

**This is the Schedule One referred to in the Support & Maintenance Agreement  
between Gemsoft7 and the Client**

**GENERAL TERMS AND CONDITIONS**

These are the terms and conditions which will govern the Maintenance Services.

**1. DEFINITIONS AND INTERPRETATION**

1.1 In this Agreement unless the context otherwise requires:

|                                    |  |
|------------------------------------|--|
| <b>“Additional Services”</b>       | means any services requested by the Client which fall outwith the Maintenance Services;  |
| <b>“Authorised Sites”</b>          | means those sites of listed in Schedule 2 for which the Licensed Software can be used to create and process Permits.   |
| <b>“Client configurable files”</b> | means the files that can be modified by the Client to ensure P2W behaves in a manner compliant with its own business processes.  |
| <b>“Critical Fault”</b>            | means a fault which prevents the Client using the Software;  |
| <b>“Error”</b>                     | means any error, non conformity or defect in the Software;   |
| <b>“IPR”</b>                       | means any rights in or to, but not limited to, copyright, patents, trade mark, brand name, trade name, business name, know-how or confidential information and any other rights in respect of any other industrial or intellectual property, whether registrable or not and wherever existing in the world and including without limitation all rights to apply for any of the foregoing rights; |
| <b>“Issue”</b>                     | means a claim by the Client for Maintenance Services made by the Client to Gemsoft7;   |
| <b>“Licence”</b>                   | means the software licence agreement entered into between Gemsoft7 and the Client in respect of the Software;  |
| <b>“Maintenance Charge”</b>        | means the charge due by the Client to Gemsoft7 for Maintenance Services as set out Schedule Two;   |
| <b>“Maintenance Services”</b>      | means the maintenance services to be provided by   |

|                               |  |
|-------------------------------|--|
|                               | Gemsoft7 to the Client as set out in Clause 5 of this Schedule One;  |
| <b>"New Version"</b>          | means any improvement, modification or correction to the current version of the Software which significantly enhances functionality or any new software product which may be issued by Gemsoft7 in its sole discretion from time to time;  |
| <b>"Non-Critical Fault"</b>   | means any fault of the Software other than a Critical Fault;   |
| <b>"Proprietary Material"</b> | means any and all trade secrets and confidential or proprietary information of the other party disclosed to the other party, including (but not limited to) the Software whether in writing, in electronic format, orally or otherwise and whether designated as being proprietary or confidential or not;   |
| <b>"Rates"</b>                | means those rates set out in Schedule 2;   |
| <b>"Release"</b>              | means any improvement, modification or correction to the current version of the Software which provides minor functional enhancements or improvements or which corrects any Client specific problems in the Software;  |
| <b>"Update"</b>               | means a release with error corrections, modifications and updates to the Software but which does not typically contain any new functionality;  |
| <b>"Software"</b>             | means the P2W software comprising all .NET code inside the GEM namespace hierarchy, the P2W database schema and all database objects, also the online P2W Help manual and associated files and all associated systems configuration files, and Client Configurable files together with all Updates, New Versions and Releases of such software and any applicable new or revised associated Documentation; |

1.2 Clause headings in this Agreement are for convenience only and shall not affect its construction or interpretation. References in this Agreement to Clauses and Sub-Clauses are unless otherwise stated references to the clauses and sub-clauses of this Agreement.

- 1.3 Words in this Agreement importing the singular include the plural and *vice versa*, words in this Agreement importing a gender shall include all genders and references to persons shall include an individual, company, corporation, firm or partnership.

## 2. **PROVISION OF THE MAINTENANCE SERVICES**

Gemsoft7 will provide the Maintenance Services to the Client and the Client will pay Gemsoft7 the Maintenance Charge during the term of this Agreement.

## 3. **PERFORMANCE OF THE MAINTENANCE SERVICES**

- 3.1 The Maintenance Services shall not include service in respect of:

- 3.1.1 defects or errors resulting from any modifications of the Software made by or on behalf of the Client, other than by GEMsoft7;
- 3.1.2 incorrect use of the Software or operator error due to a lack of training; or
- 3.1.3 any fault in any hardware device, including but not restricted to, network file servers, network cabling, personal computers, hard-disks, peripherals or in any third party software not supplied by Gemsoft7 as an integral part of the Software,
- 3.1.4 defects or errors resulting from any modifications of the Client Configuration files made by or on behalf of the Client;

and should the Client require services in respect of the above, these shall be treated as Additional Services which Gemsoft7 may provide at its option under the terms of Clause 4.

