

AABS Licence Agreement

Terms and Conditions

1. Definitions

In this Agreement, the following terms should have the following meanings:

“AABS” means AAB Software Limited;

[“Bespoke Services” means premium levels of technical support and maintenance which are provided in addition to the Standard Service provision and may include bespoke installations, site visits and training. Such services are payable in addition to the standard charges and will be discussed and charged for separately;]

“Charges” means AABS’s Charges for access to the Services as are agreed between the parties in writing (or in default of such written agreement are set out on the Website) from time to time;

“Commencement Date” has the meaning set out in Clause 3;

“Conditions” means these terms and conditions (as amended from time to time under clause 10);

“Contract” the contract between the Supplier and the Customer for the supply of Services in accordance with this Agreement;

“Customer” means you, at whose request AABS agrees to provide the Services under the terms of this Agreement;

“Data” means all information uploaded to the [Website][Server] via the New Light Product;

“Free Trial Period” has the meaning set out in Clause 2;

“Hardware” means any hardware used by the Customer in accessing the Services;

“ISP” means any internet service provider used by the Customer in accessing the Services;

“Order Form” means the form to be completed by the Customer to indicate that they wish to receive the Services to be provided under the terms of this Agreement;

“Password” means such password used in conjunction with the Unique ID as is required to access the Services. This will be allocated to the Customer initially by AABS and it may be changed thereafter from time to time by the Customer or AABS;

“Product” means the software application known as New Light which enables remote workflow monitoring when installed on compatible devices and for Data to be collated and accessed via AABS’s [Server] [Website];

“Standard Service” means the provision by AABS of access to the New Light Product allowing for the remote management of workflow and access to the Data via the [Website] [Server];

“Services” means the supply by AABS of the Product, Standard Service and any Bespoke Services in accordance with this Agreement;

“Unique ID” means the personal identification names or numbers as may be allocated to the Customer by way of unique user identification from time to time;

[“Website” means the Website at www.AABSSoftware.co.uk (or such other Website as AABS advises the Customer from time to time) through which the Services may be accessed;]

[“Website Gateway” means the Website page that requires the Customer to confirm that it has accepted the terms and conditions of this Agreement before proceeding to gain access to the Services.]

2. Free Trial Period

2.1 The Customer may register via the Website for a Free Trial Period of the Standard Service lasting for 30 days. Free trials are for new Customers only. AABS reserves the right, in its absolute discretion, to determine the Customer’s free trial eligibility;

2.2 At the end of the Free Trial Period, if the Customer wishes to continue to use the Standard Service they must sign an Order Form;

2.3 It is the responsibility of the Customer to ensure that they sign an Order Form in sufficient time to ensure that there is no break in continuity of the Standard Service between the end of the Free Trial Period and the start of the Contract.

2.4 By accepting free trial usage of the Product and Standard Service the Customer is bound by the terms of this Agreement, save that such usage shall be without charge and will automatically expire at the end of the Free Trial Period. Either party may choose to terminate the Free Trial Period with immediate effect at any time before the expiry of the 30 day period by communicating the same to the other.

2.5 In each case, to the maximum extent permissible by law, the Customer agrees that it will have no claim against AABS for any loss or damage of whatsoever nature, which is incurred or suffered during the course of or as the result of the Free Trial Period and that it shall indemnify AABS for any claims made by any third parties resulting from the Customer’s use of the Product and/or Standard Service during the Free Trial Period.

2.6 The Standard Service provided during the Free Trial Period does not include any Bespoke Services. At the end of the Free Trial Period, if the Customer wishes to start to use any Bespoke Services they must sign an Order Form.

3. Basis of Contract

3.1 The Order Form constitutes an offer by the Customer to access the Services in accordance with this Agreement.

3.2 When AABS accepts the Order Form the Contract shall come into existence (Commencement Date).

3.3 If there is any conflict between the provisions of the Order Form and this Agreement the terms of this Agreement shall prevail, unless the variation to the Agreement has been specifically agreed in writing with AABS.

3.4 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of AABS which is not set out in the Contract.

3.5 Any brochures, descriptive matter or advertising issued by AABS are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.

3.6 This Agreement applies to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing;

3.7 Any quotation given by the Supplier shall not constitute an offer, and is only reliable for a period of 20 Business Days from its date of issue.

