

# Gemini Computer Systems Limited Software Licence Agreement

## BACKGROUND

Gemini Computer Systems Limited a company registered in England and Wales with company registration number 074178211 whose registered office is at West Central, Kingsley Road, Lincoln, LN6 3TA, England (“**Licensor**”), is the authorised licensor of the Software and the Third-Party Software.

The Software and the Third-Party Software is made available to the Licensee for use by the Users under the Licence on a non-exclusive basis.

This Agreement sets out the terms agreed between the Licensor and the Licensee for the granting of the Licence with Support Services or the provision of Support Services only.

## 1. DEFINITIONS AND INTERPRETATION

1.1. In this Agreement the following words and expressions have the following meanings set out below, unless the context requires otherwise:

**Agreement:** this contract between the parties comprising the Order Form together with these terms and conditions;

**Annual Fees:** the Initial Licence Fee or Subsequent Licence Fees and, if applicable, the Licence Support Fees or SSOC Fees payable by the Licensee for the relevant year;

**Commercial Terms:** the terms set out at the beginning of this Agreement;

**Initial Licence Fees:** the initial fees for the Licence as set out on the Order Form;

**Initial Term:** the initial term of this Agreement as set out in the Order Form and/or the Commercial Terms for either the Licence or the Support Services Only Contract;

**Intellectual Property Rights:** any intellectual property rights derived from the Software and Third-Party-Software such as patents, utility models, rights to inventions, copyright and related rights, trade marks and service marks, trade names and rights in domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in the Software and/or Third-Party 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;

# Gemini Computer Systems Limited

## Software Licence Agreement

**Licence:** the non-exclusive licence that permits the Licensee to use the Software (as specified on the Order Form) on the terms of this Agreement;

**Licence Support Fees:** any additional fees specified in the Order Form payable by the Licensee for Support Services in addition to the Initial Licence Fee or Subsequent Licence Fees;

**Licensor's Software:** the computer programs which are ordered by the Licensee in the Order Form or made available by the Licensor to the Licensee during the subsistence of this Agreement (save for any Third-Party Software);

**Order Form:** the order form setting out details relating to the Licence and/or Support Services to be provided by the Licensor;

**Schedule:** the schedule to this Agreement;

**Site:** means location/locations as identified in this Agreement at which the Software may be used or Support Services Only Contract may be provided;

**Software:** the Licensor's Software and the Third-Party Software;

**SSOC Fees:** either monthly, quarterly or annual fees payable in respect of a Support Services Only Contract;

**Subsequent Licence Fees:** either monthly, quarterly or annual Licence fees set out in the Order Form or as may be varied in accordance with clauses 4.3 and 7.6, which are payable by the Licensee to use the Software after the Initial Term;

**Support Services:** the support services to be supplied to the Licensee as specified in the Schedule;

**Support Services Only Contract:** this Agreement where only Support Services are supplied to the Licensee;

**Third-Party Software:** the computer programs which are authored and owned by other third parties but distributed by Licensor (under the Licensor's brand) and identified in the Order Form which the Licensor grants the Licensee the use of during the subsistence of this Agreement; and

**User:** those users as expressly identified in number to be authorised to use the Software.

1.2. Unless the context otherwise requires:

(a) words in the singular shall include the plural and in the plural shall include the singular;

# Gemini Computer Systems Limited

## Software Licence Agreement

(b) a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time;

(c) any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.3. In the case of conflict or ambiguity between any provision contained in the body of this agreement and any provision contained in the schedules or appendices or the Order Form, the provision in the body of the Order Form shall take precedence.

### 2. FORMATION OF THIS AGREEMENT

2.1. This Agreement together with the Order Form sets out the terms under which the Licensor agrees to either licence the Software to the Licensee and to support that Software ("**Licence**") or to provide Support Services only ("**Support Services Only Contract**"). The selection by the Licensee of a Licence or a Support Services Only Contract is set out in the Order Form. A Support Services Only Contract is only available where the Licensee has previously purchased a perpetual licence to use the Software. Only the terms of this clause and the provisions of clauses 1,4, 7 and 11 to 26 inclusive shall apply to a Support Services Only Contract.

2.2. This Agreement is limited to these terms and conditions together with the relevant Order Form and the Licensor is not bound by any general conditions of purchase submitted by the Licensee or any different or additional terms or provisions that may appear on any other order form used by the Licensee.