## 4. **ADDITIONAL SERVICES**

- 4.1 Where the Client requires Additional Services to be carried out, the Client shall provide Gemsoft7 with full written particulars of such Additional Services and with such information as Gemsoft7 may reasonably require.

- 4.2 Gemsoft7 will then submit to the Client as soon as reasonably practicable a quotation, where this is possible, for the provision of such Additional Services.

- 4.3 Upon receipt of such quotation the Client may elect either:

- 4.3.1 to accept such quotation in which case Gemsoft7 shall provide the Additional Services and the Client shall pay for the Additional Services in accordance with Clause 9.2; or
- 4.3.2 to withdraw the proposed Additional Services.

- 4.4 Gemsoft7 will be entitled to make a reasonable charge for considering such Additional Services and preparing the said quotation.

- 4.5 Gemsoft7 is not under any obligation to consider or provide the Additional Services.

## 5. **MAINTENANCE SERVICES**

- 5.1 Issues shall be notified by the Client to Gemsoft7 via a phone call to our Help Desk – 0800 018 0141.

- 5.2 If the Client discovers an Error, the Client shall immediately after such discovery notify Gemsoft7 in accordance with Clause 5.1 and provide Gemsoft7 with all relevant information regarding the Error so far as the Client is able.
- 5.3 Prior to notifying Gemsoft7 under Clause 5.2, the Client will take all reasonable steps to establish that a fault is an Error and is not related to any other equipment or factor which is outwith the control of Gemsoft7. If an Issue is found to be in relation to an Error, that Error shall be dealt with under Maintenance Services.
- 5.4 On being informed of an Error under Clause 5.2, Gemsoft7 will categorise the Error as:
- 5.4.1 a Critical Fault, in which event the provisions of Clause 5.5 will apply; or
- 5.4.2 a Non-critical Fault in which event the provisions of Clause 5.6 will apply.
- 5.5 Where Gemsoft7 determines that the Error is a Critical Fault, Gemsoft7 shall use its best endeavours to resolve the Critical Fault and where rectified shall deliver to the Client a Release, Update, documentation or such other solution as Gemsoft7 deems, in its sole discretion, necessary to resolve the Critical Fault.
- 5.6 Where Gemsoft7 determines that the Error is a Non-Critical Fault, Gemsoft7 shall correct the Non-Critical Fault in the following New Version and provide the New Version to the Client in accordance with Clause 6.
- 5.7 The Client acknowledges and agrees that except as otherwise agreed between the parties in writing, all obligations on Gemsoft7 in respect of Maintenance Services shall cease where the Client has made changes, alterations, modifications or deletions to the Software or has instructed a third party to do so on its behalf.
- 5.8 For the avoidance of doubt, Maintenance Services shall not include the installation of any New Version or Release. Gemsoft7 may, at the request of the Client, install and integrate a New Version or Release with the Software at Gemsoft7's rates in force from time to time.

## 6. **NEW VERSION**

At any time during the term of the Agreement, Gemsoft7 may issue a New Version of the Software. A New Version will only be made available to the Client, subject to the Client paying an additional fee to Gemsoft7.

## 7. **RELEASE**

In the event that there is an upgrade to the application upon which the Software runs (an "Upgrade"), Gemsoft7 shall produce, in the form of a Release, a version of the Software which is compatible with the Upgrade. Gemsoft7 undertakes within ten months of the release of the Upgrade to provide the Client with such Release at no cost to the Client.

## 8. **IPR AND LICENCE**

- 8.1 All New Versions and Releases will be incorporated into and form part of the Software on being issued to the Client by Gemsoft7 and the terms of the Licence will apply to the Software incorporating such New Version and Release.
- 8.2 The Client acknowledges and agrees that:-

- 8.2.1 all IPR in and to the Maintenance Services and any documentation, code or other materials used, developed and/or supplied by Gemsoft7 to the Client during the provision of the Maintenance Services are owned by Gemsoft7 (or its licensors as the case may be);
- 8.2.2 it shall not acquire any proprietary right, title or interest in or to any IPR in the Maintenance Services or any documentation, code or other materials used, developed and/or supplied by Gemsoft7 to the Client during the provision of the Maintenance Services.

