

# MonitorPro

Monitoring Data Management Systems  
Perpetual Software Licence Agreement



## Table of Contents

Licence Agreement .....	3
Licensee Details.....	3
EHS Data Details.....	3
Licence Details (to be completed by EHS Data) .....	4
This Agreement is Subject to the Attached Terms and Conditions.....	5
EHS DATA LIMITED.....	6
TERMS AND CONDITIONS FOR THE SUPPLY OF A SOFTWARE LICENCE .....	6
1 INTERPRETATION .....	6
2 GRANT OF LICENCE .....	7
3 OWNERSHIP .....	7
4 DELIVERY AND INSTALLATION .....	7
5 PERMITTED USE OF THE SOFTWARE .....	7
6 MAINTENANCE SERVICES .....	8
7 PAYMENT.....	9
8 EHS DATA’S WARRANTIES .....	9
9 LIMITATION OF LIABILITY.....	10
10 TERM OF LICENCE .....	10
11 CONFIDENTIALITY AND PUBLICATIONS.....	12
12 DATA PROTECTION.....	12
13 GENERAL.....	12
SCHEDULE 1 SERVICE SLA .....	14
SCHEDULE 2 HOSTING SLA.....	15

# Licence Agreement

## Licensee Details

Company\Business Name:	
Company Code:	
Company Address:	
Contact Name:	
Contact Email Address:	
Contact Direct Dial:	

## EHS Data Details

Contact Name:	
Contact Email Address:	
Contact Direct Dial	

## Licence Details (to be completed by EHS Data)

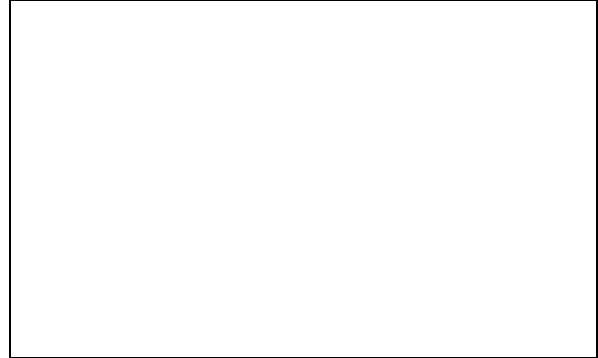
Commencement Date:	00/00/0000														
Term:	Perpetual Licence with annually renewed maintenance and support.														
Software:	<p>The following MonitorPro software created by EHS Data:</p> <table><thead><tr><th>Product</th><th>No. of Licenses/Seats</th></tr></thead><tbody><tr><td>MonitorPro Desktop Server</td><td></td></tr><tr><td>MonitorPro Web Server</td><td></td></tr><tr><td>MonitorPro Additional Databases</td><td></td></tr><tr><td>MonitorPro Desktop User</td><td></td></tr><tr><td>MonitorPro Web User</td><td></td></tr><tr><td>MonitorPro Field User</td><td></td></tr></tbody></table>	Product	No. of Licenses/Seats	MonitorPro Desktop Server		MonitorPro Web Server		MonitorPro Additional Databases		MonitorPro Desktop User		MonitorPro Web User		MonitorPro Field User	
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MonitorPro Web Server															
MonitorPro Additional Databases															
MonitorPro Desktop User															
MonitorPro Web User															
MonitorPro Field User															
Services:	<table><thead><tr><th colspan="2">Maintenance Services</th></tr></thead><tbody><tr><td>Basic</td><td></td></tr><tr><td>Essential</td><td></td></tr><tr><td>Premium</td><td></td></tr></tbody></table> <table><thead><tr><th colspan="2">Hosting</th></tr></thead><tbody><tr><td>Hosting</td><td>YES or NO</td></tr></tbody></table>	Maintenance Services		Basic		Essential		Premium		Hosting		Hosting	YES or NO		
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Basic															
Essential															
Premium															
Hosting															
Hosting	YES or NO														

# This Agreement is Subject to the Attached Terms and Conditions

If there is any conflict between the provisions of this agreement (including schedules) and EHS Data's standard terms and conditions, the provisions of this agreement shall prevail.