2.3. A binding contract shall only be formed when both parties sign this Agreement or, if earlier in the case of the Licence, when the Licensee uses the Software.

### 3. LICENCE

3.1. In consideration of the Initial Licence Fees paid by the Licensee to the Licensor, receipt of which the Licensor hereby acknowledges, the Licensor grants to the Licensee a non-exclusive licence, for the Initial Term specified in the Order Form, to use the Software on the terms of this Agreement. Subject to the provisions of clause 4.3 the Subsequent Licence Fees must be paid each year for this licence to be extended and to permit continued use of the Software for periods after the Initial Term.

3.2. The Licensor's Software is software authored and owned by the Licensor. The Third-Party Software is software authored and owned by other third parties but distributed by the Licensor (under the Gemini Systems brand). All title, copyright and other intellectual property rights in the Licensor's Software, Third-Party Software and documentation shall remain vested in the authors at all times.

# Gemini Computer Systems Limited

## Software Licence Agreement

- 3.3. The Licensee will be permitted to make copies of the Software for the purposes of bona fide operational purposes, security and back-up only. No other copies may be made.
- 3.4. The Licensee may not make any copies of any Software documentation provided by the Licensor without the written permission of the Licensor. The Licensor will provide the Software documentation at its discretion, at the published price, for the exclusive use of the Licensee only.
- 3.5. The Licensee shall ensure that any copies of the Software or documentation are marked as proprietary to, copyright of, and licensed by, the Licensor.
- 3.6. The Licence covers the use of the Software where the database(s) reside on a single network server only. Use of the Software is limited to the processing of the Licensee's own data (or the data of its holding or subsidiary companies).
- 3.7. The Licensee can use the Software to create and service 1 (one) database. This licence can be extended to service additional databases by purchasing the appropriate licence component from the Licensor.
- 3.8. The Software may be used by the number of user elements purchased as specified in the Order Form and/or the Commercial Terms. Where the Licensee uses the Software with multiple companies, and the Software licensed is limited to concurrent users, then the total number of concurrent users (across all the companies), shall not exceed the number of concurrent user elements licensed.
- 3.9. The Licensor reserves the right to embed technology within the Software to automatically time-expire the Software if the Initial Licence Fees and Subsequent Licence Fees are not paid by the Licensee pursuant to this Agreement.
- 3.10. The Software comprises of computer software application(s), which in turn may include a number of elements, modules and users. The Licence is deemed to cover the applications and elements invoiced by the Licensor to the Licensee. Future purchases of additional elements and/or applications that are invoiced will be included within this Licence upon payment of the invoice.
- 3.11. The Third-Party Software shall be deemed to be incorporated within the Software for the purposes of this licence (except where expressly provided to the contrary) and use of the Third-Party Software shall be subject to such Third-Party additional terms as the Licensor shall notify the Licensee from time to time.
- 3.12. Where Support Services are provided with the Licence such services are as specified in the Schedule.
- 3.13. Where the Software is used to produce an electronic vehicle health check video for the Licensee's retail customer at the dealership and this video is uploaded to AWS (Amazon Web Services) by the Licensor then these videos are retained by the Licensor for 90 days only and after which they are deleted.

#### 4. TERM

Our Ref:  
Licence Version Number: 21-09-2023

Page 4 of 16

**Gemini Computer Systems Limited (CRN: 04178211)**, West Central, Kingsley Road, Lincoln, Lincolnshire, LN6 3TA, United Kingdom

Telephone: 01522 698 911

E-mail: [support@gemini-systems.co.uk](mailto:support@gemini-systems.co.uk)

