



Asset Guardian
SOLUTIONS LIMITED

TAKE CONTROL AND CONTROL CHANGE

Asset Guardian Solutions Limited

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Agreement

Software Licence and Support Agreement



Asset Guardian Solutions Limited

This agreement is between **Asset Guardian Solutions Limited** a limited liability company incorporated in Scotland under number SC375944 whose Registered Office at 39 May Gardens, The Fairways, Wishaw, North Lanarkshire, Scotland, ML2 7PB ("**AGSL**") and **you** ("**the Customer**").

If the Customer does not agree to be bound by these Terms and Conditions ("**Terms and Conditions**"), the Customer cannot order or use any Professional Services or Software Services.

The person entering into the Agreement on behalf of the Customer warrants that he/she/they has/have the authority of the Customer to enter into the Agreement on the Customer's behalf.

AGSL's issue of a Proposal to the Customer constitutes a contractual offer and subject to Clause 12 the Customer's signing/acceptance of the Proposal will conclude the Agreement between AGSL and the Customer relating to the Services listed in the Proposal. All Proposals will be deemed to be subject to and include the Terms and Conditions.

The contract (the "**Agreement**") between the Customer and AGSL will comprise:

1. the Terms and Conditions;
2. AGSL's Proposal(s);
3. any Purchase Order;
4. the Privacy Policy; and
5. where appropriate, the SLA.

If there is any conflict between the terms of any other foregoing documentation, the documentation shall have precedence in the following Order:

1. the Proposal(s) in reverse chronological order;
2. the Terms and Conditions;
3. the Privacy Policy; and
4. where appropriate, the SLA.
5. the Purchase Order(s) in reverse chronological order;

PART ONE – SOFTWARE SERVICES.

1. Access to the Software Services.

AGSL grants to the Customer a non-exclusive, non-transferable or sub-licensable (except as provided in a Proposal) royalty based (i.e. the Fees) licence to Use the Software Services for the Customer's internal business purposes only for the Subscription Term, subject to the following conditions:

1.1. AGSL shall install, setup and configure the Software on the Users Local Equipment where this Professional Service is Included in the Proposal. AGSL may also issue the Customer with one copy of the Software in object code for Use on the Customer's system, together with the Documentation to install and Use the same, where it is agreed that the User shall help install the Software on the Local Equipment or outsource this service to a reputable supplier.

1.2. For the purposes of this Licence, "Use" shall mean and include:

1.2.1. utilisation of the Software by copying, transmitting or loading the same into the temporary memory (RAM) or installing into the permanent memory (*e.g.* hard disk, CD ROM or other storage device) of the Customer's system for the processing of the system instructions or statements contained in such Software;

1.2.2. copying the Software which is in machine-readable form for Use by the Customer on the Customer's system for the purposes only of understanding the contents of such machine-readable material and for back-up provided that no more than two (2) copies will be in existence at any one time without prior written consent from AGSL;

1.2.3. storing the whole or any part of the Software on the Customer's system or other storage unit or disk;

1.2.4. utilising (but not copying) the Documentation.

1.3. For the purposes of the Agreement "concurrent use" shall mean simultaneous use of the Software by the number of Users specified in the relevant Proposal; however Software installed on a file server for the sole purpose of distribution to other workstations or computers is not used for the purposes of ascertaining the number of concurrent users. Additional concurrent users may be added by varying the licence and recording the variation by signing a replacement Proposal.

1.4. The Customer may be subject to an additional charge upon issue to the Customer of Upgrades. Such additional charge for Upgrades shall become payable within 14 days of issue unless the Customer has returned the Upgrade unused to AGSL within such period.

- 1.5. The Customer must provide, maintain and support Local Equipment that meets the minimum specification for the Software Services that is defined in the Documentation to operate the Software Services. The Customer may wish to support this Local Equipment themselves or outsource to a reputable supplier. None of these things are AGSL's responsibility.
- 1.6. AGSL may periodically Upgrade and Update the Software Services, in order to provide Users with a greater, evolving user experience. These changes will require the Customer to schedule and implement the changes on their own Local Equipment. The changes may also mean that Users need to upgrade their Local Equipment in order to make efficient use of the Software Services. AGSL shall provide the Customer with reasonable notification in advance in this case.
- 1.7. AGSL recognises that the Customer may have legitimate business reasons for not upgrading to a new version of the Software Services as soon as the version becomes available. However, AGSL will not support old versions indefinitely. When an old version used by you is at end-of-life or at AGSL's discretion, AGSL may remove your access to that version and Upgrade you to a new version.
- 1.8. AGSL has all required distribution rights to the Intellectual Property in the Software Services and the Documentation.
- 1.9. AGSL shall be under no liability to the Customer in respect of anything which, apart from this provision, may constitute breach of the Agreement arising by reason of Force Majeure.

2. Conditions of Use.

The Software Services provided to the Customer are non-exclusive, non-transferable and non-sublicensable (except as provided in a Proposal) and are for the Customer's internal business use only. The Customer's right to use the Software Services is subject to the following conditions: -

The Customer shall not:

- 2.1. Transfer to any other person any of its rights to use the Software Services;
- 2.2. Sell, license, rent or lease the Software Services;
- 2.3. Make the Software Services available to anyone who is not a User;
- 2.4. Create any derivative works based upon the Software Services or Documentation;
- 2.5. Copy any feature, design or graphic in the Software (including without prejudice to the foregoing generality the graphical user interface and menu command hierarchy);
- 2.6. Access the Software Services (i) in order to build a competitive solution or to assist someone else to build a competitive solution; or (ii) if the User is an employee or contractor of an AGSL competitor;

- 2.7. Use the Software Services in a way that violates any criminal or civil law;
- 2.8. Load test the Software Services in order to test scalability; or,
- 2.9. Exceed any usage limits listed the applicable Proposal.
- 2.10. Demonstrate any aspect of the Software Services to anyone associated in any way with an AGSL competitor.
- 2.11. Copy the Software Services (other than for normal system operation) nor otherwise reproduce the same provided that the Customer may copy the Software for back-up in terms of the Agreement;
- 2.12. translate, adapt, vary, or modify the Software Services;
- 2.13. disassemble, decompile or reverse engineer the Software Services;
- 2.14. install the Software Services on any Location/Site other than that specified in the relevant Proposal.