Signed for and on behalf of EHS Data Limited

Signed for and on behalf of the licensee



Name: Phil Ely  
Position: Managing Director  
Date: \_\_\_\_\_

Name: \_\_\_\_\_  
Position: \_\_\_\_\_  
Date: \_\_\_\_\_



## EHS DATA LIMITED

### TERMS AND CONDITIONS FOR THE SUPPLY OF A SOFTWARE LICENCE

#### 1 INTERPRETATION

1.1 In these Conditions, the following words and expressions shall have the following meanings:

<b>Act</b>	The Data Protection Act 1998
<b>Agreement</b>	the agreement, including the Schedules, between EHS Data and the Licencee to which these Conditions are annexed.
<b>Commencement Date</b>	the date shown in the Agreement.
<b>Conditions</b>	these terms and conditions as amended from time to time in accordance with Condition 13.3.
<b>Contract Document</b>	the contract document prepared by EHS Data and accepted by the Licencee, which includes the details of the Software.
<b>Data</b>	shall have the meaning set out in Condition 12.1.
<b>EHS Data</b>	means EHS Data Limited, registered in England and Wales with company number 05637434 whose registered office is at Unit 2 Halifax Court, Fernwood Business Park, Cross Lane Fernwood, Newark, Nottinghamshire, NG24 3JP.
<b>Intellectual Property Rights</b>	patents, utility models, rights to inventions, copyright and related rights, trademarks and service marks, trade names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to preserve the confidentiality of information (including know-how and trade secrets) and any other intellectual property rights, including all applications for (and rights to apply for and be granted), renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist, now or in the future, in any part of the world.
<b>Licence</b>	shall have the meaning set out in Condition 2.1.
<b>Licence Fee</b>	the fee payable by the Licencee for the Licence as set out in the Agreement.
<b>Licencee</b>	the person, firm or company identified in the Agreement who purchases the Software and the Services (if applicable) from EHS Data.
<b>Maintenance Fee</b>	the annual fee payable by the Licencee for the Maintenance Services as set out in the Agreement.
<b>Maintenance Services</b>	the Maintenance services to be supplied by EHS Data (if applicable) in accordance with Condition 6.
<b>Maintenance Services Team</b>	shall have the meaning set out in Condition 6.1.
<b>Re-Join Fee</b>	the fee payable by the Licencee from time to time in the event that it purchases Maintenance Services from EHS Data after terminating for any period of time in accordance with Condition 6.3.
<b>Seats</b>	the amount of seats as set out in the Agreement.

<b>SLA</b>	the service level agreement as updated from time to time by EHS Data, the current version of which is set out in the Schedule.
<b>Software</b>	the software detailed in the Agreement.
<b>Specification</b>	The Software specification agreed between the parties and as updated from time to time, the current version of which is set out in the Contract Document and the Implementation Agreement.
<b>Term</b>	shall have the meaning set out in the Agreement.
<b>Warranty Period</b>	shall have the meaning set out in Condition 8.1.
<b>VAT</b>	value added tax

1.2 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.3 A reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

## **2 GRANT OF LICENCE**

2.1 EHS Data grants to the Licencee a non-exclusive, non-transferable, revocable licence to use the Software subject to the terms of the Agreement (the "Licence").

2.2 In the event that EHS Data has permitted the Licencee to test software (other than the Software) developed by EHS Data (e.g. for a trial or pre-release testing purposes) for a limited period of time during the Term, without any obligation to purchase a licence, these Conditions shall apply to the trial period. In particular, the Licencee agrees and accepts that it shall have no title to or ownership rights in such software.

2.3 The Licencee may, from time to time during the Term, purchase additional Seats in excess of the number set out in the Agreement in accordance with these Conditions.

2.4 If the Licencee wishes to purchase additional Seats, the Licencee shall notify EHS Data in writing. EHS Data shall evaluate such request for additional Seats and respond to the Licencee with approval or rejection of the request (such approval not to be unreasonably withheld).