# Gemini Computer Systems Limited

## Software Licence Agreement

- 4.1. This Agreement will commence on the date of final signature of this Agreement and will continue for the Initial Term and thereafter shall automatically renew for successive 12-month periods from the final signature of this Agreement or the anniversary of that date ( each a “**Renewal Period**”) unless either Party gives written notice to the other of its intent to terminate this Agreement at the end of the Initial Term or the applicable Renewal Period at least 3 months prior to the end of the Initial Term or the applicable Renewal Period (“**Renewal Date**”). Save for any price increases notified to the Licensee by the Licensor in accordance with clause 7.6, and subject to clause 4.3, any renewal shall be on the same terms as applied for the previous year including concurrent User numbers.
- 4.2. If the Licensee has not provided the Licensor with written notice of its intent to terminate this Agreement within the 3 month period specified in clause 4.1 then this Agreement may be terminated by the Licensee however the full Subsequent Licence Fees and, if applicable, the Licence Support Fees or SSOC Fees fee for the forthcoming year shall be payable by the Licensee and any such fees paid are not refundable.
- 4.3. If the Licensee wishes to change the Licence to reduce the number of concurrent Users from the end of the Initial Term or from any Renewal Date the Licensee must notify the Licensor in writing at least 3 months prior to the end of the Initial Term or the relevant Renewal Date. On receipt of such notification the Licensor shall advise the Licensee of the revised Subsequent Licence Fees to be applied from the end of the Initial Term or the relevant Renewal Date.

### 5. SOFTWARE DELIVERY

- 5.1. Where the Licensee is to be provided with a Licence, the Licensor shall deliver one copy of the Software electronically to the Licensee. Risk in any tangible media on which the Software is delivered shall pass on delivery.
- 5.2. The Software must be installed in accordance with the volume and type of licence detailed within the Order Form and/or the Commercial Terms. Installations are only permitted on systems under the full control of the Licensee.
- 5.3. In some cases the Software must be activated with a licence file and where one is required this must be reactivated every year.
- 5.4. If upgrades are made available in relation to the Software these will be made available to the Licensee via the appropriate distribution method stated in the Order Form. There is no obligation to provide upgrades.

### 6. LICENSEE’S OBLIGATIONS

- 6.1. The Licensee shall:

# Gemini Computer Systems Limited

## Software Licence Agreement

- 6.1.1. ensure that the number of Users using the Software does not exceed the number identified in this Agreement or the Order Form and/or the Commercial Terms;
  - 6.1.2. ensure that the Software is installed on designated equipment only;
  - 6.1.3. run the Software on hardware and specifications that meet or exceed the system's recommendations and third party compatibility information set out in the Licensor's minimum system requirements as notified from time to time;
  - 6.1.4. ensure that the Software is used by Users only in the designated Sites;
  - 6.1.5. keep a complete and accurate record of the Licensee's copying and disclosure of the Software and its Users, and produce such record to the Licensor on request from time to time;
  - 6.1.6. notify the Licensor as soon as it becomes aware of any unauthorised use of the Software by any non-User;
  - 6.1.7. comply with the terms of terms of the Third-Party Software licenses notified to the Licensee; and
  - 6.1.8. pay, for broadening the scope of the Licence granted under this Licence to cover the unauthorised use, an amount equal to the fees which the Licensor would have levied (in accordance with its normal commercial terms then current) had it licensed any such unauthorised use on the date when such use commenced.
- 6.2. The Licensee shall not use the Software to take any actions that:
- 6.2.1. infringe any third party Intellectual Property Rights;
  - 6.2.2. violate any applicable law, statute, ordinance or regulation; or
  - 6.2.3. are defamatory, threatening, libellous, harrassing or obscene.
- 6.3. The Licensee shall permit the Licensor to inspect and have access to any Sites (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 Licensee is complying with the terms of this Licence, provided that the Licensor provides reasonable advance notice to the Licensee of such inspections, which shall take place at reasonable times.

## 7. PAYMENT TERMS

- 7.1. Save where this Agreement is Support Services Only Contract, the Licensee shall pay the Licensor the Initial Licence Fees and the Subsequent Licence Fees and, if

# Gemini Computer Systems Limited

## Software Licence Agreement

applicable, the Licence Support Fees as specified in the Order Form from the final signature of this Agreement.

