

## 1. Interpretation

1.1 In this Agreement, unless the context otherwise requires:

**Agreement means any estimate/invoice issued by Event Store, these terms and conditions and any schedules or annexes to them;**

**Business Day** means a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business;

**Commencement Date** means the date an Event Store estimate is accepted online by the End User;

**Cluster** a number of Nodes configured to work together;

**End User** means the party accepting the Event Store estimate online;

**Event Store or Supplier** means Event Store LLP (OC: 375040) whose trading address is at Wansdyke Business Centre, Midsomer Enterprise Park, Midsomer Norton, Bath BA3 2BB;

**Group** means in relation to a party, the party, any holding company of it and any subsidiary of the party or its holding company, where "holding company" and "subsidiary" shall have the meaning given them in Section 1159 of the Companies Act 2006 as may be amended from time to time;

**Intellectual Property Rights** means all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world and

**Intellectual Property Right** means any one of the Intellectual Property Rights;

**Month** means a calendar month;

**Nodes** each node being a single functioning server operating in a physical or virtualised environment;

**Services** means support of the Supported Software;

**Service Charges** means charges agreed with the End User for the Services from time to time in any estimate/invoice issued by the Supplier to the End User;

**Supported Software** means the version of the Event Store software as indicated in the relevant Event Store estimate/invoice issued by the Supplier to the End User;

**Term** means 1 year ; and

**VAT** means value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement or additional tax.

1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.

1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors and permitted assigns.

- 1.4 Words in the singular shall include the plural and vice versa.
- 1.5 A reference to one gender shall include a reference to the other genders.
- 1.6 A reference to a statute, statutory provision or any subordinate legislation made under a statute is to such statute, provision or subordinate legislation as amended or re-enacted from time to time whether before or after the date of this Agreement and, in the case of a statute, includes any subordinate legislation made under that statute whether before or after the date of this Agreement.
- 1.7 A reference to **writing** or **written** includes faxes but not e-mail.
- 1.8 Where the words **include(s)**, **including** or **in particular** are used in this Agreement, they are deemed to have the words "without limitation" following them.
- 1.9 Any obligation in this Agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.10 References to clauses and schedules are to the clauses and schedules of this Agreement; references to paragraphs are to paragraphs of the relevant schedule.

## **2. Services**

- 2.1 The Supplier shall provide the Services to the End User, in relation to the number of Clusters/Nodes detailed in the relevant Event Store estimate/invoice issued by the Supplier to the End User and in accordance with any agreed service levels.
- 2.2 Extra Clusters/Nodes can be added to this Agreement at any time during its Term. Services shall be performed for such Clusters/Nodes for the unexpired term of this Agreement and shall be charged pro-rata.

## **3. End User Obligations**

- 3.1 The End User shall:
  - (a) cooperate with the Supplier and provide it with, or procure for it, such information, access and assistance as the Supplier shall reasonably require to enable it to provide the Services;
  - (b) ensure that the Supported Software is used in a proper manner in accordance with any terms agreed between the parties, relevant software licences and any user manuals or guides, by competent trained employees only or by persons under their supervision;
  - (c) keep full security copies of the Supported Software and of the End User's databases and computer records in accordance with best computing practice;
  - (d) not request, permit or authorise anyone other than the Supplier to provide any maintenance services in respect of the Supported Software;
  - (e) co-operate fully with the Supplier's personnel in the diagnosis of any error or defect in the Supported Software;
  - (f) make available to the Supplier free of charge all access, information facilities and services reasonably required by the Supplier to enable it to perform its obligations under this Agreement including without limitation computer runs, memory dumps, printouts, data preparation, office accommodation, typing and photocopying;

- (g) provide such telecommunication facilities and connections as are reasonably required by the Supplier for remote testing, diagnostic and maintenance purposes, at the End User's expense;
- (h) make available facilities to enable the Supplier to connect to the End User remotely. The technical specification for such connection must be according to the specifications notified by the Supplier from time to time; and
- (i) maintain the Clusters/Nodes and equipment on which the Supported Software is stored/used and not make any changes to such Clusters/Nodes or equipment or to the Supported Software without the written consent of the Supplier.

