

# Software as a Service (SaaS) Agreement

## THIS SOFTWARE AS A SERVICE AGREEMENT (\*AGREEMENT\*) GOVERNS YOUR USE OF KBBCONNECT

IN ACCEPTING THIS AGREEMENT, BY EXECUTING AN ORDER FORM THAT REFERENCES THIS AGREEMENT, YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERMS "YOU" OR "YOUR" SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SERVICE.

You may not access the Service if You are our direct competitor, except with Our prior written consent. In addition You may not access the Service for purpose of monitoring their availability, performance or functionality, or for any other benchmarking or competitive purposes.

This Agreement is effective between You and Us as of the date You accept this Agreement.

## 1 Definitions

"Affiliate" means any entity which directly or indirectly controls, is controlled by, or is under common control with the subject entity. "Control" for purposes of this definition, means direct or indirect ownership of control of more than 50% of the voting interests of the subject entity.

"Malicious Code" means viruses, worms, time bombs, Trojan horses and other harmful of malicious code, files, scripts, agents or programs.

"Non Smart Systems Applications" means online applications and offline software products that are provided by entities or individuals other than Us and are clearly identified as such, and that interoperate with the Service.

"Order Form" means the documents for placing orders hereunder that are entered into between You and Us or any of Our Affiliates from time to time, including addenda and supplements thereto. By entering into an Order Form hereunder, an Affiliate agrees to be bound to the terms of this Agreement as if it were and original party hereto. Order Forms shall be deemed incorporated herein by reference.

"Purchased Service means Service that You or Your Affiliates purchase under an Order Form.

“Service” means KBBCConnect Plus ordered by You under an Order Form and made available by Us online via the customer login link at <http://www.smart-systems.co.uk> and/or other web pages designated by Us.

“Users” means individuals who are authorised by You to use the Service, for whom subscriptions to a Service have been ordered, and who have been supplied user identifications and passwords by You (or by Us at Your request). Users may include but are not limited to Your employees, consultants, contractors and agents, and third parties with whom You transact business.

“We”, “Us”, or “Our” means the GeneralSoft Ltd (t/a Smart Systems) company described in Section 12 (Contracting Party, Notices, Governing Law and Jurisdiction).

“You” and “Your” means the company or other legal entity for which you are accepting this Agreement and Affiliates of that company or entity.

“Your Data” means all electronic data or information submitted by You to the Purchased Service.

## **2 PURCHASED SERVICE**

### **2.1 Provision of Purchased Service**

We shall make the Purchased Service available to you pursuant to this Agreement and the relevant Order Forms during the subscription term. You agree that your purchases hereunder are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by Us regarding functionality or features.

### **2.2 User Subscriptions**

Unless otherwise specified in the applicable Order Form: (i) Service are purchased as User subscriptions and may be accessed by no more than the specified number of Users; (ii) additional User subscriptions may be added during the applicable subscription term at the same pricing as that for the pre-existing subscriptions there under, prorated for the remainder of the subscription term in effect at the time the additional User subscriptions are added; and (iii) the added User subscriptions shall terminate on the same date as the pre-existing subscriptions. User subscriptions are for designated Users only and cannot be shared or used by more than one User but may be reassigned to new Users replacing former Users who no longer require ongoing use of the Service.

## **3 USE OF THE SERVICE**

### **3.1 Our Responsibilities**

We shall: (i) provide Our basic support for the Purchased Service to You at no additional charge, and/or upgraded support if purchased separately; (ii) use commercially reasonable efforts to make the Purchased Service available 24 hours a day, 7 days a week, except for: (a) planned downtime (of which We shall give at least 8 hours’ notice) and which We shall schedule to the extent practicable during the weekend hours from 6:00 p.m. Friday to 6:00 a.m. Monday UK time); or (b) any unavailability caused by circumstances beyond Our reasonable control, including without

limitation, acts of God, acts of government, floods, fires, earthquakes, civil unrest, acts of terror, strikes or other labour problems (other than those involving Our employees), Internet service provider failures or delays, or denial of service attacks; and (iii) provide the Purchased Service only in accordance with applicable laws and government regulations.