- 7.2. Where this Agreement comprises a Support Services Only Contract the Licensee shall pay the Licensor SSOC Fees as specified in the Order Form.
- 7.3. The Initial Licence Fees, the Subsequent Licence Fees and, if applicable, the Licence Support Fees and the SSOC Fees are to be paid to the Licensor in advance as specified in the Order Form.
- 7.4. The Initial Licence Fees and, if applicable, the Licence Support Fees, must be paid by the Licensee prior to using the Software.
- 7.5. The Subsequent Licence Fees and, if applicable, the Licence Support Fees for periods after the Initial Term and the SSOC Fees must be paid to the Licensor in advance of each month, quarter or year (as applicable) as specified on the Order Form ("**Payment Date**") and in any event no later than within 30 days of receipt of the Licensor's invoice which shall be issued by the Licensor not less than 30 days before the Payment Date.
- 7.6. During the term of this Agreement but not more than once in any period of 12 months the Licensee may increase the Subsequent Licence Fees and, if applicable, the Licence Support Fees or the SSOC Fees. Such increase as so determined may be applied from the Renewal Date and thereafter from each succeeding anniversary of the date of the previous such increase. The Licensor shall notify the Licensee of any such increase proposed for the forthcoming year at least four months prior to the Renewal Date and if such notification is given less than 4 months prior to the Renewal Date the Licensee shall have the ability to terminate this Agreement at the next Renewal Date without liability if the Licensee does not wish to renew with the increased fees. If no such notice of termination is given the increased fees shall apply from the Renewal Date. This clause shall not apply to changes to the Subsequent Licence Fees as a consequence of the Licensee's request for a change of concurrent Users where such changes shall be made in accordance with the provisions of clause 4.3.
- 7.7. The Licensor reserves the right suspend the use of the Software under the Licence on the expiry of 14 days' notice to the Licensee if the Licensee fails to pay any undisputed amount due in respect of the Licence in accordance with the terms of this Agreement.
- 7.8. All payments made by the Licensee under this Agreement are exclusive of VAT. The Licensor shall provide the Licensee with a valid VAT invoice.
- 7.9. If the Licensee fails to make any payment due to the Licensor under this Agreement by the due date for payment, then, without limiting the Licensor's remedies under clause 17, the Licensee shall pay interest on the overdue amount at the rate of 4%

# Gemini Computer Systems Limited

## Software Licence Agreement

per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Licensee shall pay the interest together with the overdue amount. The Licensor shall also be entitled to charge the Licensee a £25.00 administration charge should the Licensee miss a due date for payment pursuant to this Agreement in a situation where it does not exercise its right to terminate this Agreement pursuant to this clause 7.

7.10. The Licensor shall be entitled (without prejudice to its other rights and remedies) to terminate this Agreement immediately without notice if the Licensee fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 5 days after being notified in writing to make such payment.

7.11. All payments due under this Agreement shall be paid by the Licensee to the Licensor by direct debit (unless the Licensor has expressly agreed in writing to accept other methods of payment).

### 8. WARRANTY

8.1. The warranty contained in this clause 8 does not apply to any Third-Party Software.

8.2. Where a feature does not operate in accordance with the most recent documentation, then the Licensee may provide notification in writing to the Licensor with sufficient detail to enable the Licensor to replicate the problem on the most current standard Licensor's Software version. In the event that a reported error can be replicated by the Licensor on the then current standard version, and on systems approved by the Licensor, then the Licensor will provide a correction within a new release that will be made available to the Licensee.

8.3. Provision of this warranty is dependent on the Licensee having a current and valid Licence. The warranty does not cover minor errors that do not materially affect Licensor's Software function. This warranty applies to standard (non-customised) Licensor's Software only and replication of errors and corrections will only be made in relation to the standard version of the Licensor's Software.

8.4. The Licensor has a policy of continual improvement and reserve the right to add, delete, and amend features within the Licensor's Software without notice. The warranty and any remedy given in this clause 8 is in lieu of any other condition, remedy, or warranty given whether expressed or implied by law as to the quality, or fitness for the purpose, of the Licensor's Software in so far as such terms may lawfully be excluded.

### 9. PERFORMANCE

9.1. The Software response times are subject to systems specification and as such are not guaranteed or underwritten by the Licensor. The Licensee is responsible for ensuring that the Software fully meets its business requirements and that their

# Gemini Computer Systems Limited

## Software Licence Agreement

computer systems are compatible. The Licensor takes no responsibility for any representations made by a third party regarding the Third-Party Software.

- 9.2. If the Licensee identifies a feature documented, demonstrated, or discussed, that is critical to its business, or otherwise of material importance, it must obtain written confirmation of the feature, and its function, from the Licensor.
- 9.3. If the Order Form so provides, the Software may only be accessed via other software which is subject to a valid licence.
- 9.4. The Licensor shall (at its sole discretion) have the right to replace any Software (provided that such Software is no longer within the Licensor's current range of products available for supply) supplied to the Licensee pursuant to this Agreement during the Initial Term with another Licensor's Software or Third-Party Software of a similar kind.

