OpSuite:

Contents

Glossary of DRL Terms

These frequently used DRL terms have been grouped together for easy reference:

Project Specific Category:

Gap Analysis - The process, performed by the potential purchaser, to examine and establish if there is any 'gap' between their requirements and the currently deliverable/available solution.

CPP - Comprehensive Project Plan: A document containing extensive detail regarding the project plans. These include proposed timescales and milestone dates, the customer's objectives, resource allocation, availability and roles and the DRL requirements including resource allocations and specific personnel's objectives. The **CPP** can be relied upon to provide the most accurate forecasts of eventual project costs.

SP - Standard Proposal: These documents are derived without consultancy but are based upon the meetings and discussions held between the customer and DRL prior to a purchase decision. **SP**'s are valid and provide a reasonable basis for moving forward but become less appropriate as the project scope, complexity, and timescales become extended.

CRN - Change Request Note: All changes, modifications or alterations in material elements of the customer requirements as specified in the **CPP** or **SP** (or **PSD, FRD or FRO**) after the time of project commencement will be recorded within, and only acted upon by DRL when the customer has fully authorised, the **CRN** including associated costs.

MS - Milestones: Milestones **(MS)** are the critical steps in project plans that have dependencies upon them and therefore need to take place before subsequent stages can proceed. The primary objective of the **MS** is to clearly define the key stages within the overall project so that all parties have clarity. The **MS** will be defined by whether it is a DRL or customer 'ownership' element and will have specific timelines and human resource applied to it.

Bespoke Specific Category:

PSD - Professional Specification Document: These contain the most detail including proposed software look and feel with screen shots of the user interface and work flow diagrams. The opportunities for variations of interpretation between the customer expectations and the delivery of the system in line with the document are very low with the professional specification document **(PSD)** approach. **PSD's** involve extensive consultancy prior to any coding and can sometimes account for a very significant %age of the total budget for the completed task. The total task budget cannot be accurately measured until the specification process is completed therefore preliminary estimates are highly prone to alteration, sometimes significantly.

FRD - Functional Requirements Definition: Documents derived from consultancy but constrained to producing a list of functional requirements but not expanded to the point of user interface design or workflow. The consultancy process will be shorter than that required to produce the **PSD** and the initial cost will therefore be reduced however the likelihood of variance is more than that with a **PSD**. The **FRD** approach is advisable when the UI design and workflow are not of critical importance and the budget is constrained.

FRO - Functional Requirements Outline: Documents derived usually without consultancy due to the lack of complexity or scale of the proposed development work. It has all of the same characteristics of the **FRD** however is likely to contain less detail and therefore the potential for variance is greater than the **FRD**.

Service Specific Category:

Services - Professional Services: The range of **services** offered by DRL is extensive and variable. The nature of the **service** is variable in terms of whether it is 'knowledge transfer' activities such as consultation, systems analysis and training, or fee based work such as infrastructure or development functions. Project Management is somewhat unique in that it straddles areas of collaborative 'knowledge transfer' work and internal fee based activities. The delivery of **services** can be on-site or at DRL's offices in Derby, whether in-person or remotely. Some **services** require an interface between the customer and DRL and some do not. The delivery on-site can be geographically local or remote. **Services** are also variable in terms of the time at which they are consumed. Weekend and other 'out of hours' services will be delivered at a higher cost than services delivered in standard time. Standard time is Monday to Friday (Inclusive) 6am – 6pm.

SAN - Services Addendum Note: Additional **services** required cannot proceed without receipt of authorisation from the customer based upon DRL raising a **Service Addendum Note** (**SAN**). A **SAN** is raised when there is variance of **services** requirements within the parameters of the original project plan, regardless of document type. The differentiation between a **CRN** and **SAN** is that a **CRN** is used when there is a material change in the project plan such as additional lanes needed or a new store is opening or changes to a development project whereas a **SAN** is used, for example, when more training or on-site hand holding is required than estimated in an original project proposal.

SSR - Skilled Services Resources: The use of **SSR** is when the customer is supplied the time and/or labour of our Skilled Services Resources whether it be for consultation, project management, application development or infrastructure installation to name a few examples.

Financial Category:

PSA - Professional Services Access Subscription: The **PSA** subscription is a monthly fee levied to allow an OpSuite customer seamless access to DRL **services** regardless of whether the requested 'activity' is covered under contract.

EVU - Economically Viable Unit: The **EVU** methodology allows DRL to maintain the standard daily rates lower for some on-site **services** than could be achieved without it. Exceptional value for money can be delivered for on-site services provided the project is structured in a manner than is economically viable. The **EVU**'s mean a single one-off **services** day consumed at considerable distance from DRL is the most expensive option however it also means that a significant discount is achievable for the customer for services they consume in an economically viable unit (**EVU**) for DRL.

An Introduction To Davidson-Richards (DRL), The Engagement Document And Its Intended Purpose: From Richard Goodley, Executive Chairman

September 2023 marked the completion of our 46th consecutive year of trading. During that time, where our customer has remained trading, we have never once failed to complete a project and go-live. In those years DRL has provided services for many hundreds of customers and are proud to have 20+ year relationships with many of these.

Because of this history and what follows within this document I can state with the utmost conviction that DRL would be an excellent organisation to choose to partner with. I know, and drive, the principles that underpin everything we do from our recruitment to our pricing policy and our permanent intent to have our customers act as our best advocates. We are an ambitious group of Directors and pursue success, however this must be achieved by the delivery of value. There is a vast difference between seeking to ‘earn’ rather than simply ‘pursue’ money. The consistent delivery of value is the foundation upon which we have built, and continue to grow, our successful and long-established business. We genuinely believe you will not be able to find better value for money in the market. We believe this because we know how the calibre of our staff measures up to those in organisations that charge far higher professional service fees than we do because over the years we have interviewed, and in some cases recruited, a significant number of our competitors’ employees. We can achieve this because we run lean, particularly in terms of the size and budget of our Commercial and Administration resources. Our industry average is roughly a 50/50 split between those employees directly delivering service to customers and those who manage and administer the business and market and sell to prospects. We have over 70% of our employees involved in the provision of services to our customers. Our customers therefore get more ‘bang for their buck.’ Every shareholder is directly working within the organisation so we are carrying no unproductive baggage whatsoever. Finally, we take a very long-term perspective and are comfortable targeting a return on turnover at a percentage below the average for our industry sector.

This OpSuite Engagement Document was created largely because of my preference for maximum transparency when I deal with any supplier organisation, either personally or professionally. I want DRL to extend that same courtesy to offer transparency to any organisation who is considering entering into a commercial relationship with us. The early stages of this document are an explanation of our ‘code of conduct’ regarding the way in which we work together with our customers and how we bill for our services. The latter stages contain more of the legal content including the OpSuite (SaaS) Agreement and the Terms and Conditions, including the Software Support, under which we operate. My view is that providing transparency and clarity is undeniably positive because it is preventing, or attempting to prevent, the circumstances under which a relationship could proceed based upon fundamental misunderstandings regarding responsibilities or modes of operation.

The intent is for this document to enable you to make a well-informed decision whether DRL is an organisation with whom you would wish to enter into a business relationship. I believe, as the author of the majority of the content, that our positions are logical, reasonable and fundamentally honourable. I hope that you reach the same conclusion however if you do not then I believe both parties are better served realising that now rather than later and we wish you well.

Boundaries of Responsibility - Introduction

The following illustration is provided as a visual representation to help clarify where the boundaries regarding responsibilities lie between DRL and the customer in the DRL proposition.

All DRL proposals are provided in the first instance with this fundamental assumption that the distribution of responsibility is as demonstrated in the image. Of course there can be further discussion and adjustments on a project or relationship basis where requirements may vary but this is the starting point.

The relative scale of the Customer and DRL segments is our view on the share of contribution that each organisation makes to the degree of success of a project. DRL does not overstate what we can do nor do we understate the degree of hard work that is necessary from the customer to optimise a project. The nature of the business relationship between the customer and DRL is different to many other commercial examples in that the vast majority of the hard work is performed by the customer rather than DRL and therefore the share is as indicated. If we consider, for example, a relationship with a law firm we can reasonably presume that the labour-intensive work will be predominantly performed by that law firm and, equally, if a construction project were commissioned likewise the architects, surveyors, tradesman and labourers would be performing the vast majority of the workload. In our situation however the ratio is the opposite because the role of DRL is to supply the application software and provide training, consultancy and support in order to enable the customer to utilise it to maximise ROI. The crucial element of any system is the quality of the data that is entered and then maintained within it and this is the customer's critical responsibility. Regardless of whether it be supplier or customer data, tax rates, promotions or any other element of the data required for the system to operate optimally this should be the primary focus for every customer utilising any retail management system, or any business application for that matter.

DRL always describes the nature of our best relationships with customers as 'partnerships.' There is a co-dependency in order to make a project successful. DRL cannot do it without the customer fulfilling their responsibilities and vice-versa.

For absolute clarity: High quality data, meaning it is both accurate and relevant, is the vital component that every customer must take ownership of in order to make a project successful. DRL can advise but cannot provide this because the quality of data requires expertise in the specific business processes and business relationships of each individual customer. DRL supplies the tool but the utilisation of that tool is in the hands of the customer.

Relationship & Project
Boundaries of Responsibility

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Customer

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Customer: 75%

Segment A: Human Resources:

Team members:
Project Sponsor
Customer Project Manager(s)
Advanced Users (Key Sub-Managers)

Tasks/Jobs:
- Clearly Specify Requirement(s)
- Perform Gap Analysis
- Choose/Adjust Project Approach: CPP, SP or SSR
- Choose/Adjust Development Approach (if required): PSD, FRD or SDR
- Evaluate Proposal(s)
- Decision (Order)
- Project Management: BPR Expertise, Data Quality, Milestone Adherence to Prevent Project Creep – Alternatively if Changes Required Provide Approval for CRN's & SAN's, HR availability, Assignment of Authorised 'Software Support' Users with necessary level of IT expertise, Internal Support of Non-Authorised Users plus **Critical Element: UAT pre Go-Live (User Acceptance Testing** – OpSuite & Development)
- Permanent On-going Operational Management (including replacements/successors): Maintenance of - BPR Expertise, Data Quality, Authorised 'Software Support'
- Users with necessary level of IT expertise, Internal Support of Non-Authorised Users, Approval (if requested) for CRN's & SAN's

Segment B: Infrastructure / Environment:

Customer HQ and/or Stores or other locations:
- All Hardware Devices (Post Delivery & Customer Acceptance)
- Physical & Cyber Security (Theft, Fire, Accidental Damage & Internet & Email Policy – Any Malicious Software Intrusion, Virus, Trojan etc)
- Network, Cabling, Wi-Fi, Communications (Broadband/Leased Line or Alternative)
- Power Supply (Electrical – e.g. Availability, Surge Protection)
- Environment Control – Temperature, Moisture, Ventilation

Segment C: I.T. Expertise:

Authorised 'Software Support' User(s):
Requisite level of IT expertise to manage the Infrastructure / Environmental responsibilities highlighted and to interact with and understand DRL resources in the delivery of 'Software Support' and 'PSA' Services

Segment D: Finance:

Adhere to Agreed Payment Schedule, or in the absence of a Specific Payment Schedule, Standard Payment Terms

Segment E: Project Management:

Project Management (joint Project Management with DRL)

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Davidson-Richards: 25%

Segment A: Human Resources:

Team members:
Projects (Operations Director & Team)
Commercial Lead
OpSuite Lead Consultant
*OpSuite Additional Consultant / Development / Technical Services

Tasks/Jobs:
- Receive Customer Specified Requirement(s)
- Assist with Gap Analysis (Limits to FOC assistance)
- Advise on Project Approach: CPP, SP or SSR (including limited advice on Infrastructure / environmental considerations)
- Advise on Development Approach (if required): PSD, FRD or SDR
- Provide Proposal(s)
- Action Order Received
- Project Management: Schedule & Provide (only relevant if contained within orders received):
  - Data Migration, Enterprise Application Set-Up, OpSuite Functionality Training, OpSuite Functionality & System Configuration Consultancy (with respect to Customers BPR Expertise), Bespoke Development
  - Milestone Adherence to Prevent Project Creep – Alternatively if Changes Required Request Approval for CRN's & SAN's
- Support Provision to Authorised 'Software Support' Users with necessary level of IT expertise
- Support Provision to Non-Authorised Users or any Non-Contract request through PSA (Professional Services Access) Mechanism
- Co-ordinate with Customer PM on: **UAT pre Go-Live (User Acceptance Testing – OpSuite & Development)**