The Customer shall:

- 2.15. maintain accurate and up-to-date records of the number and location of all copies of the Software Services;
- 2.16. supervise and control Use of the Software Services by Users in accordance with the terms of the Agreement;
- 2.17. replace the current version of the Software Services with the Updated or Upgraded version forthwith upon receipt;
- 2.18. reproduce and include the copyright notice of AGSL on all and any copies, whether in whole or in part, in any form, including partial copies or modifications of the Software Services made herein;

3. User Content/Security

- 3.1. The Customer provides all data for use in the Software Services, and AGSL is not obliged to modify or add to User Content except as specified in Clause 4. The Customer is solely responsible for User Content and the accuracy of User Content.
- 3.2. User Content belongs to the Customer or its licensors, and AGSL makes no claim to any right of ownership in it.
- 3.3. AGSL shall keep User Content confidential in accordance with Clause 17 of the Agreement.
- 3.4. The Customer hosts its own User Content on its own Local Equipment, AGSL has no responsibility or liability whatsoever for the Customer's Data Protection, Security, or any other data obligations under the Agreement.

3.5. AGSL does however recommend that Users keep account details confidential and Users should not reveal their username or password to any unauthorised third parties. Furthermore, Industry Best Practice security recommendations should be implemented at all times, such as (a) maintaining a recognised Cyber Essentials Certification for IT systems such as <https://www.cyberessentials.ncsc.gov.uk> (b) Always implementing Strong, robust, difficult to break passwords, that are changed on a regular basis (c) that Users do not save account details in their internet browser (d) Implementing Two Factor authentication at each endpoint.

3.6. Whereas as part of the Software Services, AGSL may on occasion host email accounts or other subscription accounts for Users, AGSL accepts no responsibility and shall not be liable for these services nor for any third parties accessing such email or subscription accounts by way of breaking or hacking passwords. It is the responsibility of Users to ensure that all email and all subscription accounts are properly protected with robust passwords and security measures as per 3.5.

4. Acceptable Usage Policy

- 4.1. AGSL accepts no responsibility or liability for any infringement of third party rights by Users.
- 4.2. AGSL will not be liable in any way or under any circumstances for any loss or damage that any User may incur as a result of AGSL exercising its rights under the Agreement, nor for any errors or omissions in the Software. Use of and reliance of the Software is entirely at your own risk.
- 4.3. The Customer acknowledges that AGSL may retain copies of any and all communications, information and User Content sent to AGSL.
- 4.4. Users must comply with the terms of the Privacy Legislation at all times.
- 4.5. All Users must enter into the EULA.

5. Intellectual Property

- 5.1. The Software Services and the Documentation are the property of AGSL, or AGSL's Affiliates or licensors. By continuing to use the Software Services you acknowledge that such material is protected by applicable United Kingdom and international Intellectual Property and other laws.
- 5.2. You may print, reproduce, copy, distribute, store or in any other fashion re-use Content from the Software Services for personal or educational purposes only unless otherwise given AGSL's express written permission to do so. Specifically, the Customer agrees that it will not systematically copy Content from the Software Services with a view to creating or compiling any form of comprehensive collection, compilation, directory or database unless given AGSL's express written permission to do so.

5.3. In the event that new inventions, designs or processes evolve in performance of or as a result of the Agreement, the Customer acknowledges that the same shall be the property of AGSL unless otherwise agreed in writing by AGSL.

6. User Intellectual Property

6.1. The Intellectual Property rights subsisting in the User Content belongs to the User unless it is expressly stated otherwise.

6.2. Where expressly indicated, certain Content available through the Software Services and the Intellectual Property rights subsisting therein belongs to other parties.

6.3. The third party Content described in this Clause 6, unless expressly stated to be so, is not covered by any permission granted by Clause 5 of the Terms and Conditions to use Content.

7. Third Party Intellectual Property

7.1. Unless otherwise expressly indicated, all Intellectual Property rights including, but not limited to, Copyright and Trademarks, in Content belong to the manufacturers or distributors of such products as may be applicable.

7.2. Subject to Clause 5 you may not reproduce, copy, distribute, store or in any other fashion re-use Content unless otherwise indicated on the Software Services or the Documentation or unless given express written permission to do so by the relevant manufacturer or supplier.

8. Installation, Licensing and Use of the Software Services

The licence model works as follows:

8.1. The Software Services are installed on an Asset Guardian Application Server or Servers. The Asset Guardian Application Server or Servers is/are normally owned and managed by the Customer.

8.2. AGSL may have remote desktop access and carry out the installation on an Asset Guardian Application Server or Servers, or AGSL may issue the Software Services to the Customer for the Customer to install on the on an Asset Guardian Application Server or Servers.

8.3. None of the Software Services are installed on Local Equipment other than the Asset Guardian Application Server or Servers.

8.4. The Asset Guardian Application Server or Servers may be (a) dedicated to the Software Services or (b) shared with other applications.