### 10. GENERAL RESTRICTIONS

- 10.1. Except as expressly stated in clause 3, the Licensee has no right (and shall not permit any third party) to copy, adapt, reverse engineer, decompile, disassemble, modify, adapt or make error corrections to the Software in whole or in part except to the extent that any reduction of the Software to human readable form (whether by reverse engineering, decompilation or disassembly) is necessary for the purposes of integrating the operation of the Software with the operation of other software or systems used by the Licensee, unless the Licensor is prepared to carry out such action at a reasonable commercial fee or has provided the information necessary to achieve such integration within a reasonable period, and the Licensee shall request the Licensor to carry out such action or to provide such information (and shall meet the Licensor's reasonable costs in providing that information) before undertaking any such reduction.
- 10.2. The Licensee is prohibited from entering data into the data files or data tables from an application other than the Software, in such a manner that it may compromise the integrity of the data.
- 10.3. If the Licensee is entering data directly into the Licensor's data tables or files they must apply care and diligence and maintain a full audit trail of their actions.
- 10.4. If the Licensee uses another third party application that reads and/or writes data to the Licensor database or tables to replace the function of an available the Licensor module, then the Licensee will pay to the Licensor the Initial Licence Fees and Subsequent Licence Fees that would be chargeable to procure such a module.
- 10.5. The Licensee will permit, and give assistance, at all reasonable times, to the Licensor to verify that the Software is being used within the terms of the Licence. The Licensee shall not publish any results of benchmark tests run on the Software.

# Gemini Computer Systems Limited

## Software Licence Agreement

### 11. SUPPORT SERVICES

- 11.1. Where the Licensee has elected in the Order Form to purchase a Licence, the Support Services are provided as part of the Licence and within the Initial Licence Fees or Subsequent Licence Fees unless the Order Form specifies that Licence Support Fees are payable. Where the Licensee has elected in the Order Form to purchase a Support Service Only Contract only then only the Support Services are provided.
- 11.2. If the Order Form does not specify that Support Services have been purchased in respect of the Software, then no such Support Services shall be provided in respect of such Software and Third-Party Software.
- 11.3. The Support Services are set out in the Schedule.

### 12. CONFIDENTIALITY

- 12.1. The Software may be used by the employees of the Licensee and any contractor authorised by the Licensee but in all cases the Licensee shall be responsible for keeping the Software and any documentation confidential, and secure from any unauthorised party.
- 12.2. The Licensee shall be responsible for ensuring that all authorised users of the Software comply with the terms of this Agreement.
- 12.3. The Licensee is specifically prohibited from allowing access to the Software by any agent, contractor, or person who may be regarded as a competitor to the Licensor.

### 13. EXCLUSION AND LIMITATION OF LIABILITY

- 13.1. The Licensee must satisfy itself that the Software meets its requirements. The Licensee is solely responsible for any use made of the Software or documentation.
- 13.2. The Licensor shall not be responsible for any use of or inability of the Licensee to use the Software.
- 13.3. Except as expressly stated in clause 13.4:
  - 13.3.1. the Licensor shall not in any circumstances have any liability for any costs, losses or damages which may be suffered by the Licensee (or any person claiming under or through the Licensee), whether the same are suffered directly or indirectly or are immediate or consequential, and whether the same arise in contract, tort (including negligence) or otherwise howsoever, resulting from or arising out of the use, or inability to use the Software or which fall within any of the following categories:
    - (i) special damage even if the Licensor was aware of the circumstances in which such special damage could arise;
    - (ii) loss of profits;

# Gemini Computer Systems Limited

## Software Licence Agreement

- (iii) loss of anticipated savings;
- (iv) loss of business opportunity;
- (v) loss of goodwill;
- (vi) loss or corruption of data;
- (vii) loss of processing time, costs in re-inputting or restoring data;
- (vii) financial losses; or
- (vii) wasted expenditure.

13.3.2. the total liability of the Licensor in any year of this Agreement, whether in contract, tort (including negligence) or otherwise and whether in connection with this Agreement or any collateral contract, shall in no circumstances exceed a sum equal to the Annual Fees paid for that year.