*Infrastructure (Technical Services): Hardware/Device Set-Up and Configuration at DRL including initial testing, Delivery and Implementation in-situ at Customer premises

Segment B: Permanent / Continuous Services:

- Support Provision to Authorised 'Software Support' Users with necessary level of IT expertise through 'Software Support' Contract
- Support Provision to Non-Authorised Users or any Non-Contract Request through PSA (Professional Services Access) Mechanism
- Changes Required Request Approval for CRN's & SAN's
- Co-ordinate with Customer PM: UAT pre Go-Live (User Acceptance Testing – OpSuite & Development)

*Note – No infrastructure or infrastructure-related issue are covered under 'Software Support' Contract terms

Segment C: Core Solution

Subscribe and Utilise - OpSuite Application Software and Managed Hosted Platform:
- Retail Management Application with Continuous Enhancement Process
- ANS situated Infrastructure Platform – O/S, D/B, Back-Up, Access to Internet Backbone, Power Security, Physical (Fire, Theft, 24/7 Staff) Security, Cyber Security, 24/7 Monitoring by Qualified Technical Staff

Segment D:

Project Management:
Project Management (joint Project Management with Customer)

Initial Commercial Engagement Process & Policies

DRL is always delighted to have the opportunity to enter into an engagement to establish if the combination of the OpSuite functionality and DRL services is the optimal solution for prospective customer's present and future needs. Each prospective customer naturally has their own specific objectives, priorities and preferred engagement arrangements in this initial exploratory phase. In most cases there are no charges involved during this phase as most prospects consider the proposal, product demonstration and the subsequent opportunity to trial the system to be sufficient for their needs. In some instances an FOC workshop will be offered where both project scope and DRLs potential return make this economically viable. However, there are organisations that desire an advanced level of clarity and/or they have more complex technical, functional or logistical challenges than can be addressed in the standard process. In these cases DRL can accommodate the desired process however these more extensive consultation requirements naturally incur charges. The outline of these approaches with their varying pros and cons are covered in detail in the following sections.

Gap Analysis

This is a generic term to capture the essence of the process outlined in the paragraph above. Whether an organisation is considering an entirely new system or an upgrade to an existing solution there is a need to perform a 'gap' analysis project to establish if there are any material issues regarding differences between what the deliverable solution provides and the functional, or workflow, requirements of the user. Often where there are 'gaps' they can be overcome by an internal adjustment to operating processes and/or, on occasion, bespoke modifications to the software.

The ideal situation would always mean a detailed business process analysis is performed which would entirely remove the possibility of finding functionality gaps or workflow issues when moving from one solution to another. However, in many cases the limitations of budget and available human resources prevent this. It is therefore important to consider the categories of approach covered in the following sections that allow each organisation to mitigate and manage exposure to risks as it deems most appropriate.

GAP Analysis and Post-Implementation Management

The Support & Implementations Manager conducts the GAP analysis meeting accompanied in a primarily observational function for continuity by either Keith Bateman, (Co-CEO – Commercial), Chris Worthington, (Co-CEO – Operations), or the originating OpSuite commercial consultant. The Support & Implementations Manager subsequently produces the GAP report which is provided to the customer for feedback and approval. Co-ordinated through the projects team, a handover is performed whereby the Support & Implementation Manager provides the nominated OpSuite Implementation Consultant with the relevant customer-specific information prior to the project commencement. The project is then carried out and as it draws to an end the Support & Implementation Manager reconnects to take on the responsibility to deal with any post-implementation issues.

Our Co-CEO – Operations is the DRL Lead Project Manager throughout the duration of the project. Upon project go live, a snagging list will be provided to the customer for completion regarding all outstanding issues/points. Those issues/points will be co-ordinated by the Support & Implementations Manager and addressed and either fulfilled, raised as enhancement requests or identified as areas that require further training and consultancy as such, passed into the responsibility of the commercial / customer care department for ongoing account management.

Professional Services (Services) - Rules of Engagement & Specific Terms of Business

The customers' optimised utilisation of high quality Professional Services (**services**) is a key differentiator between a very successful project providing an excellent return on investment (ROI) and the potential for significant disappointment.

Services are a core strength of DRL coupled with OpSuite and our market leading development capabilities. The Development processes are specifically dealt with in a later section however this section is intended to provide a guide to the different types of **services** and a walk through of the processes involved in an engagement with DRL.

- The initial point of contact between the customer and DRL is a telephone discussion or meeting. This covers outline requirements in order to determine if OpSuite may be appropriate to fulfil the customer's requirements.
- The following stage is to provide 'menu pricing of the components' of the OpSuite solution to give estimates of costs to establish if the budgetary expectations of the customer are in-line with the budgetary requirements.
- From this point there will be further discussions and/or meetings, often there are telephone references or site visits and further refinements of the 'menu pricing' or draft versions of the proposal will be provided as the discussions progress and become more detailed.
- DRL can also provide a demonstration site of OpSuite for prospective customers to trial before proceeding so that the customer may establish that there are no local technical issues, such as insufficient bandwidth, before reaching a decision to move forward.
- DRL provides pre-consultation during the initial meetings however it is common, particularly for larger projects, for a more detailed consultation process to be undertaken prior to any decision to proceed with the project.

A very important issue to be considered before proceeding without detailed consultancy is the potential for a significant variance between the customers' expectations based upon the original proposal and the true final costs. In this arena DRL present the viable alternative processes including the benefits and disadvantages of each.

Our policy is to ensure our customers are fully aware that a decision to take the lowest cost approach in the project definition stage means there is more likelihood for variances from expectations downstream and the degree of those can sometimes be significant.

DRL policy is also that we do not minimise the **services** expectations at proposal stages to create lower cost expectations than we believe are likely to be realised in practice. DRL provides an estimate based upon previous similar experiences but we stress it is an ***estimate*** not a guarantee.

All **services** consumed are billable and therefore in a project with low initial consultation this can result in costs substantially beyond the customers' expectations. There will usually be a necessary degree of compromise from the customer if the budget is to be kept low. To achieve the closest fit of customer expectations to **services** requirements needs the production of a detailed consultation document which is the highest cost initial stage method. Conversely the greatest potential for variance between customer expectations and **services** needs is when the zero cost, low detail outline proposal document is the initial stage method.

DRL making sure its customers are aware of the benefits and drawbacks associated with each different approach allows business decisions to be made with clear foresight of these probabilities.

With regard to this information the following paragraph is of extreme importance for a DRL customer to fully understand before making any commitment:

- DRL is not obliged under contract to meet the estimates provided in the proposal although it is always DRL's intention to provide a realistic guideline regardless of the fact this, on occasion, may make the DRL proposal appear more costly than some competitors.
- DRL urges potential customers to be wary of low cost proposals because most providers will, like DRL, not be obliged to provide any **services** without charge regardless of the contents of the proposal document. In many cases, insufficient **services** are delivered as customers and suppliers cannot agree on an extension to the **services** budget once the project is underway and the implementation is severely compromised and ROI value is diminished.

The following are the outline points regarding the options provided by DRL to customers under which **services** can be commissioned as part of a solution proposal:

There are various forms of project definition documents. These depend on the investment the customer is prepared to make at the outset and how much the project needs to be tied down precisely to operate in the way the customer requires.

- In some cases, the requirement is to produce a complete roll out plan with specified landmark dates, project objectives, resource allocations, training roles and attendees and all other project management and process related issues prior to the project commencement.
- In the projects where the customer deems this not to be critical at the outset it is for the customer to participate in establishing a reasonable estimate, with DRL providing expert advice, upon the level of investment that they are required to make with the explicit knowledge that estimates are very unlikely to be entirely accurate.

To achieve a definitive project cost that DRL, within constraints, will be able to contractually commit to needs the customer to authorise and participate in the production of the comprehensive project roll out plan.

Categories of Approach

The main categories of approach are as follows:

Comprehensive Project Plans (CPP) - contain extensive detail regarding the project plans. These include proposed timescales and landmark dates, the customer's objectives, resource allocation, availability and roles and the DRL requirements including resource allocations and specific personnel's objectives. The risks for deviations from what the customer's expectations are and what DRL delivers in terms of **services** in line with the document is low. **CPPs** involve considerable consultancy prior to any **services** being delivered as part of the implementation project which may be a significant proportion of the total budget of the completed task. The **services** budget can only be estimated in the absence of the **CPP** and preliminary average estimates which include timescales are highly prone to alteration, sometimes significantly.

Skilled Services Resources (SSR) - are available on contract from DRL to work on customer projects and can be based at DRL or on-site, although on-site costs are higher. In these circumstances the resource is available to the customer to consult, train and implement. Many customers who adopt this approach do so because they have not yet fully defined the parameters of the project they are embarking upon and utilise the resource for a wide variety of consultation ranging from business process to layout of labels.

Standard Proposal (SP) - documents are derived without consultancy but are based upon the meetings and discussions held between the customer and DRL prior to a purchase decision. **SP**'s are valid and provide a good basis for moving forward but become less appropriate as the project scope, complexity, and timescales become extended. Customers are urged by DRL to take these factors into consideration when weighing the benefits of taking a low-cost entry into a project or mapping out the detail due to the relative complexity or scale of the proposed work.

There is a further aspect of this approach when the **CPP** is provided by the customer organisation as a result of internal work or by collaboration with a 3rd Party. In the case of the **CPP** being produced in this method DRL would require charged consultancy time to be authorised by the customer for it to be able to study the details of the document to provide a reasoned and valid proposal based upon their contents. If the scope of the **CPP** was particularly extensive then the potential cost savings made by the customer if they were to carry out this process internally could be significant.

There are no 'hard as fast' rules defining which approach is right for which project as there are often many elements in each project. It is perfectly feasible, and financially more attractive, to only adopt a **CPP** approach to the critical elements of the solution whilst accommodating a higher degree of flexibility in other areas utilising the **SP** approach to costings. Ultimately the customer decides which approach is right for them with this information as the guide to assist making an informed decision.

Terms of Business & Project Process Flow

The proposal (**CPP** or **SP**) offered by DRL at the project outset, based upon whatever method of analysis was favoured by the customer, is for the delivery of **services** in line with the relevant document ***at the time of order only***.

DRL's obligation should the customer go ahead with the proposal is to deliver **services** without additional charge (excepting variations covered by EVU's, accommodation & travel expenses, out of hours and/or extended hours' work) up to but not beyond the amount detailed in the documentation without consultation with the customer. Some customers adopt the new applications functionality, processes and procedures more rapidly than others and this means there is a necessary degree of flexibility even after the agreed project document is created. This variation in adoption can result in charges being lower or higher than anticipated. **Services** that are found, in mutual agreement between the customer and DRL, not to be required will be credited to the customer's account. Additional **services** required cannot proceed without receipt of authorisation from the customer based upon DRL raising a **Service Addendum Note** (**SAN**).

DRL is absolutely not required to provide additional services without charge in the event the customer needs more than was originally included in the proposal referred to above.

All changes, modifications or alterations in material elements of the customer requirements after the time of order placement will not be acted upon by DRL until the customer has fully authorised the **Change Request Note** (**CRN)** including associated costs. As all authorised **CRNs** & **SANs** result in additional charges they impact directly on budget. The customer should be fully cognisant of this potential impact on budget when deciding upon the method of initial project definition and when authorising changes to the original **CPP** or **SP**.

The outline ways in which projects move forward can be summarised as follows.

Customer Proceeds with Comprehensive Project Plan (CPP) Performed With DRL

The customer requires the project to proceed with a very low risk of deviation from design. This necessitates a detailed definition of the project including objectives, resources, timescales and costs. This process will roughly follow these stages:

1) DRL provide an estimate of the guideline price following a conversation about the requirements either on-site or by telephone.