2.5 If EHS Data approves the Licencee's request to purchase additional seats, the Licencee shall, within 30 days of the date of EHS Data's invoice, pay to EHS Data the relevant fees for such additional Seats as set out in the Agreement.

## **3 OWNERSHIP**

3.1 The Licencee acknowledges that EHS Data is the owner of the Software and all of the Intellectual Property Rights therein.

3.2 The Licencee acknowledges and agrees that no title to or ownership of any part of the Software is transferred to Licencee by virtue of the Licence or otherwise.

## **4 DELIVERY AND INSTALLATION**

4.1 EHS Data shall deliver the Software and, if applicable, install and configure the same on the Licencee's equipment in accordance with the Specification.

4.2 EHS Data will provide the Licencee with reasonable assistance with the installation of the Software (at its discretion) either by telephone, email or any other means of communication for a period of 90 days from the Commencement Date.

## **5 PERMITTED USE OF THE SOFTWARE**

5.1 The Licencee undertakes:

- 5.1.1 to only use the Software for the purposes of the Licencee's own internal business and to not install the Software on any computer for use outside of the Licencee's operations/business without first obtaining the express written approval of EHS Data;
  - 5.1.2 to use the Software in accordance with all applicable laws;
  - 5.1.3 to control the use of the Software in accordance with the terms of the Agreement;
  - 5.1.4 not to remove, or to allow to be removed, any copyright or other proprietary protection or notices in or on the Software, or any part thereof;
  - 5.1.5 not to modify, alter or in any way interfere with the Software or merge the Software with other data, programmes or systems save to the extent permitted by law;
  - 5.1.6 not to reverse engineer, decompile, or disassemble the Software, except and only to the extent that such activity is expressly permitted by law;
  - 5.1.7 not to sell, lease, licence, sub-licence or otherwise deal with the Software or any part or parts save in accordance with the terms of the Agreement or have any software or other programme written or developed for itself based on any confidential information supplied to it by EHS Data;
  - 5.1.8 to only make archival copies of the Software for backup/non-operational purposes;
  - 5.1.9 to ensure that its employees, agents and other parties who shall use the Software are notified of the Agreement and the terms hereof prior to such employee, agent or party using the same; and
  - 5.1.10 not to provide or otherwise make available the Software or documentation (including manuals) in whole or in part in any form to any third party without prior written consent from EHS Data.
- 5.2 The Licencee accepts that EHS Data may need reasonable access to the Licencee's server(s) to meet its obligations under the Agreement and the Licencee agrees that it shall not block or otherwise interfere with such access during the Term.
- 5.3 The Software shall not be copied to, or used on, any other computers or network of computers other than the Licencee's network in accordance with the Specification and the terms of the Agreement without EHS Data's prior written approval. Any change or addition to the Licencee's network during the Term may be subject to additional Licence Fees.
- 5.4 The Licencee shall permit EHS Data to inspect and have access to any premises (and to the computer equipment located there) at or on which the Software is being kept or used, and have access to any records kept in connection with this Licence, for the purposes of ensuring that the Licencee is complying with the terms of the Licence, provided that EHS Data provides reasonable advance notice to the Licencee of such inspections, which shall take place at reasonable times.

## **6 MAINTENANCE SERVICES**

- 6.1 If agreed between the parties, EHS Data will provide Maintenance Services, the details of which shall be set out in the SLA from time to time for periods of 12 months commencing on either the Commencement Date or at any agreed time during the Term (each 12 month period being a "Maintenance Services Term").
- 6.2 Unless terminated in accordance with Condition 6.3 or unless otherwise agreed between the parties, the Maintenance Services Term will automatically be renewed for the duration of the Term.
- 6.3 Either party may terminate the Maintenance Services by giving the other not less than 1 month's written notice to end no earlier than on the last day of the then current Maintenance Services Term. Although EHS Data may contact the Licencee to confirm that the Maintenance Services Term is coming to an end, it is under no obligation to do so.
- 6.4 If the Licencee fails to renew any Maintenance Services Term for whatever reason and then later elects to reinstate the Maintenance Services, the Licencee shall be required to pay to EHS Data the greater of:
- 6.4.1 the Re-Join Fee; or