- 8.5. The Asset Guardian Application Server requires to communicate with a SQL Database Server or Servers. AGSL does not supply licenses for SQL Database Servers. The Asset Guardian Application Server will connect and use databases on the Customer's SQL Database Servers. The Customer must have an SQL Database Server or Servers (as appropriate) with all necessary licences in place.
- 8.6. A Customer may have one Asset Guardian Application Server or have multiple servers in a Synchronisation Scheme (all communicating together), or have multiple standalone servers (separate systems), and/or have separate development/test server(s).
- 8.7. AGSL will supply Licence Keys to the Customer, that the Customer (or AGSL) install on the Asset Guardian Application Server through an administration function in the Software, and through a Web Admin page.
- 8.8. Each Asset Guardian Application Server needs: One license to operate it: either a Server Licence or a Sync Server Licence and the requisite number of Concurrent User Licences. The [Server Licence or Sync Server Licence] determines how many Users can connect to the relevant Asset Guardian Application Server concurrently.
- 8.9. A Server Licence or a Sync Server Licence must not be installed on multiple servers/devices.
- 8.10. Without prejudice to the terms of Clause 8.5, Sync Server Licences must not be shared or pooled between devices/servers, they must be split and installed on separate Asset Guardian Application Servers and are only available for licensed Concurrent Users connecting to that Asset Guardian Application Server.
- 8.11. AGSL will supply two sets of License Keys that have to be entered into the Software to activate the Software Services. AGSL receives one set of these Licence Keys from Servoy, and AGSL generates its own Licence Keys in addition. The License Keys are coded to the Customer and number of permitted Concurrent Users, and Software Services are activated once the correct Licence Keys are entered.
- 8.12. The Asset Guardian Application Server may attempt to connect back to Servoy when the Licence Keys are entered but the Licence Keys will still activate the Software Services without an Internet connection.
- 8.13. No Licence Keys are entered by or sent to Users. The Asset Guardian Application Server keeps an open connection to each connected User and limits the number of connections according to the number of Concurrent User Licences. Once the limit of Concurrent Users is reached, further Users are restricted from connecting to the Asset Guardian Application Server.
- 8.14. Users connect and use the system through their Web Browser (Web Client) or using a Java client (Smart Client), if they have Java Runtime Environment installed on their desktop.

9. Software Services Warranties

AGSL warrants that: (i) the Software Services will function substantially as described in the Documentation; and (ii) AGSL owns or otherwise has the right to provide the Software Services to the Customer under the Agreement. The remedies set out in this Clause 9 are the Customer's exclusive remedies for breach of either warranty.

9.1. If the Software Services do not function substantially in accordance with the Documentation, AGSL shall, at its option, either (i) modify the Software Services to conform to the Documentation; or (ii) provide a workaround solution that will reasonably meet the Customer's requirements. If neither of these options is commercially feasible, either party may terminate the relevant Proposal under the Agreement, in which case AGSL shall refund to the Customer all Fees pre-paid to AGSL under the relevant Proposal for unused Software Services.

9.2. If the normal operation, possession or use of the Software Services by the Customer is found to infringe any third party Intellectual Property right or AGSL believes that this is likely, AGSL shall, at its option, either (i) obtain a license from such third party for the benefit of the Customer; (ii) modify the Software Services so that they no longer infringe; or (iii) if neither of these options is commercially feasible, terminate the relevant Proposal under the Agreement, in which case AGSL shall refund to the Customer all Fees pre-paid to AGSL under the relevant Proposal for unused Software Services.

9.3. However, AGSL has no warranty obligations for:

- 9.3.1. the extent that Software has been modified by the Customer or any third party, unless the modification has been approved in writing by AGSL;
- 9.3.2. a version of the Software Services that has passed its end-of-life date (see Clause 1.4); or,
- 9.3.3. problems in the Software Services caused by any third party software or hardware, by accidental damage or by other matters beyond AGSL's reasonable control.

PART TWO – PROFESSIONAL SERVICES.

10. Professional Services Warranties.

- 10.1. AGSL warrants that (i) the Professional Services shall substantially conform to the applicable Proposal; and (ii) the Professional Services shall be performed with reasonable skill and care. The remedies set out in this Clause 10 are the Customer's exclusive remedies for breach of either warranty. If the Professional Services do not conform to the Proposal or are not performed with reasonable skill and care, AGSL shall re-perform the Professional Services to the extent necessary to correct the defective performance.
- 10.2. AGSL shall comply with the terms of the SLA (or as amended in a Proposal) at all times. The terms of Clause 10.1 shall apply to the SLA.

11. The Customer's Responsibilities.

The Customer shall provide AGSL with all information, access, and full good faith cooperation reasonably necessary to enable AGSL to deliver the Professional Services and shall do anything that is identified in the Proposal as the Customer's responsibility. If the Customer fails to do this, AGSL shall be relieved of its obligations to the extent that the obligations are dependent upon the Customer's performance.

PART THREE – GENERAL.

12. Term of Agreement.

This Agreement starts on the date that the Customer accepts a Proposal or where the Customer issues a Purchase Order in response to a Proposal and AGSL accepts the Purchase Order and ends when AGSL no longer is obliged to provide the Customer with Software Services and Professional Services under any Proposal.

13. Payments.

13.1. The Customer shall pay the Fees listed in, and in accordance with, the relevant Proposal.

13.2. If the Customer initially purchases Software Services for a term, and subsequently orders an additional product, the purchase price for the additional product shall be pro-rated so that the added subscriptions terminate on the same day as the Initial Subscription Term.

14. Termination and Suspension.

14.1. The Customer may terminate rights granted to the Software Services and Professional Services under a particular Proposal only after expiry of the Initial Subscription Term specified in the Proposal. Such notice must be given in writing not less than 30 days prior to the date of expiry of the said initial term (time being of the essence) otherwise the subscription will continue for the same term as specified in the Proposal at the Fee specified in the Proposal. Termination applies to Software Services and Professional Services and will only be terminated when a settlement of 100% of these service costs have been recovered by AGSL.

14.2. The Fees for the Initial Subscription Term will be as specified in the Proposal. AGSL reserves the right to change Fees from time to time and any such changes may affect the Customer's recurring Fees after the Initial Subscription Term. Increases in price will be reflected in the Customer's recurring Fees for the Services.

14.3. Either party may terminate rights granted under a particular Proposal if the other breaches any material term of the Proposal (including a material term of the Agreement insofar as it applies to the Proposal) and the breach is not cured within 30 days of written notice. the Customer's breach of Clause 2.9 of the Agreement shall be considered a material breach

14.4. Instead of terminating rights granted to the Customer under an Proposal, AGSL may suspend the provision of Software Services to the Customer for a period of up to 45 days. At any time during that period, AGSL may terminate the rights granted to the Customer.