2) The customer commits to an initial consultative process contribution that needs to be agreed in principle before the next stage goes ahead. The initial commitment is for a project requirements meeting, report and review. This stage may or may not address objectives, resources, timescales and costs in sufficient detail to produce a final **CPP** dependent on the nature, scale and scope of the project. If this initial process is insufficient it would still form the basis of the consultative requirements that will be needed to create the final **CPP**.

3) Assuming the initial consultation is satisfactory, but not sufficient for a full **CPP** to be produced, the customer then needs to commit to a flexible arrangement whereby our consultant/s will work with them to create the **CPP.** This open-ended element of the process is customer-driven to a substantial extent therefore the scale of investment is implicitly being managed by the amount of work the customer requires of the consultant/s. There is a minimum involvement below which the consultant cannot do their job however the customer can contribute to keeping costs down by preparing in detail, prior to any scheduled meeting, in order that the billable professional services are efficiently optimised. This high customer involvement level is something DRL actively encourages as it is beneficial for the customer, and for DRL, as it assures the customer has a deep and broad understanding of all aspects of the project which most commonly results in excellent customer project management and ultimately greater final satisfaction levels.

4) Upon completion of the process DRL will supply to the customer the CPP for the delivery of the documented system and this will need to be authorised by the customer for the system project to begin in earnest.

5) The terms of proceeding against the CPP is that the project plan will not be changed from that defined at the point of signing.

6) Any changes whatsoever subsequent to the signing off of the CPP document impacting on solution or services requirements will result in additional charges via the CRN/SAN process.

7) The advantage of the CPP process is that the project will proceed in line with transparent expectations for both DRL and customer.

Customer Chooses to Purchase Skilled Services Resource (SSR)

The customer can book the **services** resource on a daily, weekly or even monthly basis to be available to fulfil their requirements. The customer shall be responsible for the management of the resource and the verification of the final project plan.

Customer Proceeds with Standard Proposal / Quotation (SP)

The customer may decide against the route of a **CPP** but accept the estimates provided in the **SP** document.
This process will roughly follow these stages:

1) DRL provide an estimate of the guideline price following a conversation about the requirements either on-site or by telephone.

2) Further discussions and perhaps a meeting/s may take place to clarify issues.

3) DRL will supply to the customer an **SP** for the delivery of the project.

4) The terms of proceeding with the **SP** is that the project delivery will be provided in good faith by DRL but that the lack of extensive consultancy means the estimates for **services** requirements may be significantly inaccurate.

5) Any **services** requirements beyond those included within the original proposal to which the customer has committed will result in additional charges via the **SAN** process.

6) The advantage of this approach is it will be considerably less expensive than the **CPP** but it does place a great deal of emphasis on the customer to tightly manage the project internally and to be very discerning about additional requirements that would truly 'add value' as opposed to requirements that may be aesthetic or cosmetic.

Milestones (MS)

Milestones **(MS)** are the critical steps in project plans that have dependencies upon them and therefore need to take place before subsequent stages can proceed. The primary objective of the **MS** is to clearly define the key stages within the overall project so that all parties have clarity. The **MS** will be defined by whether it is a DRL or Customer's 'ownership' element and will have specific timelines and human resource applied to it.

*For example, a key **MS** would be the entry of data into the OpSuite application. If the process was the most common method, whereby the customer took 'ownership' to import data into OpSuite through the Data Management tool, then the **MS** would be assigned to the customer. If a go-live was pencilled in for a specified date, then all data would need to have been transferred and approved by a minimum of 6 weeks prior to that date. If the **MS** was missed by the customer, then all downstream activity would automatically become flexible as it would need to be reviewed and rescheduled under these new circumstances. In these circumstances the customer may face additional charges under the **CRN** process if the notification of the failure to meet the **MS** was inside the 5 days' rule.

Some **MS** will be assigned to DRL and some to the customer: There will be differing consequences for the different types of **MS** for missing deadlines.

(a). In the event that DRL were to fail to hit a **MS** for the production of, for example, bespoke modifications to OpSuite resulting in the go-live date having to be moved to a later date, provided DRL informed the customer more than 5 days prior to the planned go-live, there would be no costs faced by DRL.

- In this circumstance, any payments due, excluding any payments already overdue, for the bespoke modification would be paused for the extent of the delay period but no more.
- OpSuite payments may also be suspended in part or in full during this delay period but only if the bespoke modifications were material to the functioning of the solution in that customer's circumstances.
- If there was a hardware payment plan in place then, despite the delay being caused by DRL, all payments would be required to continue on schedule. DRL would be required to offer a period of extended free of charge cover, to the same level of the warranty, for the extent of the period of the delay added to the end of the manufacturer's warranty period to compensate for coverage lost.

(b). In the event that the customer was to fail to hit a **MS** for the completion of, for example, a preparation task of setting up all item related attributes within OpSuite which resulted in the go-live date having to be moved to a later date, provided the customer informed DRL more than 5 days prior to the planned go-live, there would be no costs faced by the customer.

- In this circumstance, any payments due for OpSuite, hardware or related services would remain due regardless of the delay caused by the customer.
- DRL would not be required to offer a period of extended free of charge cover, to the same level of the warranty, for the extent of the period of the delay caused added at the end of the manufacturer's warranty period.

Obligations & Responsibilities of the Implementation Teams

The success of an OpSuite solution implementation is critically dependent upon the sharing of obligations, responsibilities and outcomes between the supplier (DRL) and the customer organisation. There are a broad range of tasks that need to be successfully performed and the responsibilities for these are usually placed on a small number of key individuals within the customer and DRL project teams. Every member of each team needs to thoroughly understand their role and responsibilities. Most of these tasks have dependencies related to other jobs within the overall project in terms of them being necessary stages of the progression both pre and post go-live. Therefore, in many cases there are time dependent project 'milestones' built into the project plan which need to be met otherwise overall timescales will slip and, potentially, further costs could be incurred. It is imperative that this is defined and communicated prior to the project outset and this is what DRL will do in collaboration with the customer. The pre-consultation phase DRL provides introduces this aspect of the relationship by the inclusion of this document. The project planning following the acceptance of the proposal then adds more clarity to the project definition, roles and responsibilities, milestones, contingencies and timelines. These elements apply to both DRL and the customer organisation.

Main Types of Engagement Relationships

The three main types of engagement relationship that DRL enters with its customers are as follows:

The 'Collaborative' Consultant:

- This is where there is an interdependent relationship and control of the project is shared. Customer Management works hand in hand with the DRL consultation and project management team.
- This is by far the most common form of engagement because of the nature of the retail management system implementation projects.
- The customer is the expert in their business processes, data, customers, suppliers, products and pricing and other commercial areas however DRL is the expert in terms of the business management application and its implementation. The interdependence is because neither party is expert in the whole range of issues involved in the project.
- Ownership of the project is shared and this specifically means the responsibility for success is a shared burden.

The 'Pair of Hands' Consultant:

- This example is where control sits firmly with the customer. The customer understands exactly what needs to be done and wants a consultant, or expert, to assist them.
- This is an engagement type that is sometimes applied in narrow projects, for example, the allocation of a development resource to write a series of reports to the customer's specification.
- This engagement is not associated with the broad overall implementation project. (There may be an exception to this however one has not yet occurred in DRLs operating history).
- Ownership of the project sits firmly in the hands of the customer however this will reduce costs to a degree.

The 'Expert' Consultant:

- This relationship is where the supplier, DRL, is more autonomous and project control sits firmly with DRL.
- This approach is rare but if chosen can apply to a variety of project types, be they broad or narrowly defined. The key element is the customer relinquishing control to DRL.
- This additional control skews the ownership of the project, and related burden to achieve success, further onto DRL and is matched by a hugely significant increase in costs as a result.

Unless stated otherwise in the customer specific proposal / project documentation the DRL standard approach would be to adopt the role of a 'collaborative' engagement as per the 'boundaries of responsibility' section.

Team Member Roles

Once the nature of the relationship has been settled then it is important to define the teams and their respective roles and responsibilities:

These roles include:

Customer Team Members

Business Owners and Managers: Project Sponsor

Business owners, executives and managers provide the team leadership necessary for success and make or contribute to decisions that are required to be made about the way the OpSuite solution is deployed and configured. Depending on the size and structure of the organisation, the business owner or manager may not be the team member who understands the details of installation and configuration; however, it is critical that as they generally occupy the role of key decision maker or influencer they must be aware of the underlying reasons for the systems final deployment configuration and on-going maintenance and management requirements.

Customer Project Manager: CPM/s

The CPM is/are the individual/s that has executive control and responsibility to direct the work and make decisions on behalf of the customer business. This role requires explicit understanding of the details of the installation and configuration. Specifically, they will be responsible for ensuring the schedule and milestones are adhered to by co-ordinating all staff and team members within the customer project team and communicating very closely with the DRL project team. In smaller organisations, the CPM is most often the business owner or senior manager.

Customer Key Sub Managers: Advanced Users

The CPM/s, depending on the scope of the business, will need to be supported in their efforts by any number of key associates. These roles may take the form of delegated sections of the overall project responsibility, for example, an individual may take responsibility for the purchasing areas within the solution whilst another may take all pricing and promotional decisions. The nature and size of each customer's unique business will dictate whether this role or roles are required.

Davidson Richards Team Members

The DRL project team is variable per project depending on the scope and requirements however the core building blocks are drawn from the Operations Director, Project Co-ordinator, OpSuite consultants, OpSuite developers and Technical Services / Infrastructure specialists. The DRL project team will also include at all stages prior to go-live a retained involvement from the commercial team involved in the pre-sales consultancy.

Fixed Team Members:

Chris Worthington	Co-CEO – Operations (DRL Lead Project Manager)
Keith Bateman	Co-CEO - Commercial
Wendy Dean	Project Co-ordinator
Liam Parker	Support & Implementations Manager

Variable Team Members:

The variable team members will be made up as the following example or a combination from this list depending on individual project requirements. DRL currently has the following specialist human resources available for the variable project teams:

Lead OpSuite Consultant
OpSuite Consultant
OpSuite Developer
Technical Services

OpSuite

The OpSuite solution is offered for sale as a standard, although regularly enhanced, retail management application. The solution has a finite range of functional capabilities and is 'sold as seen' and DRL makes no representation whatsoever otherwise to its capabilities. The sole responsibility, therefore liability, for determining the appropriateness of the solution for the customer organisation lies with the customer organisation. Clearly this liability requires the absence of fraudulent misrepresentation.

DRL very strongly recommends that the customer analyses and scrutinises the OpSuite solution with great care to ensure, to the degree the customer's financial and human resource investments allow, that the solution is suitable for their organisational requirements.

- To assist in this analysis, DRL provide a detailed product demonstration and, with appropriate initial training investment, can provide an OpSuite enterprise for a 'try before you buy' period.
- Alternatively, or in addition, DRL can provide extensive consultancy services prior to any final purchase decision to thoroughly review the solution however this requires investment.

The most significant issue to be considered before proceeding without either careful analysis and/or consultancy is the potential for a significant variance between the customer expectations and what the actual capabilities of the solution are.

Data and Data Protection

The customer has sole responsibility and ownership of the data. The task of ensuring the data integrity in terms of accuracy, with respect to data imported into OpSuite in particular, is performed by the customer and therefore it is imperative that great care and attention is paid to this stage of the project. Accurate data is the essential building block for a successful project and it is an area all too often afforded insufficient focus and resources.

For the purposes of data protection laws the customer will be the data controller of the personal data that it provides to DRL and DRL shall be the data processor. We have included clauses in the OpSuite agreement and our terms and conditions to address this part of our relationship and further information about how we handle personal data can be found in our privacy policy at http://www.davrich.co.uk/legal.

Data Conversion

Unless specifically stated in the proposal there is no data conversion services of any kind included in the DRL services.

If the customer requires either an export of data from an original data source and/or an import of data into OpSuite to be performed by utilising DRL resources, although full and active participation in the process is required from the customer throughout, charges for those services will be raised.