- 6.4.2 the cost of elapsed Maintenance Services plus 25%.
- 6.5 If the Licencee does not order the Maintenance Services, EHS Data shall be under no obligation to supply any updates to and/or upgrades of the Software to the Licencee.
- 6.6 EHS Data does not fully support any version of the Software other than the latest release. EHS Data assumes that the Licencee will be operating the latest released version of the Software and all Maintenance Services shall be provided on this assumption. If the Licencee is running a legacy version of the Software then EHS Data reserves the right to request that the Licencee upgrades to the latest release of the Software before providing the Maintenance Services. Where upgrading is not possible, then EHS Data shall at its sole discretion continue to provide the Maintenance Services and to assist wherever fixes are available for the version being run.
- 6.7 EHS Data warrants that it shall perform the Services:
  - 6.7.1 in a timely and professional manner with all due care and skill using appropriately skilled and qualified persons; and
  - 6.7.2 in accordance with all applicable provisions and in compliance with all applicable laws, enactments, orders, regulations, standards and other similar instruments.
- 6.8 The Licencee shall:
  - 6.8.1 ensure that EHS Data's staff has reasonable access to all facilities necessary so as to enable EHS Data to perform its obligations under the Agreement; and
  - 6.8.2 warrant that it has the right to provide the materials (if any) it provides to EHS Data so as to enable EHS Data to perform its obligations in respect of the Services and, where required, the Licencee shall provide a licence to EHS Data to use any Licencee owned software solely for the duration and the purpose of the Services.

## **7 PAYMENT**

- 7.1 The Licencee shall pay to EHS Data the following:
  - 7.1.1 the Licence Fee in relation to which EHS Data will issue an invoice within 30 days following the date of the Agreement; and
  - 7.1.2 the Maintenance Fee in relation to which EHS Data will issue an invoice within 30 days following the first day of each Maintenance Services Term.
- 7.2 The Licence Fee and the Maintenance Fee will be payable by the Licencee within 30 days of the date of EHS Data's relevant invoice.
- 7.3 All sums payable under the Agreement are exclusive of VAT and any other applicable taxes which shall be payable in addition by the Licencee.
- 7.4 The Licence Fee and the Maintenance Fee are exclusive of EHS Data's reasonable expenses including, without limitation, travel, accommodation and subsistence, which will be charged to the Licencee when incurred in connection with the supply of the Software and the Maintenance Services.
- 7.5 If the Licencee fails to pay any sums due under the Agreement, notwithstanding its rights under Condition 10.2, EHS Data reserves the right to deactivate the Software remotely.

## **8 EHS DATA'S WARRANTIES**

- 8.1 EHS Data warrants that the Software will conform in all material respects to the Specification:
  - 8.1.1 for a period of 90 days from the date the Software is activated; or
  - 8.1.2 where EHS Data is supplying Maintenance Services, for the duration of the Maintenance Services Term,  
  
("Warranty Period")
- 8.2 If, within the Warranty Period, the Licencee notifies EHS Data in writing of any defect or fault in the Software in consequence of which it fails to conform in all material respects to the Specification, and such defect or fault does not result from the Licencee, or anyone acting with the authority of the

Licencee, having amended the Software or used it outside the terms of the Agreement, or it has not been loaded onto suitably configured equipment as specified by EHS Data, EHS Data's sole obligation shall be to repair or replace the Software.

- 8.3 Except as provided in this Condition 8, the Software is provided on an "as-is" basis without any other warranty and conditions of any kind, either express or implied, by statute, common law or otherwise including, but not limited to, the implied warranties of satisfactory quality, merchantability and fitness for a particular purpose or that the Software will operate error-free or uninterrupted.
- 8.4 EHS Data does not warrant or accept liability for third party software included as a part of the Software installation.
- 8.5 To the best of EHS Data's knowledge the use of the Software and/or any other information provided to the Licencee hereunder does not infringe the Intellectual Property Rights of any third party. However if EHS Data is made aware that such uses infringes or is likely to infringe any third party rights, EHS Data shall at its option modify, replace (without significantly detracting from the overall performance) or withdraw the Software (and/or modifications) and/or such other information so as to become non-infringing. EHS Data shall have no liability where the infringement or alleged infringement results from the use of the Software in combination with any equipment or programmes not supplied or approved by EHS Data or any modification of any item of the Software by a party other than EHS Data.
- 8.6 Where any major threat to integrity of data is discovered through a fault with the Software, EHS Data reserves the right to withdraw any version of the Software and replace it with a suitable alternative version.