- 14.5. Sections 2, 3.3, 4,5,6,7, 8, 9, 10, 13, 15, 16, 17, 18 and 19 continue after the Agreement ends.
- 14.6. If AGSL terminates a Proposal under the Agreement because of non-payment by the Customer, all unpaid Fees for the remainder of the Subscription Term immediately fall due for payment.
- 14.7. Within fourteen (14) days after the date of termination or discontinuance of the Agreement for whatever reason, the Customer shall return or destroy (as AGSL shall instruct) the Software Services and all Updates, Upgrades or copies, in whole and in part, in any form including partial copies or modifications of the Software Services received from AGSL or made in connection with the Agreement and all documentation relating thereto and to furnish AGSL with a certificate, certifying that the same has been done, unless the Customer has obtained AGSL's prior written authorisation to retain one copy for archive purposes only or for such other purpose which AGSL may authorise together with any conditions AGSL may impose in respect of such continued retention;
- 14.8. Termination also covers the eventuality of data migration for any other reason including ceasing to offer the services or changing suppliers.

15. Warranty Disclaimer.

EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, THE SOFTWARE SERVICES, SOFTWARE AND PROFESSIONAL SERVICES ARE PROVIDED WITH NO OTHER WARRANTIES OF ANY KIND, AND AGSL DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. AGSL DOES NOT WARRANT THAT THE USE OF THE SOFTWARE SERVICES SHALL BE UNINTERRUPTED OR ERROR-FREE.

16. Limitation of Liability.

NEITHER PARTY SHALL BE LIABLE UNDER THIS AGREEMENT FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF GOODWILL, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, LOST OR CORRUPTED DATA, LOST PROFITS, LOST BUSINESS OR LOST OPPORTUNITY), OR ANY OTHER SIMILAR DAMAGES UNDER ANY THEORY OF LIABILITY (WHETHER IN CONTRACT, TORT/DELICT, STRICT LIABILITY OR ANY OTHER THEORY), EVEN IF THE OTHER PARTY HAS BEEN INFORMED OF THIS POSSIBILITY. THE CUSTOMER ASSUMES ALL RESPONSIBILITY FOR THE SELECTION OF THE SOFTWARE SERVICES, SOFTWARE AND DOCUMENTATION NECESSARY TO ACHIEVE THE CUSTOMER'S INTENDED RESULTS, AND FOR THE USE AND RESULTS OF THE SOFTWARE SERVICES AND PROFESSIONAL SERVICES. EACH PARTY'S TOTAL LIABILITY FOR ANY DIRECT LOSS, COST, CLAIM OR DAMAGES OF ANY KIND RELATED TO THE RELEVANT PROPOSAL SHALL NOT EXCEED THE AMOUNT OF THE FEES PAID OR PAYABLE BY THE CUSTOMER TO AGSL UNDER SUCH RELEVANT PROPOSAL DURING THE PERIOD OF 12 MONTHS BEFORE THE EVENT

GIVING RISE TO SUCH LOSS, COST, CLAIM OR DAMAGES. THIS LIMITATION ON LIABILITY WAS AND IS AN EXPRESS PART OF THE CONTRACT BETWEEN AGSL AND THE CUSTOMER AND WAS A CONTROLLING FACTOR IN THE SETTING OF THE FEES PAYABLE TO AGSL. HOWEVER, THERE IS NO LIMITATION ON DIRECT LOSS, CLAIM OR DAMAGES ARISING AS A RESULT OF AN INFRINGEMENT OF AGSL'S INTELLECTUAL PROPERTY RIGHTS BY THE CUSTOMER, OR A BREACH OF SECTION 16 OF THIS AGREEMENT BY THE CUSTOMER, OR IN CONNECTION THE CUSTOMER'S INDEMNIFICATION OBLIGATIONS.

AGSL'S LIABILITY UNDER THIS AGREEMENT (EXCEPT WHERE PROVIDED OTHERWISE IN THIS AGREEMENT TO A LESSER EXTENT) SHALL BE LIMITED TO THE AMOUNT OF PROFESSIONAL INDEMNITY INSURANCE UNDERWRITTEN IN THE NAME OF AGSL WHICH SHALL BE £500,000.

17. Confidentiality

- 17.1. The Software Services, Software, Documentation and Proposal contain valuable trade secrets that are the sole property of AGSL, and the Customer agrees to use reasonable care to prevent third parties from learning of these trade secrets. The Customer shall take reasonable care to prevent unauthorised access to or duplication of the Software Services, Software, Documentation, and Proposal. The Customer shall use reasonable endeavours to ensure that their employees, agents and independent contractors are bound by the same duty of confidentiality to AGSL in terms of this Clause 17.
- 17.2. The User Content may include valuable trade secrets that are the sole property of the Customer. AGSL shall take reasonable care to prevent third parties from learning of these trade secrets. AGSL use reasonable endeavours to ensure that their employees, agents and independent contractors are bound by the same duty of confidentiality to AGSL in terms of this Clause 17.
- 17.3. Sections 17.1 and 17.2 do not apply to any information that (i) is now, or subsequently becomes, through no act or failure to act on the part of receiving party (the **"Receiver"**), generally known or available; (ii) is known by the Receiver at the time of receiving such information, as evidenced by the Receiver's records; (iii) is subsequently provided to the Receiver by a third party, as a matter of right and without restriction on disclosure; or (iv) is required to be disclosed by law, provided that the party to whom the information belongs is given prior written notice of any such proposed disclosure.

18. Indemnification by AGSL.

- 18.1. AGSL shall indemnify and hold harmless the Customer, its Affiliates, directors and employees from any damages finally awarded against the Customer (including, without limitation, reasonable costs and legal fees incurred by the Customer) arising out of any third party suit,

claim or other legal action alleging that the use of the Software Services or Documentation by the Customer (other than User Content – see Clauses 4 and 19) infringes any third party Intellectual Property rights, (“Legal Action”). AGSL shall provide reasonable assistance in the defence of such Legal Action.