Customisation

Unless specifically stated in the proposal the OpSuite system is provided online and off-line as the standard solution and does not include any customisation. Customisation in this context often includes, but is not limited to, bespoke receipt layouts and reports as below. It is the customer's responsibility to make DRL fully aware of any bespoke enhancements that will be required, whenever the need arises during the project, and these need to be documented by the customer or by DRL on a consultancy basis, and a development charge will be agreed before commencement of any coding work.

Customising Receipts

Any receipt changes from the standard options will be chargeable on an adhoc basis and will only be carried out when the final format has been agreed and documented.

Customising Reports

OpSuite includes many reports within the Active Reports module which customers can adjust. The Active Reports engine is a powerful proprietary reporting engine that allows queries into the OpSuite database for many fields. It is easy to sort and filter the reports further with just a few quick clicks of the mouse. Custom report settings can then be saved per login.

OpSuite also includes a further range of standard reports which are less flexible although they do have a degree of filtering available. These reports cannot be manipulated and saved by customers however DRL can provide customised reports to order. These reports can be available to a single login or made enterprise wide.

Any further reports that may be required that need developing in SQL or with the use of alternative reporting tools will be chargeable on an adhoc basis and will only be carried out when the final format has been agreed and documented.

User Acceptance Testing (UAT)

Access to a test system for user acceptance testing (UAT) purposes is provided as part of the OpSuite project implementation stage. This access is typically removed three months after the date of go live, unless prior arrangements have been made for other elements that may require a UAT such as for the testing of web integrations or the OpSuite Apps. The details and costs for continued use of the UAT facility can be provided by the commercial team if required.

Hardware

Hardware is covered by manufacturers' warranties and all responsibilities for contingency plans to enable customer organisations to continue to trade in the event of hardware failure for any cause, e.g. power failure, is the responsibility of the customer.

WEE

As part of the WEE directive, we can, if required, arrange to dispose of obsolete hardware that we have supplied once we have replaced it. This service is subject to a disposal fee.

Communications

DRL will make informed recommendations to customers however the communications suppliers hold full responsibility for service provision and delivery times. Broadband provision, for example, is not DRL's responsibility.

Credit Card Payment Security

DRL encourages EFT best practices but is not, nor can be, responsible for the Merchant Service Provider. In the event of any problems it is essential that the customer adopts emergency backup planned arrangements such as credit card slabs, telephone approval etc.

Staff Availability

See full terms for Professional Services etc.

Procedures

DRL does not produce a procedure manual as a standard element of the consultancy process. The service can be provided on a specific customer basis on request.

Stationery

All consumables, including but not limited to, labels or receipt paper are not part of the project and need to be sourced by the customer directly. DRL will assist in specifying requirements and directing to suitable supply sources.

OpSuite Tested & Supported Environments: Specifics

This section is provided to clarify what DRL means in terms of tested and supported environments in relation to OpSuite.

The broad position is this: DRL intends, through reasonable endeavours, to continue to support the software through hosting services and helpdesk provision however this is with the following caveat. It is based upon the assumption that the OpSuite tested and supported environments (listed in the following sections) remain available in the marketplace to purchase and/or install and/or do not hinder other necessary upgrades to allow 3rd party applications to function properly (in their supported environments).

DRL cannot control the support regimes of 3rd party providers, hardware or software, and makes no claim to be able to do so.

The comprehensive list of OpSuite tested and supported environments that follows is provided in the aim of clearly demonstrating the multitude of considerations that DRL are processing and testing behind the scenes before proposing a solution to our customers or prospects. This is the largely invisible value-add that a solution provider such as DRL delivers that ultimately makes our customer's lives considerably easier. We make sure you are supplied with a tested and supported environment if you purchase a solution from DRL. If you choose to purchase from alternative providers, perhaps because it is less expensive from a box-shift online outfit, and there are any subsequent issues through non-compatibility because it is now a non-tested and non-supported environment then any support contract with DRL is, obviously, invalidated and support will be charged at consultancy rates.

DRL are solution providers and not box shifters and therefore it is the responsibility of each organisation to ultimately make their own value judgement on where they purchase certain elements of the system.

OpSuite Tested & Supported Environments

Back Office

Store Server	Microsoft SQL 2012	Out of mainstream support
	Microsoft SQL 2016 SP3 **	Microsoft Extended Support ends 14 July 2026
	Microsoft SQL 2019 CU18 **	Microsoft Extended Support ends 8 January 2030
	Microsoft SQL 2016 Express SP3	Microsoft Extended Support ends 14 July 2026
	Microsoft SQL 2019 Express CU18	Microsoft Extended Support ends 8 January 2030
	Microsoft Windows Server 2012 R2	Microsoft Extended Support ended 10 October 2023
	Extended Security Update Year 3	Microsoft Extended Support ends 13 October 2026
	Microsoft Windows Server 2016	Microsoft Extended Support ends 12 January 2027
	Microsoft Windows Server 2019	Microsoft Extended Support ends 9 January 2029
	Microsoft Windows Server 2022	From the end of Q4-2023 (currently still in testing) Microsoft Extended Support ends 14 October 2031
	Microsoft Windows 8.1	Microsoft Extended Support ended 10 January 2023
	Microsoft Windows 10 Pro 21H2	Microsoft Extended Support ended 13 June 2023
	Microsoft Windows 10 Pro 22H2	Microsoft Extended Support ends 14 May 2024
	Microsoft Windows 11 Pro 21H2	Microsoft Extended Support ended 10 October 2023
	Microsoft Windows 11 Pro 22H2	Microsoft Extended Support ends 8 October 2024
	Microsoft Windows 11 Pro	Microsoft in Support
Back-office database/ reporting servers **	** Database sizes >10Gb	

OpSuite POS	Microsoft Windows 8.1 Industry	Microsoft Extended Support ended 11 July 2023
	Microsoft Windows 10 2016 LTSB	Microsoft Extended Support ends 13 October 2026
	Microsoft Windows 10 2019 LTSC	Microsoft Extended Support ends 9 January 2029
	Microsoft Windows 11 Pro 21H2	Microsoft Extended Support ended 10 October 2023
	Microsoft Windows 11 Pro 22H2	Microsoft Extended Support ends 8 October 2024

OpSuite Clients

OpSuite WPF Client	Microsoft Windows 10 Pro 21H2	Microsoft Extended Support ended 13 June 2023
	Microsoft Windows 10 Pro 22H2	Microsoft Extended Support ends 14 May 2024
	Microsoft Windows 11 Home 21H2	Microsoft Extended Support ended 10 October 2023
	Microsoft Windows 11 Home 22H2	Microsoft Extended Support ends 8 October 2024
	Microsoft Windows 11 Pro 21H2	Microsoft Extended Support ended 10 October 2023
	Microsoft Windows 11 Pro 22H2	Microsoft Extended Support ends 8 October 2024
	Microsoft Windows 11 Home & Pro	Microsoft in Support

EFT

Verifone Sentinel	Microsoft Windows 8.1 Industry	Microsoft Extended Support ended 11 July 2023
	Microsoft Windows 10 2016 LTSB	Microsoft Extended Support ends 13 October 2026
	Microsoft Windows 10 2019 LTSC	Microsoft Extended Support ends 9 January 2029
VeriFone Engage P400 I/P	Microsoft Windows 10 2016 LTSB	Microsoft Extended Support ends 13 October 2026
	Microsoft Windows 10 2019 LTSC	Microsoft Extended Support ends 9 January 2029
	Microsoft Windows 11 Pro 21H2	Microsoft Extended Support ended 10 October 2023
	Microsoft Windows 11 Pro 22H2	Microsoft Extended Support ends 8 October 2024

Optomany Axept	Microsoft Windows 8.1 Industry	Microsoft Extended Support ended 11 July 2023
	Microsoft Windows 10 2016 LTSB	Microsoft Extended Support ends 13 October 2026
	Microsoft Windows 10 2019 LTSC	Microsoft Extended Support ends 9 January 2029
Opayo Guardian	Microsoft Windows 8.1 Industry	Microsoft Extended Support ended 11 July 2023
	Microsoft Windows 10 2016 LTSB	Microsoft Extended Support ends 13 October 2026
	Microsoft Windows 10 2019 LTSC	Microsoft Extended Support ends 9 January 2029
	Microsoft Windows 11 Pro 21H2	Microsoft Extended Support ended 10 October 2023
	Microsoft Windows 11 Pro 22H2	Microsoft Extended Support ends 8 October 2024

Mobile

Chainway C4050	Android v442 with Chrome v81.4044.138	Out of mainstream support
Chainway C6000	Android v6.0 with Chrome v89.4389.105	
	Android v10.0 with Chrome v105.0.5195.79	
Honeywell EDA50K	Android v7.1 with Chrome v78.0.3904	
Honeywell EDA51K	Android v10.0 with Chrome v108.0.5359.128	

Avery

MX Connect V5.4.4.277		
MX Business V5.4.5	Microsoft Windows 10 21H2	Microsoft Extended Support ended 13 June 2023
	Microsoft Windows 10 22H2	Microsoft Extended Support ends 14 May 2024
	Microsoft Windows 11 Pro 21H2	Microsoft Extended Support ended 10 October 2023
	Microsoft Windows 11 Pro 22H2	Microsoft Extended Support ends 8 October 2024
	Microsoft Windows Server 2016	Microsoft Extended Support ends 12 January 2027
	Microsoft Windows Server 2019	Microsoft Extended Support ends 9 January 2029

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Windows 10 2016 LTSB - Microsoft Lifecycle | Microsoft Learn
Windows 10 Enterprise LTSC 2019 - Microsoft Lifecycle | Microsoft Learn
Windows 10 Home and Pro - Microsoft Lifecycle | Microsoft Learn
Windows 11 - release information | Microsoft Learn
Windows 11 Home and Pro - Microsoft Lifecycle | Microsoft Learn
Products Ending Support for 2022 - Microsoft Lifecycle | Microsoft Learn
Ending Support in 2023 - Microsoft Lifecycle | Microsoft Learn

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Professional Services (Services) - Billing Structure & Terms of Business

The range of **services** offered by DRL is extensive and variable. The delivery of those **services** can be on-site, at DRL offices in Derby, whether in-person or remotely. The delivery on-site can be geographically local or remote. Costs will vary in terms of transportation time, distance, and method in addition to accommodation and subsistence issues. **Services** are also variable in terms of the time at which they are consumed. Weekend and out of hours' services work will be delivered at a higher cost than services delivered in standard time.

The nature of the **service** delivered is also variable in terms of whether it is 'knowledge transfer' activities such as consultation, systems analysis and training, or fee based work such as infrastructure or development functions. Project Management is somewhat unique in that it straddles areas of collaborative 'knowledge transfer' work and internal fee-based activities.

Please note that Implementation & Technical Services that involve installations and a "set job" rather than consultancy / training that involves a "transfer of knowledge" will be offered more as a fixed fee plus the travel supplements, although excess hours can result in additional charges. This section is to provide guidance to customers on billing criteria to ensure that all relevant information is available prior to purchase commitment.

Structure, Terms & Rates of Services Billing

DRLs objective is to offer our customers the best value for money in the marketplace and full transparency regarding the reasoning behind, and the structure of, our billing arrangements is a vital pillar in the achievement of this. Fundamentally DRL is a Professional Services organisation, not unlike an Accounting or Law firm, and therefore we need to generate a return from **services** delivery however we simultaneously seek to maximise the efficiency our customers can achieve in their consumption of said **services** to manage and control their budget. As core factors in this approach we decided long ago not to mirror the high services charges of our mid-tier competitors and to also provide low entry-level subscription access for OpSuite with the **Software Support** (See Appendix 1) and System Provision inclusive within the OpSuite Service Fee being exceptionally competitive.

- Weekday Support (Full) is costed at 40% of the total OpSuite Service Fee of £63 per lane **and** per location = **£25.20** per month.
  The number of Weekdays per year, excluding weekends and typical number of English Public or Bank Holidays, are (261 – 8) 253.
  £25.20 per month is £302.40/per annum therefore £302.40/253 = Daily Support Cost per lane **and** per location of **£1.20.**

- Weekend Software Support (*not within the OpSuite Service Fee) is £5.90 per month per lane **and** per location.
  The number of Weekend operating days per year are usually 52 x 2 = 104.
  Min £11.80 (£5.90 + £5.90) per month is £141.60/per annum therefore £141.60/104 = Weekend Daily Support Cost of **£1.36*** per lane and per location. *This is the highest possible daily cost configuration for weekend support (A site with only one lane).