4. Use of the Product and Services

4.1 In consideration of the Customer paying the Charges, AABS shall supply the Services in accordance with the terms of this Agreement;

4.2 AABS shall commence supplying the Services on the Commencement Date and shall supply the Services for the relevant Minimum Period and thereafter until terminated by either party in accordance with the provisions of this Agreement;

4.3 AABS shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially change the nature or reduce the overall quality of the Services, and AABS shall notify the Customer in any such event.

4.4 AABS reserves the right to develop the Services from time to time and shall notify the Customer of any substantial changes to the Services.

5. Charging

5.1 AABS shall invoice the Customer monthly in arrears;

5.2 The Customer shall pay each invoice submitted by AABS:

- (a) within 30 days of the date of the invoice; and
- (b) in full and in cleared funds to a bank account nominated in writing by AABS.

5.3 AABS may at its sole discretion elect to increase the Charges annually by no more than 10% on notifying the Customer either orally (confirming such notification in writing) or via email [or on the Website] or otherwise in writing.

5.4 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by AABS to the Customer, the Customer shall, on receipt of a valid VAT invoice from AABS, pay to AABS such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.

6. Termination

6.1 Without prejudice to its other rights, AABS will have the right forthwith to terminate this Agreement by notice in writing to the Customer and to claim on an indemnity basis for any result of losses, costs and expenses if:

- a) the Customer fails to make payment when it is due;
- b) the Customer is in breach of any terms of this Agreement;
- c) or any order, arrangement, appointment or petition is issued or made relating to the Customer under the provisions of the Insolvency Act 1986 (or other relevant insolvency legislation) or if the Customer enters into an arrangement with its creditors or if a receiver or administrative receiver is appointed over any of the Customer's assets or undertakings.

7. Suspension of Services

7.1 AABS may at its sole discretion elect to suspend forthwith provision of the Services until further notice on notifying the Customer either orally (confirming such notification in writing) or via email [or on the Website] or otherwise in writing in the event that:

- a) Payment of an Invoice and any accrued interest is overdue by two months;
- b) AABS withdraws the Customer's Unique ID and Password under the provisions of Clause 11 below;
- c) Data of an inappropriate nature is uploaded to the [Website][Server] or the Services are abused in some manner;
- d) AABS is obliged to comply with an order, instruction or request of a government, an emergency service organisation or other competent administrative authority; or
- e) AABS wishes to suspend provision of the Services for a period not exceeding an aggregate of [2] days in any [30] day period for technical reasons relating to the provision of the Services.

8. Limitation of Liability

8.1 Nothing in these Conditions shall limit or exclude AABS's liability for:

- a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- b) fraud or fraudulent misrepresentation; or
- c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

8.2 Subject to clause 8.1:

- a) AABS shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
- b) AABS's total liability to the Customer in respect of all other losses arising under or in connection with this Agreement, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the higher of £5,000 or the Customer's previous 12 months' aggregate fees.

8.3 The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from this Agreement.

8.4 This clause 8 shall survive termination of this Agreement.

9. Set-off

9.1 The Customer will not be entitled to exercise a right of set-off against any claim by AABS for payment for the provision of the Services under this Agreement.

10. Updating of this Agreement

10.1 If AABS sends the Customer or places a revised version of this Agreement at the Website Gateway and the Customer makes use of the Services after such notification or placement, then the Customer will be deemed to have accepted the terms and conditions of the revised Agreement in place of the Conditions with immediate effect. However, any variation of the Agreement which affects the amount payable by the Customer by over 10%, including any fee increases in the 12 months prior to the date of the revised Agreement, shall entitle the Customer to terminate the Agreement.

11. Unique ID and Password

11.1 AABS may withdraw the Unique ID and Password and forthwith allocate a new Unique ID and Password to the Customer at no extra charge where AABS has reason to believe such Unique ID and Password has been discovered and/or used by any person without the knowledge, consent or permission express or implied of the Customer and on any such other occasion as shall deem necessary in its reasonable opinion.

11.2 AABS shall have the right to withdraw the Unique ID and Password from the Customer if this Agreement or any part hereof is terminated or suspended for any reason or if in its opinion there are reasonable grounds for believing the Customer has not complied or is not complying with this Agreement.

11.3 AABS shall have the right to reveal or disclose the Unique ID or Password, Customer name, address, email address and/or telephone number of a Customer to any person to satisfy the legal demand of any Court of law, government body or any competent Tribunal or under any applicable law, rule or regulation.

