

## **Asset Guardian Solutions Limited**

### **Agreement with you “the User”**

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 User**”).

This is a Click to Agree Contract from within the Software if then User wishes to be bound by these Terms and Conditions, the User must click to accept these Terms and Conditions. If the User does not agree to be bound by these Terms and Conditions, the User cannot use the Software Services.

The contract (the “**Agreement**”) between the User and AGSL will comprise:

1. these terms and conditions;
2. the Privacy Policy;

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

1. these Terms and Conditions;
2. the Privacy Policy;

## PART ONE – SOFTWARE SERVICES.

### 1. Access to the Software Services.

AGSL grants to the User a non-exclusive, royalty based, non-sublicensable, non-transferable licence to use the Software Services for the User's personal business use for the duration of the Agreement, subject to the following conditions:

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

- 1.1.1. 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 User's system for the processing of the system instructions or statements contained in such Software;
- 1.1.2. copying the Software which is in machine-readable form for Use by the User on the User'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;
- 1.1.3. storing the whole or any part of the Software on the User's system or other storage unit or disk;
- 1.1.4. utilising (but not copying) the Documentation.

1.2. For the purposes of the Agreement "**concurrent use**" shall mean simultaneous use of the Software by the relevant number of Authorised Users.

1.3. The User must use, 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 User may wish to support this Local Equipment themselves or outsource to a reputable supplier. None of these things are AGSL's responsibility.

1.4. 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 User 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 User with reasonable notification in advance in this case.

1.5. AGSL recognises that the User 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.

1.6. AGSL has all required distribution rights to the Intellectual Property in the Software Services and the Documentation.

1.7. AGSL shall be under no liability to the User 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 User's right to use the Software Services is subject to the following conditions: -

the User 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 stipulated by AGSL.
- 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 User 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 by AGSL from time to time.
- 2.15. The User shall:

- 2.15.1. maintain accurate and up-to-date records of the number and location of all copies of the Software;
- 2.15.2. supervise and control Use of the Software Services by Users in accordance with the terms of the Agreement;
- 2.15.3. replace the current version of the Software Services with the Updated or Upgraded version forthwith upon receipt as required by AGSL;
- 2.15.4. 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 User 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 User is solely responsible for User Content and the accuracy of User Content.
- 3.2. User Content belongs to the User 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 13 of the Agreement.
- 3.4. The User hosts its own User Content on its own Local Equipment, AGSL has no responsibility or liability whatsoever for the User's data protection, cyber 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 User 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. Users must not upload or install User Content which is illegal, immoral, in breach of any third party's Intellectual Property rights or racist, sexist or offensive in any way.

#### **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 User 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 User 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 these 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 User.

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 User for the User 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 User's SQL Database Servers. The User must have an SQL Database Server or Servers (as appropriate) with all necessary licences in place.

8.6. A User 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 User, that the User (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 User 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 or make available the Software Services to the User under the Agreement. The remedies set out in this Clause 9 are the User'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 User's requirements. If neither of these options is commercially feasible, either party may terminate the Agreement.
- 9.2. If the normal operation, possession or use of the Software Services by the User 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 User; (ii) modify the Software Services so that they no longer infringe; or (iii) if neither of these options is commercially feasible, terminate the Agreement.
- 9.3. However, AGSL has no warranty obligations for:
- 9.3.1. the extent that Software has been modified by the User 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 THREE – GENERAL.**

### **10. Term of Agreement.**

This Agreement starts on the date that the User accepts these Terms and Conditions and ends when AGSL no longer is obliged to provide the User with Software Services in terms of any contract with the User's employer or principal or in the event of any material breach of the Agreement by the User in terms of Clause 10.1.

10.1. Either party may terminate rights granted under the Agreement if the other breaches any material term of the Agreement and the breach is not cured within 30 days of written notice. The User's breach of Clause [2.9] of the Agreement shall be considered a material breach.

10.2. With reference to the provisions of Clauses 10.2 and 10.3, instead of terminating rights granted to the User under the Agreement, AGSL may suspend the provision of Software Services to the User for a period of up to 45 days. At any time during that period, AGSL may terminate the rights granted to the User.

