

SaaS Software License, Support and Services Agreement

SOFTWARE LICENSE, SUPPORT AND SERVICES AGREEMENT FOR INSTALLATION ON TNP'S AZURE™ SAAS SERVICE OF NAV SOFTWARE, OTHER THIRD PARTY SOFTWARE AND TNP'S SOFTWARE UNDER PERIODIC SUBSCRIPTION LICENCES

AGREEMENT

As a result of you ("Customer") and **THE NAV PEOPLE** entity listed on the applicable Order Form ("TNP") signing or otherwise accepting an Order Form in connection with TNP Services, you agree that these are the terms and conditions (referred to in the Order Form) upon which TNP shall supply those services to you. In the absence of any other written and signed agreement intended by the parties to be the sole agreement with respect to TNP Services, this agreement shall apply to the exclusion of any other terms and conditions. TNP reserves the right to amend this agreement at any time and any continued use of the TNP Services after the date the new agreement is posted will be subject to the terms of the new agreement

1. DEFINITIONS

1.1 In this agreement and any Order Form, unless the context otherwise requires, the following words and expressions mean

"Affiliate"	any person, partnership, joint venture, corporation, subsidiary, or other form of enterprise, controlling, controlled or managed by, or under common control or management with, the Customer or TNP
"Agreed Form"	the form and terms of a document agreed, entered into or accepted (including without limitation by any process for acceptance used by the Customer electronically or on any TNP website) for the purposes of identification in connection with this agreement
"Commencement Date"	the date upon which TNP commences providing the applicable Services to the Customer
"Confidential Information"	non-public information that a Disclosing Party designates as being confidential to a Receiving Party or which, under the circumstances surrounding disclosure ought to be treated as confidential by the Receiving Party and includes, without limitation, information in tangible or intangible form relating to and/or including released or unreleased Disclosing Party software or hardware products, the marketing or promotion of any Disclosing Party software or hardware or any products, Disclosing Party's business policies, plans or practices, its personnel, customers or suppliers and information received from others that Disclosing Party is obligated to treat as confidential
"Customer Contact(s)"	the Customer's information technology or other suitably qualified, competent and trained staff member(s) or contractor(s) nominated to manage the Customer's interests and obligations under this agreement
"Customer Content"	any information, data, editorial content or intellectual property in any form, including without limitation, the Customer's own corporate and product branding, trademarks, service marks or other pre-existing Intellectual Property rights owned by or licensed to the Customer provided to TNP by the Customer for the development of or integration into or use with or transmission through the Software, Third Party Software or SaaS Service under this agreement
"Customer Data"	information of the Customer posted or submitted to the SaaS Service by a Customer User
"Customer Personal Data"	personal data, including sensitive personal data, relating to employees, contractors and customers of the Customer posted or submitted to the SaaS Service by the Customer
"Customer User"	such number of employees or contractors of the Customer who have satisfactorily completed training, have an individualised login identification and password and are authorised by TNP in any Order Form to have access to, use of and enter data using the Software and/or Third Party Software on the SaaS Service
"Database"	any database that TNP has spent, or continues to spend, material time and resources on the selection and arrangement of data as an intellectual creation on any website or computer system or network used in connection with the Software excluding, for the avoidance of doubt, any database created solely by operation of any third party software

Software License, Support and Services Agreement

"Disclosing Party"	a party to these terms and its Affiliates who disclose Confidential Information to another party
"Enhancement(s)"	an updated version of the Software or, if applicable, Third Party Software released generally to its commercial users which may contain enhanced functionality and/or permanent fixes but shall not include a New Release
"Intellectual Property"	all intellectual property rights protected by law throughout the world whether registered or not, including without limitation all copyrights, copyright registrations and applications, trademark rights, registrations and applications, patent rights (including the right to apply therefor), patent applications (including the right to claim priority under applicable international conventions) and all patents issuing thereon, industrial property rights, inventions (whether or not patentable), together with all utility and design, know-how, specifications, trade names, mask-work rights, trade secrets, moral rights, author's rights, algorithms, rights in packaging, goodwill, corporate, trade and product branding and other intellectual and industrial property rights, as may exist now and hereafter come into existence, and all renewals and extensions thereof, regardless of state, country or legal jurisdiction
"Licence Limit(s)"	the maximum number of concurrent Customer Users that may use the Software and Third Party Software on the SaaS Service as set out in the Order Form
"New Release"	any new version of the Software which may include substantial new functionality that may be made available by TNP to the Customer from time to time
"Order Form"	any electronic or hard copy document in Agreed Form setting out from time to time such matters as the Software, Third Party Software, the Commencement Date, Subscription Periods, Subscription Fees and any additional Services to be provided by TNP
"Project Document(s)"	any documentation that the parties agree will be the output from project meetings conducted under and approved by the Customer pursuant to clause 3 which, without limitation, may include any Order Form, Third Party Software or Software specification as these may be amended from time to time by agreement
"Project Manager"	a suitably skilled representative of TNP nominated in writing to the Customer by TNP from time to time to manage the day to day performance of TNP's obligations under this agreement or any Order Form
"Receiving Party"	a party to these terms and its Affiliates who receive Confidential Information from another party
"SaaS Service(s)"	software hosting and related services that TNP is to provide or procure for the Customer, including the Azure™ service or equivalent, for the Customer to access and use the Software and, if applicable, Third Party Software under this agreement during any Subscription Period
"Service(s)"	the services agreed to be provided by TNP to the Customer under this agreement and any Order Form, which may include without limitation the SaaS Service, the scoping, development, installation, and implementation of Software or any applicable Third Party Software on the SaaS Service, Support and training
"Software"	TNP software applications and processes specified in any Order Form to be supplied and installed by TNP on the SaaS Service for use by the Customer under this agreement and excludes any Third Party Software.
"Suggestions"	comments for improvements or modifications or other feedback which the Customer may from time to time provide to TNP with respect to Confidential Information concerning the Services or the Software
"Support"	the support and maintenance service further described in Schedule 1 to be provided by TNP for the Software, and if applicable Third Party Software during any Subscription Period
"Subscription Fee(s)"	the fees and charges to be paid by the Customer to TNP from time to time under this agreement and any Order Form, exclusive of Taxes, for access to, use of and Support for the Software and, if applicable, any Third Party Software on the SaaS Service during any Subscription Period

Software License, Support and Services Agreement

“Subscription Period”	any period in respect of which the Subscription Fees set by TNP from time to time shall have been paid, or agreed unconditionally to be paid, by the Customer under this agreement including any such period specified in any Order Form
“System Administrator”	such number of Customer User(s) approved by TNP in any Order Form to exercise system administration rights as defined by TNP from time to time
“System Environment”	a system of integrated computer hardware, operating systems software, computer peripherals and facilities provided by TNP or its contractors to facilitate access to and use of the Software and if applicable Third Party Software by the Customer over the internet
“Tax(es)”	any federal, state or local imposed excises, taxes, duties, levies, fees or similar charges imposed on TNP or the Customer by any government or taxing authority (other than corporation taxes imposed on TNP’s income) related to any supplies under this agreement
“Technical Dispute”	a dispute between the parties that is of a technical nature concerning the interpretation of this agreement, or any document created pursuant to or incorporated by reference into this agreement or relating to the functions or capabilities of the Software or Third Party Software or the Services or any similar or related matter or that the parties agree is of a technical nature
“Third Party Software”	software owned and provided by a Vendor as specified in any Order Form, to be installed by TNP on the SaaS Service at the request of and for access to and use by the Customer
“TNP Intellectual Property”	TNP work product comprising or created pursuant to the Services, the Software and any Project Documents, including without limitation original work and materials undertaken by TNP either previously or in performing its obligations under this agreement
“Vendor”	the owner of Third Party Software listed in an Order Form
“Vendor Terms”	the standard license terms of the Vendor as set out in the Order Form or published on any applicable website page pursuant to which the Vendor permits the Customer to have access to and use of Third Party Software on the SaaS Service. The Vendor may update such terms from time to time in its discretion.
1.2	Words importing the singular include the plural, words importing any gender include every gender and words importing persons include bodies corporate and un-incorporate and (in each case) vice versa
1.3	Any reference in this agreement to any statute or statutory provision shall be construed as including a reference to that statute or statutory provision as from time to time amended, modified, extended or re-enacted, whether before or after the date of this agreement, and to all statutory instruments orders and regulations for the time being made pursuant to it or deriving validity from it and (so far as may be applicable) any past statutory provisions (as from time to time amended modified extended or re-enacted) which such provision has directly or indirectly replaced
1.4	Where any provision in or schedule or appendix to this agreement or any Project Document refers to or requires any action consent or notice to be in writing this shall be deemed to include or allow as the case may be writing created transmitted or stored in electronic form including without limitation by email
1.5	In the event of any conflict between the terms of the Agreement and the terms of an Order Form, the terms of the Order Form shall prevail.