3.2 The Supplier shall have no liability for any failure to provide, or delay in providing, the Services in accordance with the terms of this Agreement, to the extent such failure or delay results from the failure of the End User to comply with any of its obligations under this Agreement.

#### **4. Charges and payment**

- 4.1 In consideration of the Supplier providing the Services to the End User, the End User shall pay the Service Charges to the Supplier.
- 4.2 The Supplier shall invoice the End User and the End User shall pay invoices in full, without deduction or set-off, within 30 days of date of invoice by Direct Debit to Supplier account as nominated by the Supplier.
- 4.3 If a party fails to pay any amount due to the other (excluding any amount contested in good faith) by the due date for payment, then that party shall pay interest immediately on demand on any outstanding amount at the rate of four per cent per annum above HSBC Bank base lending rate from time to time from the due date for payment until the payment is made in full, whether before or after judgment.
- 4.4 The Service Charges are exclusive of amounts in respect of VAT. The End User shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on a supply of the Services.
- 4.5 The Supplier reserves the right to make changes to the Services upon giving notice to the End User.

#### **5. Warranties**

The Services shall be provided by the Supplier using reasonable care and skill and in a professional manner. In the event of any breach of this warranty, the Supplier shall re-perform the relevant Services and such re-performance will be the End User's sole and exclusive remedy in relation to a breach of this warranty. Any claim for breach of this warranty must be made, by written notice to the Supplier, within 30 days following the completion of the Services in relation to which the claim is made.

#### **6. Assignment and sub-contracting**

- 6.1 The Supplier may transfer its rights and obligations under this Agreement to another entity, but this will not affect the End User's rights or the Supplier's obligations arising under this Agreement prior to such transfer.

6.2 The End User may not assign this Agreement or any rights granted under it without the prior written consent of the Supplier.

## 7. Confidentiality

7.1 Each party undertakes that it shall not at any time during this Agreement or following its expiry or termination disclose to any person any confidential information disclosed to it by the other party concerning the business or affairs of the other party or of any member of its Group, including but not limited to information relating to a party's operations, processes, plans, product information, know-how, designs, trade secrets, software, market opportunities and customers (**Confidential Information**), except as permitted by clause 7.2.

7.2 Each party may disclose the other party's Confidential Information:

- (a) to its employees, officers, agents, consultants or sub-contractors (**Representatives**) who need to know such information for the purposes of carrying out the party's obligations under this Agreement, provided that the disclosing party takes all reasonable steps to ensure that its Representatives comply with the confidentiality obligations contained in this clause 7 as though they were a party to this Agreement. The disclosing party shall be responsible for its Representatives' compliance with the confidentiality obligations set out in this clause; and
- (b) as may be required by law, court order or any governmental or regulatory authority.

7.3 Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information other than those expressly stated in this Agreement are granted to the other party or to be implied from this Agreement. In particular, no licence is granted directly or indirectly under any patent, invention, discovery, copyright or other Intellectual Property Right held, made, obtained or licensable by either party now or in the future.

## 8. Term

8.1 This Agreement shall start on the Commencement Date and, unless terminated earlier in accordance with clause 9, shall continue for the Term. Thereafter, it shall automatically renew for further Terms, unless terminated by either party on 3 months' written notice, such notice to expire at the end of the Term or relevant renewal Term.

## 9. Termination

9.1 Either party may terminate this Agreement at any time on written notice to the other if the other:

- (a) is in material breach of any of the terms of this Agreement and either that breach is incapable of remedy, or the other party fails to remedy that breach within 30 days after receiving written notice requiring it to remedy that breach; or
- (b) is unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986), or becomes insolvent, or is subject to an order or a resolution for its liquidation, administration, winding-up or dissolution (otherwise than for the purposes of a solvent amalgamation or reconstruction), or has an administrative or other receiver, manager, trustee, liquidator, administrator or similar officer appointed over all or any substantial part of its assets, or enters into or proposes any composition or arrangement with its creditors generally, or is subject to any analogous event or proceeding in any applicable jurisdiction.

9.2 Termination by either party in accordance with the rights contained in clause 9 shall be without prejudice to any other rights or remedies of that party accrued prior to termination.

