 with full, safe and uninterrupted access (including remote access) to the Customer's premises, systems, facilities and the Software as may reasonably be required for the purpose of performing the Services, such access, except in the case of emergency or agreed out-of-hours downtime, to be within the Support Hours.

6.3 Maintenance of environmental conditions. The Customer shall ensure that appropriate environmental conditions are maintained for the Software and shall take all reasonable steps to ensure that the Software is operated in a proper manner by the Customer's employees.

6.4 Nomination of Customer Contacts. The Customer shall nominate:

- (a) a Manager to be available to liaise with, and respond to queries from, the Support Manager; and
- (b) a maximum of 2 employees who are sufficiently qualified in technical terms to act as contact persons for Matrix42 (Customer Contacts).

6.5 Customer support obligations. The Customer shall:

- (a) report faults promptly to Matrix42 in writing in a comprehensible and detailed form, providing all relevant information for the detection and analysis of such faults by e-mail or via the self-service portal, including the manifestation and effects of the defect and the system environment (for example, the computer system, operating system and open applications);
- (b) keep full backup copies of all of its data; and
- (c) use the latest Modification provided to it.

7. SUPPORT MANAGER

7.1 Support Manager. Matrix42 shall appoint a Support Manager, who shall be responsible for the coordination of all matters relating to the Services. All communications, documentation and materials relating to this Agreement shall be sent as appropriate by the Support Manager to the Manager. Each party shall notify the other in writing promptly if there is any proposed change to those appointments.

8. CHARGES AND PAYMENT

8.1 Fees for Services. The Customer shall pay the Fees to Matrix42 in accordance with this clause 8.

8.2 Fees for New Versions. The Fees payable in respect of the licensing of any new versions of the Software pursuant to this Agreement to the Customer (**New Version**) shall be agreed in writing between the parties before supply by Matrix42, and shall be charged and invoiced to the Customer by Matrix42 (and paid by the Customer) following acceptance by Matrix42 of the Customer's written order for such New Version.

8.3 Faults outside of the scope of this Agreement. The Customer shall pay all costs (at Matrix42's then prevailing rates) and expenses incurred by Matrix42 for work carried out by Matrix42 in connection with any fault which is not covered by this Agreement.

8.4 Expenses. The Customer shall reimburse any travel or subsistence expenses incurred by Matrix42 where such expenses are incurred wholly and exclusively for the purpose of providing on-site support as part of the Services, provided that any request for reimbursement is in the form of a proper invoice accompanied by appropriate receipts.

8.5 Invoicing. Matrix42 shall invoice the Customer:

- (a) on the Effective Date for the Fees payable in respect of the Initial Term; and
- (b) subject to clause 17.1, on the first day of each Renewal Period for the Fees payable in respect of the next Renewal Period,

and the Customer shall pay each invoice within 30 days of the date of such invoice.

8.6 Interest. Interest shall accrue on such due amounts at an annual rate equal to 5% over the then current base lending rate of Barclays Bank PLC at the date the relevant invoice was issued, commencing on the due date and continuing until fully paid, whether before or after judgment.

8.7 Non-payment. If Matrix42 has not received payment within 30 days of the due date, and without prejudice to any other rights and remedies of Matrix42, Matrix42 may, without liability to the Customer, disable the Customer's access to the Services and Matrix42 shall be under no obligation to provide the Services or otherwise perform under this Agreement while the invoice(s) concerned remain unpaid.

8.8 Amounts. All amounts and fees stated or referred to in this Agreement:

- (a) shall be payable in United States Dollars (US \$);
- (b) are, subject to clause 16.4, non-cancellable and non-refundable;
- (c) are exclusive of value added tax, which shall be added to Matrix42's invoice(s) at the appropriate rate; and
- (d) are in addition to, and not in lieu of, any additional fees, assessments, levies or governmental charges assessed against the transactions contemplated herein. With the exception of taxes imposed on Matrix42's net income, ad valorem and sales tax as provided by applicable law, all such taxes shall be the Customer's responsibility. The Customer shall pay any such taxes, which Matrix42 may be required to collect and remit, upon invoice.

8.9 Increases in the Fees. Matrix42 shall be entitled to increase the Fees at the start of each Renewal Period upon not less than 90 days' prior notice to the Customer and clause 8 shall be deemed to have been amended accordingly, provided that Matrix42 may not increase the Fees by more than 5% unless Matrix42's labor costs have risen by more than 5% during the immediately preceding 12 months.