18.2. However, AGSL shall have no indemnification obligations for any Legal Action arising out of: (i) a combination of the Software Services and/or Software with software or products not supplied, or approved in writing by AGSL; (ii) any repair, adjustment, modification or alteration to the Software Services by the Customer or any third party, unless approved in writing by AGSL; or (iii) any refusal by the Customer to install and use a non-infringing version of the Software Services offered by AGSL under Clause 9.2(ii). Clause 9.2(ii) and this Clause 18 state the entire liability of AGSL with respect to any Intellectual Property infringement by the Software Services or Software or Documentation. Or (iv) for any technical or security issues with Local Equipment.

18.3. The Customer shall give written notice to AGSL of any Legal Action no later than 30 days after first receiving notice of a Legal Action, and shall give copies to AGSL of all communications, notices and/or other actions relating to the Legal Action. The Customer shall give AGSL the sole control of the defence of any Legal Action, shall act in accordance with the reasonable instructions of AGSL and shall give AGSL such assistance as AGSL reasonably requests to defend or settle such claim. AGSL shall conduct its defence at all times in a manner that is not adverse to the Customer’s interests. the Customer may employ its own counsel to assist it with respect to any such claim. The Customer shall bear all costs of engaging its own counsel, unless engagement of counsel is necessary because of a conflict of interest with AGSL or its counsel, or because AGSL fails to assume control of the defence. The Customer shall not settle or compromise any Legal Action without AGSL’s express written consent. AGSL shall be relieved of its indemnification obligation under Clause 18 if the Customer materially fails to comply with Clause 18.2.

19. Indemnification by the Customer

19.1. The Customer shall indemnify and hold harmless AGSL, its Affiliates, directors, and employees from any damages finally awarded against AGSL (including, without limitation, reasonable costs and legal fees incurred by AGSL) arising out of any third party suit, claim or other legal action (including but not limited to any governmental investigations, complaints and actions) in connection with the User Content, including, without limitation, any action for infringement

of any Intellectual Property rights, right of publicity or privacy (including defamation), or other proprietary right with respect to the User Content (“Legal Claim”).

19.2. AGSL shall give written notice to the Customer of any Legal Claim no later than 30 days after first receiving notice of a Legal Claim and shall give copies to the Customer of all communications, notices and/or other actions relating to the Legal Claim. AGSL shall give the Customer the sole control of the defence of any Legal Claim, shall act in accordance with the reasonable instructions of the Customer and shall give the Customer such assistance as the Customer reasonably requests to defend or settle such claim. the Customer shall conduct its defence at all times in a manner which is not adverse to AGSL’s interests. AGSL may employ its own counsel to assist it with respect to any such claim. AGSL shall bear all costs of engaging its own counsel, unless engagement of counsel is necessary because of a conflict of interest with the Customer or its counsel, or because the Customer fails to assume control of the defence. AGSL shall not settle or compromise any Legal Claim without the Customer’s express written consent.

20. Publicity.

20.1. AGSL may list the Customer as a customer and use the Customer’s logo on AGSL’s website, on publicly available Customer lists, and in media releases with the Customer’s consent, such consent not to be unreasonably withheld

21. Miscellaneous.

21.1. This Agreement represents the entire express agreement of the parties, and supersedes any prior or current agreements or understandings, whether written or oral. If there is a conflict between the Agreement and a Proposal, the Proposal shall prevail.

21.2. This Agreement may not be changed or any part waived except by written agreement between the parties.

21.3. This Agreement shall be governed by the laws of Scotland.

21.4. The parties prorogate the exclusive jurisdiction of the Scottish courts.

21.5. The Customer shall not assign or otherwise transfer any of its rights or obligations under the Agreement without the prior written consent of AGSL. AGSL may not withhold such consent in the case of an assignment by the Customer of its rights and obligations to an entity that has

acquired all, or substantially all of the Customer's assets, or to an assignment that is part of a genuine corporate restructure. Any assignment in breach of this Clause is void.

21.6. The language of the Agreement shall be English.

21.7. The Time Zone for the Agreement shall be Greenwich Mean Time.

22. Data Processing.

22.1. The provisions of the Agreement shall apply to the processing of the Personal Data described carried out for the Customer by AGSL, and to all Personal Data held by AGSL in relation to all such processing whether such Personal Data is held at the date of the Agreement or received afterwards.

22.2. This Agreement shall continue in full force and effect for so long as AGSL is processing Personal Data on behalf of the Customer, and thereafter as provided in Clause 12. For the avoidance of doubt, as the Customer hosts the Software on its own Local Equipment, AGSL is not classified as a Data Processor for User Data on the Customers or User's own Local Equipment. Data Processing in this context refers to Data Processed only as a result of delivering Professional Services supplied to the Customer by AGSL for accessing the User Data remotely to provide helpdesk support services as per 21.2 at the User's request.

22.3. Where Professional Services involve Data Processing, AGSL is only to carry out the Professional Services, and only to process the Personal Data received from the Customer:

22.3.1. for the purposes of those Professional Services and not for any other purpose;

22.3.2. to the extent and in such a manner as is necessary for those purposes; and

22.3.3. strictly in accordance with the Agreement or otherwise with the express written authorisation and instructions of the Customer (which may be specific instructions or instructions of a general nature or as otherwise notified by the Customer to AGSL).

22.4. All instructions given by the Customer to AGSL shall be made in writing and shall at all times be in compliance with the Privacy Legislation and other applicable laws. AGSL shall act only on such written instructions from the Customer unless AGSL is required by law to do otherwise (as per Article 29 of the UK GDPR).

22.5. AGSL shall promptly comply with any request from the Customer requiring AGSL to amend, transfer, delete, or otherwise dispose of the Personal Data.

22.6. AGSL shall transfer all Personal Data to the Customer on the Customer's request in the formats, at the times, and in compliance with the Customer's written instructions.