- English Public Holiday & Bank Holiday Software Support (*not within the OpSuite Service Fee) is £75/per month per location.
  Software support is delivered by our dedicated team and offered as a supplementary subscription for all English Public or Bank Holidays except Christmas Day itself when we are closed. If an English Public or Bank Holiday substitute day is granted for Christmas Day (when it falls on a weekend), software support will be provided on that substitute day.
  The typical number of English Public or Bank Holidays supported each year is 8 (excluding additional special days granted by Parliament). The cost to cover all English Public or Bank Holidays supported in a year is £75/month.
  £75/month is £900/per annum. Therefore £900/8 = Cost for each English Public or Bank Holiday supported of **£112.50**.

- System Provision (Hosting, Hosting Services (including backups / 24/7 monitoring etc.) O/S, D/B, Application Software and Upgrades) is costed at 60% of the total OpSuite Service Fee of £63 per lane **and** per location = **£37.80** per month.
  The number of total days per year, excluding Christmas and New Year (assumption based on customer working practices however OpSuite provision available both of these days), are (365 – 2) 363.
  £37.80 per month is £453.60/pa therefore £453.60/363 = Daily Service Provision Cost per lane **and** per location of **£1.25.**

- **Example System Daily Costs:**
  - 1 Location with 10 lanes (in total):
    - System Provision: £1.25 x 1 location plus £1.25 x 10 lanes = £13.75.
    - Software Support: £1.20 x 1 location plus £1.20 x 10 lanes = £13.20 (weekdays only).
    - Total Weekday Daily Cost therefore is £13.75 + £13.20 = **£26.95**

        - * If weekend support taken out see below:
        - Weekend Support: £0.68 x 1 location plus £0.68 x 10 lanes = £7.48 (weekend days only)
        - Total Weekend Daily Cost therefore is £13.75 + £7.48 = **£21.23**

    - 4 locations with 20 lanes (in total spread across 4 locations):
        - System Provision: £1.25 x 4 locations plus £1.25 x 20 lanes = £30.00
        - Software Support: £1.20 x 4 locations plus £1.20 x 20 lanes = £28.80 (weekdays only)
        - Total Weekday Daily Cost therefore is £30.00 + £28.80 = **£58.80**
        - * If weekend support taken out see below:
        - Weekend Support: £0.68 x 4 locations plus £0.68 x 20 lanes = £16.32 (weekend days only)
        - Total Weekend Daily Cost therefore is £30.00 + £16.32 = **£46.32**

DRL provide a great deal of control to our customers over how they consume our **services**. We offer a range of mechanisms to help realise the best value possible such as the **PSA** (Professional Services Access) Subscription, **EVU's** (Economically Viable Units), 'on DRL premises' discounted fees (which also removes any mileage charges) and the option for remote consumption of **services** by the hour.

We want OpSuite customers to have a broad range of options available to suit each organisations preference regards how, where and what **services** are required from DRL and in what quantity. In principle if an organisation wishes to utilise only the range of **services** DRL caters for within the OpSuite Service Fee then they will be receiving an outstanding package for a very low monthly outlay. If another organisation, for example one with less internal IT expertise and a greater turnover of staff, wishes to utilise more of the DRL **services**, beyond the boundaries of the OpSuite Service Fee, then they can do so at competitive rates but, naturally, they will have a greater outlay than the first example. DRL's intent is for our customers to have a uniquely tailored relationship with DRL that is best suited to their particular circumstances through our structure of **services** charging and delivery options. We do not believe that one size fits all and do not supply a 'cookie cutter' solution or **service**.

It is also important to note that there is a significant financial differential dependent on where the **services** work being performed by the DRL resource takes place. The delivery of the **services** can take place either in-person, as in a training environment, or on-line/remotely. The consumption of the **services** by the customer can take place either at DRL or on their own premises. **Services** consumed on the customer's own premises can be in-person or on-line/remotely.

- The most expensive option is usually the in-person **services** delivered on the customer's premises.
- The least expensive option is the in-person **services** delivered at DRL premises.

<u>Professional Services Access (PSA) Monthly Subscription Fee (Optional)</u>

The Professional Services Access (**PSA**) subscription is a monthly fee levied to allow an OpSuite customer seamless access to DRL **services** regardless of whether the requested 'activity' is covered under contract. DRL has internal systems, fully operational since Q1 2017, into which every DRL operative conducting an 'activity' with, or on behalf of, a customer records the nature and duration of that 'activity' – a range of the types of 'activities' is listed below. The **PSA** amount paid is fixed for a relevant period, often a calendar quarter, but is directly offset against any **services** 'activity' consumed during that same period. The initial value of the charge is an entry level figure based upon the scope and scale of each individual enterprise. This value is then reviewed through the Account Management process on a regular basis, also usually quarterly, to analyse trend usage and discuss appropriate adjustments, either up or down. The intent with which the initial value of the **PSA** is pitched, and reviewed (see below 'key points' bullets), means that it is virtually certain that the **PSA** will be a lower figure than the consumed **services** would generate on a straight like-for-like usage multiplied by hourly charge basis.

The **PSA** has a major benefit in that all <u>remote</u> **services** consumed by a customer with a **PSA** subscription in place is billed in a manner mirroring that of Accountancy and Legal firms where time is recorded in 10ths (6 minute segments) of an hour. Within each time period, be it monthly or quarterly, these 6 minute segments are collated to reach a total resource utilisation figure. OpSuite customers need to be clear that if they choose to access and utilise the DRL **services** within a **PSA** arrangement it is with their implicit approval that those **services** consumed, that are not covered under contract, and in excess of the **PSA** monthly value, will potentially result in additional charges being incurred at the standard hourly rate calculated in this cumulative way.

The **PSA** removes unnecessary barriers to efficient partnership to both parties' benefit.

Activity: An 'activity' is any process involving the utilisation of DRL (human) resources and is recorded within the DRL internal systems:

- **Contract Support:** **Included** (unlimited duration & frequency) within OpSuite Service Fee (Software Support Terms – Appendix 1)

- **Non-Contract Support:** **Charged** – The 3 most frequent reasons that a support request is outside the scope of the Software Support terms are:

(1) Infrastructure or access related issues
(2) Requests received from unauthorised or replacement (new) personnel
(3) Service needed to be performed outside of contracted days / hours

- **Consultancy:** **Charged** – (*Software Support is not a remote Consultancy service)
- **Training:** **Charged** – (*Software Support is not a remote Training service)
- **Project Management:** **Charged** – (Record over-utilisation)
- **Ordered/Invoiced** **Charged** - (Record over-utilisation)
- **Commercial:** **No charge** – (Except in exceptional circumstances)
- **Account Management:** **No charge** – (Except in exceptional circumstances)
- **Administration/Finance:** **No charge** – (Except in exceptional circumstances)

As denoted in the title the **PSA** subscription is an **optional** service, although it is very highly recommended because of the obvious financial benefits and the administrative obstacles not having access can bring about in the delivery of DRL's support **services**. Should a customer choose not to take up a **PSA** subscription then every support request will first have to be screened to check if it is covered under contract terms, and if not covered and even if *potentially* not covered, **explicit** customer approval will be required to accept charges prior to being able to deliver a **service**. The non-**PSA** customer will incur charges at the current standard rates with a minimum charge of 1 hour, additional time consumed within this service request would be charged on a per hour basis however each subsequent separate request would also result in a minimum charge of 1 hour rather than the cumulative 6-minute segment basis in operation for the **PSA** customer. This situation is not optimal in terms of ease of process management and the non-**PSA** customer would incur higher charges than a **PSA** customer for the same range of **services**. However, this more restrictive option does allow customers to very tightly manage and control utilisation and therefore budget.

The following 'key points' are worth considering:

- The **PSA** customer is charged for appropriate remote **services,** beyond contract terms and 'goodwill' allowance, at the standard current hourly rate based upon a, monthly or quarterly, total utilisation recorded in 6 minute segments, as is standard practice in the professional services sector

- The basis of the **PSA** charge mirrors the logic of the OpSuite POS Subscription ratio for Permanent Lanes v PAYG Lanes. There must be a minimum of 50% of the total lanes subscribed to on the fixed 'Permanent' monthly fee. Likewise, the **PSA** monthly fee must account for a minimum of 50% of the trend rate of **services** utilisation over the preceding quarter

- The **PSA** customer potentially has less control over budget because customer staff can access DRL services automatically without DRL receiving explicit authority. This can be overcome by maintaining tight communication controls within the organisation whereby only authorised staff can utilise DRL services but the benefits of the cumulative charge rates and automatic access can still be realised

- A non-**PSA** customer has restricted access to DRL support because any 'activity' requested that is outside, or potentially outside, of contract coverage cannot proceed until explicit approval is granted from the appropriate customer personnel

- The non-**PSA** customer is charged, for appropriate remote **services** beyond contract terms and 'goodwill' allowance, at the standard current hourly rate in increments of 1 hour with a minimum charge of 1 hour per issue

- The non-**PSA** customer can potentially have more control over budget because customer staff cannot access DRL services automatically without DRL receiving explicit authority

Charging: What Do DRL Charge And What Is 'Goodwill'?

It would be valid to consider at this stage if DRL's modus operandi is to invoice for every minute of every **service** provided. The answer is in the vast majority of cases that we do not, and we do not intend to enter into a relationship on that basis, but there are contractual limits naturally, and **services** are chargeable activities. In reality a degree of leeway or 'goodwill' is often extended to our customers particularly regarding Software Support **service** consumption concentrated around the early stages of implementations, although not exclusively. Beyond the boundaries of any reasonable accommodation our philosophy is to record as accurately as feasible the **services** provided to each customer. As we cannot be completely precise, often because an 'activity' can contain more than one element of **service** category, we err on the side of our customers in order that we cannot reasonably be accused of exploitation. This will be demonstrated in the information provided during regular reviews as part of DRL Account Management practices.

The policy of erring in the customer's favour is derived from the obvious truth that if you receive £10 worth of **service** but are charged £9.75 you will feel you are receiving outstanding value however if you are charged £10.25 you will feel aggrieved, acutely so in the situation where one is a long-standing customer. This approach coupled to the cumulative time billing arrangement for **PSA** customers contributes to the overall DRL value proposition.

As an organisation therefore DRL sometimes, by way of example, provides extra on-site time or support **services** not directly covered by the contract without raising a full value invoice, and on occasion no invoice at all. The potential charges that are waived during the Account Management review is 'goodwill' offered to our customers. When we decide something is 'goodwill' it is not with the intent to attempt to secure payment for those activities at a later time (see Paragraph **Goodwill Clawback** below).

DRL will undoubtedly be more likely to extend 'goodwill' to a customer with whom we have generally enjoyed a constructive relationship, and who has always paid us on schedule, rather than the opposite. However, it is mostly determined by the frequency, nature (including if it is a 'repeat' issue) and duration of the non-contract 'activities' we are requested to address by each specific customer. It is fairly obvious that an OpSuite customer who places a generally 'high demand' on the support desk, including for non-contract issues, will receive less accommodation regarding the extension of 'goodwill' than an OpSuite customer who has generally been a 'light user' of the support desk however other factors do merit consideration.

DRL is more inclined to extend accommodation to a **PSA** customer rather than a non-**PSA** customer because the former is more committed to a 'partnership' style engagement with DRL rather than the more 'arm's length' nature with the non-**PSA**.

Here are some further specific examples which we hope will create a better framework of understanding about why, when and for how long DRL may, or may not, extend 'goodwill':

For the sake of clarity – issues within the contract terms will always be addressed, provided it is communicated via an authorised user and the OpSuite Service Fee, and any other contract, payment has been collected, without additional charges.

Example (1)

If an authorised user contacted support to report an issue that they were unable to access the OpSuite software from their device, then DRL would log the request and then try to access their enterprise via DRL infrastructure.