## **9 LIMITATION OF LIABILITY**

- 9.1 Subject to Condition 9.3, EHS Data shall not be liable to the Licencee whether in contract, tort (including negligence), breach of statutory duty, or otherwise for any:
  - 9.1.1 loss of profit;
  - 9.1.2 loss of data, loss or damage to other software, hardware or data; or
  - 9.1.3 indirect or consequential loss arising under or in connection with the Agreement.
- 9.2 The aggregate liability of EHS Data under the Agreement shall not exceed the following:
  - 9.2.1 the Licence Fee if the claim issued is in respect of the Software; or
  - 9.2.2 the Maintenance Fee paid during the Maintenance Services Term in which the claim arises if the claim issued is in respect of the Maintenance Services.
- 9.3 Nothing in the Agreement shall limit the liability of EHS Data for:
  - 9.3.1 death or personal injury caused by its negligence;
  - 9.3.2 fraud or fraudulent misrepresentation;
  - 9.3.3 breach of the obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
  - 9.3.4 any other liability which may not be excluded by law.
- 9.4 It is the absolute responsibility of the Licencee to ensure all data is regularly backed up. Databases should additionally be backed up immediately prior to executing any database script provided by EHS Data, its agents or representatives.

## **10 TERM OF LICENCE**

- 10.1 EHS Data grants to the Licencee the Licence for the Term unless terminated in accordance with this Condition 10.
- 10.2 EHS Data may terminate the Agreement or any part of it including the Maintenance Services:
  - 10.2.1 immediately if the Licencee fails to pay any sums due in accordance with Condition 7; or
  - 10.2.2 at any time on giving the Licencee not less than 3 months' written notice.

- 10.3 Either party may terminate the Agreement with immediate effect if:
- 10.3.1 if the other party commits a material breach of the Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within 30 days after being notified in writing to do so;
  - 10.3.2 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
  - 10.3.3 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
  - 10.3.4 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
  - 10.3.5 an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party;
  - 10.3.6 the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
  - 10.3.7 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
  - 10.3.8 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
  - 10.3.9 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Condition 10.3.2 to Condition 10.3.8 (inclusive); or
  - 10.3.10 the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.
- 10.4 Upon termination of the Agreement for any reason:
- 10.4.1 all rights granted to the Licencee under the Licence shall cease;
  - 10.4.2 the Licencee shall cease all activities authorised by the Licence;
  - 10.4.3 the Licencee shall immediately pay to EHS Data any outstanding Licence Fees or Maintenance Fees or other sums due under the Agreement;
  - 10.4.4 the Licencee shall uninstall and/or remove all copies of the Software stored in or on the Licencee's equipment or otherwise destroy all copies of the Software in the possession of the Licencee and certify to EHS Data that it has done so; and
  - 10.4.5 EHS Data reserves the right to deactivate the Software.
- 10.5 Termination or expiry of the Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.
- 10.6 Any provision of the Agreement that is expressed or implied to operate or have effect after termination of the Agreement shall remain in full force and effect, including Condition 1 (Interpretation), Condition

3 (Ownership), Condition 7 (Payment), Condition 9 (Limitation of Liability), Conditions 10.4 to 10.6, Condition 11 (Confidentiality and Publications) and Condition 13 (General).