- 13.4. The exclusions in clause 13.3 shall apply to the fullest extent permissible at law, but the Licensor does not exclude liability for:
- (a) death or personal injury caused by the negligence of the Licensor, its officers, employees, contractors or agents;
  - (b) fraud or fraudulent misrepresentation;
  - (c) 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
  - (d) any other liability which may not be excluded by law.
- 13.5. All dates supplied by the Licensor for the delivery of the Software or the provision of Support Services shall be treated as approximate only. The Licensor shall not in any circumstances be liable for any loss or damage arising from any delay in delivery beyond such approximate dates.
- 13.6. All references to "the Licensor " in this clause 13 shall, for the purposes of this clause only, be treated as including all employees, subcontractors and suppliers of the Licensor and its Affiliates, all of whom shall have the benefit of the exclusions and limitations of liability set out in this clause, in accordance with clause 25.5.
- 13.7. The Licensor shall not be liable for any failure of performance by a third-party supplier in respect of the Third-Party Software. A third-party supplier has no authority to bind or give undertakings on behalf of the Licensor.

### 14. ANTI -VIRUS PRECAUTIONS

The Licensor will use reasonable endeavours to prevent the introduction of a computer virus or other program code which will damage the Software or any other system, operated by the Licensee. This will involve the Licensor virus checking any supplied version of the Software. For its part the Licensee will check each release of the Software with the same diligence as outlined above.

### 15. NON-SOLICITATION

During the term of this Agreement and for a period of six months thereafter the Licensee shall not, on its own behalf or in conjunction with or on behalf of any other person, company or firm, solicit or entice away or endeavour to solicit or entice away from the Licensor, any individual who is an

# Gemini Computer Systems Limited

## Software Licence Agreement

employee, consultant, or director of the Licensor and who has worked with the Licensee in connection with this Agreement. This restriction shall not prohibit advertising for staff generally. In the case of a breach, then the Licensee will pay the Licensor a fee equal to 12 months of the relevant employee, consultant, or director's salary.

### 16. EXCLUSIONS

All services, (such as but not limited to installation, delivery, support, training) that may be related to the Software are excluded unless it has been expressly agreed otherwise by the Licensor and the Licensee.

### 17. TERMINATION

17.1. The Licensee or the Licensor may terminate the Licence with immediate effect by giving notice to the other party in writing if:

17.1.1. the other party is in material breach of this Agreement (and such material breach is not remedied within 30 days of notification);

17.1.2. 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;

17.1.3. 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;

17.1.4. a petition is filed, a notice is given, a resolution is passed, 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;

17.1.5. 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;

17.1.6. 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;

17.1.7. 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;  
or

# Gemini Computer Systems Limited

## Software Licence Agreement

- 17.1.8. 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 at clauses 17.1.1 to 17.1.7 (inclusive); or
- 17.1.9. the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.
- 17.2. In the event of termination or expiry of this Agreement, the Licensee shall cease to use the Software, save where such Software is removed remotely by the Licensor, promptly remove all copies from its computers and magnetic media, and destroy all copies of the programs and documentation and shall confirm to the Licensor in writing that it has done so.
- 17.3. In a circumstance where the Licensor exercises its right to terminate this Agreement pursuant to clauses 7.10 or this clause 17 any outstanding Initial Licence Fees and Subsequent Licence Fees (or SSOC Fees) pursuant to this Agreement shall be immediately due and payable.
- 17.4. Termination or expiry of this 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 this Agreement which existed at or before the date of termination or expiry.
- 17.5. Terms of this Agreement shall continue after termination if, by their nature, they are intended to continue after that date.
- 17.6. In the event that the Licensor's right to distribute any third-party component(s) or application(s) is revoked, then the Licensor shall have the right to terminate the Licenses for the Third-Party Software components affected, giving reasonable notice to the Licensee. In such circumstances the Licensor will use reasonable endeavours to source, provide or offer an alternative or upgraded application or component, for the benefit of the Licensee or to arrange for the Licensee to be able to procure such an application or component from a third party.

### 18. ASSIGNMENT

The Licence is personal to the Licensee. The Licensee shall not assign, transfer, lease, sell, or sub-licence the Software, or any of the rights or obligations under the Licence or this Agreement, or purport to do so. Transfer of the Licence and this Agreement may only be permitted at the discretion of the Licensor. Such permission must be obtained by the Licensee in writing prior to any transfer.