- 22.7. Both Parties shall comply at all times with the Privacy Legislation and other applicable laws and shall not perform their obligations under the Agreement or any other agreement or arrangement between themselves in such way as to cause either party to breach any of its applicable obligations under the Privacy Legislation.
- 22.8. The Customer hereby warrants, represents, and undertakes that the Personal Data shall comply with the Privacy Legislation in all respects including, but not limited to, its collection, holding, and processing.
- 22.9. AGSL agrees to comply with any reasonable measures required by the Customer to ensure that its obligations under the Agreement are satisfactorily performed in accordance with any and all applicable legislation from time to time in force (including, but not limited to, the Privacy Legislation) and any best practice guidance issued by the ICO.
- 22.10. AGSL shall provide all reasonable assistance (at the Customer's cost) to the Customer in complying with its obligations under the Privacy Legislation with respect to the security of processing, the notification of personal data breaches, the conduct of data protection impact assessments, and in dealings with the ICO.
- 22.11. When processing the Personal Data on behalf of the Customer, AGSL shall:
- 22.11.1. not process the Personal Data outside the European Economic Area (all EU member states, plus Iceland, Liechtenstein, and Norway) ("EEA") without the prior written consent of the Customer and, where the Customer consents to such a transfer to a country that is outside of the EEA, to comply with the obligations of Data Processors under the provisions applicable to transfers of Personal Data to third countries set out in Chapter 5 of the UK GDPR by providing an adequate level of protection to any Personal Data that is transferred;
 - 22.11.2. not transfer any of the Personal Data to any third party without the written consent of the Customer and, in the event of such consent, the Personal Data shall be transferred strictly subject to the terms of a suitable agreement, as set out in Clause 22.20;
 - 22.11.3. process the Personal Data only to the extent, and in such manner, as is necessary in order to comply with its obligations to the Customer or as may be required by law (in which case, AGSL shall inform the Customer of the legal requirement in question before processing the Personal Data for that purpose unless prohibited from doing so by law);
 - 22.11.4. implement appropriate technical and organisational measures, and take all steps necessary to protect the Personal Data against unauthorised or unlawful

- processing, accidental loss, destruction, damage, alteration, or disclosure. AGSL shall inform the Customer in advance of any changes to such measures;
- 22.11.5. make available to the Customer any and all such information as is reasonably required and necessary to demonstrate AGSL's compliance with the Privacy Legislation; and
- 22.11.6. inform the Customer immediately if it is asked to do anything that infringes the Privacy Legislation or any other applicable data protection legislation.
- 22.12. AGSL shall, at the Customer's cost, assist the Customer in complying with its obligations under the Privacy Legislation. In particular, the following shall apply to data subject access requests, complaints, and data breaches.
- 22.13. AGSL shall notify the Customer without undue delay if it receives:
- 22.13.1. a subject access request from a data subject; or
 - 22.13.2. any other complaint or request relating to the processing of the Personal Data.
- 22.14. AGSL shall, at the Customer's cost, cooperate fully with the Customer and assist as required in relation to any subject access request, complaint, or other request, including by:
- 22.14.1. providing the Customer with full details of the complaint or request;
 - 22.14.2. providing the necessary information and assistance in order to comply with a subject access request;
 - 22.14.3. providing the Customer with any Personal Data it holds in relation to a data subject (within the timescales required by the Customer); and
 - 22.14.4. providing the Customer with any other information requested by the Customer.
- 22.15. AGSL shall notify the Customer immediately if it becomes aware of any form of Personal Data breach, including any unauthorised or unlawful processing, loss of, damage to, or destruction of any of the Personal Data.
- 22.16. The Customer shall be liable for, and shall indemnify (and keep indemnified) AGSL in respect of any and all action, proceeding, liability, cost, claim, loss, expense (including reasonable legal fees and payments on a solicitor and client basis), or demand suffered or incurred by, awarded against, or agreed to be paid by, AGSL and any Sub-Processor arising directly or in connection with:
- 22.16.1. any non-compliance by the Customer with the Privacy Legislation or other applicable legislation;
 - 22.16.2. any Personal Data processing carried out by AGSL or Sub-Processor in accordance with instructions given by the Customer that infringe the Privacy Legislation or other applicable legislation; or

- 22.16.3. any breach by the Customer of its obligations under the Agreement, except to the extent that AGSL or Sub-Processor is liable under sub-Clause 22.17.
- 22.17. AGSL shall be liable for, and shall indemnify (and keep indemnified) the Customer in respect of any and all action, proceeding, liability, cost, claim, loss, expense (including reasonable legal fees and payments on a solicitor and client basis), or demand suffered or incurred by, awarded against, or agreed to be paid by, the Customer arising directly or in connection with AGSL's Personal Data processing activities that are subject to the Agreement:
- 22.17.1. only to the extent that the same results from AGSL's or a Sub-Processor's breach of the Agreement; and
- 22.17.2. not to the extent that the same is or are contributed to by any breach of the Agreement by the Customer.
- 22.18. The Customer shall not be entitled to claim back from AGSL or Sub-Processor any sums paid in compensation by the Customer in respect of any damage to the extent that the Customer is liable to indemnify AGSL or Sub-Processor under sub-Clause 22.16.
- 22.19. Nothing in the Agreement (and in particular, this Clause 22) shall relieve either party of, or otherwise affect, the liability of either party to any data subject, or for any other breach of that party's direct obligations under the Privacy Legislation. Furthermore, AGSL hereby acknowledges that it shall remain subject to the authority of the ICO and shall co-operate fully therewith, as required, and that failure to comply with its obligations as a data processor under the Privacy Legislation may render it subject to the fines, penalties, and compensation requirements set out in the Privacy Legislation.
- 22.20. In the event that AGSL appoints a Sub-Processor, AGSL shall:
- 22.20.1. enter into a Sub-Processing Agreement with the Sub-Processor which shall impose upon the Sub-Processor the same or similar obligations as are imposed upon AGSL by the Agreement; and
- 22.20.2. ensure that the Sub-Processor complies fully with its obligations under the Sub-Processing Agreement and the Privacy Legislation.
- 22.21. Schedule 1 sets out the scope, nature and purpose of processing by AGSL, the duration of processing and the types of Personal Data and categories of data subject.

SCHEDULE 1

Processing, Personal Data and Data Subjects

1. Processing by AGSL

- 1.1 Scope – AGSL shall process Personal Data in order to provide the Software Services and Professional Services, as set out in this Agreement.
- 1.2 Nature – storage of email addresses
- 1.3 Purpose of Processing – business to business customer communication
- 1.4 Duration of the Processing – the duration of the Agreement with the Customer
- 1.5 Types of Personal Data – email addresses
- 1.6 Categories of Data Subject – business customers

2. Rights and Obligations of Data Controller

- 2.1 The rights and obligations of the Data Controller set out in the Agreement and the Privacy Legislation.