2. TNP KEY RESPONSIBILITIES

- 2.1 TNP shall, subject to and in accordance with this agreement and any applicable Order Form, use all reasonable commercial efforts to
- 2.1.1 provide the SaaS Service, Support and any other Services specified in any Order Form
 - 2.1.2 provide project meetings as agreed under **clause 3** and with the full co-operation and assistance of the Customer prepare and deliver any agreed Project Documents
 - 2.1.3 with the full co-operation and assistance of the Customer ensure that any Customer Content is fairly and accurately incorporated in the Software, the SaaS Service and any applicable Third Party Software
 - 2.1.4 with the full co-operation and assistance of the Customer install and allow the Customer to access and use on the SaaS Service any Software and if applicable Third Party Software to which TNP has agreed to provide such access

Software License, Support and Services Agreement

and use during any Subscription Period which has been paid in advance

- 2.2 If requested and paid for by the Customer, TNP shall provide training in the use and operation of Software and Third Party Software on the SaaS Service at its standard fees and charges (including expenses) from time to time. TNP will use reasonable efforts to train the Customer's employees in the subject matter of the particular training course taking into account the level of skill and competence of each employee attending such a course but does not guarantee any resultant level of competence of any employee who attends such training. At all times that TNP is providing Support to the Customer, it will ensure that its Customer Users are trained to a sufficient level to use the SaaS Service, Software and Third Party Software competently
- 2.3 TNP shall
 - 2.3.1 provide the Services with all reasonable skill and care
 - 2.3.2 provide suitably skilled and trained and knowledgeable personnel to carry out the Services
- 2.4 For the avoidance of doubt, TNP shall be solely responsible for its Software and Services and the Vendors have no responsibility for TNP Software or Services or any effect they may have on the functionality of the Third Party Software or the Customer's systems, business or operations
- 2.5 Other than as expressly provided in this agreement, TNP gives no other representations, warranties or conditions and any warranties or conditions that might be implied by statute or otherwise into this agreement, including but not limited to warranties and conditions of title, non-infringement, merchantability and fitness for a particular purpose, are expressly excluded to the fullest extent permitted by law

3. PROJECT MEETINGS AND DOCUMENTS

- 3.1 TNP shall hold such project meetings as the parties may agree are designed to elicit the Customer's precise requirements for any Software, Third Party Software or Services, such project meetings to be attended by such of the Customer's staff as the Customer may designate. The Customer acknowledges and agrees that it is essential for TNP to produce any Project Documents in a timely and professionally competent manner that the Customer ensures that its Customer Contact(s) attend and contribute effectively at and provide all information reasonably requested by TNP at all such project meetings. As soon as practicable following any relevant project meeting, TNP shall prepare and submit to the Customer for approval a draft of any Project Document which has been agreed by the parties to be a deliverable from such project meeting
- 3.2 The Customer shall inform TNP in writing within 5 working days of its receipt of the draft Project Document as to whether such draft is approved and, if not, what changes the Customer may reasonably require. TNP shall use its reasonable endeavours to accommodate any such changes in a revised draft of the Project Document (provided that TNP shall not be obliged to accommodate revisions that would take the Services or Software or Third Party Software outside the scope of any agreed pre-project meeting document) and provided that the Customer agrees to any change in applicable pricing, estimated cost of Services or anticipated project timetable or any other adverse implications such requested changes may involve
- 3.3 After revising the draft Project Document, TNP shall re-submit it to the Customer for written approval, which the Customer shall not unreasonably withhold or delay. For the avoidance of doubt, in the event that the Customer does not approve for any reason any Project Document, TNP shall be entitled to be paid for its time spent in connection with preparing such document and in performing other work under this agreement up to and including any date that the parties agree to cease or suspend the delivery of Services under this agreement

4. PROJECT MANAGEMENT

- 4.1 TNP will nominate a Project Manager. The Customer Contact will manage the Customer's interests and obligations under this agreement. The Project Manager and Customer Contact shall, other than in exceptional circumstances, attend all of the meetings referred to in **clause 4.3** below
- 4.2 The parties shall use their respective reasonable endeavours to avoid changing any Project Manager or Customer Contact where such a change would be reasonably likely to impact adversely on the ability of either party to meet mutually planned outcomes for any project under this agreement or any Order Form. In the event that a party makes a change to relevant personnel that has or would be reasonably likely to have the above stated adverse impact, until the parties have agreed such changes as are reasonably required to this agreement or any Order Form, that party shall not be able to enforce any obligation against the other party the performance of which has been adversely affected by the change to personnel
- 4.3 During the performance of all projects agreed to be undertaken by the parties hereunder each party agrees to respond promptly to any issues or requirements referred to it by the other party relating to the performance of the Services or any other obligations under this agreement, and shall seek to resolve any problems arising in relation to the provision of the Services as quickly and effectively as possible. The parties shall meet or attend at teleconferences, webinars or other agreed arrangements at appropriate regular intervals in order to monitor the performance of the parties' obligations and the progress of work with the aim of ensuring as best as practicable that completion of projects or work takes place in accordance with any

Software License, Support and Services Agreement

applicable Project Document

5. CUSTOMER KEY RESPONSIBILITIES

- 5.1 Unless otherwise agreed in writing with TNP, the Customer will be solely responsible and liable for
- 5.1.1 all Subscription Fees and other Service charges
 - 5.1.2 entering into and full compliance with the Vendor Terms, including purchasing enough licenses for all Third Party Software to comply with the applicable License Limits
 - 5.1.3 all Service exclusions specified in **Schedule 2**
 - 5.1.4 full compliance with all laws applicable to its business in its jurisdiction
 - 5.1.5 As part of our commitment to facilitating compliance for our customers, functionality may be created based on the rules and regulations in our various markets that makes it easier for a customer to operate compliantly and show compliance. TNP is not responsible for a customer's compliance in any case and bears no liability for non-use of compliance-related functions that have been built-in to the solution. If a customer requests to pay for custom development that would put them out of compliance based on our understanding of the rules and regulations in that customer's area of operations, TNP bears no liability for related or any non-compliance.
- 5.2 The Customer shall, subject to and in accordance with this agreement and any applicable Project Documents
- 5.2.1 if applicable, deliver in a timely manner any Customer Content and any required updates of Customer Content to TNP for inclusion in the Software, Third Party Software or the Services
 - 5.2.2 provide TNP with any information which it may reasonably require from time to time to enable TNP to perform its obligations under this agreement or any Project Document, including but not limited to, providing copies to TNP of all applications or licenses required for the legal operation of its business in its jurisdiction
 - 5.2.3 procure and/or supply, and if necessary, install, support and maintain all software, licences, hardware, network infrastructure, services and environmental and operational conditions required from the connection to the System Environment providing the SaaS Service to and at the Customer's premises for it to use the SaaS Service
 - 5.2.4 promptly notify TNP of any changes the Customer requires in the number or names of active Customer Users or the number or names of System Administrators authorised by TNP to have access to the SaaS Service in respect of any Subscription Period subject to any minimum agreed from time to time
 - 5.2.5 comply fully and promptly with all requirements notified by TNP to the Customer from time to time for the registration of Customer Users for authorised use of Software or Third Party Software on the SaaS Service
 - 5.2.6 promptly notify TNP of any additional, unusual, abnormal or seasonal fluctuations and demands the Customer may make on the SaaS Service
 - 5.2.7 provide TNP, at the earliest possible notice, the details of changes to the Customer's policies or procedures that may affect any aspect of this agreement or the Services
 - 5.2.8 ensure that only adequately trained and authorised persons are permitted to use the SaaS Service and that Customer Users operate the SaaS Service, Software and any applicable Third Party Software in accordance with this agreement and operating procedures, guidelines, codes of conduct and processes reasonably specified from time to time by TNP
 - 5.2.9 upon any commercial use thereof be deemed to have accepted the SaaS Service for any and all purposes under this agreement
- 5.3 The Customer acknowledges and agrees that TNP's ability to deliver the Services also depends upon the Customer's timely cooperation, as well as the accuracy and completeness of any information the Customer provides. TNP is not responsible for any loss suffered by the Customer if TNP is not provided with this cooperation and information. The Customer acknowledges and agrees that TNP will not make the SaaS Service live until it is satisfied, in its sole discretion, that the Customer holds all licenses required to operate its business in its jurisdiction
- 5.4 The Customer shall, for the purposes of this agreement and if required by any Order Form, afford to the authorised personnel of TNP during normal working hours or as otherwise agreed access to any agreed Customer premises and shall provide adequate free working space and such other facilities at such premises as may be reasonably requested by TNP to provide applicable Services. The Customer shall comply with its obligations under applicable health and safety regulations with respect to the provision of such access and facilities to TNP. TNP will take all practical steps to ensure that its personnel will,

Software License, Support and Services Agreement

whenever on Customer premises, obey all reasonable security and health and safety standards, procedures and directions notified to it by the Customer

- 5.5 The Customer acknowledges and agrees that
- 5.5.1 it is solely responsible and liable to obtain maintain and provide to TNP all necessary authorisations and consents required for TNP to access the Customer's records on the SaaS Service that TNP may reasonably require to audit the Customer's use of the Software and Third Party Software and to check that the Customer is complying with the terms of its access and use rights under this Agreement and the Vendor Terms
- 5.5.2 it is solely responsible for complying with any laws or paying any taxes duties and tariffs applicable in any way to its use of the Software, Third Party Software or SaaS Service (other than taxes on the net income of TNP) and will hold harmless protect indemnify and defend TNP and its subcontractors from any claim, action, suit, penalty, tax, fine or tariff arising from such use or exercise of internet electronic commerce and/or any failure to comply with any such laws, taxes, duties and tariffs. This indemnity will survive any termination of this agreement
- 5.6 **Clauses 5.1, 5.3 and 5.5** shall survive any termination of this agreement