## **11 CONFIDENTIALITY AND PUBLICATIONS**

- 11.1 Each party shall keep confidential any confidential information disclosed to it by the other during the Term and shall not use for its own purposes (other than implementation of the Agreement) nor without the prior written consent of the other disclose to any third party (except its professional advisors or as may be required by any law or any legal or regulatory authority) any, information of a confidential nature (including trade secrets and information of commercial value) which may become known to such party from the other party and which relates to the other party.
- 11.2 The obligations in Condition 11.1 shall not apply to any information which:
- 11.2.1 is public knowledge or already known to such party at the time of disclosure;
  - 11.2.2 subsequently becomes public knowledge other than by breach of this Licence, or subsequently comes lawfully into the possession of such party from a third party; or
  - 11.2.3 a party is required to disclose that information by law, any governmental or regulatory, any court or other authority of competent jurisdiction.
- 11.3 The Licencee shall not make any public announcement concerning the Agreement without obtaining the prior written consent of EHS Data. If permitted, publication of results dependent on or arising from the use of the Software shall include acknowledgement of the Software. The Licencee shall use reasonable efforts to send a copy of each such publication to EHS Data.
- 11.4 The Licencee agrees that EHS Data's Intellectual Property Rights and confidential information is valuable and that damages may not be an adequate remedy for any breach by the Licencee of the Agreement. The Licencee agrees that EHS Data will be entitled without proof of special damage to the remedies of an injunction and other equitable relief for any actual or threatened breach by the Licencee of the Agreement.

## **12 DATA PROTECTION**

- 12.1 EHS Data reserves the right to collect and process the following data:
- 12.1.1 information provided by the Licencee or its employees, agents or representatives when activating the Software including, but not limited to, names, email addresses and country of residence of the Software users; and
  - 12.1.2 details relating to the usage of the Software, together the "Data".
- 12.2 EHS Data will use the Data, without limitation, including for the following:
- 12.2.1 to provide the Licencee with marketing information including, but not limited to, products or services that the Licencee may request from time to time or which EHS Data believes will be of interest to the Licencee;
  - 12.2.2 to perform the Maintenance Services or any other services as agreed between the parties from time to time; and
  - 12.2.3 to notify the Licencee about any changes to the Software.
- 12.3 EHS Data shall comply with all its obligations under the Act and any other applicable legislation.

## **13 GENERAL**

- 13.1 EHS Data shall be not liable for failure to perform its obligations under the Agreement if such failure results from any force majeure event (whether happening in the United Kingdom or elsewhere) such as, but not limited to, Act of God, refusal of licence or other government act, terrorism, war, fire, flood, explosion, strikes, lockout, industrial action, accident, lightning damage, electromagnetic interference, radio interference, difficulty in obtaining materials or any cause beyond its reasonable control.
- 13.2 The Agreement supersedes any and all prior or contemporaneous negotiations, understandings or agreements between the parties, written or oral, with respect to the Agreement. In the instance

where the terms of the Agreement conflict with a prior written agreement, the terms of the Agreement shall prevail.

- 13.3 No variation to the Agreement shall have any effect unless made in writing and approved by an authorised representative of EHS Data.
- 13.4 The Licencee shall not assign or transfer any rights, duties or obligations under the Agreement without the prior written approval of EHS Data.
- 13.5 Any notice or other communication required or permitted under the Agreement shall be in writing addressed to the address stated in the Agreement and shall be deemed to have been duly given, if delivered personally, upon delivery; or if properly addressed and posted by recorded delivery mail within forty-eight hours of posting. Email may be used if approved by an authorised representative of EHS Data; delivery by email will be deemed to have been given on the day of transmission.
- 13.6 No failure or delay by a party to exercise any right or remedy provided under the Agreement or by law shall constitute a waiver of that or any other right or remedy.
- 13.7 If any court or competent authority finds that any provision of these Conditions (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of these Conditions shall not be affected.
- 13.8 Nothing in the Agreement is intended to, or shall be deemed to establish any partnership or joint venture between the parties, nor constitute either party the agent of the other for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.
- 13.9 A person who is not a party to the Agreement shall not have any rights under or in connection with it.
- 13.10 The parties agree that the Agreement shall be governed by and determined in accordance with the laws of England and the parties irrevocably submit to the exclusive jurisdiction of the English Courts.

SCHEDULE 1  
SERVICE SLA

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IF APPLICABLE

SCHEDULE 2  
HOSTING SLA

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