10.3. Sections 2, 3.3, 4,5,6,7, 8, 9, 10, 11, 12, 13, 15, 16, 17, 18 and 19 continue after the Agreement ends.

10.4. Within fourteen (14) days after the date of termination or discontinuance of the Agreement for whatever reason, the User 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 User 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;

### **11. Warranty Disclaimer.**

EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, THE SOFTWARE 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.

## 12. 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 PROFESSIONAL INDEMNITY INSURANCE UNDERWRITTEN IN THE NAME OF AGSL WHICH SHALL BE £500,000. 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 17 OF THIS AGREEMENT BY THE CUSTOMER, OR IN CONNECTION THE CUSTOMER'S INDEMNIFICATION OBLIGATIONS.

## 13. Confidentiality

- 13.1. The Software Services, Software and Documentation contain valuable trade secrets that are the sole property of AGSL, and the User agrees to use reasonable care to prevent third parties from learning of these trade secrets. The User shall take reasonable care to prevent unauthorised access to or duplication of the Software Services, Software and Documentation. The User 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 13.
- 13.2. The User Content may include valuable trade secrets that are the sole property of the User. 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 13.
- 13.3. Clauses 13.1 and 13.2 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.

#### 14. Indemnification by AGSL.

14.1. AGSL shall indemnify and hold harmless the User, its Affiliates, directors and employees from any damages finally awarded against the User (including, without limitation, reasonable costs and legal fees incurred by the User) arising out of any third party suit, claim or other legal action alleging that the use of the Software Services or Documentation by the User (other than User Content) infringes any third party Intellectual Property rights, (“**Legal Action**”). AGSL shall provide reasonable assistance in the defence of such Legal Action.

14.2. 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 User or any third party, unless approved in writing by AGSL; or (iii) any refusal by the User 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 14 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.

14.3. The User 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 User 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 User’s interests. the User may employ its own counsel to assist it with respect to any such claim. The User 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 User shall not settle or compromise any Legal Action without AGSL’s express written consent. AGSL shall be relieved of its indemnification obligation under Clause 14 if the User materially fails to comply with Clause 14.2.

## 15. Indemnification by the User

- 15.1. The User 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**").
- 15.2. AGSL shall give written notice to the User of any Legal Claim no later than 30 days after first receiving notice of a Legal Claim and shall give copies to the User of all communications, notices and/or other actions relating to the Legal Claim. AGSL shall give the User the sole control of the defence of any Legal Claim, shall act in accordance with the reasonable instructions of the User and shall give the User such assistance as the User reasonably requests to defend or settle such claim. The User 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 User or its counsel, or because the User fails to assume control of the defence. AGSL shall not settle or compromise any Legal Claim without the User's express written consent.

## 16. Miscellaneous.

- 16.1. This Agreement represents the entire express agreement of the parties, and supersedes any prior or current agreements or understandings, whether written or oral.
- 16.2. This Agreement may not be changed or any part waived except by written agreement between the parties.
- 16.3. This Agreement shall be governed by the laws of Scotland.
- 16.4. The parties prorogate the exclusive jurisdiction of the Scottish courts.
- 16.5. The User 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 User of its rights and obligations to an entity that has acquired all, or substantially all of the User's assets, or to an assignment that is part of a genuine corporate restructure. Any assignment in breach of this Clause is void.

16.6. The language of the Agreement shall be English.

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

## **17. Data Processing.**

17.1. The provisions of the Agreement shall apply to the processing of the Personal Data described carried out for the User 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.

17.2. This Agreement shall continue in full force and effect for so long as AGSL is processing Personal Data on behalf of the User. For the avoidance of doubt, as the User hosts the Software on its own Local Equipment, AGSL shall only process Personal Data as a result of providing support and maintenance services by accessing the User Data remotely at the User's request.

17.3. Where such support and maintenance services involve Data Processing, AGSL is only to carry out such services, and only to process the Personal Data received from the User:

17.3.1. for the purposes of those services and not for any other purpose;

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

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

17.4. All instructions given by the User 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 User unless AGSL is required by law to do otherwise (as per Article 29 of the GDPR).