12 Unique ID and Password – Customer’s Obligations

- 12.1 The Unique ID and Password allocated to the Customer by AABS are confidential and personal to the Customer and it is the Customer’s responsibility to keep the Unique ID and Password safeguarded.
- 12.2 The Customer may change the Password allocated but continues to be responsible for security of access and the safeguarding of the Password. The Customer shall change the Password allocated on a regular basis in accordance with good computer security practice. The Customer undertakes to use the Unique ID and Password in accordance with the instructions as to their use given to the Customer from time to time. The Customer shall notify AABS immediately where there are grounds for suspecting that a person has discovered or is making use of the Customer’s Unique ID and or Password without the knowledge consent or permission of or the Customer. The Customer shall be responsible for all Charges occurring during the continuance of this Agreement, irrespective of whether or not the person using the Customer’s Unique ID and Password was authorised so to do by the Customer or AABS.

[13. Means of access to the Website and Licence to use

- 13.1 The Customer is responsible for obtaining access to the Website and for the installation of any Hardware and Software (and making any arrangements with any ISP required to so do).]
- 13.2 To the extent that the Product provided by AABS is downloaded (whether in "cookie" form or otherwise) for the purpose of using the Services such Product remains the property of AABS and AABS grants the Customer a non-exclusive non-transferable licence to use the Product for the purpose of using the Services and for no other purpose. The Customer shall not reproduce the Product nor copy, modify, adapt, translate, reverse engineer, decompile and disassemble the same or create any derivative work based thereon or save for the initial acceptance of any "cookie" or similar applet software shall not merge or include such software with or in any other software. AABS accepts no liability for any damage to the Customer’s computer system (or consequential losses arising therefrom) arising from the transfer of any virus in software provided by AABS or arising from the incompatibility of the Customer’s Hardware, Software and/or ISP with the Product, [Website] or with any other software provided by AABS.

14. Customer Data

- 14.1 The Customer shall use the Product to upload such Data to AABS’s [Website] [Secure Server] as is reasonably required for it to use the Services, shall be solely responsible for ensuring the legality and accuracy of such Data and that it is free from viruses, corrupted files or any similar material that may damage AABS’s [Website][Secure Server] and shall indemnify AABS against any losses, costs or expenses caused by any breach of its obligations under this sub-clause.

14.2 AABS shall initially retain such Customer Data on AABS's Secure Server and shall permit the Customer ongoing access to a database containing it for a minimum period of [6] months. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for AABS to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by AABS. AABS shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party.

14.3 To the extent to which the Customer Data contains any personal data (as defined in the Data Protection Act 1998) the Customer shall ensure that the Customer has obtained all necessary consents or is otherwise entitled to transfer the relevant personal data to AABS in order that AABS may lawfully process the personal data as Customer Data in accordance with this Agreement and each party shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the personal data.

15. Force Majeure

15.1 Neither party shall be liable to the other for any loss or damage which may be suffered by the other party due to any cause beyond the first party's reasonable control including without limitation any act of God, inclement weather, failure or shortage of power supplies, flood, drought, lightning or fire, strike, lock-out, trade dispute or labour disturbance, the act or omission of government highway authorities, other telecommunications operator or other competent authority, war or military operations of any kind.

16. Severance

16.1 In the event that any provision of the Agreement shall be found to be unlawful or unenforceable then the remainder of the provisions of this Agreement shall remain in force and effect to the fullest possible extent.

17. Assignability

17.1 The Customer shall not assign delegate or otherwise deal with all or any of its rights and obligations under this Agreement without AABS's prior written consent.

17.2 AABS shall be entitled to assign this Agreement in whole or in part at any time.

18. Entire Agreement

18.1 This Agreement represents the entire understanding between the parties in relation to the subject matter hereof and supersedes all other agreements and representations made by either party whether oral or written.

18.2 This Agreement shall prevail over any inconsistent terms or conditions referred to in the Contract or in correspondence or elsewhere in any conditions and stipulations to the contrary are hereby excluded and extinguished.

19. No waiver

19.1 Failure by either party to exercise and enforce any rights conferred by this Agreement shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise of enforcement thereof of any right on any later occasion.

20. Governing Law

20.1 This Agreement shall be governed by and construed and interpreted in accordance with English law, and the parties submit to the jurisdiction of the English courts.