6 FEES AND PAYMENT

- 6.1 The Subscription Fees and other fees for Services together with any Taxes payable thereon shall be invoiced to and paid by the Customer in advance of the period to which they relate or otherwise at the discretion of TNP or, if applicable, in accordance with any payment profile set out in any Order Form. If Customer acquires additional licenses throughout the duration of the agreement, Customer shall be invoiced the License Fee in respect of such additional licenses prior to the grant of such licenses and such License Fee shall be payable immediately. For clarity, no Third Party Software shall be ordered for Customer and neither the Software nor the Third Party Software shall be delivered to Customer under this agreement until cleared payment in full is received for the License Fees.
- 6.2 Unless otherwise agreed in any Order Form, the Customer shall reimburse TNP for any reasonable expenses necessarily incurred by TNP in connection with the provision of the Services
- 6.3 Invoices and payments shall be in US dollars (\$) unless otherwise agreed. Except for any payment due and payable as set out in any Order Form, all payments shall be made by the Customer within fourteen (14) days of the date of the appropriate tax invoice issued by TNP. All fees are exclusive of Taxes (if any) which shall be paid by the Customer at the rate and in the manner for the time being prescribed by law, unless the Customer has provided TNP with an appropriate certificate of exemption from the applicable Government or taxing authority. Taxes, when applicable, shall appear as separate items on TNP's invoice.
- All sums payable to TNP under this agreement shall be paid free and clear of all deductions, withholdings or set off unless the deduction, withholding or set off is required by law. If any deduction or withholding is required by law to be made from any such sum the Customer shall pay such additional amount as shall be required to ensure that the net amount received by TNP will equal the full amount which would have been received by it had no such deduction, withholding or set off been made
- 6.4 If any sum payable under this agreement is not paid within 30 days after the due date then (without prejudice to TNP's other rights and remedies) TNP reserves the right to charge interest of one and one-half percent (1.5%) of the unpaid balance per month, or the maximum rate allowed under applicable law, whichever is the lesser amount, on all overdue amounts (not subject to a bona fide dispute), such interest accruing on a day to day basis (as well after as before any judgment) from the date or last date for payment thereof to the date of actual payment (both dates inclusive). Such accrued interest shall be paid on demand by TNP.
- 6.5 Unless otherwise agreed in any Order Form, all Services shall be charged on a time and materials basis. Any estimated fee is based on the number of days estimated by TNP as being required for the provision of the relevant agreed Services. Subject to **clause 6.7**, TNP shall be entitled to charge the Customer for any additional days required in order to complete the provision of agreed Services. TNP shall also be entitled to charge for additional days attributable to any changes agreed by the parties to Project Documents or other Services to be delivered under this agreement or to any breach of this agreement by the Customer
- 6.6 Except where otherwise agreed by the parties in writing, the professional Services shall be provided between the hours of 9.00am and 5.30pm Monday to Friday excepting statutory holidays in the Customer's jurisdiction. Where the Services are provided outside these times at the written request of the Customer, TNP may increase its then current per hour and per day rates by 100% or by 150% respectively in the case of Services provided on a Sunday or statutory holiday
- 6.7 Once a date for the delivery of Services has been agreed by the Customer and TNP, then both parties will take all reasonable steps to prevent that date from being cancelled or postponed. In the event that a date for delivery of a Service is cancelled or postponed by the Customer for any reason and, having made all reasonable endeavours to do so TNP is unable to redeploy to alternative paid services resources it has allocated to the delivery of such Services on such date, the following charges shall apply

Software License, Support and Services Agreement

6.7.1 if cancelled or postponed within 48 hours of the agreed date there will be payable by the Customer a charge calculated at 100% of the Services fees at our regular billable rates that TNP would otherwise have been entitled to charge the Customer for the delivery of Services on that date and will show up on your invoice as Missed/Late Reschedule

6.7.2 if travel has been booked for a resource to provide on-site services related to the above, you will be invoiced at cost for any associated cancellation/reschedule fees incurred for the booking

TNP reserves the right to cancel or postpone any training course in the event of circumstances beyond its control, in which case its liability will be limited to refunding any fees paid in respect of the delivery of that course on that date

6.8 The Customer acknowledges and agrees that if any amount under any invoice (not subject to a bona fide dispute) is not paid on the due payment date then TNP shall be under no obligation to continue to provide or procure the provision of the relevant Service or other Services to the Customer and delivery of such services may be suspended upon immediate written notice (without prejudice to TNP's rights under **clause 13**) unless and until the relevant invoice/s shall be paid in full. The Customer shall hold harmless protect and indemnify TNP against all legal and other fees and expenses incurred or charged by it in relation to the collection of any overdue accounts under this agreement or to re-active any Service suspended under this **clause 6.7**

7 RIGHTS IN SERVICES, SOFTWARE AND DATA

7.1 Subject to any special terms that TNP may agree with the Customer in any Project Document, the Customer acknowledges and agrees that all Intellectual Property in TNP Intellectual Property whenever created shall remain the exclusive property of TNP and the Customer shall have no rights in respect thereof save as may be granted to it by TNP pursuant to this agreement or in accordance with any licence or agreement which TNP may enter into with the Customer from time to time. For the avoidance of doubt, TNP Intellectual Property shall include, without limitation, original work specifically undertaken by TNP for the purposes of fulfilling its obligations under this agreement and in order to meet any facilities or functionality required by the Customer in any Software or Third Party Software whether or not such original work is identified under any Project Document, specification or other documentation. The Customer agrees to use the TNP Intellectual Property only as provided in this agreement and to not use it to develop software for third parties or for any other purpose without the prior written authorisation of TNP

7.2 For such periods only in respect of which the applicable Subscription Fees shall have been paid in full to TNP and subject to the Customer otherwise complying with the terms and conditions of this agreement and the Vendor Terms, TNP hereby grants to the Customer non-exclusive, world-wide rights to access and use any Software and Third Party Software that TNP has agreed to provide such access to and use of under this agreement and the relevant Order Form on the SaaS Service for the Customer's own business purposes. The Customer shall acquire for itself and each Customer User sufficient fully paid up licenses or legal rights for access, terminal or web services, and service plans to match the scope of access and use of Software, Third Party Software and Services for itself and each Customer User set out from time to time in any Order Form and on TNP's request, promptly verify and document that it has purchased such sufficient licenses and/or legal rights

7.3 For the avoidance of doubt, TNP may provide Third Party Software on the SaaS Service for access and use by the Customer but in doing so it is acting only as a distributor of such rights. The Customer acknowledges and agrees that its right to use such Third Party Software is also subject to applicable Vendor Terms in force between the Customer and the Vendor. For the avoidance of doubt, the Vendor Terms only apply to the Customer's use of the Third Party Software and not to TNP's Software. The provisions of the Vendor Terms shall apply to the supply of the corresponding Third Party Software in addition to the provisions of this agreement. In the event of any conflict between this Agreement and any Vendor Terms, the Vendor Terms shall take precedence

7.4 The Customer acknowledges and agrees that, subject to **clauses 7.5 and 15.3**

7.4.1 all Intellectual Property rights of any kind in any Database, all TNP Intellectual Property and Third Party Software shall be the exclusive property of TNP or its licensors

7.4.2 TNP has spent, and continues to spend, considerable time and resources to collate, compile and reformat the contents of any Database and accordingly all Intellectual Property rights of any kind in such contents shall be the exclusive property of TNP

7.4.3 TNP grants to the Customer a non-transferable perpetual licence to possess and use for its own internal purposes only all data, reports and information, including without limitation Customer Data, derived from any Database by the Customer through its lawful and proper use of the SaaS Service during such Subscription Periods in respect of which the Customer shall have paid to TNP in advance all applicable Subscription Fees

7.5 TNP acknowledges and agrees that copyright in Customer Content and Customer Data may belong to the Customer or a third party and for the avoidance of doubt asserts no claim pursuant to this agreement inconsistent with any such rights