If DRL could access the OpSuite enterprise then the issue would not be covered under contract however the DRL support resource would likely suggest some ideas for the user to try.

- For a non-**PSA** customer this request would result in a charge
- If this issue was an infrequent occurrence – for example once or twice a month then it is likely DRL would initially categorise this as 'goodwill,' at least for a couple of months
- If DRL was being contacted regularly for this issue, a few times a week, and it had been going on for a period of time, perhaps a few weeks, then DRL would categorise these as non-contract support and be offset against payments received and considered against a possible future increase in monthly fee

Example (2)

If an authorised user contacted support to request assistance in setting up a new promotion type and/or creating a purchase order, then DRL would log the request.

This is an issue we would class as borderline because it is assistance with using the software however if the request is beyond a general query but requires an extensive explanation of functionality and the applications of that functionality then it risks exceeding the terms as it ventures into the realm of training and systems consultancy.

The DRL support resource would guide the user contact through the processes.

- If this issue was frequent, perhaps every few days, during the first 4-8 weeks of using OpSuite then it would very likely be categorised as ‘goodwill’

- If this issue was an on-going infrequent occurrence – for example once or twice a month then it is likely DRL would continue to categorise this as ‘goodwill,’ for perhaps as long as the first 6 months after which it would be categorised as non-contract support and they would incur a charge in a non-**PSA** relationship and be offset against payments received in a **PSA** engagement

- If DRL was being contacted regularly for this issue, a few times a week, and it had been going on for a period of time beyond the initial 4-8 weeks, then DRL would likely categorise these as non-contract support and they would incur a charge in a non-**PSA** relationship and be offset against payments received in a **PSA** engagement

Example (3)

If an authorised user contacted support to log an issue regarding apparent inaccuracies in order data being imported from an integrated ecommerce solution, then DRL would log the request.

This is an issue that would be impossible to identify at the outset whether it was covered or not under contract. The DRL support resource would then draw on the development team and/or testing to investigate the issue and then resolve, or begin the process of so doing, if it was caused by OpSuite behaviours or changes or identify what may have happened regarding the actions of a 3rd party, such as the delivery partner for the imported data, or 3rd party software product, perhaps having undergone an upgrade, unless it was logged by a non-**PSA** customer which would require explicit approval before this could occur.

If the issue was caused by the 3rd party or 3rd party software, then it is not covered under the Software Support contract.

- If this issue was a one-off and the elapsed time was short (less than an hour) then it would probably be categorised as ‘goodwill’

- If this issue was a one-off and the elapsed time was long (more than an hour) then it would be less likely to be categorised as ‘goodwill’

- If this issue was an on-going occurrence regardless of elapsed time to investigate and determine resolution it would be categorised as non-contract support and they would incur a charge in a non-**PSA** relationship and be offset against payments received in a **PSA** engagement

Example (4)

If a non-authorised user contacted support to request assistance, for example, in setting up a new promotion type and/or creating a purchase order then DRL would log the request.

This is a non-contract issue, despite the content of the query, because a non-authorised user is attempting to access the support service.

The DRL support resource would then guide the user contact through the processes (unless it was a user from a non-**PSA** customer which would require explicit approval before this could occur).

- For a non-**PSA** customer this request would always result in a charge

- If this issue was only once or twice, during the first 4-8 weeks of using OpSuite then it would likely be categorised as ‘goodwill

- If this issue was only once or twice, at any time, but purely as a result of the short term or unplanned absence, perhaps through illness, of an authorised colleague then it would probably be categorised as 'goodwill'

- If this issue occurred infrequently, but over an extended period because a trained authorised member of staff had left the organisation and no-one had been trained to replace them, then it would be categorised as non-contract support and it would be offset against payments received in a **PSA** engagement

There are some elements of **services** that are outside of contract boundaries where DRL raises charges and have not historically been subject to any 'goodwill' exemption. Although if any of these services are provided remotely a **PSA** customer would possibly benefit from the cumulative billing practice.

There are 3 main categories:

1) Installation or reinstallation of software onto customer devices – e.g. through replacement, addition or estate renewals following theft, fire etc.
2) Any service provided in the recovery from a malicious attack: e.g. Virus or Trojan etc.
3) Any services provided in the recovery, salvaging, restoration or anything whatsoever regards data on customer infrastructure

Software Support: The Boundaries

The Software Support, included within the OpSuite Service Subscription, is technically 'unlimited' in terms of the frequency and the duration it can be accessed however the scope of the coverage is also necessarily narrow consequently. DRL's 'unlimited' approach is because Software Support may have to be accessed because of malfunctions in the software behaviour. This type of issue, we believe, should not be restricted or 'metered' within the context of a Support Service because the OpSuite service is supplied with the reasonable intent, **but not legal liability**, of the software operating precisely as designed. If it is temporarily not doing this our approach is that Support should continue to be available until it is either eliminated, a 'work-around' is provided or it becomes clear an external factor is the cause (*at which point it is identified as 'non-contract'*).

It is equally important to establish that if the causes of issues are, for example, user misuse or devices, or any and all related infrastructure that enables those devices, whether network, broadband, electrical supply, or any issues in the operation of the software caused by infrastructure whatsoever, except under DRLs remit of the Hosted environment, these are **absolutely not covered** under the provisions of the Software Support within the OpSuite Service Fee.

The OpSuite Service Fee, in addition to the Software Support element, effectively encompasses a 'Facilities Managed' solution regarding OpSuite located within our Hosting environment, using ANS (formerly known as UK Fast) as our Partner, and a Help Line for software errors and guidance to utilise the application software to qualified users only.

For absolute clarity - DRLs responsibility is limited to provide, develop, upgrade and support the Hosted environment and the functioning of the OpSuite software, including guidance to trained authorised users only, as per the terms of the Software Support (**Appendix 1**), but not the customer side infrastructure environment used to access and utilise the service.

Software Support – The Boundaries

Potential areas where assistance and advice can be offered (not exhaustive):
Infrastructure, Networking, Comms, Environment, Unskilled Users/New Users

Goodwill Clawback Clause (7.3): An explanation by Richard Goodley, Executive Chairman

Occasionally, but thankfully extremely rarely, the extension of 'goodwill' has been abused by unreasonable enterprises and before the introduction of the clause in our updated Terms and Conditions (7.3) there was no recourse available to DRL in those situations. An abuse of DRL support potentially has an impact on every user of the DRL Support Service as the 'abuser,' unless restrained, monopolises the support resources that we have at our disposal which diminishes what is available to the rest of our customer base. That is not a situation that we find acceptable nor, I suspect, will you.

I wish to state for clarity: When DRL extends 'goodwill' our intention is for it to be 'goodwill.'

Please don't be under any illusion that this clawback is anything other than a deterrent, protection and recourse against abusive and unreasonable behaviour only.

Economically Viable Units (EVU's)

EVU's are designed to optimise the delivery process for services being delivered by DRL resources at customer sites over particular time periods. Many customers, understandably, preference is to have the in-person consultation and training services delivered on their own premises however this is more financially and operationally onerous for DRL to deliver than at DRL.

DRL's services daily rate pricing, in a like for like comparison contrasting consultants' calibre and experience, offers exceptional value for money in our market sector. The **EVU** methodology allows this exceptional value for money to be delivered for on-site services provided the project is structured in a manner than is economically viable. The **EVU**'s result in a single day consumed at considerable distance from DRL being the most expensive option however it also means that a significant discount is achievable for the customer for services they consume in an economically viable manner for DRL.

First let us examine an example scenario below which provides the reasoning behind why the **EVU** structure is necessary:

E.g. If a customer's site was 200 miles away from the DRL offices and the customer wished to purchase a single day of training **services** then this, if limited to a single day charge at the rate/s below, would not be economically viable. This is due to the time required for the consultant to travel to and from the site and the fuel expense incurred. In this situation, the consultant would need to travel to site the night before and stay in the area so that the **services** could take place on the following day. This would mean the day before the training day would not be available to be utilised as a consultation day because part of that time would be needed to travel to site. Then DRL would also incur the fuel expense charges for the consultant at an average rate of £0.45 per mile. This would result in DRL charging only £885 but for the loss of two working days and paying the consultant £180 in expenses (400 miles for the journey to and from site x £0.45 per mile) and this also assumes the customer would agree to cover accommodation and subsistence charges for the consultants overnight stay before the training.

The **EVU**'s are based around the following criteria:

Consultancy / Training / Systems Analysis Services On-Site Daily Charge Rate: £885.00
(This includes an allowance for 7 hours work on-site and 1.5 hours travel each way)

Excess / Additional Travel Time: Per hour £132.00
(Calculated and charged in 0.5 Hour Sections in Excess of the Total Allowance)

Fuel Expenses: £0.45 per mile
(Calculated from DRL Offices (DE21 4SZ) to customer premises postcode. Google Maps quickest time route is used for measurement for both the time travelled and for the fuel expenses. This method is to ensure the customer has a visible and reviewable fixed charge before committing and will not be financially impacted should the DRL resource encounter travel delays en route).

Other Expenses: Ad-Hoc
(In some customer's engagements, flying is the optimal travel option. Accommodation, parking and subsistence expenses are all passed on to the customer at either cost, or often in the case of the latter element a capped amount is agreed in advance).

For on-site **services,** the best **EVU**'s for the customer and DRL are those consumed consecutively, with a proportional reduction in wasted travelling time for DRL and the fuel expenses spread across more than a single day. We are able to discount travel supplements for days booked together as a result on the scale below:

Excess / Additional Travel Time for 2 Days Consecutively: Per Hour – 33% Discount off Standard Rate (Calculated and charged in 0.5 Hour Sections in Excess of the Total Allowance)	£88.00
Excess / Additional Travel Time for 3 Days Consecutively: Per Hour – 67% Discount off Standard Rate (Calculated and charged in 0.5 Hour Sections in Excess of the Total Allowance)	£44.00
Excess / Additional Travel Time for 4 or more Days Consecutively: Per Hour –	No Charge

If we consider the effect of **EVU** on the example customer given on the previous page in two distinct scenarios:

(1). Consultancy / Training **Services** – 1 Day	£885.00
Travel Supplement – (Total Journey 8 Hours – Allowance 3 Hours – 5 Excess x £132 per hour)	£660.00
Fuel Expenses – 400 miles x £0.45 per mile	£180.00
Total Charge for 1 Day Consultancy / Training **Services** On-Site (Plus other expenses)	**£1,725.00**

(2). Consultancy / Training **Services** – 4 Days	£3,540.00
Travel Supplement – No Charge	£00.00
Fuel Expenses – 400 miles x £0.45 per mile	£180.00
Total Charge for 4 Days Consultancy / Training **Services** On-Site (Plus other expenses)	**£3,720.00**

The actual consumption of DRL time by the activity of traveling to site and performing the **services** in example (2) would be nearer 5 days although the charge is for only 4 days. The actual result of applying the **EVU** method is to provide a substantial discounted rate for customers who take the **services** in consecutive bundles.

EVU's are the proof that DRL's motivation is not to attempt to simply increase charges but to work with our customers to manage our mutual budgets in the most effective and efficient manner possible. Further support can be given to this argument by the option made available to customers to consume DRL services in various more financially attractive methods.

There are a range of **Services** and they fall into categories and different terms and rates may apply:

Any variations from the rules above or within the body of a **CPP** or **SP** produced by DRL for a customer are valid (instead of the rules below) only for a period of 30 days from the production of the proposal document and are very strictly limited to the work directly referred to within that proposal document. Any variances from the rules stated above or below are not permanent and all future business conducted between DRL and the customer will be bound by the rules within the Engagement Document unless subsequent proposals also include specific customer conditions. For the removal of doubt each and every time business is conducted between a customer and DRL the terms of business will be as detailed in this document unless specifically excluded in writing in a proposal document supplied by DRL to the customer. For ease of administration an email is considered acceptable to facilitate quick decision making.

Pricing Policy: Annual Uplifts

The standard DRL charges, for the provision of professional services, software and support, incurred no increase whatsoever during the period from the Lehman's crisis in September 2008 until October 2014. Many other charges increased, or altered, over this timeframe however all of those were as a result of input costs from our suppliers changing.