9. PROPRIETARY RIGHTS AND LICENSE

9.1 Intellectual Property Rights. All Intellectual Property Rights in the Deliverables shall belong to Matrix42, and the Customer shall have no rights in respect of any of the Deliverables except as expressly granted under this Agreement. The Customer shall do or procure to be done all such further acts and things and sign or procure the signature of all such other documents as Matrix42 may from time to time require for the purpose of giving Matrix42 the full benefit of the provisions of this clause 9.

9.2 Applicability of License Agreement. The license set out in clause 4 of the License Agreement shall apply in respect of the Deliverables (amended as necessary to relate to the Deliverables).

10. NON-SOLICITATION

10.1 Non Solicitation. The Customer shall not, for the duration of this Agreement, and for a period of two (2) years following expiration or termination for any reason, directly or indirectly induce or attempt to induce any employee or independent contractor of Matrix42 who has been engaged in the provision, receipt, review or management of the Services or otherwise in connection with this Agreement to leave the employment of or sever the contractor relationship with Matrix42.

11. RISK

11.1 Risk. Risk in any media bearing any Deliverables or other information that may from time to time be supplied by Matrix42 to the Customer shall pass to the Customer on delivery to the Customer.

12. CONFIDENTIALITY

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

- (a) is or becomes publicly known other than through any breach of this Agreement by the receiving party;
- (b) was in the other party's lawful possession before the disclosure;
- (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure;
- (d) is independently developed by the receiving party, which independent development can be shown by written evidence; or
- (e) is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.

12.2 Confidentiality obligations. Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this Agreement.

12.3 Steps to ensure confidentiality. Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement.

12.4 Matrix42 Confidential Information. The Customer acknowledges that details of the Services and Deliverables, and the results of any performance tests of the Services, constitute Matrix42's Confidential Information.

12.5 Relief. Each party agrees that if a court of competent jurisdiction determines it has breached, or attempted or threatened to breach, any of its confidentiality obligations to the disclosing party or the

disclosing party's proprietary rights, the disclosing party shall be entitled to obtain appropriate injunctive relief and other available measures restraining further, attempted or threatened breaches of such obligations.

12.6 **Survival.** This clause 12 shall survive termination or expiry of this Agreement, however arising.

13. DATA PROTECTION

13.1 **Data Protection.** The parties intend that the Customer shall be the Data Controller and Matrix42 shall be a Data Processor in respect of any Personal Data processed by Matrix42 on behalf of the Customer in connection with this Agreement and in any such case:

- (a) the Customer shall ensure that the Customer is entitled to transfer the relevant Personal Data to Matrix42 so that Matrix42 may lawfully use, process and transfer the Personal Data in accordance with this Agreement on the Customer's behalf;
- (b) the Customer shall ensure that the relevant third parties have been informed of, and have given their consent to, such use, processing, and transfer as required by the Fair Information Practice Principles (FIPPs) and all other applicable data protection legislation;
- (c) Matrix42 shall process the Personal Data only in accordance with the terms of this Agreement and any lawful instructions reasonably given by the Customer from time to time; and
- (d) each party shall take appropriate technical and organizational measures against unauthorized or unlawful processing of the Personal Data or its accidental loss, destruction or damage.

14. EXPORT

14.1 **Export.** Neither party shall export, directly or indirectly, any technical data acquired from the other party under this Agreement (or any products, including software, incorporating any such data) in breach of any applicable laws or regulations (**Export Control Laws**), including United States export laws and regulations, to any country for which the government or any agency thereof at the time of export requires an export license or other governmental approval without first obtaining such license or approval.

14.2 **Undertakings.** Each party undertakes:

- (a) contractually to oblige any third party to whom it discloses or transfers any such data or products to make an undertaking to it in similar terms to the one set out above; and
- (b) if requested, to provide the other party with any reasonable assistance, at the reasonable cost of the other party, to enable it to perform any activity required by any competent government or agency in any relevant jurisdiction for the purpose of compliance with any Export Control Laws.

15. INDEMNITY

15.1 **Customer indemnity.** The Customer shall defend, indemnify and hold harmless Matrix42, and its officers, directors, shareholders, employees, agents, heirs and sub-contractors, against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with any third party claim resulting from (i) the Customer's use of the Services and/or Deliverables other than in accordance with

this Agreement, (ii) death, bodily injury, damage to tangible personal property caused by the Customer in connection with this Agreement and (iii) the violation of any third-party's Intellectual Property Rights arising in connection with this Agreement where such violation arises from Matrix42's reliance on, or use of, tools, instructions, specifications, or other materials provided by the Customer, or where the Customer modifies, adds to, or combines with any technology or data, any such intellectual property or (iv) any failure to obtain Intellectual Property Rights or export licenses necessary to permit Matrix42 to perform hereunder, provided that:

- (a) the Customer is given prompt notice of any relevant third party claim;
- (b) Matrix42 does not make any admission of liability, agreement or compromise in relation to any relevant third party claim without the prior written consent of Customer;
- (c) Matrix42 provides reasonable co-operation to the Customer in the defense and settlement of any relevant third party claim, at the Customer's expense; and
- (d) the Customer is given sole authority to defend or settle the claim.