### **3.2 Our Protection of Your Data**

We shall maintain appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Your Data. We shall not: (a) modify Your Data; (b) disclose Your Data except as compelled by law in accordance with Section 7.3 (Compelled Disclosure) or as expressly permitted in writing by You; or (c) access Your Data except to provide the Service and prevent or address service or technical problems, or at Your request in connection with customer support matters.

### **3.3 Your Responsibilities**

You shall: (i) be responsible for Users' compliance with this Agreement; (ii) be responsible for the accuracy, quality and legality of Your Data and of the means by which You acquired Your Data; (iii) use commercially reasonable efforts to prevent unauthorized access to or use of the Service, and notify Us promptly of any such unauthorized access or use; and (iv) use the Service only in accordance with applicable laws and government regulations. You shall not: (a) make the Service available to anyone other than Users; (b) sell, resell, rent or lease the Service; (c) use the Service to store or transmit infringing, libelous, or otherwise unlawful or tortuous material, or to store or transmit material in violation of third-party privacy rights; (d) use the Service to store or transmit Malicious Code; (e) interfere with or disrupt the integrity or performance of the Service or third-party data contained therein; or (f) attempt to gain unauthorized access to the Service or their related systems or networks.

### **3.4 Usage Limitations**

Service may be subject to other limitations, such as, for example, limits on disk storage space or the number of calls You are permitted to make to our support help- desk. Any such limitations are specified in the Order Form.

## **4 NON-SMART SYSTEMS PROVIDERS**

### **4.1 Acquisition of Non-Smart Systems Products and Service**

We or third parties may from time to time make available to You third-party products or service, including but not limited to Non-Smart Systems Applications and implementation, customisation and other consulting service. Any acquisition by You of such non-Smart Systems products or service, and any exchange of data between You and any non- Smart Systems provider, is solely between You and the applicable non-Smart Systems provider. We do not warrant or support non-Smart Systems products or service, whether or not they are designated by Us as 'certified' or otherwise, except as specified in an Order Form. Subject to Section 4.3 (Integration with Non- Smart Systems

Service) no purchase of non-Smart Systems products or service is required to use the Service except a supported computer, operating system, web browser and Internet connection.

## **4.2 Non-Smart Systems Applications and Your Data**

If You install or enable Non-Smart Systems Applications for use with Service, You acknowledge that We may allow providers of those Non-Smart Systems Applications to access Your Data as required for the interoperation of such Non-Smart Systems Applications with the Service. We shall not be responsible for any disclosure, modification or deletion of Your data resulting from any such access by Non-Smart Systems Application providers. The Service shall allow You to restrict such access by restricting Users from installing or enabling such Non-Smart Systems Applications for use with the Service.

## **4.3 Integration with Smart System Service**

The Service may contain features designed to interoperate with Smart System's Applications. To use such features, You may be required to obtain access to such Smart Systems Applications from their providers. If the provider of any such Smart Systems Application ceases to make the Smart Systems Application available for interoperation with the corresponding Service features on reasonable terms, We may cease providing such Service features without entitling You to any refund, credit, or other compensation.

# **5 FEES AND PAYMENT FOR PURCHASED SERVICE**

## **5.1 Fees**

You shall pay all fees specified in all Order Forms hereunder. Except as otherwise specified herein or in an Order Form fees are based on service purchased and not actual usage: User subscription fees are based on monthly periods that begin on the subscription start date and each monthly anniversary thereof; fees for User subscriptions added in the middle of a monthly period will be charged for that full monthly period and the monthly periods remaining in the subscription term. All fees are subject to annual increase no more than 1.5% above the prevailing RPI.