Software License, Support and Services Agreement

- 7.6 If TNP provides or makes available to the Customer as part of or in connection with the use of the Software, Third Party Software or the SaaS Service data reports or information the use of which is subject to conditions or restrictions, third party or otherwise notified to the Customer, the Customer agrees to comply with such conditions or restrictions
- 7.7 The Customer agrees that it will not make more copies of data reports or information provided to it or made available to Customer as part of or in connection with the use of the Software, Third Party Software or the SaaS Service than is reasonably necessary for its own internal purposes and shall only publish and circulate such reports or information within its own organisation
- 7.8 The Customer agrees
- 7.8.1 to not copy data reports or information provided or made available to Customer as part of or in connection with the use of the Software, Third Party Software or the SaaS Service to create a complete or material reconstruction of any Database
- 7.8.2 to not use data reports or information provided or made available to Customer as part of or in connection with the use of the Software, Third Party Software or the SaaS Service to provide any service competing with Software based services
- 7.9 The Customer shall
- 7.9.1 not remove or interfere with any trademarks, copyright or trade mark notices affixed or installed by TNP or any licensor of TNP on any Service or copy of the Software, TNP Intellectual Property or Third Party Software
- 7.9.2 without prejudice to the foregoing take all such other reasonable steps to protect the confidential information and intellectual property rights of TNP in the TNP Intellectual Property in its possession or control from access use or copying not authorised by this agreement
- 7.9.3 use the Software and, if applicable, any Third Party Software for lawful purposes only and in accordance with all applicable laws and regulations
- 7.9.4 maintain any municipal, state, provincial or federal licenses required by the Customer to legally operate its business in its jurisdiction
- 7.9.5 not use the Software or the Third Party Software in excess of the Licence Limit, and the Customer acknowledges and agrees that the such software shall prevent it from doing so
- 7.9.6 not, other than as permitted by **clause 7.2**, sell, assign, license, lease, rent, loan, lend, transmit, network, or otherwise distribute, transfer or make available the TNP Intellectual Property, Software or Third Party Software in any manner to third parties
- 7.9.7 keep the TNP Intellectual Property, Software and Third Party Software free and clear of all claims, liens and encumbrances
- 7.10 The Customer acknowledges and agrees that the SaaS Services may use Customer User activity monitoring, metering and analysis software to avoid any unintentional violation of licence or Service usage terms and that such software may access and use Customer Content for such purposes and for the purpose of accessing and transmitting licence or usage related data at the time of installation, activation, registration or update of Services, Software and any applicable Third Party Software and validating the authenticity of such licence or usage related data to protect TNP against unauthorised, unlicensed or illegal use of the SaaS Services
- 7.11 Subject to **clause 15**, if, at any time that TNP is providing access to the Software on the SaaS Service to the Customer, the Customer requests that TNP provide it with a copy of the Customer Data held by TNP on the SaaS Service, TNP shall provide the Customer with a copy of such Customer Data as at the date of the request, or at such other date as is agreed, provided that the Customer shall have paid to TNP
- 7.11.1 any data transfer fee specified for such data transfer from time to time or as otherwise agreed (together with the cost of any medium upon which such data is transferred)
- 7.11.2 all other invoices issued by TNP with respect to the Services provided to the Customer
- 7.11.3 any fees or charges at TNP's then applicable rates raised by TNP for the provision of any assistance reasonably requested by the Customer and provided or to be provided by TNP in connection with the transfer of such Customer Data
- 7.12 **Clause 7** shall survive any termination of this agreement

8 SERVICE USE

Software License, Support and Services Agreement

- 8.1 The Customer unconditionally represents warrants and undertakes that all Customer Content including without limitation any elements of text, graphics, photos, designs, trademarks, or other artwork furnished to TNP for the development of or integration into or use with or communication through the Services, the Software or any applicable Third Party Software
- 8.1.1 are owned by the Customer or that the Customer has permission from the rightful owner to use such Customer Content in the Services, Software or any applicable Third Party Software in the manner and for the purposes required or approved by the Customer from time to time
- 8.1.2 are in no way whatsoever a violation or infringement of any third party Intellectual Property, right of privacy or publicity or any other rights of any person and that they are not obscene, libellous or defamatory or in any other way unlawful and will not in any way inhibit restrict or impair the free and/or unrestricted performance by TNP of any rights or obligations it has under this agreement
- 8.2 The Customer shall
- 8.2.1 possess the legal right and ability to enter into and comply with this agreement and any licence conditions attaching from time to time to the use of the Software or Third Party Software
- 8.2.2 use the Services, the Software and, if applicable, any Third Party Software for lawful purposes only and in accordance with all applicable laws, regulations and TNP policies notified to it from time to time
- 8.2.3 not attempt to decompile, reverse engineer or hack any website or computer network used in connection with the SaaS Service or to defeat or overcome any encryption and/or other technical protection methods implemented with respect to any such website or network and/or data transmitted, processed or stored by TNP or other users of such website or network
- 8.2.4 not use any automatic or manual device or process nor take any steps (including penetration testing, without the prior written authority of TNP) to interfere with or in any manner compromise any security measures or the proper working of any website or computer network used in connection with the SaaS Service
- 8.2.5 ensure that Customer Users do not use any other individual's or entity's login or identity or any unauthorised or inadequately licensed computer, device or facility to access or use the SaaS Service or any website or computer network used in connection with the SaaS Service and that only System Administrators login and exercise System Administrator rights and privileges on any such website or network
- 8.2.6 not collect any information or communication about TNP or users of SaaS Services by monitoring, interdicting or intercepting any process of the Services, the Software or any applicable Third Party Software
- 8.2.7 not use any facility, device, software code or software instruction that is designed or intended to or could be used to provide a means of surreptitious or unauthorised access or that is designed or intended to or could distort, delete, damage or disassemble the Software, any applicable Third Party Software, the Services or any website or computer network used in connection with the SaaS Service
- 8.2.8 not use the Software, any applicable Third Party Software or the SaaS Service to develop, generate, transmit or store information that infringes any third party's intellectual property or other proprietary right or is defamatory, harmful, abusive, obscene or hateful or performs any unsolicited commercial communication not permitted by applicable law or is harassment or a violation of privacy or threatens others or impersonates any other person or steals or assumes any person's identity (whether a real identity or online nickname or alias) and
- 8.2.9 if requested by TNP on reasonable grounds, provide true, accurate, current and complete information on its use of any website or computer network used in connection with the SaaS Service
- 8.3 TNP reserves the right to involve, and cooperate with, law enforcement authorities in prosecuting users who have participated in actions that may involve breaches of this **clause 8**
- 8.4 If TNP has reasonable grounds to suspect that the Customers representations, warranties or promises are inaccurate or breached, TNP may suspend, upon five (5) calendar days' prior, written notice (without prejudice to any right to terminate) the Customer's rights, benefits or services under or terminate this agreement and any licence attaching from time to time to the use of the Software or Services in accordance with **clause 13.2**.
- 8.5 The Customer hereby agrees to hold harmless protect indemnify and defend TNP and its subcontractors from any liability (including legal and administrative fees and costs on a full indemnity basis) or any claim, prosecution or suit, threatened or actual, arising from
- 8.5.1 any breach by the Customer of its obligations under this **clause 8** or
- 8.5.2 from any use by TNP of Customer Content authorised by the Customer
- 8.6 The foregoing warranties, promises and indemnities in this **clause 8** shall survive any termination of this agreement

Software License, Support and Services Agreement

9 DISPUTE RESOLUTION

Each party shall use its best endeavours to resolve amicably and expeditiously any dispute which may arise between them concerning this agreement, any Project Document or any documents incorporated by reference therein. If a dispute cannot be resolved amicably within 7 days of such dispute being notified in writing by one party to the other for the purposes of this clause then the dispute shall be determined as follows

- 9.1 If the dispute is a Technical Dispute then such dispute shall be referred to the next scheduled project team meeting or a meeting of the Project Manager and Customer Contact convened for this purpose
- 9.2 If such meeting cannot resolve a Technical Dispute to the satisfaction of both parties then the dispute will be referred as a matter of urgency to an appropriately qualified senior manager or director of each party
- 9.3 If such senior managers or directors cannot resolve a Technical Dispute within 21 days of the meeting referred to in **clause 9.1** or such other period that they may agree then the parties shall immediately select a mutually agreeable mediation location and mediator and enter into mediation of the Technical Dispute. If the Technical Dispute has not been resolved by mediation within 30 days of the start of mediation or such other period as the parties may agree, then either party may initiate a lawsuit or seek a judicial order in accordance with **clause 14.3**. No party may commence any other court proceedings or arbitration in relation to any Technical Dispute arising out of this agreement until it has attempted to settle the dispute by such mediation and either the mediation has terminated or the other party has failed to participate in the mediation, provided that the right to issue proceedings is not prejudiced by a delay
- 9.4 Non-technical disputes shall be referred as a matter of urgency to the appropriate senior management of each party and if they cannot resolve such dispute within 21 days of it being referred to them, then either party may initiate a lawsuit or seek a judicial order in accordance with **clause 14.3**

10 LIABILITY AND LIMITATIONS

CUSTOMER'S ATTENTION IS EXPRESSLY DRAWN TO THE PROVISIONS OF THIS CLAUSE

10.1 Limitation of liability.

Except as expressly provided herein, neither party makes any express or implied warranties, representations or conditions, including but not limited to the warranties of merchantability, fitness for a particular purpose and any warranty arising from a course of dealing, usage or trade practice. Further TNP does not represent or warrant or guarantee that the Software, any Services or any Third Party Software will always be available, accessible, uninterrupted, timely, secure, accurate, complete, error-free, or will operate without packet loss, nor does TNP warrant any connection to or transmission from the internet

The Software, Services and, if applicable, Third Party Software may be subject to limitations, delays and other problems inherent in the use of the internet and electronic communications. TNP accepts no liability of any kind whatsoever, including liability for negligence, for the continuing existence, operation, interoperability, facilities or functions or the consequences direct or indirect of any Customer using the internet or any other electronic communications facility to access and use the SaaS Service

To the maximum extent permitted by applicable law, in no event shall either party be liable for indirect, consequential, punitive or incidental damages (including damages for loss of business profits, revenue, data or anticipated savings or business interruption) however caused (including negligence) or arising under any theory of law and whether or not the other party has been advised of the possibility of such damages

In any event TNP's cumulative liability under this agreement or any transaction contemplated hereunder or for any software data report or information or service provided to the Customer or any defect or failure therein or arising from any court of competent jurisdiction holding any of the above warranties or disclaimers or limitations of liability invalid, including any cause of action in contract, tort or strict liability, shall be limited to the amount of fees paid by the Customer to TNP under this agreement during the 12 months period immediately preceding the date on which the relevant cause of action arose. TNP's limitation of liability is cumulative with all TNP expenditures to address liability being aggregated to determine satisfaction of the limit. The Customer releases TNP from all obligations, liabilities, claims or demands in excess of the limitation. The parties acknowledge that other parts of this agreement rely upon the inclusion of this **clause 10** and the resulting allocation of risks