9.3 Clauses 7, 10 and 11 shall survive any effective termination of this Agreement.

## **10. Limitation of liability**

10.1 This clause sets out the entire financial liability of the parties (including any liability for the acts or omissions of their respective employees, agents and sub-contractors) to each other in respect of:

- (a) any breach of this Agreement;
- (b) any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.

10.2 Nothing in this Agreement shall limit or exclude the liability of either party for:

- (a) death or personal injury resulting from negligence; or
- (b) fraud or fraudulent misrepresentation.

10.3 Subject to clause 10.2 and clause 10.4, the Supplier's total liability arising under or in connection with this Agreement, whether in tort (including negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise, shall be limited to the Service Charges received by the Supplier at the time any claim is first made.

10.4 Subject to clause 10.2, neither party shall be liable to the other, whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation or otherwise for the following types of loss whether direct or indirect and howsoever caused:

- (a) loss of profit; or
- (b) loss of goodwill; or
- (c) loss of business; or
- (d) loss of business opportunity; or
- (e) loss of anticipated saving; or
- (f) loss or corruption of data or information; or
- (g) any special, indirect or consequential damage or loss suffered by the other party.

10.5 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this Agreement.

**11. Employees and Non-solicitation**

The End User shall not, without the prior written consent of the Supplier, at any time during the Term or for 12 months after the date of termination of this Agreement howsoever arising, solicit or entice away from the Supplier or employ or attempt to employ any person who is, or has been, engaged as an employee of the Supplier in relation to the Services. Any consent given by the Supplier shall be subject to the End User paying a sum equivalent to 20% of the then current annual remuneration of the Supplier's employee or, if higher, 20% of the annual remuneration to be paid by the Client to that employee.

**12. Force majeure**

No party shall be liable to the other for any delay or non-performance of its obligations under this Agreement arising from any cause beyond its reasonable control including, without limitation, any of the following: act of God, governmental act, war, fire, flood, explosion or civil commotion.

**13. Waiver**

No forbearance or delay by either party in enforcing its rights shall prejudice or restrict the rights of that party, and no waiver of any such rights or of any breach of any contractual terms shall be deemed to be a waiver of any other right or of any later breach.

**14. Severability**

If any provision of this Agreement is judged to be illegal or unenforceable, the continuation in full force and effect of the remainder of the provisions shall not be prejudiced.

**15. Amendments**

Event Store LLP may unilaterally amend the Agreement, or any exhibit, schedule, or appendix of the Agreement, by giving notice to the other party. Except as provided in clause 15(a), the amendment will take effect at the specified time after the effective date of the notice.

- (a) If the End User is unwilling for the Agreement to continue as amended, it may terminate the Agreement by giving notice to the amending party no later than the effective date of the amendment.
- (b) For the avoidance of doubt, no unilateral amendment will retroactively modify any binding dispute-resolution provisions of the Agreement for then-pending disputes (for example, binding-arbitration provisions) unless the parties expressly agree otherwise.
- (c) For the avoidance of doubt, without the End User's express written agreement, a unilateral amendment will not retroactively eliminate or modify any right already exercised by the End User, including for example any right to demand that the amending party perform an obligation, under the Agreement.

**16. Third party rights**

No term of this Agreement is intended to confer a benefit on, or to be enforceable by, any person who is not a party to this Agreement.

**17. Notices**

Any notice required to be given pursuant to this Agreement shall be in writing, and shall be sent to the other party at the address from time to time supplied by that party to the other. Notices may be sent by first-class mail or fax, provided that faxes are confirmed within 24 hours by first-class mailed confirmation of a copy. Correctly addressed notices sent by first-class mail shall be deemed to have been delivered 72 hours after posting and correctly directed faxes shall be deemed to have been received instantaneously on transmission, provided that they are confirmed as set out in this clause 17.

**18. Entire agreement**

This Agreement and the documents annexed as appendices to this Agreement or otherwise referred to herein contain the whole agreement between the parties relating to the subject matter hereof and supersede all prior agreements, arrangements and understandings between the parties relating to that subject matter.

**19. Governing law and jurisdiction**

This Agreement shall be governed by and construed in accordance with English law and each party hereby submits to the non-exclusive jurisdiction of the English courts.