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

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

17.7. 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.

- 17.8. The User 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.
- 17.9. AGSL agrees to comply with any reasonable measures required by the User 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.
- 17.10. AGSL shall provide all reasonable assistance (at the User's cost) to the User 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.
- 17.11. When processing the Personal Data on behalf of the User, AGSL shall:
- 17.11.1. not process the Personal Data outside the European Economic Area (all EU member states, plus Iceland, Liechtenstein, and Norway) ("EEA") or the United Kingdom without the prior written consent of the User and, where the User consents to such a transfer to a country that is outside of the EEA or the United Kingdom, to comply with the obligations of Data Processors under the provisions applicable to transfers of Personal Data to third countries set out in the GDPR by providing an adequate level of protection to any Personal Data that is transferred;
  - 17.11.2. not transfer any of the Personal Data to any third party without the written consent of the User 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 17.20;
  - 17.11.3. process the Personal Data only to the extent, and in such manner, as is necessary in order to comply with its obligations to the User or as may be required by law (in which case, AGSL shall inform the User of the legal requirement in question before processing the Personal Data for that purpose unless prohibited from doing so by law);
  - 17.11.4. 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 User in advance of any changes to such measures;

- 17.11.5. make available to the User any and all such information as is reasonably required and necessary to demonstrate AGSL's compliance with the Privacy Legislation; and
- 17.11.6. inform the User immediately if it is asked to do anything that infringes the Privacy Legislation or any other applicable data protection legislation.
- 17.12. AGSL shall, at the User's cost, assist the User in complying with its obligations under the Privacy Legislation. In particular, the following shall apply to data subject access requests, complaints, and data breaches.
- 17.13. AGSL shall notify the User without undue delay if it receives:
  - 17.13.1. a subject access request from a data subject; or
  - 17.13.2. any other complaint or request relating to the processing of the Personal Data.
- 17.14. AGSL shall, at the User's cost, cooperate fully with the User and assist as required in relation to any subject access request, complaint, or other request, including by:
  - 17.14.1. providing the User with full details of the complaint or request;
  - 17.14.2. providing the necessary information and assistance in order to comply with a subject access request;
  - 17.14.3. providing the User with any Personal Data it holds in relation to a data subject (within the timescales required by the User); and
  - 17.14.4. providing the User with any other information requested by the User.
- 17.15. AGSL shall notify the User 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.
- 17.16. The User 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:
  - 17.16.1. any non-compliance by the User with the Privacy Legislation or other applicable legislation;
  - 17.16.2. any Personal Data processing carried out by AGSL or Sub-Processor in accordance with instructions given by the User that infringe the Privacy Legislation or other applicable legislation; or
  - 17.16.3. any breach by the User of its obligations under the Agreement, except to the extent that AGSL or Sub-Processor is liable under sub-Clause

17.17.

17.17. AGSL shall be liable for, and shall indemnify (and keep indemnified) the User 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 User arising directly or in connection with AGSL's Personal Data processing activities that are subject to the Agreement:

17.17.1. only to the extent that the same results from AGSL's or a Sub-Processor's breach of the Agreement; and

17.17.2. not to the extent that the same is or are contributed to by any breach of the Agreement by the User.

17.18. The User shall not be entitled to claim back from AGSL or Sub-Processor any sums paid in compensation by the User in respect of any damage to the extent that the User is liable to indemnify AGSL or Sub-Processor under sub-Clause 17.16.

17.19. Nothing in the Agreement (and in particular, this Clause 17) 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.

17.20. In the event that AGSL appoints a Sub-Processor, AGSL shall:

17.20.1. 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

17.20.2. ensure that the Sub-Processor complies fully with its obligations under the Sub-Processing Agreement and the Privacy Legislation.