Nothing in this agreement shall exclude or limit the liability of a party, its service entities and personnel where such exclusion or limitation is prohibited by applicable law (but then only to the extent of the prohibition)

10.2 Customer acknowledges and agrees that TNP has no liability of any nature whatsoever

10.2.1 to any person for the content of any third party communications publications or sources from which any data, reports or information is provided through Customer's use of the Software, Third Party Software or any SaaS

Software License, Support and Services Agreement

Service or

- 10.2.2 for such data, reports or information including without limitation its accuracy, quality, integrity, reliability or appropriateness for any purpose and the Customer shall be solely responsible and liable for any use it makes of such data, reports or information including any breach of copyright or other right obligation or duty recognised by the laws of any jurisdiction
- 10.3 TNP does not give any opinions or advice concerning the use or non-use of any data reports or information provided or available to Customer through its use of the Software, Third Party Software or any Service. Such data reports or information may need further expert or specialist advice or interpretation to be obtained by the Customer before they can be fully or partly understood or assessed or use made of or reliance placed on them
- 10.4 TNP accepts no liability for any claim notified to it more than six months after the date of receipt by the Customer from TNP of the data report or information in respect of which the claim arises
- 10.5 Notwithstanding any other provision of this agreement TNP does not warrant that use or operation of the Software or any Third Party Software will be uninterrupted or error-free
- 10.6 As some jurisdictions do not allow some of the exclusions set out in this **clause 10**, some of these exclusions may not apply to you. In the event that any court of competent jurisdiction rules any other limitation of liability invalid or unenforceable, TNP's total aggregate liability shall not exceed the total sum which TNP may recover with respect to its liability for such loss or damage under either its general public liability insurance or professional indemnity insurance (which at the date of this agreement is with respect to general public liability not less than \$1,000,000 per occurrence or series of occurrences arising from the one event and with respect to professional indemnity not less than \$1,000,000 for any one claim or series of claims arising out of one incident or event)
- 10.7 For the avoidance of doubt, time shall not be of the essence of this contract. If TNP shall fail to provide access to or use of the Software, any applicable Third Party Software or any Service by any applicable agreed date, other than as a consequence of any act or omission of the Customer (whether or not such act or omission constitutes a breach of this agreement) or a third party over which TNP has no control or responsibility, then TNP shall provide such resources as may be at its disposal and reasonably required in order to provide access to or use of the Software, Third Party Software or such Services within the shortest possible time thereafter and compliance by TNP with this **clause 10.7** shall be in full and final settlement of any liability it may have for any loss or damage suffered by the Customer as a result of such failure by TNP
- 10.8 The limitations contained in this section do not apply to either the Customer or TNP for breach of their respective confidentiality obligations in **clause 12** or for breaches of each other's intellectual property rights
- 10.9 The Customer and TNP agree that all terms and limitations of this agreement, including the warranty and liability limitations and exclusions, are fair and reasonable in light of the amounts to be paid by the Customer, the nature of the Services, the strength of the bargaining position of each party, the alternative ways the Customer's needs could have been met and the potential benefits and risks for both party in entering into this agreement

11 FORCE MAJEURE

Notwithstanding anything else contained in this agreement, neither party shall be liable for any delay in performing its obligations under this agreement, any Project Document or other document created pursuant to or incorporated by reference into this agreement if such delay is caused by circumstances beyond its reasonable control and any delay caused by any act or omission of the other party (whether or not such act or omission constitutes a breach of this agreement) or a third party provided however that any delay by a sub-contractor or supplier of the party so delaying shall not relieve that party from liability for delay except where such delay is beyond the reasonable control of the sub-contractor or supplier concerned. The performance of the affected party's obligations shall be suspended during the period that the relevant circumstances persist and, if applicable to any obligation under this agreement, any Project Document or other document created pursuant to or incorporated by reference into this agreement, the affected party shall be granted an extension of time for performance equal to the period of the delay. Except where such delay is caused by the act or omission of the other party (in which event the rights, remedies and liabilities of the parties shall be those conferred and imposed by the other terms of this agreement and by law) any costs arising from such delay shall be borne by the party incurring the same. Both parties will in any event use all reasonable endeavours to mitigate the impact of any event of force majeure and to recommence performance of their obligations under this agreement as soon as reasonably possible

12 CONFIDENTIALITY

12.1 Definition of Confidential Information and Exclusions

If any party has any doubts about what constitutes Confidential Information then such party agrees to consult with the other party before acting in any manner that may breach its obligations under this agreement

Confidential Information shall not include any information, however designated, that

Software License, Support and Services Agreement

- 12.1.1 is or subsequently becomes publicly available without Receiving Party's breach of any obligation owed to Disclosing Party
- 12.1.2 became known to Receiving Party prior to Disclosing Party's disclosure of such information to Receiving Party pursuant to or prior to or in contemplation of this agreement
- 12.1.3 became known to Receiving Party from a source other than Disclosing Party other than by the breach of an obligation of confidentiality owed to Disclosing Party
- 12.1.4 is independently developed by Receiving Party without use of Disclosing Party's Confidential Information or
- 12.1.5 constitutes Suggestions (as defined in **clause 12.4** of this agreement)
- 12.2 Obligations Regarding Confidential Information.
- Receiving Party shall
- 12.2.1 refrain from disclosing any Confidential Information of the Disclosing Party to third parties for ten (10) years following the date that Disclosing Party first discloses such Confidential Information to Receiving Party
- 12.2.2 take reasonable security precautions, at least as great as the precautions it takes to protect its own confidential information, but no less than reasonable care, to keep confidential the Confidential Information of the Disclosing Party and shall procure that all of its directors, employees, professional advisers and sub-contractors only have access to Confidential Information of the Disclosing Party on a need to know basis and are made aware of the obligations of **clause 12**
- 12.2.3 not disclose any Confidential Information to its sub-contractors without first obtaining their written agreement to confidentiality obligations no less stringent than those set out in this **clause 12**
- Receiving Party may disclose Confidential Information of Disclosing Party in accordance with a judicial or other governmental order, provided that Receiving Party either
- 12.2.4 gives the Disclosing Party reasonable notice prior to such disclosure to allow Disclosing Party a reasonable opportunity to seek a protective order or equivalent, or
- 12.2.5 obtains written assurance from the applicable judicial or governmental entity that it will afford the Confidential Information the highest level of protection afforded under applicable law or regulation. Notwithstanding the foregoing, the Receiving Party shall not disclose any computer source code that contains Confidential Information of the Disclosing Party in accordance with a judicial or other governmental order unless it complies with the requirement set forth in **clause 12.2.4**
- Receiving Party may disclose Confidential Information only to Receiving Party's employees and consultants on a need-to-know basis. The Receiving Party will have executed or shall execute appropriate written agreements with third parties sufficient to enable Receiving Party to enforce all the provisions of these terms. Any such disclosures do not relieve the Receiving Party of its confidentiality obligations
- Receiving Party shall notify the Disclosing Party immediately upon discovery of any unauthorized use or disclosure of Confidential Information or any other breach of this **clause 12** by Receiving Party and its employees and consultants, and will cooperate with Disclosing Party in every reasonable way to help Disclosing Party regain possession of the Confidential Information and prevent its further unauthorized use or disclosure
- Upon termination of this agreement for any reason, Receiving Party shall, at Disclosing Party's request, return all originals, copies, reproductions and summaries of Confidential Information and all other tangible materials and devices provided to the Receiving Party as Confidential Information, or at Disclosing Party's option, certify destruction of the same
- 12.3 Non-Solicitation of Employees
- The Customer agrees that they will not, during the time both parties are working together and for a period of two years following the voluntary or mutual termination of the contract with TNP, directly or indirectly solicit, or assist anyone else in the solicitation of, any of TNP's then current employees for the purpose of hiring them, engaging them as consultants, or inducing them to leave their employment with TNP
- If TNP's Employee is approached by one of Entity's employees regarding potential employment, consultation or contract, as described above during the restrictive period of non-solicitation, the Customer must immediately (1) fully inform the employee or former employee of the his/her non-solicitation obligation described above; and (2) refrain from engaging in any communication with the employee or former employee regarding potential employment consultation or contract
- 12.4 Miscellaneous.
- The parties acknowledge that monetary damages may not be a sufficient remedy for unauthorized disclosure of

Software License, Support and Services Agreement

Confidential Information and that Disclosing Party shall be entitled, without waiving any other rights or remedies, to such injunctive or equitable relief as may be deemed proper by a court of competent jurisdiction

All Confidential Information is and shall remain the property of Disclosing Party. By disclosing Confidential Information to Receiving Party, Disclosing Party does not grant any express or implied right to Receiving Party to or under any patents, copyrights, trademarks, or trade secret information except as otherwise provided herein. Disclosing Party reserves without prejudice the ability to protect its rights under any such patents, copyrights, trademarks, or trade secrets except as otherwise provided herein