PART FOUR –DEFINITIONS

23. Glossary.

- 23.1. **“Affiliate”** means an entity which controls, is controlled by, or is under common control with, a party, and **control** means the ability to vote 50% or more of the voting securities of any entity or otherwise having the ability to influence and direct the policies and direction of an entity;
- 23.2. **“Asset Guardian Application Server”** means a specific server device being a computer hardware system (whether physical or virtual) with a storage device capable of running the Software (a hardware partition or blade is considered to be a device) and which may or may not form part of the Customer’s Local Equipment;
- 23.3. **“Concurrent Users”** means a number of Users who are using the Software Services simultaneously under Concurrent User Licences;
- 23.4. **“Concurrent User Licence”** means a licence issued by AGSL allowing Users to use the Software Services via an Asset Guardian Application Server;
- 23.5. **“Content”** means any text, graphics, images, audio, video, software, data compilations including, but not limited to, text, graphics, logos, icons, sound clips, video clips, data compilations, page layout, underlying code and software and any other form of information capable of being stored in a computer that appears on, is uploaded to or forms part of the Software Services; BUT excluding User Content;
- 23.6. **“Data Controller”, “Data Processor”, “Personal Data” “processing” and “data subject”** shall have the meanings ascribed to them in the UK GDPR (Data Controller shall have the same meaning as “Controller” and Data Processor shall have the same meaning as “Processor” under the UK GDPR);
- 23.7. **“DPA”** means the Data Protection Act 2018 and any modification, amendment or re-enactment thereof;
- 23.8. **“Documentation”** means user documentation (including operating and instruction manuals) provided electronically by AGSL for use with the Software Services, as periodically updated;
- 23.9. **“EULA”** means the End User Licence Agreement in the form set out here [insert link];
- 23.10. **“Fees”** means the sums of money payable by the Customer to AGSL for the Services in terms of the relevant Proposal;

- 23.11. **“Force Majeure”**, means circumstances beyond the control of AGSL which shall include (but shall not be limited to) acts of God, perils of the sea or air, fire, flood, drought, disease, epidemic or pandemic (whether naturally occurring or man-made) explosion, sabotage, accident, embargo, riot, civil commotion, including acts of local government and parliamentary authority; inability to supply the Software Services and/or the Professional Services, materials, breakdown of Local Equipment and labour disputes of whatever nature and for whatever cause arising including (but without prejudice to the generality of the foregoing) work to rule, overtime bars, strikes and lockouts and whether between either of the parties hereto and any or all of its employees and/or any other employer and any or all of its employees and/or between any two or more groups of employees (and whether of either of the parties hereto or any other employer);
- 23.12. **“GDPR”** means the General Data Protection Regulation (Regulation (EU) 2016/679);
- 23.13. **“ICO”** means the UK’s supervisory authority, the Information Commissioner’s Office;
- 23.14. **“Industry Best Practice”** means the standard of care, attention, diligence, expertise, knowledge, methods and practice expected of a competent and experienced professional in the IT and Cyber Security profession;
- 23.15. **“Initial Subscription Term”** means the first Subscription Term specified in the first Proposal;
- 23.16. **“Intellectual Property”** means patents, trademarks, trade name, service mark, copyright, trade secrets, know-how, process, technology, development tool, ideas, concepts, design right, domain names, moral right, database right, methodology, algorithm and invention, and any other proprietary information (whether registered, unregistered, pending or applied for);
- 23.17. **“Java Runtime Environment”** means Java software running on Local Equipment ;
- 23.18. **“Licence Key”** means a unique number which associates the Software with a number of Concurrent Users;
- 23.19. **“Local Equipment”** means the Customer or User’s own on-premise equipment including hardware and software environment which is used in connection with the Software Services, which comprise of, but is not limited to - server computers (whether virtual or not), Desktop PC’s, Laptops or any other portable device, storage systems and relative hardware, firmware, operating software, operating system software, networking software, database software, anti-virus and security software, switches, power supplies and telecommunications infrastructure, internet connection, broadband availability and infrastructure, routers, Printers, associated peripheral devices or accessories whether fixed or portable;

- 23.20. **“Privacy Legislation”** means the retained EU law version of the GDPR (the **“UK GDPR”**), as it forms part of the law of England and Wales, Scotland, and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018, the DPA, the Data Protection Directive (95/46/EC), the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive (2002/58/EC), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003) and all applicable laws and regulations relating to the processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the ICO (as amended or replaced from time to time);
- 23.21. **“Privacy Policy”** means AGSL’s policy and compliance with (amongst others) the Privacy Legislation from time to time, the current version of which is located here [Privacy Policy Services - Asset Guardian Solutions Limited](#);
- 23.22. **“Professional Services”** means the training, consulting, development, support and other professional services identified on a Proposal but does not include the Software Services;
- 23.23. **“Proposal”** means a document created by AGSL and signed by the Customer setting out the Fees, Subscription Term and Services;
- 23.24. **“Purchase Order”** means any written order for the Services issued by the Customer and which order makes specific reference to the Proposal;
- 23.25. **“Services”** means Software Services and/or Professional Services as the case may be;
- 23.26. **“Server Licence”** means a licence to use the Software on an Asset Guardian Application Server which is not part of a Synchronisation Scheme;
- 23.27. **“Servoy”** means the development and deployment platform for enterprise applications, which is owned by Servoy B.V. De Brand 26, Amersfoort, 3823 LJ Netherlands;
- 23.28. **“SLA”** means a Service Level Agreement in the form set out in Part 5 of these terms;
- 23.29. **“Software”** means the AGSL™ proprietary operating software written in object and source code as Updated and Upgraded from time to time;
- 23.30. **“Software Services”** means the Software and Third Party Software solutions identified in a Proposal, and any modifications periodically made by AGSL (including where appropriate, Upgrades and Updates made remotely), but does not include the Professional Services;
- 23.31. **“SQL Database Server”** means a relational database management system developed by Microsoft Inc. which is a software product with the primary function of storing and retrieving data as requested by other software applications, which may run either on the same computer or on another computer across a network (including the Internet);