9. **PAYMENT**

- 9.1 The Client shall pay the Maintenance Charge in advance on the Commencement Date and thereafter on an annual basis on each anniversary of the Commencement Date. All payments representing the Maintenance Charge shall be paid in accordance with this Clause 9 and Schedule 2.
- 9.2 Any Additional Services carried out by Gemsoft7 for the Client will be charged at the Rates, which shall be due to be paid by the Client within 30 days of receipt of Gemsoft7's invoice.
- 9.3 All sums due by the Client to Gemsoft7 under the Agreement are expressed exclusive of VAT which shall be added to such sums (if applicable) and shall be paid by the Client to Gemsoft7 in addition.
- 9.4 Time of payment shall not be a material condition or of the essence of the Agreement unless otherwise agreed between the parties, interest at the rate of four per cent per annum above the base rate for the time being of The Royal Bank of Scotland plc will be payable by the Client on all sums which remain unpaid after the due date for payment.
- 9.5 All monies due to Gemsoft7 under this Agreement shall be paid in Sterling and without any deductions whatsoever (unless such deductions are required by law).
- 9.6 Where it is necessary for any of the employees or representatives of Gemsoft7 to visit the Client's premises or make any other journeys in the course of providing the Services then the Client will reimburse Gemsoft7 for all reasonable travelling and subsistence expenses properly incurred in so doing. Apart from minor out-of-pocket expenses, claims for reimbursement of expenses shall be paid by the Client only if accompanied by the relevant receipts.
- 9.7 Gemsoft7 will not provide Maintenance Services until such time as the Maintenance Charge has been paid. If payment of the Maintenance Charge due under this Agreement is not received within 30 days of the due date for payment, Gemsoft7 shall be entitled to terminate this Agreement.
- 9.8 Without prejudice to any other right under this Agreement, if the Client defaults in making payment of any sums due under this Agreement, Gemsoft7 reserves the right to suspend the Services until such time as the sums have been paid.
- 9.9 The Maintenance Charge shall be re-calculated on an annual basis and notified to the Client thirty (30) days in advance of a renewal under Clause 12.1
- 9.10 Gemsoft7 reserves the right to alter the Rates from time to time thirty (30) days' written notice to the Client.

10. **WARRANTIES AND LIMITATIONS OF LIABILITY**

- 10.1 Gemsoft7's liability for losses (including but not limited to any claims made by third parties) arising out of breach of contract, or breach of any term hereof whether express or implied, or breach of any common law or statutory duty (including but not limited to any duty in relation to delict) to take reasonable care or exercise reasonable skill shall not exceed a sum equivalent to the Maintenance Charge in respect of the total aggregate of all losses or claims so arising.
- 10.2 In no event shall Gemsoft7 be liable for any indirect or consequential loss or damage, howsoever arising (including delict), or any loss of revenues, profits, goodwill or anticipated savings.
- 10.3 Nothing in this Agreement shall limit or purport to limit Gemsoft7's liability for death or personal injury resulting from the negligence of Gemsoft7, its employees, agents or contractors.
- 10.4 To the extent permitted by law, all warranties, conditions and other terms which might otherwise be implied into this Agreement, including without limitation any implied terms of satisfactory quality or fitness for purpose, are hereby excluded.
- 10.5 The Client shall indemnify Gemsoft7 from and against any loss, damage, liability or expense suffered or incurred by Gemsoft7 which is in any way caused by or results from the Client's use of the Software arising from the Client's breach of this Agreement or any of the Client's warranties hereunder.
- 10.6 The provisions of this Clause 10 shall remain in force notwithstanding termination of this Agreement.

11. **CONFIDENTIALITY**

- 11.1 Each party undertakes that it will hold each other's Proprietary Material in confidence and will not at any time hereafter use, divulge or communicate the Proprietary Material to any person who does not need to know it. Each of the parties will use its reasonable endeavours to prevent publication of the Proprietary Material or disclosure to, or access by, any third party of the Proprietary Material, in each case without the prior written consent of the other party. This Clause 11 shall not apply to the whole or any part of the Proprietary Material to the extent that it is already in the other's possession prior to the commencement of this Agreement or in the public domain other than as a result of a breach of this Clause 11 or which the other is required to disclose by reason of a statutory or regulatory requirement having the force of law or by reason of an order of a court of competent jurisdiction.
- 11.2 The obligations of both parties under this Clause 11 shall survive the expiry or termination of this Agreement for whatever reason.