12.5 Suggestions

The Customer may from time to time provide Suggestions to TNP. Both parties agree that all Suggestions are and shall be given entirely voluntarily. Suggestions, even if designated as confidential by the Customer, shall not, absent a separate written agreement, create any confidentiality obligation for TNP. Furthermore, except as otherwise provided herein or in a separate subsequent written agreement between the parties, TNP shall be free to use, disclose, reproduce, license or otherwise distribute, and exploit the Suggestions provided to it as it sees fit, entirely without obligation or restriction of any kind on account of intellectual property rights or otherwise

12.5 Use of Data.

Provided that all Customer Data disclosed or made available pursuant to this **clause 12.5** to any third party shall not identify such data with the Customer nor specifically identify any individual, company or entity, TNP may access, process, use and disclose to third parties data posted by or on behalf of the Customer on any website or computer network used in connection with the SaaS Service (including Customer Personnel Data) as reasonably necessary to operate or maintain the Software (including virus scanning), to comply with obligations of confidentiality TNP has to the Customer or other customers. TNP may use de-identified and/or aggregate Customer Data to evaluate or improve the performance and implementation of and to promote and market the Software, to perform statistical analyses and other data mining activities and to present such data in whatever format TNP requires to measure, amongst other things, interest in and use of the Software and to develop and design new products and services

13 TERMINATION

13.1 Unless otherwise agreed, TNP shall permit the Customer to have access to and use of any Software and if applicable Third Party Software on any SaaS Service on the relevant Commencement Date and shall continue to permit such access and use thereafter only during such periods in respect of which the applicable Subscription Fees shall have been paid in full unless and until terminated under **clause 13.2**. Unless the parties otherwise agree in writing, at the end of any Subscription Period, the SaaS Services and Support will automatically be extended for a subsequent minimum Subscription Period unless the Customer or TNP gives not less than one calendar months' notice of termination with effect at the expiry of the then current Subscription Period

13.2 Either party may terminate this agreement by written notice to the other if

13.2.1 the other party commits any breach of any provision of this agreement or any effective Order Form which is capable of remedy (including for the avoidance of doubt any breach referred to in **clause 13.2.2**) and that other party fails to remedy the breach within 14 days after receipt of a written notice giving full particulars of the breach and requiring it to be remedied

13.2.2 the other party commits any breach of any provision of this agreement which constitutes a material breach and fails to remedy the breach within 30 days after receipt of a written notice giving full particulars of the breach and requiring it to be remedied (material breach for this purpose meaning a breach that has caused or, with the passage of time, will cause substantial harm to the interests of the aggrieved party or if it involves knowing and unauthorised infringement of the aggrieved party's intellectual property, or if it involves knowing or grossly negligent unauthorised disclosure or use of the aggrieved party's confidential information, or if it involves a continuing failure after warning to pay any undisputed fees when due, or if the aggregate effect of non-material breaches by the same party satisfies these standards for materiality)

13.2.3 the other party shall have a receiver or administrative receiver appointed or shall pass a resolution for winding-up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction shall make an order to that effect or if the other party shall become subject to an administration order (or have an administrator appointed) or shall enter into any voluntary arrangement with its creditors or shall cease or threaten to cease to carry on business

13.2.4 there are no outstanding Services agreed to be provided under this agreement

13.3 TNP may, immediately and in its sole discretion, terminate this agreement or suspend the delivery of any or all of the Services in the event that the Customer does not have all the licenses required to operate its business in its jurisdiction.

Software License, Support and Services Agreement

- 13.4 Upon any termination of this agreement
- 13.4.1 provisions regarding fees and expenses, rights arising from Services, confidentiality and protection of intellectual property, limitations of liability, obligations on termination and any provisions specified as surviving in a Project Document will remain in effect
- 13.4.2 subject as otherwise provided in this agreement and to any rights or obligations which have accrued prior to termination, neither party shall have any further obligation to the other under this agreement

14 GENERAL

- 14.1 Neither party has been induced to enter into this agreement by a statement or promise which it does not contain. This agreement, including the Order Form and any applicable Project Document, constitutes the entire agreement between TNP and the Customer with respect to the supply of Services and supersedes all previous communications, representations and agreements either written or oral (save for fraudulent misrepresentation) with respect thereto. This shall not exclude any liability which a party would otherwise have to the other party in respect of any statement made fraudulently by that party prior to the date of this agreement. The application of any general terms and conditions upon which the Customer trades or which it seeks to impose by inclusion in any purchase order or by way of course of trading or otherwise are excluded and shall be of no effect
- 14.2 The Customer may not assign, transfer or otherwise dispose of any of its rights or obligations under this agreement without the prior written consent of TNP, such consent not to be unreasonably withheld or delayed. Subject to the foregoing, this agreement will bind and inure to the benefit of any successors and assigns. TNP may use subcontractors in the performance of the Services but will remain liable to the Customer in accordance with this agreement for the Services provided
- 14.3 If the Customer's address on its Order Form is in the United States, then this agreement and all matters arising out of or relating to this agreement shall be governed by and construed in accordance with the laws of the state of Nevada without regard to principles of conflicts of laws. The state and federal courts located in the State of Nevada shall have non-exclusive jurisdiction to adjudicate disputes arising out of or relating to this agreement. If the Customer's address on its Order Form is in Canada, then this agreement and all matters arising out of or relating to this agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia without regard to principles of conflicts of laws. The provincial courts located in the Province of British Columbia shall have non-exclusive jurisdiction to adjudicate disputes arising out of or relating to this agreement. The parties hereby irrevocably consent to the jurisdiction of such courts
- 14.4 Each provision of this agreement shall be construed separately and notwithstanding that the whole or any part of any such provision may be held by any body of competent jurisdiction to be illegal invalid or unenforceable the other provisions of this agreement and the remainder of the provision in question shall continue in full force and effect. The parties hereby agree to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible the economic legal and commercial objectives of the invalid or unenforceable provision
- 14.5 The relationship of TNP to the Customer is solely that of independent contractor, and nothing contained herein is intended or will be construed as establishing an employment, joint venture, partnership, commission agent or other business relationship between the parties
- 14.6 Any variation of this agreement or any Project Document must be in writing, and signed by an authorised representative of each of the parties. No term or provision hereof will be deemed waived and no breach excused unless such waiver or consent is in writing and signed by the party claimed to have waived or consented
- 14.7 The Customer agrees that TNP may refer to the Customer as a customer of TNP and as a user of its Software in TNP marketing and public relations material. For the avoidance of doubt, this **clause 14.8** does not give either party the right to disclose Confidential Information
- 14.8 The parties confirm their intent not to confer any rights on any third parties by virtue of this agreement

15 DATA PROTECTION

- 15.1 The Customer acknowledges that in connection with the performance of its obligations under this agreement TNP and any Vendor used in connection with the SaaS Service may carry out processing on Customer Personal Data. TNP shall carry out such operations in compliance with any applicable data protection legislation in force from time to time
- 15.2 The Customer acknowledges that it is solely responsible for the creation of all Customer Personal Data upon which TNP and any Vendor used in connection with the SaaS Service carries out processing under this agreement. The Customer shall make obtain and maintain all necessary notifications authorisations and consents the Customer is required to have

Software License, Support and Services Agreement

for the processing of Customer Personal Data to be carried out under this agreement. TNP acknowledges that Customer Personal Data in the possession of TNP and any such Vendor shall at all times remain the property of Customer

- 15.3 The Customer hereby instructs TNP and any Vendor to carry out such processing on Customer Personal Data as is reasonably required by TNP to perform its obligations under this agreement and TNP agrees to instruct its Vendors to process such data solely in accordance with this instruction and any applicable data protection legislation. The Customer may vary the instruction given by this **clause 15.3** with respect to the processing of Customer Personal Data at any time by written notice to TNP provided that TNP shall have no liability of any kind to the Customer for any loss or damage suffered by or claim made by any person against the Customer arising directly or indirectly from TNP complying with such notice
- 15.4 TNP agrees to ensure that its Vendors maintain appropriate technical and organizational measures to prevent any unauthorized or unlawful processing of Customer Personal Data and to guard against accidental loss or destruction of, or damage to, Customer Personal Data
- 15.5 TNP shall, as soon as commercially practicable (and in any event within seventy-two (72) hours of becoming aware of it), give the Customer notice of any known breach of the Customer Personal Data or any unauthorized use or disclosure of Customer Personal Data. Such notice will include the full particulars known to TNP and TNP will cooperate with any investigation initiated by the Customer

16 NOTICES

- 16.1 Any document, notice, claim or demand to be given served or made by either party to the other in connection with this agreement shall be sufficiently given served or made by delivering or sending the same by hand or courier, recorded delivery or registered air mail post, facsimile or email to the registered office or any notified address of the party to whom it is addressed
- 16.2 Any such document, notice, claim or demand shall be deemed to be given served or made
- 16.2.1 if delivered, at the time of delivery
 - 16.2.2 if sent by courier, at the expiration of 12 hours of the same having been despatched
 - 16.2.3 if posted, at the expiration of 2 days after the envelope containing the same shall have been posted
 - 16.2.4 if sent by facsimile or email, upon completion of transmission