## **5.2 Invoicing and Payment**

You will provide Us with valid and updated banking information for payments to be made by the Go Cardless Direct Debit facility. A correctly constituted VAT invoice will be sent to You in support of each monthly payment

## **5.3 Suspension of Service**

If any charges are not received from You by the due date, then at Our discretion we will suspend the service. Access to your historic data will be available via Our "Freemium" online facility, KBBCconnect.

## **5.4 Payment Dispute**

We shall not exercise Our rights under Section 5.4 (Suspension of Service) or 6.4 if You are disputing the applicable charges reasonably and in good faith and are cooperation diligently to resolve the dispute.

## **5.5 Taxes**

Unless otherwise stated, fees will be subject to the prevailing rate of VAT

# **6 PROPRIETARY RIGHTS**

## **6.1 Reservation of Rights in Service**

Subject to the limited rights expressly granted hereunder, We reserve all rights, title and interest in and to the Service, including all related intellectual property rights. No rights are granted to You hereunder other than as expressly set forth herein.

## **6.2 Restrictions**

You shall not: (i) permit any third party to access the Service except as permitted herein or in an Order Form; (ii) create derivate works based on the Service except as authorized herein; (iii) copy, frame or mirror any part or content of the Service, other than copying or framing on Your own intranets or otherwise for Your own internal business purposes; (iv) reverse engineer the Service; or (v) access the Service in order to (a) build a competitive product or service, or (b) copy any features, functions or graphics of the Service.

## **6.3 Your Data**

Subject to the limited rights granted by You hereunder, We acquire no right, title or interest from You or Your licensors under this Agreement in or to Your Data, including any intellectual property rights therein.

## **6.4 Suggestions and Enhancements**

We shall have a royalty-free, world-wide, irrevocable, perpetual licence to use and incorporate into the Service any suggestions, enhancement requests, recommendations or other feedback provided by You, including Users, relating to the operation of the Service.

# **7 CONFIDENTIALITY**

## **7.1 Definition of Confidential Information**

As used herein, 'Confidential Information' means all confidential information disclosed by a party ('Disclosing Party') to the other party ('Receiving Party'), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the

nature of the information and the circumstances of disclosure. Your Confidential Information shall include Your Data; Our Confidential Information shall include the Service; and Confidential Information of each party shall include the terms and conditions of this Agreement and all Order Forms, as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information (other than Your Data) shall not include any information that: (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party; (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party; (iii) is received from a third party without breach of any obligation owed to the Disclosing Party; or (iv) was independently developed by the Receiving Party.

## **7.2 Protection of Confidential Information**

The Receiving Party shall use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care): (i) not to use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement; and (ii) except as otherwise authorized by the Disclosing Party in writing, to limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates' employees, contractors and agents who need such access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein. Neither party shall disclose the terms of this Agreement or any Order Form to any third party other than its Affiliates and their legal counsel and accountants without the other party's prior written consent.

## **7.3 Compelled Disclosure**

The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the receiving Party for its reasonable cost of compiling and providing secure access to such Confidential Information.

# **8 WARRANTIES AND DISCLAIMERS**

## **8.1 Our Warranties**

We warrant that: (i) We have validly entered into this Agreement and have the legal power to do so; (ii) subject to Section 4.3 (Integration with Smart Systems Service), the functionality of the Service will not be materially decreased during a subscription term; and (iii) We will not transmit Malicious Code to You; provided it is not a breach of this subpart (iv) if You or a User uploads a file containing

Malicious Code into the Service and later downloads that file containing Malicious Code. For any breach of a warranty above, Your exclusive remedy shall be as provided in Section 11.3 (Termination for Cause) and Section 11.4 (Refund or Payment upon Termination) below.

## **8.2 Your Warranties**

You warrant that You have validly entered into this Agreement and have the legal power to do so.