### 19. FORCE MAJEURE

Neither party shall have any liability or be deemed to be in breach of this Agreement for any delays or failures in performance of this Agreement which result from circumstances beyond the reasonable control of that party. The party affected by such circumstances shall promptly notify the other party

# Gemini Computer Systems Limited

## Software Licence Agreement

in writing when such circumstances cause a delay or failure in performance and the time for performance of such obligations shall be extended accordingly. If the period of delay or non-performance continues for 3 months or more, the party not affected may terminate this Agreement by written notice to the affected party.

### 20. WAIVER

No delay, neglect, or forbearance on the part of either party in enforcing against the other party any term or condition of this Agreement shall be deemed to be a waiver or shall prejudice any right of that party under this Agreement. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

### 21. LEGISLATIVE COMPLIANCE

It is the sole responsibility of the Licensee to ensure that their use of the Software complies with and meets any relevant legislative requirements. This includes, (but is not limited to), the use of the Software to store personal details which would be subject to terms and conditions set out within the Data Protection Act 2018.

### 22. DATA PROTECTION

By entering into this Agreement the Licensee acknowledges that the Licensor may share the Licensee's business name and a business IT department email link (but not personal details) with carefully selected third parties from time to time. The Licensor aims to do this only where the third party can offer benefits directly related to the Licensee's software solutions supplied by the Licensor. If the Licensee wishes the Licensor to not share these details, it will cease to do so on written request.

### 23. NOTICES

23.1. Any notice given to a party under or in connection with this Agreement shall be in writing and shall be:

(a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or

(b) sent by email to the addresses specified in the Order Form (or an address substituted in writing by the party to be served):

23.2. Any notice shall be deemed to have been received:

(a) if delivered by hand, at the time the notice is left at the proper address;

(b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second working day after posting (sixth working day if sent by airmail);

(c) if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume.

23.3. This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

# Gemini Computer Systems Limited

## Software Licence Agreement

### 24. ENTIRE AGREEMENT

- 24.1. This Agreement, contain the whole agreement between the parties relating to the subject matter hereof and supersede all previous and contemporaneous agreements, arrangements and understandings between them, whether written or oral, relating to that subject matter.
- 24.2. Each party acknowledges that, in entering into this Agreement it does not rely on any statement, representation, assurance or warranty (whether it was made negligently or innocently) of any person (whether a party to this agreement or not) other than as expressly set out in this Agreement. Nothing in this clause shall limit or exclude any liability for fraud.

### 25. GENERAL

- 25.1. This Agreement may only be varied with the agreement of the Licensor and the Licensee in writing.
- 25.2. Except as expressly provided in this Agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.
- 25.3. This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.
- 25.4. If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement. If any provision or part-provision of this Agreement is deemed deleted under this clause the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 25.5. The Licensor and the entities referred to in clause 13.6 may enforce the terms of clause 13 to the fullest extent permitted by law as if they were a party to this Agreement, but otherwise the parties confirm their intent not to confer any rights on any third parties by virtue of this Agreement and accordingly the application of the Contracts (Rights of Third Parties.) Act 1999 shall not apply to this Agreement. The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this Agreement are not subject to the consent of any person that is not a party to this Agreement.

### 26. LAW AND DISPUTE RESOLUTION

- 26.1. This Agreement shall be governed by and construed in accordance with the law of England and Wales. Subject to the provisions of clause 26.2, the parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims ("**Dispute**").

# Gemini Computer Systems Limited Software Licence Agreement

- 26.2. If any dispute or difference shall arise between the parties on any matter relating to or arising out of this Agreement the parties agree to engage in good faith discussions to resolve such dispute. If after 30 days the parties are unable to resolve the dispute such dispute may be referred to arbitration by written agreement of both parties. In which case:
- 26.2.1. the tribunal shall consist of one arbitrator (who is to be chosen by parties to this Agreement) or failing agreement to be appointed on the application of either party by the London Court of International Arbitration (LCIA), who shall make the appointment at the request of either party;
  - 26.2.2. the place of the arbitration shall be agreed between the parties as the most convenient to both; and
  - 26.2.3. the language of the arbitration shall be English