17 ELECTRONIC AGREEMENTS

The Customer acknowledges and agrees that

- 17.1 by accessing, using, receiving or downloading any Software and by making electronic transmissions to TNP in connection therewith this agreement and any other licence, usage or other conditions attaching from time to time to the use of Software or Services are legally binding upon it whether or not an authorised employee agent or contractor of the Customer clicked on any electronic button or such similar links as may be designated by TNP to accept this agreement or gain access to and use any Software or Service using the internet or other electronic forms of communication
- 17.2 pursuant to any applicable statutes, regulations, rules, ordinances or other laws, it accepts the use of electronic signatures, contracts, orders and other records and to electronic delivery of notices, contractual terms, records of transactions and other data initiated or completed through electronic means with TNP and
- 17.3 it hereby waives any rights or requirements under any statutes, regulations, rules, ordinances or other laws in any jurisdiction which require an original signature or delivery or retention or filing of electronic or non-electronic records

Software License, Support and Services Agreement

SCHEDULE 1

SOFTWARE SUPPORT

Section 1

Support Definitions

"Error"	any failure of the Software or if applicable Third Party Software caused directly and solely by the coding of such software to provide the facilities or functions that are set out in the applicable specification sheet published by TNP or if applicable the Third Party Software Vendor or agreed in any Order Form
"Service Level Agreement"	the service levels for Support and for the SaaS Service as set out in Section 4 of this Schedule 1
"Support Commencement Date"	the commencement of a Subscription Period in respect of which the relevant Subscription Fee has been paid or the date set out in any Order Form
"Support Contact(s)"	Customer personnel identified to TNP in writing who are trained and qualified to act as liaison points with TNP in respect of Errors, initial such contacts to be identified in the Order Form
"Support Hours"	the hours each weekday, excluding weekends and United States Federal holidays, during which Support will be provided by TNP as set out in the Order Form
"System Environment"	a system of integrated computer hardware, operating systems software, computer peripherals and facilities provided by TNP or its contractors to allow the Customer over the internet to access and use the Software and, if applicable Third Party Software

Section 2

How Support Works

- 2.1 Subject to the terms of this agreement TNP will provide Support during the Support Hours Subject to the terms of this agreement Support shall include
 - 2.1.1 Error correction
 - 2.1.2 Enhancements
 - 2.1.3 subject to payment of any applicable Subscription Fees or consultancy or implementation fees, New Releases
- 2.2 Support shall commence on the Support Commencement Date and shall continue for the relevant Subscription Period or as otherwise set out in any Order Form
- 2.3 TNP shall respond to Errors and supply Support solely through the Support Contacts, in accordance with the Service Level Agreement
- 2.4 Prior to the Support Commencement Date, the Customer shall nominate three (3) (or such other number as is agreed by TNP) named Support Contacts. The Customer may change the identities of the Support Contacts from time to time upon reasonable prior written notice to TNP. The Customer accepts that it may not be possible for TNP to resolve an Error in detail until it can be discussed with a Support Contact
- 2.5 In the case of Errors that originate in Third Party Software, TNP shall
 - 2.5.1 liaise with the relevant Third Party Software Vendor to obtain a fix or workaround for the Error and
 - 2.5.2 implement such fix or workaround within the SaaS Service

The Customer acknowledges that the response times of such Vendor may be longer than those set out in the Service Level Agreement and there may be additional conditions applicable. The Customer agrees that TNP shall have no liability in respect of delays in providing fixes or workarounds, or failure to provide such fixes or workarounds, for Errors in Third Party Software as a result of delays or failures on the part of the relevant vendor

Software License, Support and Services Agreement

- 2.6 Upon TNP's request, the Customer shall promptly provide TNP with a written statement of and any further reasonable information concerning any Error requiring Support
- 2.7 The Customer acknowledges and agrees that for TNP to provide any Support, where the Customer is in possession or control of the Software or, if applicable, Third Party Software, the Customer must ensure that TNP Support personnel are provided with all necessary and appropriate approvals, permissions, rights, access information and necessary physical or remote electronic access to the relevant hosting service and the Software and Third party Software for the purpose of investigating or rectifying reported Errors. In the event that the Customer is responsible for providing such access but fails to obtain the necessary and appropriate approvals, rights or information, the Customer shall not, seek any action or remedy from TNP in association with any loss, damage, costs or expense incurred or suffered by the Customer arising directly or indirectly from any such failure and TNP shall not be obliged to continue to provide Support in connection with the relevant Error until such approvals, rights, information or access is provided
- 2.8 TNP shall respond to a reasonable number of queries from the Support Contacts where such queries are not in respect of Errors. However, the Customer acknowledges that Support is not a substitute for training, and if TNP (acting reasonably) believes that the volume and/or nature of queries indicates that one or more of the Support Contacts requires additional training, TNP reserves the right to withhold response to any further queries from such Support Contacts until they have undertaken the necessary training

Section 3

Exclusions from Support

- 3.1 TNP shall be under no obligation to provide Support in respect of
- 3.1.1 Errors resulting from any modifications or customisations of the Software or if applicable Third Party Software after the Commencement Date not made by TNP. For the avoidance of doubt, such modifications shall include but not be limited to changes to the logical or physical file system or database schema for the Software or if applicable Third Party Software or changes to the data made directly by or on behalf of the Customer without use of such software or its interfaces
 - 3.1.2 any software other than the Software or if applicable Third Party Software
 - 3.1.3 incorrect or unauthorised use of Software or if applicable Third Party Software or operator error
 - 3.1.4 any fault, incompatibility with or lack of capacity of the SaaS Service upon which the Software or if applicable Third Party Software is installed, other than to comply with the SaaS Service Levels in **Section 4.12** of this **Schedule 1**
 - 3.1.5 use of the Software or if applicable Third Party Software with operating systems or other supporting software other than those agreed by TNP
- 3.2 TNP shall notify the Customer as soon as TNP is aware that any Error is not covered by Support and the reasons for that decision and any time spent by TNP investigating such Errors will be chargeable at TNP's then current rates. TNP shall invoice such charges at its discretion and such invoices shall be paid within 14 days from the invoice date

Section 4

Service Level Agreement

4.1 TNP Error Resolution Process

A team of TNP help desk advisers receive and log the initial call from a Customer Contact. The help desk will identify the caller and log the software issue. They have access to an extensive knowledge database and should an adviser be unable to immediately resolve the issue it is escalated to the second line help desk and if necessary, thereafter in accordance with **section 4.8** of this **Schedule 1**

4.2

Software issues referred to the second line help desk will be handled by the appropriately qualified consultant who will attempt to simulate the issue through a process of replication. If the consultant is unable to replicate the issue, TNP will seek to investigate the issue in situ using a remote diagnostic link to the Software, Third Party Software or SaaS Service

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4.3

If, following the remote diagnostic process, the issue remains unresolved then it will be referred to the product support manager. Following a review of the issue the product support manager may form a virtual team. This virtual team is explained in greater detail below as it represents an important stage in the resolution of the most difficult issues

4.4

To ensure that the virtual team contains the necessary expertise, team members will be resourced from throughout TNP. The team may include operating system experts, database consultants as well as application consultants with the most appropriate skills for the product(s) concerned. Depending on the nature of the issue the team may also include the software authors. At all times the main focus and priority of the virtual team will be the resolution of the issue and a team leader will be appointed to help co-ordinate the process

The virtual team will work to eliminate those areas that may be causing the problem. These may include the database, the operating system, application(s), data, network and communications or possibly user error. Progress on the resolution will be reported back to ensure that the process remains focused. Details of the issue and the action taken will be recorded in the knowledge database and the issue logging database

4.5 Reporting an Error to TNP

TNP will provide telephone and email access to the Help Desk during the Support Hours,

E-Mail: support@thenavpeople.com
Telephone: +1 888 609 6766

If the Customer has purchased Support outside of Support Hours, such Support shall be for Priority Levels 1 and 2 only as defined in **section 4.9** of this **Schedule 1**. The Support Contacts should use their training and their own internal knowledgebase to attempt to resolve any issue prior to it being reported to TNP. To ensure that Errors are handled efficiently and effectively, contact with TNP shall only be made by the Support Contacts

4.6 On contacting TNP, the Support Contacts will have to provide

- Caller Name and Email Address
- Company Name and Contact ID
- Application Name, Module and Version Number
- Full Description of Error including Error Codes

TNP will establish the Priority Classification of each Support issue in consultation with the Support Contact

4.7 At any time the issue status will be one of

Status	Description
On-going	The issue is open with actions waiting to be performed by TNP
Pending Case	The issue is open. The Customer is waiting for a response from TNP
New Release Request	The issue is open. The item requires an upgrade to a later version of the software
Waiting for Customer	The issue is open. TNP is waiting for the Customer to perform one or more actions
SMR Request	The issue is open. TNP is waiting for a response from a Third Party Software Vendor. An SMR is a system modification request
Bug Fix	The issue is open. TNP is waiting for a Vendor to release a patch to Third Party Software or recommend a workaround
Issue Closed	The issue has been resolved by TNP

4.8 Software Errors are resolved as follows

Front Line Support – A representative from the Help Desk takes the initial issue and attempts an expeditious resolution after recording, analysing, referring to the knowledgebase data and using its best endeavours to resolve the issue

Second Line Support – Software Errors are escalated to Second Line teams (generally, if the issue has not been resolved by Front Line Support within 15 minutes). Each second line team is formed from functional specialists who will seek to resolve the issue in accordance with **section 4.2** of this **Schedule 1**