The overall approach of DRL from October 2014 was that we could no longer continue to allow our charges to atrophy over time as inflation eroded the value returned to DRL. As with many organisations DRL instituted measures to achieve maximum efficiencies as a direct result of the financial crisis and costs were reduced wherever possible provided they did not directly impact the level of service provision. After six years of absorbing those inflationary costs, DRL was no longer able to continue this without the service levels being subject to negative impacts. DRL therefore introduced a transparent method whereby our standard charges were subject to an inflationary adjustment on an annual basis to maintain, not raise, their market value. We stress that the uplift is to maintain the charges at a stationary market value and not an increase in inflation adjusted terms.

The main components of our calculations to adjust for inflationary pressures are calculated on an annual basis from July to July, or nearest available published figures, utilising the readily accessible databases from the Office for National Statistics for Average Wage Inflation and the Consumer Price Index. As the major element of the fixed costs for DRL is human resources, which accounts for over 75% of total costs, the AWI plays the biggest role in the calculation. The formula DRL uses as a guideline will be an annual rate based upon a weighted average of 75% on the AWI and 25% on the CPI. This is reviewed each year and applied to the relevant DRL direct charges for goods and services. The actual value uplifted each year will also take into account the rounding to the nearest sensible figure.

This will result in some years the uplift being slightly more or less than the actual uplift weighted average would suggest. If DRL rounded down one year in the charges issued this will not be the base point for the recalculation 12 months later. For example, if a charge was £100 and the uplift suggested the new price should be £103.34 the actual charge would likely be £103.00. The recalculation 12 months later would apply that new average weighted figure onto the original £103.34 not onto the rounded down figure of £103.00.

Business Applications and/or Infrastructure Expertise; Systems Analysis, Software Development & Project Management

Project Management (PM)

This service is led by the Operations Director, Chris Worthington, with the assistance of his Management team and associated staff. The costings included in DRL proposals are based upon estimates for the **PM** resource requirements for the Operations Director, Consultants and related staff involved in the project to bring the project to its successful conclusion. To start any reasonably complex project usually the Commercial Director would either attend site for a Project Initiation Meeting or perform the process via a conference call. If he were to be accompanied to site, or joined on the call, by an administrative colleague a charge for his utilisation only would be incurred. However, if the Commercial Director was required to also utilise a Consultant then his charges would be incurred plus the prevailing rate for the Consultant. Further to the initial Project Initiation Meeting much of the **PM** that follows, although not always, encompasses work that mostly takes place 'out of sight' within DRL such as procurement, resource allocation & management, preparation, organisation and on-going communication internally and externally. There can also be elements of further on-site engagement, for example but not exclusively, to work through aspects of project planning in a collaborative setting.

DRL proposals generally include the requirement for the Project Initiation Meeting and a charge for an estimated number of hours for the performance of internal **PM** tasks and duties. The RUR is used to track time and any additional time consumed will result in additional charges.

Systems Consultancy

Consultation is differentiated from Application Training because it is a process of the unique 'transfer of expertise' from DRL to the customer organisation on the specific topics which are the most important to that organisation. A major aspect of the process is the analysis of customer business processes and the mapping of the configuration, set-up and procedural activities to fit to, or adjust those, business processes to achieve maximum return on investment. Consultation therefore involves similar processes to application training however also includes analysis, design, configuration, set-up, problem solving and hand holding. Because Systems Consultancy is unique to each customer it is more difficult to estimate how much each customer will require. For example, one customer may wish to begin with a 'vanilla' set-up of OpSuite whilst another may have a very specific focus on loyalty or promotions programmes that requires greater analysis and configuration. Or one organisation may have a strong core of IT literate operators whilst another may have very few IT skilled personnel. The Consultancy requirement is far more variable on a customer by customer basis than Application training as a result.

Application Training

Fundamentally this service is the most predictable and structured element of Systems Consultancy. Training imparts the necessary information to enable customer staff to utilise the functions of the OpSuite solution being deployed. There are a broad range of functional areas within OpSuite and a standard training course duration is needed to impart this fundamental level of knowledge. Although this is by its very nature less variable than Systems Consultancy some organisations need more time than others to complete the basic training and this is particularly common in situations where there are larger numbers of trainees receiving instruction concurrently.

Systems Analysis

The analysis stage of a development project, variable due to the differing approaches available to the customer, required to gain full understanding of business issues and requirements. The process involves meetings, discussions, preliminary reports and the production of a final Professional Specification Document **(PSD)** or Functional Requirements Definition **(FRD)**. The differences between the **PSD** & **FRD** are detailed in the Bespoke Development section.

Software Development

Work performed by a developer and associated testing professional, project managed by the Operations Director's team, to provide enhancements to the standard product ranging from bespoke / specialist reports to major functional enhancements based upon the outcome of the **PSD**, **FRD** or on a contract basis.

Systems Implementation

Covers all infrastructure activities: hardware, software, EFT basic set up and installation at DRL and basic set-up, installation and delivery to site and on-site. These are the services provided typically by DRL engineering and infrastructure staff. The provision of installation services are associated with the task being completed more so than time spent at site. This is due to the nature of the services being task orientated rather than the intellectual transfer involved in the consultancy, systems analysis, project management and training services. Although infrastructure specialists and engineers generally provide these functions, where it is most efficient, consultants can sometimes perform 'Implementation' functions as a sub-set of their job to reduce overall cost by requiring fewer site visits.

1) **Services** charges are the current daily rate on site or at DRL, Monday to Friday, excluding English Bank Holidays.

2) **Services** charges are current daily rate x 1.5 on site or at DRL, Saturday, Sunday, English Bank Holidays or out of standard hours.

3) **Services** can be consumed, where appropriate, as a remote on-line **service**. In this specific format **services** can be provided in hourly units. Remote on-line **services** can also be provided on an ad-hoc basis, outside of a project, and will be billed at £132/hour or segment of an hour used above the minimum £132 charge.

4) Excess charges are £132 per hour. This is when the **services** being delivered in a 24-hour period extends beyond the contracted definition of a day but specifically excludes travelling time which is covered by the **EVU** conditions. The *additional hours consumed above and beyond those contracted will be charged at £132 per hour or segment of an hour used above the minimum £132 charge.

5) *Hours consumed between the hours of 6pm to 6am will be the current rate x 1.5.

6) The DRL resource will not be required to explicitly request authorisation for these additional costs in the situations where they are deemed necessary. The additional **services** can proceed without authorisation unless agreed otherwise in advance on a customer specific basis.

7) All charges, unless otherwise specified, relate to a single DRL resource. If one DRL consultant/infrastructure specialist were on site providing **services,** the appropriate prevailing rate would be levied. If two DR consultants/infrastructure specialists were on site providing **services** two charges would be levied. The charges are per person (DRL resource).

8) A 'knowledge transfer' service day is defined as 7 hours providing **services** with the customer allowing the provider (the DRL Resource) reasonable opportunity to take a working lunch, which typically involves having a sandwich/buffet whilst continuing to work. Any hours consumed beyond the 7 hours (excluding the travel time allowance and any DRL resource initiated break during the service provision for example a phone call or lunch break) result in additional charges.

A service day involving infrastructure services/engineering time based at DRL will be calculated on a time utilised basis. On-site infrastructure/engineering services will be calculated on a 'fee for completed task' basis on the assumption that all necessary circumstances have been fulfilled, which is the responsibility of the customer, for the task to be completed. If the infrastructure specialist/engineer cannot fulfil the task through no fault of their own, for example the cabling has not been installed by a 3rd party or shop fitting services have not been completed and the infrastructure/engineer has to wait before being able to complete their task then excess charges will be raised in the event time overruns the same daily allowances as outlined for the knowledge transfer examples given previously. For clarity if the total time exceeds 10 hours including the 3 hour allowances for travel then additional charges will be incurred unless the services are specifically ordered as a fixed fee service regardless of time consumption.

The on-site day starts from the point the DRL resource arrives and is ready to deliver **services**, not the time at which the customer may become available or makes a room available, provided the arrival is not before the customer's usual start time, but also on condition that the start time is no later than 9.00am.

1) There is no provision for half day on-site **services**.

2) If the customer is not able to utilise the 'knowledge transfer' **services** provided by DRL because of issues that are not due to DRL activities the day will be deducted from the project allowance or, if being done on an ad hoc basis, will be billed at the appropriate rate. Example reasons include business distractions taking customer staff out of training situations or similar events. The project management in terms of making customer personnel available to take full value from the **services** provided is entirely the customer's obligation.

3) If for the following reasons, but not limited to, illness, mechanical failure, accident or unfavourable road traffic conditions the DRL resource fails to arrive on site before 11.00am, unless otherwise specified, the customer has the right to cancel the **services** day without charge. If the customer decides to proceed to utilise the **services,** the DRL resource will deliver the full 7 hours unless instructed otherwise. If the customer decides to proceed then the day will be billed or allocated in full even if the customer chooses not to consume the full 7 hours.

4) If onsite work is to be delivered in consecutive days for a customer where the DRL personnel are required to stay locally the customer is required to refund reasonable overnight accommodation and subsistence.

5) Cancellation or Postponement of **services** within 5 working days (not including weekend days / English Bank Holidays) of the scheduled appointment by the customer due to circumstances not within DRL's direct control, but not including failure by DRL to receive delivery of necessary goods, will result in the **services** being billed in full. All orders for **services** are taken explicitly on this condition. For clarity, this example is provided:

A cancellation received from the customer in writing, email being sufficient for satisfying this condition, on Thursday for **services** scheduled for the following Wednesday will incur costs for the customer. If the cancellation is received on the Tuesday or earlier the **services** scheduled will not be billed.

Bespoke Development - Rules Of Engagement & Bespoke Specific Terms of Business

The most common issue with development projects is variance between the interpretation and expectation of the customer and what the development team builds and delivers.

- DRL present the viable alternative approaches in this arena.
- To achieve the closest fit of expectations to development delivery requires the production of a professional specification document (**PSD**), which is the highest cost initial stage method. Conversely the greatest potential for variance between customer expectations and development team delivery is when a low cost, low detail functional requirements outline document (**FRO**) is the initial stage method.
- Any corrective action to address variances in functionality or mode of operation of the solution will result in increased costs for the customer through the **CRN** process.
- DRL's goal is to make sure its customers are aware of the benefits and drawbacks associated with each different approach which allows business decisions to be made with clear foresight of these probabilities.

With regard to this information above the following paragraph is of extreme importance for a DRL customer to fully understand before making a commitment:

Note: DRL is not obliged under contract to correct variances in expectations without charge if DRL has delivered product in line with the relevant document. The customer is responsible for funding functionality variances should they deem it to be operationally necessary to do so.

The following are the outline points regarding the options provided by DRL under which development services projects can be commissioned:

There are various forms of bespoke project definition documents. These depend on the investment the customer is prepared to make at the outset and how much the product needs to precisely operate in the way the customer requires. In some cases, the requirement is to complete a specified task, or tasks; however, it is not critical when the task is initiated within the system operations or how the interface is constructed. In other cases the ergonomic design and the workflow sequencing are critical to the usability and the value of the solution. It is for the customer to decide, with DRL providing expert advice, upon the level of investment that they are prepared to make in the first stage with the knowledge that bespoke development does not deliver 100% of customer expectations within a first iteration. The closeness of fit for the first iteration is hugely enhanced when a fully detailed Professional Specification Document (**PSD**) is provided in which the customer has actively participated, or when the customer takes a DRL development resource on contract work and manages the project directly.

Categories of Approach

The main categories of approach are as follows:

1) **Professional Specification Documents (PSD)** contain the most detail including proposed software look and feel with screen shots of the user interface and detailed work flow diagrams. The opportunities for variations of interpretation between the customer's expectations and the delivery of the system in line with the document are very low with the specification document approach. Specification documents involve extensive consultancy prior to any coding and can consume significant percentages of the total budget for the completed task. The total task budget cannot be accurately measured until the specification process is completed therefore preliminary estimates are highly prone to alteration, sometimes significantly.