15.2 Matrix42 indemnity. Matrix42 shall defend the Customer against any claim that the Customer's receipt or use of the Services or Deliverables in strict accordance with this Agreement infringes any Intellectual Property Rights (**Third Party IPR Claim**) and shall indemnify the Customer for any amounts finally awarded against the Customer in judgment or agreed in settlement of a Third Party IPR Claim, provided that:

- (a) Matrix42 is given prompt notice of a Third Party IPR Claim;
- (b) the Customer does not make any admission of liability, agreement or compromise in relation to a Third Party IPR Claim without the prior written consent of Matrix42;
- (c) the Customer provides reasonable co-operation to Matrix42 in the defense and settlement of a Third Party IPR Claim, at Matrix42's expense; and
- (d) Matrix42 is given sole authority to defend or settle the Third Party IPR Claim.

15.3 Other remedies and termination. In the defense or settlement of any Third Party IPR Claim, Matrix42 may procure the right for the Customer to continue using the Services or Deliverables, replace or modify the Services or Deliverables so that they become non-infringing or, if such remedies are not reasonably available, terminate this Agreement on not less than 2 Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.

15.4 Limitation on liability. In no event shall Matrix42, its directors, officers, employees, agents and sub-contractors be liable to the Customer to the extent that the Third Party IPR Claim is based on:

- (a) a modification of the Services or Deliverables by anyone other than Matrix42; or
- (b) the Customer's use of the Services or Deliverables in a manner contrary to the instructions given to the Customer by Matrix42 or otherwise contrary to any term of this Agreement; or
- (c) the Customer's use of the Services or Deliverables after notice of the alleged or actual infringement from Matrix42 or any appropriate authority.

15.5 Sole and exclusive remedies. The foregoing states the Customer's sole and exclusive rights and remedies, and Matrix42's (including Matrix42's directors, officers, employees', agents' and sub-contractors') entire obligations and liability, for any Third Party IPR Claim.

16. LIMITATION OF LIABILITY

16.1 **Scope of limitations and exclusions of liability.** This clause 16 sets out the entire financial liability of Matrix42 (including any liability for the acts or omissions of its directors, officers, employees, agents and subcontractors) to the Customer:

- (a) arising under or in connection with this Agreement;
- (b) in respect of any use made by the Customer of the Services and Deliverables or any part of them; and
- (c) in respect of any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.

16.2 **Financial Liability.** Except as expressly and specifically provided in this Agreement:

(a) the Customer assumes sole responsibility for results obtained from the use of the Services and the Deliverables by the Customer, and for conclusions drawn from such use. Matrix42 shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Matrix42 by the Customer in connection with the Services or Deliverables, or any actions taken by Matrix42 at the Customer's direction;

(b) ALL WARRANTIES, REPRESENTATIONS, CONDITIONS AND ALL OTHER TERMS OF ANY KIND WHATSOEVER IMPLIED BY STATUTE OR COMMON LAW ARE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EXCLUDED FROM THIS AGREEMENT AND THE SERVICES AND THE DELIVERABLES ARE PROVIDED TO THE CUSTOMER ON AN "AS IS" BASIS.

16.3 **Carve out from limitation of liability.** Nothing in this Agreement excludes or limits the liability of Matrix42 for:

- (a) death or personal injury caused by Matrix42's gross negligence;
- (b) fraud or fraudulent misrepresentation; or
- (c) any liability that cannot, by law, be excluded or limited.

16.4 **Exclusions of liability and liability cap.** Subject to clause 16.2 and clause 16.3:

(a) MATRIX42 SHALL NOT BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE FOR ANY LOSS OF PROFITS, LOSS OF BUSINESS, DEPLETION OF GOODWILL, LOSS OF ANTICIPATED SAVINGS, WASTED EXPENDITURE AND/OR SIMILAR LOSSES OR LOSS OR CORRUPTION OF DATA OR INFORMATION, OR FOR ANY SPECIAL, INDIRECT, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES OR LOSS HOWEVER ARISING, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES;

(b) SUBJECT TO CLAUSE 16.4(C), MATRIX42'S TOTAL AGGREGATE LIABILITY UNDER OR IN CONNECTION WITH THIS AGREEMENT, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, SHALL BE LIMITED TO THE TOTAL FEES PAID; and

(c) MATRIX42'S TOTAL AGGREGATE LIABILITY PURSUANT TO CLAUSE 15.2 SHALL BE LIMITED TO US \$1 MILLION.