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Third Line Support – Second Line Support will escalate Software Errors to TNP product support managers investigate all issues where the Second Line team needs guidance from product specialists. In relation to Errors or issues concerning Third Party Software, product support managers may escalate such issues to the software manufacturers and in such circumstances will work with them in order to provide a resolution or workaround as quickly as possible. In most cases the Error correction updates will be made available in the next Service Pack

4.9 Software Errors are prioritised as follows

Priority	Description	Examples
1	System down or unable to access data	Users cannot log into the system Users cannot use specific function.
2	Time-critical business function out of action or malfunctioning	Cannot create Picks Cannot produce Invoices
3	Non time-critical business function out of action or malfunctioning	Cannot print management report
4	Other	Advice requested regarding configuration of a report Requests for modifications to the system
5 – Training	Training Requests	See section below
6 – On site Request	On Site Support Requests	See section below

4.10 Priorities are actioned, with indicative response/fix times as follows

Action	Priority 1	Priority 2	Priority 3	Priority 4
Response from knowledgeable support consultant who will commence work on diagnosing and solving the issue within	1 working hour	2 working hours	4 working hours	2 working days
Status Updates within	2 working hours	4 working hours	8 working hours	5 working days
Escalate to Customer Services Supervisor within	2 working hours	8 working hours	2 working days	Not applicable
Endeavour To Resolve (Fix) within	1 working day	2 working days	5 working days	Not applicable

4.11 Error resolution management

In order to fully diagnose an issue TNP may need to recreate it on a test system. TNP maintains a test system for the two most recent releases of the Software. TNP's ability to provide solutions to any issues encountered on older releases may be constrained to general advice and guidance or workarounds already known to TNP and contained in its support knowledge-base.

In order to protect their product's integrity, the Vendors strive to control the development and distribution of patches in favour of incorporating fixes into Service Packs. If TNP and the Vendors cannot provide the Customer with a viable workaround or the issue is time-critical such that it poses a serious disruption to its business, TNP will consider the business case for developing a patch to solve the issue. The business case will be determined by taking account of the

- Loss or disruption suffered as result of the issue
- Likelihood that the issue will impact other users of the same release
- Amount of effort that will be necessary to expend on developing and testing the patch
- Risk that the patch may impact TNP products' integrity
- Time saved over waiting for the fix to be incorporated into a Service Pack

4.12 SaaS Service Levels

SaaS service levels are to be provided during the System Environment Operational Hours and are at all times subject to the System Environment Maintenance Hours, the System Environment Downtime requirements and to the following SaaS Service Level exclusions

- 4.12.1 the free tier of the Azure™ Active Directory
- 4.12.2 the developer tier of the Azure™ API Management Service and BizTalk™ services

Software License, Support and Services Agreement

- 4.12.3 Azure Mobile Services, Azure™ Multi-Factor Authentication, Azure Remote App and other related services Azure™ offers in connection with its SaaS service from time to time unless otherwise agreed to by TNP in writing
- 4.12.4 performance or end-to-end bandwidth across public networks such as the Internet

For the avoidance of doubt, the assumptions TNP has used in agreeing to these service levels are based upon information obtained from the Customer and TNP's understanding of the Customer's proposed use of the System Environment. If those assumptions change, then these service levels will be subject to change

SaaS Service Levels
System Environment Maintenance Hours
<p>System Environment Maintenance Hours are the hours from 23.00 to 06.00 each day during which the Systems Environment may be interrupted to the Customer for carrying out routine maintenance activities required by professional computing practice, including</p> <ul style="list-style-type: none"> Offline backup Software maintenance work, including testing new versions Testing restart and recovery Implementation of release upgrades and service packs for System Environment components <p>Reboots of the System Environment may be required during maintenance work and Customer Users are advised not to use the platform during these periods. For the avoidance of doubt, downtime due to maintenance works carried out during System Environment Operational Hours will form part of the Systems Environment Downtime calculation</p>
System Environment Operational Hours
<p>The System Environment Operational Hours are periods of time during which the System Environment will be made available subject to the Service Levels for routine Customer processing requirements. For the avoidance of doubt, the Systems Environment will be generally available for routine processing requirements at all times outside the System Environment Operational Hours but during such periods operations will not be subject to Service Levels</p> <p>Systems Environment Operational Hours will be between 0600hrs and 2300hrs each day</p> <p>Generally maintenance work will not be performed during System Environment Operational Hours unless it is unavoidable</p>
System Environment Downtime
<p>Systems Environment Downtime is the total number of hours in a calendar month that the Systems Environment is unavailable for the Customer's use, due to a cause that is the primary responsibility of TNP or its contractors, during Systems Environment Operational Hours and is expressed as a percentage of Systems Environment Operational Hours</p> <p>System Environment Downtime is calculated as the total hours of downtime in a calendar month that have accumulated from such causes during Systems Environment Operational Hours, (where those Incidents have had downtime in excess of 5 minutes) plus (+) maintenance works carried out during System Environment Operational Hours in the same period divided by (/) Systems Environment Operational Hours in the same period times (x) 100%. Systems Environment Downtime so calculated shall not exceed 1% in any Calendar Month</p> <p>Expressly excluded from any Systems Environment Downtime calculations is downtime due to force majeure, time to implement agreed upgrades to Third Party Software or other reasons not within the responsibility of TNP and its contractors, including without limitation the Customer or Customer User's inability to access the System Environment due to a public communications facility or network including the Internet</p>

Maintenance Notification Service Level		
Type of Maintenance	Anticipated Downtime	Advance Notice to be Given
Planned (e.g. upgrades of hardware or software)	As estimated	Seventy-two (72) hours 3 working days

Software License, Support and Services Agreement

Unplanned	Up to two (2) hours	Not < four (4) hours
Urgent or emergency works	As estimated	As much as reasonably practical

4.13 Software Enhancements and New Releases

Subject to the terms of this agreement, Enhancements and New Releases will be provided for the Software and if applicable Third Party Software specified in the relevant Order Form.

Where an Enhancement or New Release of the Software or if applicable, Third Party Software is available, the Customer may request a copy of that release to be installed on the SaaS Service for its use

The Customer is not obliged to implement an Enhancement unless

1. The version which the Customer is running is due to be dropped from TNP's Supported Software List
2. The Enhancement will fix a known support issue

Implementation of any Enhancement or New Release by TNP will be managed in accordance with TNP's change policies at the time and charged for at TNP's then current daily rates

4.14 Termination of Third Party Software Support

In the event that any Third Party Software Vendor terminates TNP's right to continue to provide Support to the Customer for its Third Party Software, TNP shall use its reasonable endeavours to source a replacement supplier for such Support where possible. In the event that TNP is unable to source a replacement supplier, TNP may terminate upon twenty (20) days written notice to the Customer its obligations under this Agreement to support the relevant software. For the avoidance of doubt any such Vendor may also be able to source an alternative supplier of support for the Third Party Software and the Customer agrees to contact that Vendor and deal in good faith with both the Vendor and TNP in connection with finding such replacement supplier

SCHEDULE 2

SERVICE EXCLUSIONS

Unless specified in any Order Form or otherwise agreed in writing, the following items are not part of Services provided under this agreement and shall remain the sole responsibility of the Customer

1. maintenance, support, management, licensing, authorisations or consents in connection with any Customer Data, Customer Personal Data or any Customer database
2. documentation, configuration, testing, maintenance, support, ongoing development work for or installation or Enhancements of the Software or any applicable Third Party Software other than new developments or releases of the Software or Third Party Software that TNP, in its absolute sole discretion, agrees to install and support under this agreement for access and use by the Customer during any Subscription Period
3. procurement, provision, maintenance, support, upgrading, installation, licensing, management or any advice or other services in connection with any Customer software, hardware, desktop equipment, infrastructure or peripherals, computer systems, or environment or the Customer's telecommunications network or facilities
4. acquisition, licensing, management, development work or integration with any software of any third party (other than as expressly agreed in connection with Third Party Software)
5. Customer or Customer User training
6. Customer data conversion or migration
7. the design or technical requirements in respect of the interface between the SaaS Service and the Customer's computer systems or its environment or the Customer's telecommunications network or Customer premises
8. the procurement, provision, adequacy, licensing, maintenance or support of or any advice in connection with the software or for any systems, computer, device or facility used by the Customer or any Customer User to access or use the SaaS Service or any website or computer network used in connection with the SaaS Service

Software License, Support and Services Agreement

9. any Services at the Customer's premises
10. any Services (other than the SaaS Service) outside TNP's business hours set out in **clause 6.6**

SCHEDULE 3

CHANGES

1. For the purposes of this agreement "Change(s)" means a modification to, addition to, or removal from the functionality to be provided by the Software, or Third Party Software, including but not limited to the addition of new Third Party Software, increases to the Customer Users, implementation of Enhancements or new versions of Software or Third Party Software where such change has been agreed in accordance with this **Schedule 3**
2. If the Customer requests a Change or TNP recommends one both parties shall work together in good faith to define, document in a Project Document and agree such Change in accordance with **clause 3**
3. When a potential Change is identified it shall be subject to approval by the Project Manager before it is incorporated in the SaaS Service. The Project Manager's approval shall be given in writing (to include by email)
4. Notwithstanding the provisions of this **Schedule 3**, TNP shall be under no obligation to agree, develop or implement any new Change that has not been approved by TNP in writing (to include by email)
5. If the scope of the Change will have a material impact on the SaaS Service the Project Document shall establish a detailed process for the definition, development and implementation of the Change