

e-Fleet: Services Supply Agreement

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Recitals

- a. The Supplier carries on business in the provision of the Services.
- b. Concilium is the owner of all intellectual property rights in the e-Fleet computer software programme and has appointed the supplier as an agent to grant use agreements to certain its customers under the terms of this agreement. The supplier's signature to this agreement confirms Concilium's agreement thereof.
- c. The Customer wishes to engage the Supplier to provide the Services in relation to the business of the Customer, and the Supplier is willing to provide the Services to the Supplier, on the terms of this agreement.

Operative Provisions

1 Interpretation

- 1.1 In this agreement unless the content otherwise requires:

"Applicable Laws" means all laws, rules and regulations which impose legal, regulatory or other requirements in respect of any of the activities which the Supplier undertakes as part of the Services;

"Commencement Date" means the date on which this agreement comes into force in accordance with clause [21.4], or any other date agreed between the parties in writing;

"Confidential Information" means, in relation to either party, any information (whether or not stated to be confidential or marked as such) which that party discloses to the other, or which the other party obtains from any information disclosed to it by that party, either orally or in writing or by any other means, under or in connection with this agreement;

"Customer's Business" means the business of the Customer referred to in Recital (B),

"Customer Content" means all vehicles, images, e-mail

addresses and employee details which the Customer enters into the system.

"Customer's Personnel" means the Customer's employees who are involved in the management of the Customer's Business;

"Customer Resources" means any resources, facilities, accommodation, software, data, databases and/or materials specified in Schedule 1 which are to be provided by the Customer in order to enable the Supplier to provide the Services;

"Data Controller" has the meaning ascribed to it in the DPA;

"Data Processor" has the meaning ascribed to it in the DPA;

"Document" means anything in which information of any description is recorded, and a copy of a document means anything onto which information recorded in the document has been copied by any means, whether directly or indirectly;

"DPA" means the Data Protection Acts 1988 - 2003;

"Intellectual Property Rights" means all property rights in patents including patent applications or patents, including, without limitation, any divisions, renewals, continuations, re-filings, confirmations, substitutions, registrations, additions, extensions or reissues thereof, patentable materials, trade secrets, innovations, creations, inventions, methodologies, concepts, manufacturing and business processes, trademarks, or names and service marks, design rights, copyrights, moral rights, topography rights, database rights whether registered or unregistered (including any applications for registration of any such thing) and any similar or analogous rights of any of the foregoing which now exists or comes into existence at any time during the Term of this Agreement whether arising or granted under the laws of Scotland, England, Wales or of any other jurisdiction including the Underlying Technology.

"Licence Fee" means one Year's fee set out in the Service Order Form;

"Personal Data" means any personal data as defined in the DPA;

"Records" has the meaning given in clause 7.1;

"Regulatory Authority" means a UK or EU governmental or other regulatory body having jurisdiction over the subject matter of this Agreement;

"Services" means the provision of software and expertise to create a fleet management system, the provision of a web based software solution with management and reporting capabilities, dedicated

	customer support and ongoing advice on how to get the best from the system. The service includes the provision of fleet management software in relation to the Customer's Business and services to be supplied by the Supplier to the Customer pursuant to this agreement;	1.3.5	where an expression is qualified by one or more examples preceded by the word "including", it shall not limit the general scope of that expression.
	"Service Order Form" means the form signed by the Customer setting out the set up fee paid by the Customer to the Supplier and licence fees payable monthly or other periodic fee for the Services set out in the Services Order Form and any other fees payable by the Customer to the Supplier for the provision of the Services and any other relevant information;	1.4	The headings in this agreement are for convenience only and shall not affect its interpretation.
	"Specification" means the specification for the Services set out in the Service Order Form or as otherwise agreed between the parties in writing;	2	Provision of the Services
	"Term" means the Initial Term or if extended the period during which this Agreement continues in force;	2.1	In consideration of payment on an ongoing basis of the monthly or other periodic fee for the Services as set out in the Service Order Form, the Supplier shall during the Term provide the Customer with the Services in relation to the Customer's Business
	"VAT" means Value Added Tax;	2.2	The Customer shall acquire the Services from the Supplier on a non-exclusive basis and accordingly nothing in this agreement shall prevent the Customer from arranging for any other person to provide for the Customer services which are the same as or similar to the Services, or from providing such services for itself whether or not such other person is in the Customer's Business.
	"Year" means the period of 12 months from the Commencement Date and each consecutive period of 12 months thereafter during the Term.	3	Specification and Service Levels
1.2	In this agreement a reference to:	3.1	The Customer will be responsible for all Customer Content. The Customer undertakes that it will not use the Services to:-
1.2.1	a Schedule is a reference to a schedule to this agreement;		upload or otherwise transmit any Customer Content that is unlawful, threatening, abusive, harassing, tortuous, defamatory, vulgar, obscene, libellous, invasive of another's privacy, hateful, or racially, ethnically or otherwise objectionable; harm minors in any way;
1.2.2	a clause or a paragraph is a reference to a clause of this agreement (other than the Schedules) or a paragraph of the relevant Schedule;	3.1.1	upload or otherwise transmit any Customer Content that the Customer does not have a right to transmit under any law or under contractual relationships (such as inside information, proprietary and confidential information learned or disclosed as part of employment relationships or under nondisclosure agreements);
1.2.3	either party or the parties includes its or their respective successors in title and permitted assignees;	3.1.2	upload or otherwise transmit any Customer Content or domain name that infringes any patent, trademark, trade secret, copyright or other proprietary rights of any person;
1.2.4	a person includes a body corporate, unincorporated association, partnership or other legal entity; and	3.1.3	upload or otherwise transmit any material that contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment.
1.2.5	a statute or a provision of a statute is a reference to that statute or provision as amended, re-enacted or extended at the relevant time, and includes any corresponding statute or provision of a statute replacing that statute or provision.	4	Ownership of Intellectual Property Rights
1.3	In this agreement:		Ownership of the intellectual rights are vested entirely and exclusively in Concilium Limited for whom the supplier acts as agent.
1.3.1	the singular includes the plural and <i>vice versa</i> ;		
1.3.2	words importing any gender include any other gender;		
1.3.3	"writing", and any similar expression, includes a reference to any communication effected by fax or similar means, but not electronic mail or text messages;		
1.3.4	"this agreement" means this agreement and each of the Schedules, as amended or supplemented at the relevant time; and		