## **8.3 Disclaimer**

EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

# **9 MUTUAL INDEMNIFICATION**

## **9.1 Indemnification by Us**

We shall defend You against any claim, demand, suit, or proceeding made or brought against You by a third party alleging that the use of the Service as permitted hereunder infringes or misappropriates the intellectual property rights of a third party (a 'Claim Against You'), and shall indemnify You for any damages, attorney fees and costs finally awarded against You as a result of, and for amounts paid by You under a court-approved settlement of, a Claim Against You; provided that You: (a) promptly give Us written notice of the Claim Against You; (b) give Us sole control of the defence and settlement of the Claim Against You (provided that We may not settle any Claim Against You unless the settlement unconditionally releases You of all liability); and (c) provide to Us all reasonable assistance, at Our expense. In the event of a Claim Against You, or if We reasonably believe the Service may infringe or misappropriate, We may in Our discretion and at no cost to You: (i) modify the Service so that they no longer infringe or misappropriate, without breaching Our warranties under 'Our Warranties' above; (ii) obtain a licence for Your continued use of the Service in accordance with this Agreement; or (iii) terminate Your User subscriptions for such Service upon 30 days' written notice and refund to You an prepaid fees covering the remainder of the term of such User subscriptions after the effective date of termination.

## **9.2 Indemnification by You**

You shall defend Us against any claim, demand, suit or proceeding made or brought against Us by a third party alleging that Your Data, or Your use of the Service in breach of this Agreement, infringes or misappropriates the intellectual property rights of a third party or violates applicable law (a 'Claim

Against Us'), and shall indemnify Us for any damages, attorney fees and costs finally awarded against Us as a result of, or for any amounts paid by Us under a court-approved settlement of, a Claim Against Us; provided that We: (a) promptly give You written notice of the Claim Against Us; (b) give You sole control of the defence and settlement of the Claim Against Us (provided that You may not settle any Claim Against Us unless the settlement unconditionally releases Us of all liability); and (c) provide to You all reasonable assistance, at Your expense.

### **9.3 Exclusive Remedy**

This Section 9 (Mutual Indemnification) states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any type of claim described in this Section.

## **10 LIMITATION OF LIABILITY**

### **10.1 Limitation of Liability**

NEITHER PARTY'S LIABILITY WITH RESPECT TO ANY SINGLE INCIDENT ARISING OUT OF OR RELATED TO THIS AGREEMENT (WHETHER IN CONTRACT OR TORT OR UNDER ANY OTHER THEORY OF LIABILITY) SHALL EXCEED THE LESSER OF £1,000,000 OR THE AMOUNT PAID BY YOU HER UNDER IN THE 12 MONTHS PRECEDING THE INCIDENT, PROVIDED THAT IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT (WHETHER IN CONTRACT OR TORT OR UNDER ANY OTHER THEORY OF LIABILITY) EXCEED THE TOTAL AMOUNT PAID BY YOU HEREUNDER. THE FOREGOING SHALL NOT LIMIT YOUR PAYMENT OBLIGATIONS UNDER SECTION 5 (FEES AND PAYMENT FOR PURCHASED SERVICE).

10.2 Exclusion of Consequential and Related Damages IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS OR REVENUES OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER OR PUNITIVE DAMAGES HOWEVER CAUSED, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMER SHALL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

## **11 TERM AND TERMINATION**

### **11.1 Term of Agreement**

This Agreement commences on the date that the service is made available to you and it and continues for a period of a minimum of 12(twelve) months (Primary Period). At the end of the primary period, the agreement will automatically renew for 12 (twelve) months unless Smart Systems receive

written notice of request to terminate is made by you no later than 3 (three) months prior to renewal. For the secondary and subsequent periods, the written notice required will be 1 (one) month.

## **11.2 Term of Purchased User Subscriptions**

User subscriptions purchased by You commence on the start date specified in the applicable Order Form and remains constant for the primary period. At the end of the primary period, subscriptions may be adjusted to reflect the prevailing rate.

## **11.3 Termination for Cause**

A party may terminate this Agreement for cause: (i) upon 30 days written notice to the other party of a material breach if such remains uncured at the expiration of such period; or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding to insolvency, receivership, liquidation or assignment for the benefit of creditors.