- 23.32. **“Sub-Processor”** means a sub-processor appointed by AGSL to process the Personal Data;
- 23.33. **“Sub-Processing Agreement”** means an agreement between AGSL and a Sub-Processor governing the Personal Data processing carried out by the Sub-Processor, as described in Clause 22;
- 23.34. **“Subscription Term”** means the period of time during which AGSL is required to provide the Customer with the Software Services as specified in the relevant Proposal;
- 23.35. **“Synchronisation Scheme”** means a multi-server network architecture;
- 23.36. **“Sync Server Licence”** means a licence to use the Software on an Asset Guardian Application Server or servers which are part of a Synchronisation Scheme;
- 23.37. **“Third Party Software”** means software other than the Software which belongs to third parties and in relation to which AGSL has the right to grant sub-licenses;
- 23.38. **“Update”** means any update, update rollup, service pack, feature pack, critical update, security update, or hotfix that is used to improve or to fix a software product;
- 23.39. **“Upgrade”** means a software package that replaces an installed version of a product with a newer version of the same product, typically leaving existing customer data and preferences intact while replacing the existing software with the newer version;
- 23.40. **“User”** means the Customer and any of its employees, or of a person to whom the Customer has outsourced services, that has permission to access the Software Services as a named user and is not employed by AGSL and acting in the course of their employment;
- 23.41. **“User Content”** means any text, graphics, images, audio, video, software, data compilations and any other form of information capable of being stored in a computer that appears on, is uploaded to or forms part of the Software Services and has been uploaded by a User;
- 23.42. **“Web Admin Page”** means an administration control panel for administrators and certain users with administration or access rights that is accessible through a password protected web page hosted on the Asset Guardian Application Server;

PART FIVE – SERVICE LEVEL AGREEMENT

1. Server availability Service Level Agreement (SLA)

This SLA is designed to ensure that AGSL meets the needs of its Customers and it outlines what levels of service can be expected.

2. Incident Resolution Targets

Severity	Description	Response	Resolution
1	Unplanned outage impacting multiple customers	1hr	2hrs
2	Outage / severe disruption to service for individual customer	2hrs	4hrs
3	Reduced functionally causing disruption to business	4hrs	8hrs
4	Non urgent / reduced functionality with low impact	4hrs	16 hrs
	On Demand Professional services requests for installations etc.	8hrs	-Agree with Customer

AGSL shall use reasonable endeavours to provide the helpdesk support services in accordance with these Service Levels and Response Times. These Response times refer only to the time within which AGSL shall respond to a helpdesk support request. AGSL gives no guarantee as to the time any given issue may take to resolve save that it hereby undertakes to use reasonable endeavours to resolve issues as quickly as is reasonably possible within the target resolution times specified in the table above.

Support provided under the Agreement shall include:

(a) Help Desk facilities.

For software issues, the Customer can email support@assetguardian.com to contact the AGSL Help Desk which is available during normal business hours (Contracted Hours)

The Customer Contact must submit sufficient material and information to enable AGSL support staff to duplicate the problem. A support technician will be assigned and will attempt to solve a problem immediately, or as soon thereafter as possible. When appropriate, the support technician will give an estimate of how long it will take to resolve. The technician will do their best to keep the Customer advised on the progress of problem resolution.

(b) The help desk includes an on-line Support facility: The Customer shall ensure the availability at its expense of compatible Local Equipment including software, hardware, communications infrastructure and provide adequate broadband facilities for on-line problem resolution. AGSL will work with the Customer's hardware supplier where necessary to ensure that remote support facilities are setup according to requirements.

The help desk is strictly not a training facility. Its objective is to troubleshoot and resolve Software Operational Issues.

The help desk is not a hardware or Local Equipment IT support facility. AGSL does not support or warrant your Local Equipment, or any other system or service that you subscribe to. Its sole purpose is to support the AGSL Software only. Anything else is strictly the Customer's responsibility.

- (d) Additional Service Levels: additional service levels shall be as follows:
- (i) AGSL will maintain a help desk staffed by skilled, trained professionals.
 - (ii) The help desk is equipped with a purpose designed management system that allows Customer/User calls to be logged, tracked, traced and reported.
 - (iii) All requests are logged and prioritised, against this priority AGSL will respond to Customer/User requests.
 - (iv) During "Contracted hours", AGSL will log all Customer/User calls to the Helpdesk.
 - (v) "Contracted hours" are Monday to Friday- 8:30am to 4:30pm Monday to Friday UK Time.
- A restricted service is provided on public holidays.

Help Desk Procedures:

- Answer the support case, received via email:
 - Update the Case database
 - Agree case priority
 - Give the user a case reference if necessary

Take action on the case:

- Confirm that this is an AGSL problem
 - Interrogate the Help Desk database
 - Use reasonable endeavours to resolve problem reported by Customer/a User
 - Report to Customer if problem cannot be resolved
 - Pass to a third party if not an AGSL problem
 - Inform Customer of progress

Close the case:

- Inform Customer of resolution
 - Update the Help Desk System Database
 - Performance Analysis / reporting
 - Review/Update the Help Desk Database
 - Review Service Level

- (e) Correction of critical errors or assistance to overcome problems.
- AGSL may, at its sole discretion, correct errors by "patch" or by version update.
- (f) Provision of Information on availability of new versions of Licensed Software and Local Equipment.
- (g) Provision Consultancy advice (chargeable at agreed rates may apply where appropriate) on Software development, enhancements and modifications, together with estimates for the same.
- (h) Provide Installations and Re-installations of AGSL as are required and reasonable to support use of AGSL software on existing or new/replacement Local Equipment.

The foregoing Terms and Conditions apply to this SLA and without prejudice to the foregoing, Clauses 1.9, 8, 9, 14 and 15 shall apply.