5 Data protection

5.1 Each party warrants and represents that it has made, and undertakes that at all times during the Term it will maintain, any notification and registration required under the DPA which relates to the performance of its obligations under this agreement.

5.2 Each party undertakes that in the performance of this agreement it will comply with the DPA, and in particular any guidance issued from time to time by the Data Controller.

5.3 The Supplier acknowledges that in relation to its obligations under this agreement it will act as a Data Processor on behalf of the Customer in relation to any Personal Data and accordingly warrants, represents and undertakes that:

5.3.1 it has, and will at all times during the period of this agreement put in place:

- (a) appropriate technical and organisational measures against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access to the Personal Data as well as adequate security programmes and procedures to ensure that:
 - (i) only authorised personnel have access to the Personal Data and processing equipment to be used to process the Personal Data; and
 - (ii) any persons it authorises to have access to the Personal Data will respect and maintain all due confidentiality; and
- (b) security programmes and procedures which specifically address the nature of sensitive personal data, where necessary;

5.3.2 it will only process the Personal Data in accordance with the instructions of the Customer and in accordance with Applicable Laws;

5.3.3 it will not use the Personal Data for any purpose not compatible with that made known to it by the Customer or as may otherwise be authorised by the Data Controller or by Applicable Laws or any Regulatory Authority, and will not use the Personal Data in contravention of any instructions of the Customer;

5.3.4 it will only use the Personal Data for its own use in the provision of the Services to the Customer and will not disclose or transfer the Personal Data without the prior written consent of the Customer; and

5.3.5 it will not transfer the Personal Data to any country outside the European Economic Area.

5.4 The Supplier undertakes that it will:

5.4.1 submit its data processing facilities, data files and documentation needed for processing to audit and/or certification by the Customer, if so requested;

5.4.2 admit to the Supplier's premises upon reasonable notice any person authorised by the Customer or the Information Commissioner for the purposes of satisfying the Customer and/or the Data Controller as to its compliance with the DPA;

5.4.3 return to the Customer all Personal Data and any copies of Personal Data in its possession or control or in the possession or control of any of its sub-contractors upon termination of this agreement; and

5.4.4 comply with any changes in Applicable Laws or any change in instructions from the Customer relating to Personal Data.

5.5 The Supplier shall indemnify the Customer against all liability, loss, costs and expenses incurred by reason of any claim by any person in respect of any loss or damage caused to that person as a result of the Supplier's unauthorised or unlawful processing of or the destruction of or damage to any Personal Data, or any breach by the Supplier of its obligations under this clause 9.

6 Duration of agreement

6.1 This agreement shall continue for a period of one Year after which it shall be renewed automatically unless terminated in writing.

7 Consequences of termination

7.1 On the termination of this agreement for any reason the Supplier shall:

7.1.1 return to the Customer all Confidential Information and Personal Data obtained or produced in the course of providing the services and any Customer Resources used for the provision of the and Services, and supply the Customer with copies of all Records relating to the provision of the Services (to the extent that they have not already been supplied to the Customer);

7.2 The expiry of this agreement shall not affect:

7.2.1 any payment which is owing by either party to the other;

7.2.2 any other accrued rights of either party; or

7.2.3 any provision of this agreement which is expressed to come into force or continue in force on or after termination.

8 Warranties and indemnities

8.1 Each party warrants to the other that:

- 8.1.1 it has the necessary authority to enter into this agreement;
- 8.1.2 the signatory to this agreement for and on behalf of that party is authorised and fully empowered to execute this agreement on that party's behalf;
- 8.1.3 the entry into and performance of this agreement by that party will not breach any contractual or other obligation owed by that party to any other person, any rights of any other person or any other legal provision; and
- 8.1.4 the entry into and performance of this agreement by that party require no governmental or other approvals or, if any such approval is required, it has been obtained.
- 8.1.5 the Customer warrants that the list of individual e-mail addresses that it will use was obtained in a legal manner and that all individuals have agreed to receive a promotion from the Customer. The Customer also warrants that if at any time any person chooses to no longer receive an electronic communication from the Customer, it will immediately remove such person from the distribution list of any and all future communications. The Customer will keep the persons removed from the distribution list until such person choose to receive the communications. The Customer shall at all times, be subject to the Supplier's current e-mail policy as amended from time to time, publish on the Supplier's website.

9 Applicable law and jurisdiction

- 9.1 The laws of England shall apply to the whole of this agreement.
- 9.2 Any dispute arising out of or in connection with this agreement shall be subject to the jurisdiction of the Courts of England to which the parties agree to submit.