## **18. Feedback and Modifications**

18.1. The User hereby acknowledges that upon submitting Feedback to AGSL, the Customer automatically grants to AGSL a worldwide, perpetual, irrevocable, royalty free licence to use that Feedback in any way AGSL deems appropriate including, but not limited to:

18.1.1. The use, publication, distribution, transmission, broadcasting, licensing, sub-licensing, leasing, lending and sale of the Feedback; and

18.1.2. The creation, use, publication, distribution, transmission, broadcasting, licensing, sub-licensing, leasing, lending and sale of any derivative works based upon the Feedback.



- 18.2. AGSL's use of the Feedback shall not bestow any rights or interests upon the User whatsoever.
- 18.3. The User hereby acknowledges that any modifications made to the Software at the request or suggestion of the User will belong to and be the Intellectual Property of AGSL.

## PART FOUR –DEFINITIONS

### 19. Glossary.

- 19.1. **"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;
- 19.2. **"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 User's Local Equipment;
- 19.3. **"Authorised User"** means a User which AGSL has authorised in writing to use the Software which may be one of a limited number of Users who are contractually permitted to use the Software Services at any given time;
- 19.4. **"Concurrent Users"** means a number of Users who are using the Software Services simultaneously under Concurrent User Licences;
- 19.5. **"Concurrent User Licence"** means a licence issued by AGSL allowing Users to use the Software Services via an Asset Guardian Application Server;
- 19.6. **"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;
- 19.7. **"Data Controller", "Data Processor" and "Personal Data" "processing", and "data subject"** shall have the meanings ascribed to them in the Privacy Legislation;

- 19.8. **“DPA”** means the Data Protection Act 2018 and any modification, amendment or re-enactment thereof;
- 19.9. **“Documentation”** means user documentation (including operating and instruction manuals) provided electronically by AGSL for use with the Software Services, as periodically updated;
- 19.10. **“GDPR”** means the retained EU law version of the General Data Protection Regulation ((EU) 2016/679) (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;
- 19.11. **“Feedback”** means all comments, suggestions, requests, requirements, improvements, feedback, or other input the User provides regarding any products or services owned or supplied by AGSL or its Affiliates;
- 19.12. **“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, explosion, sabotage, accident, embargo, riot, civil commotion, including acts of local government and parliamentary authority; inability to supply the Software 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);
- 19.13. **“ICO”** means the UK’s supervisory authority, the Information Commissioner’s Office;
- 19.14. **“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;
- 19.15. **“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);
- 19.16. **“Java Runtime Environment”** means Java software running on Local Equipment ;
- 19.17. **“Licence Key”** means a unique code which associates the Software with an Asset Guardian Application Server;

- 19.18. **“Local Equipment”** means the User 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;
- 19.19. **“Privacy Legislation”** means the GDPR, 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 Information Commissioner (as amended or replaced from time to time);
- 19.20. **“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 <https://www.assetguardian.com/services-privacy-policy/>
- 19.21. **“Server Licence”** means a licence to use the Software on an Asset Guardian Application Server which is not part of a Synchronisation Scheme;
- 19.22. **“Servoy”** means the development and deployment platform for enterprise applications, which is owned by Servoy B.V. De Brand 26, Amersfoort, 3823 LJ Netherlands;
- 19.23. **“Software”** means the AGSL™ proprietary operating software written in object and source code as Updated and Upgraded from time to time;
- 19.24. **“Software Services”** means the Software and Third Party Software solutions and any modifications periodically made by AGSL (including where appropriate, Upgrades and Updates made remotely), but does not include the Professional Services made available to Users in terms of the Agreement;
- 19.25. **“SQL Database Server”** means a relational database management system 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);
- 19.26. **“Sub-Processor”** means a sub-processor appointed by AGSL to process the Personal Data;
- 19.27. **“Sub-Processing Agreement”** means an agreement between AGSL and a Sub-Processor governing the Personal Data processing carried out by the Sub-Processor, as
- 19.28. **“Synchronisation Scheme”** means a multi-server network architecture;
- 19.29. **“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;
- 19.30. **“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;
- 19.31. **“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;
- 19.32. **“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;
- 19.33. **“User”** means the User and any of its employees, or of a person to whom the User 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;
- 19.34. **“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;
- 19.35. **“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;