12. **TERM AND TERMINATION**

- 12.1 The Maintenance Services will commence on the Commencement Date and will continue for an initial term of twelve months and will remain in force thereafter unless and until terminated by either party upon ninety (90) days' written notice to expire on or at any time after such initial term, always subject to the other termination provisions set out in this Agreement.

12.2 Either party may terminate this Agreement immediately by notice in writing to the other if:

12.2.1 the other commits a material breach of any of its obligations under this Agreement which it fails to remedy within thirty (30) days of receiving written notification requiring it do so; or

12.2.2 the other becomes insolvent, goes or is put into receivership or liquidation, passes a resolution for its winding up (other than for the purpose of solvent reconstruction or amalgamation) or makes any arrangement for the benefit of its creditors or takes or suffers any similar action anywhere in the world.

12.3 This Agreement shall terminate immediately in the event that the Licence is terminated for whatever reason.

12.4 Termination or expiry of this Agreement, however caused, shall be without prejudice to any provisions intended to operate thereafter and any rights accrued or accruing at the date of termination.

### 13. **GENERAL**

13.1 This Agreement constitutes the entire agreement and understanding between the parties in relation to the subject matter hereof. Each of the parties confirms that it has not relied upon any representation not recorded in this Agreement as an inducement to enter into this Agreement. No variation of these terms and conditions will be valid unless made in writing signed by or on behalf of both parties.

13.2 If any of the provisions of this Agreement is judged to be illegal or unenforceable by any court or administrative body of competent jurisdiction, the continuation in full force and effect of the remainder of the provisions will not be prejudiced and the Agreement will be deemed to be automatically adjusted with such minimal modification as is necessary to make it valid.

13.3 Any failure to exercise or delay in exercising a right or remedy by either party in enforcing its respective rights will prejudice or restrict the rights of that party, and no waiver of any such rights or of any breach of any terms of this Agreement will be deemed to be a waiver of any other right or of any later breach.

13.4 The relationship between the parties is that of purchaser and independent contractor. The parties acknowledge that this Agreement does not create or evidence any joint venture, agency, partnership or contract of employment between the parties, and that neither party is agent for the other nor has any authority to enter into any contract, whether expressly or by implication, in the name of the other party, without that party's prior written consent.

13.5 Neither party will be liable to the other for any delay in or failure to perform their respective obligations (other than for payment of money) as a result of any cause beyond their reasonable control, including but not limited to Act of God, fire, flood, lightning, war, revolution, act of terrorism, strikes, lock-outs or other industrial action (whether of the affected party's own employees or others) or any industrial dispute. If any delay in performance continues for more than 6 weeks, either party may terminate the Agreement forthwith on giving notice in writing to the other in which event neither party shall be liable to the other by reason of such termination save

that the Client shall pay Gemsoft7 a reasonable sum for work carried out up to date of termination.

- 13.6 All formal notices to be given under the Agreement may be given personally or by recorded delivery post or by facsimile or e-mail transmission, in either case to the address or number of the party in question as set out in this Agreement or as may be notified to the other party from time to time in writing; and if delivered personally shall be deemed served on the other party on the day of delivery; and if sent by recorded delivery shall be deemed to have been accepted on the expiry of forty eight hours after posting; and if sent by facsimile transmission or by e-mail shall be deemed served instantaneously if correctly directed provided that facsimile and e-mail transmissions are confirmed within twenty four hours by first-class mailed confirmation of a copy.
- 13.7 Gemsoft7 is entitled to assign the whole or any part of its rights, duties, liabilities or obligations arising under these terms and conditions upon notice to the Client.
- 13.8 The Client is not entitled to assign the whole or any part of its rights, duties, liabilities or obligations arising under these terms and conditions without the prior written consent of Gemsoft7.
- 13.9 These terms and conditions are governed by and construed in all respects in accordance with the laws of England and Wales and the parties hereby submit to the exclusive jurisdiction of the English and Welsh courts.



**This is the Schedule Two referred to in the Support and Maintenance Agreement  
between Gemsoft7 Limited and the Client**

“Authorised Sites”

Service Level                      Gemsoft7 will respond to issues with the Software raised to Gemsoft7 by phone within 4 hours of the registration of such an issue with Gemsoft7 within hours of 8:45am to 6pm Monday to Friday, excluding bank holidays.

Additional Services                The normal GEMsoft7 day rates applicable at the time will apply.

Expenses                              Will be restricted to Accommodation and Travel related costs and will be charged at cost.