16.5 **Time limit.** Subject to clause 16.3, the Customer may only bring a claim against Matrix42 (whether in contract, tort (including any type of negligence) or otherwise) within 12 months of the date upon which the relevant cause of action arose.

17. TERM AND TERMINATION

17.1 **Term.** This Agreement shall, unless it expires or is otherwise terminated as provided in this Agreement, commence on the Effective Date and shall continue for the Initial Term and, thereafter, this Agreement shall be automatically renewed for successive periods of 12 months (each a **Renewal Period**), unless either party notifies the other party of termination, in writing, at least three (3) months before the end of the Initial Term or any Renewal Period, in which case this Agreement shall terminate upon the expiry of the applicable Initial Term or Renewal Period and the effective term of this Agreement shall constitute the **Term**.

17.2 **Termination.** Without prejudice to any rights that have accrued under this Agreement or any of the right or remedy available to it, either party may terminate this Agreement with immediate effect by giving written notice to the other party, which notice shall specify the exact date of termination, if:

(a) the other party fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;

(b) the other party commits a material breach of this Agreement (other than failure to pay any amounts due under this Agreement) and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;

(c) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of Title 11 of the United States Code, the Bankruptcy Reform Act of 1978, or the bankruptcy laws of any other nation;

(d) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

(e) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

(f) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company);

(g) the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;

(h) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;

(i) the other party (being an individual) is the subject of a bankruptcy petition or order;

(j) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress,

execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 30 days;

(k) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 17.2(c) to clause 17.2(j) (inclusive); or

(l) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

17.3 Accrued Rights. Termination by either party in accordance with the rights contained in this clause 17 shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination.

17.4 Consequences of termination. Subject to clause 17.5, on termination of this Agreement for any reason:

(a) all rights granted to the Customer under this Agreement shall cease;

(b) the Customer shall cease all activities authorized by this Agreement;

(c) the Customer shall immediately pay to Matrix42 any sums due to Matrix42 under this Agreement; and

(d) the Customer shall immediately destroy or return to Matrix42 (at Matrix42's option) all copies of the Documentation and any Matrix42 Confidential Information then in its possession, custody or control and, in the case of destruction, certify to Matrix42 in writing that it has done so.

17.5 Survival. Any provision of this Agreement which expressly or by implication is intended to come into or continue in force on or after termination of this Agreement including, but not limited to, clause 2, clause 12 and clauses 15 - 28 inclusive shall remain in full force and effect.

17.6 Termination or Expiry of the License Agreement. This Agreement shall automatically terminate on termination or expiry of the License Agreement, but expiry or any termination of this Agreement (however caused) shall have no effect on the licenses granted under the License Agreement.

18. WAIVER

18.1 Waiver. No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

19. REMEDIES

19.1 Remedies. Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are cumulative and in addition to, and not exclusive of, any rights or remedies provided by law. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors, assigns and representatives.

20. ENTIRE AGREEMENT

20.1 **Entire Agreement.** This Agreement contains the whole agreement between the parties relating to the subject matter hereof and supersedes and extinguishes all prior agreements, arrangements and understandings between the parties relating to that subject matter.

20.2 **Non-reliance.** Each party acknowledges that, in entering into this Agreement, it does not rely on any statement, representation, assurance or warranty (whether it was made negligently or innocently) of any person (whether a party to this Agreement or not) (**Representation**) other than as expressly set out in this Agreement.

20.3 **Rights and remedies.** Each party agrees that the only rights and remedies available to it arising out of or in connection with a Representation shall be for breach of contract.

20.4 **Liability for fraud.** Nothing in this clause 20 shall limit or exclude any liability for fraud.

20.5 **Section headings.** All section and clause headings are inserted only for convenience of reference and are not to be considered in the interpretation or construction of any provision of this Agreement.

20.6 **Interpretation.** In the event any claim is made by any party relating to any conflict, omission or ambiguity in this Agreement, no presumption or burden of proof or persuasion shall be implied by virtue of the fact that this Agreement was prepared by or at the request of a particular party or that party's counsel.

21. VARIATION

21.1 **Variation.** No variation or amendment of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorized representatives).

22. SEVERANCE

22.1 **Severance.** If any court or competent authority finds that any provision of this Agreement (or part of any provision) is invalid, unenforceable or illegal, that provision or part-provision shall, to the extent required, be deemed to be deleted and the validity and enforceability of the other provisions of this Agreement shall not be affected.