## **11.4 Surviving Provisions**

The following sections shall survive any termination or expiration of this Agreement: Section 5 (Fees and Payment for Purchased Service), 6 (Proprietary Rights), 7 (Confidentiality), 8.3 (Disclaimer), 9 (Mutual Indemnification), 10 (Limitation of Liability), 11.4 (Refund or Payment upon Termination), 11.5 (Return of Your Data), 12 (Contracting Party, Notices, Governing Law and Jurisdiction) and 13 (General Provisions).

# **12 CONTRACTING PARTY, NOTICES, GOVERNING LAW AND JURISDICTION**

## **12.1 General**

You are contracting under this Agreement with: GeneralSoft Ltd (t/a Smart Systems). Registered in England & Wales no. 4285561. Registered Office: 2nd Floor, 3-5 Rickmansworth Road, Watford, WD18 0GX, UK to whom You should direct notices to under this Agreement; the law applicable to any lawsuit arising out of or in connection with this Agreement shall be the law of England and Wales, and the English courts shall adjudicate any such lawsuit.

## **12.2 Manner of Giving Notice**

Except as otherwise specified in the Agreement, all notices, permissions and approvals hereunder shall be in writing and shall be deemed to have been given upon: (i) personal delivery; (ii) the second business day after mailing; (iii) the second business day after sending by confirmed facsimile; or (iv) the first business day after sending by email (provided email shall not be sufficient

for notices of termination or an indemnifiable claim). Billing –related notices to You shall be addressed to the relevant billing contact designated by You. All other notices to You shall be addressed to the relevant Service system administrator designated by You.

### **12.3 Agreement to Governing Law and Jurisdiction**

Each party agrees to the applicable governing law above without regard to choice or conflicts of law rules, and to the exclusive jurisdiction of the applicable courts above.

## **13 GENERAL PROVISIONS**

### **13.1 Anti-Corruption**

Each party shall neither offer or give, nor request or accept, any gift or consideration or financial or other advantage of any kind which could act as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to this Agreement or any other contract between the parties or for showing or refraining from showing favour or disfavour to any person in relation to any such contract; and each party warrants to the other that it has not either paid or agreed to pay, or requested, agreed to receive or accepted, any commission, gift, consideration or financial or other advantage of any kind to or from any body or person in connection with this Agreement or any other contract between the parties or to or from any other body or person employed by or on behalf of either party.

### **13.2 Relationship of the Parties**

The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.

### **13.3 No Third-Party Beneficiaries**

There are no third-party beneficiaries to this Agreement.

### **13.4 Waiver**

No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right.

### **13.5 Severability**

If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.

### **14.6 Legal costs**

You shall pay on demand all of Our reasonable solicitors or attorney fees and other costs incurred by Us to collect any fees or charges due Us under this Agreement following Your breach of Section 5.2 (Invoicing and Payment).

### **13.7 Assignment**

Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld). Notwithstanding the foregoing, either party may assign this Agreement in its entirety (including all Order Forms), without consent of the other party to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets not involving a direct competitor of the other party. A party's sole remedy for any purported assignment by the other party in breach of this paragraph shall be, at the non-assigning party's election, termination of this Agreement upon written notice to the assigning party. In the event of such a termination, We shall refund to You any prepaid fees covering the remainder of the term of all subscriptions after the effective date of termination. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

### **13.8 Entire Agreement**

This Agreement, including all exhibits and addenda hereto and all Order Forms, constitutes the entire agreement between the parties and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and either signed or accepted electronically by the party against whom the modification, amendment or waiver is to be asserted. However, to the extent of any conflict or inconsistency between the provisions in the body of this Agreement and any exhibit or addendum hereto or any Order Form, the terms of such exhibit, addendum or Order Form shall prevail. Notwithstanding any language to the contrary therein, no terms or conditions stated in Your purchase order or other order documentation (excluding Order Forms) shall be incorporated into or form any part of this Agreement, and all such terms or conditions shall be null and void.