22.2 **Modification.** If any invalid, unenforceable or illegal provision of this Agreement would be valid, enforceable or legal if some part of it were deleted, the parties shall negotiate in good faith to amend such provision such that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the parties' original commercial intention.

23. COUNTERPARTS

23.1 **Counterparts.** This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this Agreement, but all the counterparts

shall together constitute the one agreement.

24. NO THIRD-PARTY RIGHTS

24.1 No third party rights. None of the provisions of this Agreement shall be for the benefit of or enforceable by any person or entity not a party hereto.

25. ASSIGNMENT

25.1 Assignment by Customer. The Customer shall not, without the prior written consent of Matrix42, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement. Any assignment without such written consent shall be void.

25.2 Assignment by Matrix42. Matrix42 may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.

26. NO PARTNERSHIP OR AGENCY

26.1 No partnership or agency. Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership, employer-employee relationship or joint venture between any of the parties, constitute any party the agent of another party, or authorize any party to make or enter into any commitments for or on behalf of any other party.

27. FORCE MAJEURE

27.1 Force Majeure. Neither party shall in any circumstances be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control and in such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations, provided that if the period of delay or non-performance continues for 3 months or more, the party not affected may terminate this Agreement by giving 14 days' written notice to the affected party.

28. NOTICES

28.1 Notices. Any notice given to a party under or in connection with this Agreement shall be in writing and shall be delivered personally, or sent by pre-paid first-class U.S. mail or recorded delivery or by commercial courier or nationally-recognized overnight carrier, to each party required to receive the notice as set out below:

- (a) Matrix42 AG – Contact Address: Global Service, Elbinger Strasse 7, 60487 Frankfurt, Germany
- (b) Customer – Contact Address:

or as otherwise specified by the relevant party by notice in writing to the other party.

28.2 Receipt of notices. Any notice shall be deemed to have been duly received:

- (a) if delivered personally, when left at the address and for the contact referred to in this clause;

(b) if sent by pre-paid first-class U.S. mail or recorded delivery, at 9.00 am on the second Business Day; or

(c) if delivered by commercial courier or overnight carrier, on the date and at the time that the delivery receipt is signed.

28.3 **E-mail.** A notice required to be given under this Agreement shall not be validly given if sent by e-mail.

28.4 **Exclusion.** The provisions of this clause 28 shall not apply to the service of any proceedings or other documents in any legal action.

29. GOVERNING LAW AND JURISDICTION

29.1 **Governing law.** This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of the United States and the U.S. State/Commonwealth of Georgia, without regard to any conflicts of laws provisions.

29.2 **Jurisdiction.** The parties irrevocably agree that the state and federal courts sitting in or encompassing Fulton County, State of Georgia shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

26.3 **Attorneys' fees.** In the event that any dispute between the parties should result in litigation, mediation, arbitration or any other legal or resolution proceedings, the prevailing party in that dispute shall be entitled to recover from the other party all reasonable fees, costs and expenses of enforcing any right of the prevailing party, including without limitation, reasonable attorneys' fees and expenses.

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

Schedule 1 Offer

1. Offer Date:

Please find detailed Offer under the Offer number:

2. Support

Services Description

1. A self-service portal including the current version(s) of the Software, documents, patches, up-to-date information and tools for Customer's to download. Matrix 42 shall endeavor to ensure that the self-service portal is available 24 hours a day, 7 days a week and guarantees an annual average availability of the self-service portal of 98%. Matrix42 shall notify Customer of the password and web address of the self-service portal in writing.
2. A telephone help desk to provide (during the Support Hours) first-line technical support to users of the Software, more specifically to assist the Customer with general enquiries in connection with the Software; and
3. Remote diagnosis and, where possible, correction of faults using the software management software, more specifically to correct all errors, bugs and failures of the Software to comply with any warranty or term of the Agreement (as if such warranty or term continued beyond its expiry date), deliver the resulting Maintenance Release to the Customer, install it on the Customer's equipment and hand it over to the Customer for testing.

MATRIX42:

MATRIX42 AG, Elbinger Strasse 7, 60487 Frankfurt, Germany

CUSTOMER:

Name (in block capitals):	
Role/title:	
Place, date:	
Signature:	

Name (in block capitals):	
Role/title:	
Place, date:	
Signature:	

MATRIX42 AG

Elbinger Strasse 7

60487 Frankfurt

Germany

Tel.: +49 (0)6102 - 816-0

Fax: +49 (0)6102 - 816-100

[E-Mail: info@matrix42.com](mailto:info@matrix42.com)