2) **Skilled Development Resources (SDR)** are available on contract from DRL to work on customer projects and can be based at DRL or on-site, although on-site costs are higher. In these circumstances the developer is available to the customer to consult, code and test. Many customers who adopt this approach do so because they have not yet fully defined the parameters of the project they are embarking upon and utilise the resource for extensive prototyping which is an entirely valid approach.

3) **Functional Requirements Definitions (FRD)** are documents derived from consultancy but constrained to producing a list of functional requirements but not expanded to the point of user interface design or workflow. The consultancy process will be shorter than that required to produce the **PSD** and the initial cost will therefore be reduced however the likelihood of variance is more than that with a **PSD**. The **FRD** approach is advisable when the UI design and workflow are not of critical importance and the budget is constrained.

4) **Functional Requirements Outlines (FRO)** are documents derived usually without consultancy due to the lack of complexity or scale of the proposed development work. It has all of the same characteristics of the **FRD** however is likely to contain less detail and therefore the potential for variances is greater than the **FRD**.

There is a further aspect of this approach when the **PSD**, **FRD** or **FRO** is provided by the customer organisation as a result of internal work or by collaboration with a 3rd Party. In the case of the **PSD** or **FRD** then DRL would require charged consultancy time to be authorised by the customer for it to be able to study the details of the pre-prepared documents to provide a reasoned and valid proposal based upon their contents. If the scope of the **PSD** or **FRD** were particularly extensive then the potential cost savings made by the customer if they were to carry out this process internally could be significant. In the case of the **FRO** it might require consultancy however depending on the scale of the requirement DRL may offer a proposal without additional consultancy charges.

The Development Specific Terms Of Business & Project

Process Flow:

The proposal offered by DRL at the projects outset, based upon whatever method of analysis favoured by the customer, is for the creation and delivery of bespoke software developed in line with the relevant documented specification at the time of order only. DRL's obligation is to interpret the documentation and deliver a product that works as described in said documentation but not to incorporate any changes, whatever they are, post the order point without the production of a Change Request Note (**CRN**) and the receipt of authorisation for any charges from the customer. Any disagreements about interpretation of the documentation where DRL demonstrably meets the description, regardless of if there are alternative valid interpretations, after the time of the order placement will also result in a Change Request Note (**CRN**) being issued from DRL to the customer. All changes, modifications or alterations from the time of order placement will not be acted upon by DRL until the customer has fully authorised the **CRN** including associated costs. As almost all authorised **CRN**s will result in additional charges they will therefore have an impact on budget. The customer should be fully aware of this potential impact on final budget when deciding upon the method of project definition and authorising changes to the original **PSD**, **FRD** or **FRO**.

The outline ways in which development projects move forward can be managed as follows.

Customers provides requirements to DRL

The customer provides a **PSD**, **FRD** or **FRO**. This is not common in the circumstances where DRL is supplying an initial OpSuite implementation as the very nature of these projects means that the customer must already be intimately familiar with the application at the point of specification to understand workflows and interface design issues. This is a valid approach, however, in appropriate situations. The customer may choose to use a 3rd party to provide this **PSD**, **FRD** or **FRO** but again the same constraints regarding knowledge of the business applications involved remains. Regardless of the process to create the document DRL needs to carry out a consultation period, perhaps without charge for the **FRO**, to go through the document details. The purpose is to validate the requirements and confirm a working system can be provided and at what cost.

Customer proceeds with specification (PSD) performed by DRL

The customer in this case requires the system to be exactly designed to the last detail including functionality, work flow and UI.

This process will roughly follow these stages:

1) DRL provide an estimate of the guideline price following a conversation about the requirements either on-site or by telephone.

2) The customer commits to an initial consultative process contribution that needs to be agreed in principle before the next stage goes ahead. The initial commitment is for a functional requirements meeting, report and review.

3) This stage does not address functionality, workflow or user interface issues in particular detail but does form the basis of an estimate of the consultative requirements that will be needed to create the final **PSD**. The customer needs to commit to an essentially open-ended arrangement whereby our systems analyst will work with them to create a document, including screen shots, of the system so that they know exactly what they will be getting.

4) This open-ended element of the process is customer-driven to a substantial extent therefore the scale of investment is implicitly being managed by the amount of work the customer requires of the systems analyst. There is a minimum involvement below which the analyst cannot do their job however the customer can contribute to keeping costs down by

preparing in detail prior to any scheduled meeting in order that the billable professional services are efficiently optimised. This high customer involvement level is something DRL actively encourages as it is beneficial for the customer and for DRL as it assures the customer has a deep and broad understanding of the development project which most commonly results in greater final satisfaction levels. This process is complete when a document has been created including detailed functional descriptions with relevant user interface designs and workflow diagrams.

5) DRL will supply to the customer a proposal for the development of the documented system and also for the ongoing mandatory maintenance and technical support and this will need to be authorised by the customer for the coding and testing elements of the process to commence.

6) The terms of proceeding on the **PSD** track is that functionality, UI and Workflow will match the final specification document as defined at the point of signing.

Any changes whatsoever subsequent to the signing off of the **PSD** doc regarding functionality, workflow or UI will result in additional charges via the Change Request Note (**CRN**) process.

The advantage of this highly involved and detailed process is that the resultant system will be exactly as the customer envisaged but it will require a significant investment.

Customer proceeds with FRD or FRO

The customer may decide against the route of a detailed specification including work flow and screen shots but follow the **FRD** method and will still expect the solution to fulfil functional requirements even if this is with explicit recognition that it may not be delivered in exactly the aesthetic substance or process order as they imagined.

This process will roughly follow these stages:

1) DRL provide an estimate of the guideline price following a conversation about the requirements either on-site or by telephone.

2) The customer commits to an initial consultative process contribution that needs to be agreed in principle before the next stage goes ahead. The initial commitment is for a functional requirements meeting, report and review.

3) This stage does not address functionality in detail but does form the basis of an estimate of the consultative requirements that will be needed to create the final **FRD**. The customer needs to commit to an essentially open-ended arrangement whereby our systems analyst will work with them to create a document detailing the functionality of the system so that they know exactly what the system will do.

4) This open-ended element of the process is customer driven to a substantial extent therefore the scale of investment is implicitly being managed by the amount of work the customer requires of the systems analyst. There is a minimum involvement below which the analyst cannot do their job however the customer can contribute to keeping costs down by preparing in detail prior to any scheduled meeting in order that the billable professional services are efficiently optimised. This high customer involvement level is something DRL actively encourages as it is beneficial for the customer and for DRL as it assures the customer has a deep and broad understanding of the development project which most commonly results in greater final satisfaction levels. This process is complete when a document has been created including detailed functional descriptions. This process will not involve interface design and workflow to any great detail, unless specifically designated by the customer, and will therefore require lesser investment levels than a **PSD** process for the same job.

5) DRL will supply to the customer a proposal for the development of the documented system and also for the ongoing mandatory maintenance and technical support and this will need to be authorised by the customer for the coding and testing elements of the process to commence.

6) The terms of proceeding on the **FRD** track is that the functionality to be delivered will match the final specification document as defined at the point of signing. Also, before committing to this project the customer needs to be fully aware that this approach requires them to accept and agree that DRL has fulfilled its contracted obligations when software functionality is provided as per DRL's interpretation of the **FRD** and the workflow and interface will also be designed to DRL's interpretation.

7) Any changes whatsoever subsequent to the signing off of the **FRD** regarding functionality, workflow or user interface will result in additional charges via the Change Request Note (**CRN**) process.

8) The advantage of this approach is it will be less expensive than a **PSD** and the customer will be very discerning about changes they ‘need’ as opposed to changes that they ‘want.’

Customer chooses to purchase short term DRL development resource

The customer can always book the resource on a daily or weekly or even monthly basis to be available to fulfil their requirements. The customer shall be responsible for the management of the resource and all testing of the final outcome and DRL shall not in any way be liable for the work provided in terms of functionality, work flow, suitability for purpose or UI design.

Exceptions to the Processes Above

There are two key areas of development projects that provide particular and individual challenges.

These are the process of migrating data from one database to another and the creation of new management reports.

*Data Migration (Import)

Data migration is rarely performed out of a ‘clean’ sample database but most regularly uses existing customer data which will potentially include many years of misspellings, duplications, extinct records and even corruptions. The process of taking this data and migrating it into a recipient business application database is therefore extremely complicated. The DRL resource can deliver the skills to migrate the data however it is impossible to analyse and predict at the outset of the project how much resource will be required to perform the task. The DRL resource cannot complete the task without decision making access to the correct resource within the customer organisation. The issues are many but in particular when a duplicate record is identified it is a customer management decision, not a DRL technical decision, which record is to remain and what should be done with the duplicate(s). It is also a management decision to identify if all records on which there has been no activity should be kept or whether they are now defunct and can be removed. All delays in the customer decision making process results in the DRL technical resource being unable to complete their task at maximum efficiency and therefore costs may be higher than necessary.

Data migration is significantly different to other development processes in that there is not a valid preparation method that can result in a truly accurate estimate of the time taken to perform the function. There is one slight exception and this is when the customer takes the responsibility to ‘clean’ the data before DRL is required to migrate it into the target business application. This exception is slight because there is a high probability that errors in the data will still be found and this can impact DRL resource requirements and therefore budget. DRL can only advise that the most efficient and therefore cost effective method of migrating data from one system to another is for the customer to ‘clean’ the data prior to DRL’s involvement and then to ensure that when DRL are performing the import that the requisite managerial resource is available to make any decisions throughout the process in a timely fashion. The difficulties inherent in Data Migration means that DRL does not provide fixed proposals for this service. Estimates will be provided but they are not binding and charges will be raised against actual resource utilisation. It is important that the customer understands the issues involved in this process to ensure an efficient process and to manage investment levels.

Report Generation

Report generation is an area that many customers find difficult to define with clarity during the initial stages of the project. In the case of a **PSD** this does focus attention and provide clarity but DRL recommends that customers be aware that there remains a high probability that in the latter stages of the project changes to reports will become a feature issue. From extensive experience over many years DRL recommends that reports are either defined under a **PSD** approach at the project consultancy stage, as the **FRD** method is wholly insufficient for this requirement, or the reports are left as a separate function until the main functional development process is well advanced or even completed. DRL has found that many customers only truly define report requirements once they have started to use the system in a live environment. DRL cautions customers to be wary when considering reporting requirements and as a result recommends that in most cases, unless needs are very clearly defined, they do not form part of the initial project scope. Customers must take this into account when managing budgetary expectations. The difficulties inherent in defining reports mean that DRL is reluctant to provide fixed proposals for this service and recommends against it.

Estimates will be provided but they are not binding and charges will be raised against actual resource utilisation. It is important that the customer understands the issues involved in this process to ensure an efficient process and to manage investment levels.

Company & Insurance Cover Details

Company Details

Name	**Davidson-Richards Ltd**
Address:	Systems House, The Parker Centre, Mansfield Road, Derby, Derbyshire, DE21 4SZ
Delivery/Goods Returns/Invoice queries	Address as above - any returns must be accompanied by paperwork

Contact Details

Telephone Number	+44 (0) 1332 383231
Website	www.davrich.co.uk
Email	info@davrich.co.uk

Payment Details

Payments by cheque	Post to the above address
Payments by BACS	Please pay into the following bank account

Bankers	Barclays Bank PLC, East Midlands Relationship Team, 2 Chilwell Road, Beeston, Nottingham, NG9 1EF
Sort code	20-63-25
Bank Account No	30922455
Account Name	Davidson-Richards Ltd
Remits to	accounts@davrich.co.uk

Legal Details

VAT Registration:	797 0651 89
EORI Number:	GB7970651890000
Company Registration:	04385701 - Registered in Cardiff
Directors:	**R D Goodley, K Bateman, C Worthington, A Simpkins**
Registered Office:	Systems House, The Parker Centre, Mansfield Road, Derby, Derbyshire, DE21 4SZ

Insurance Cover Details

Insurance Cover for	Davidson-Richards Ltd
Public & Products Liability Insurers	Victor Insurance underwritten by Ageas Insurance Limited
Period of Insurance	Annually from 20th February
Details	Cover for the insured's legal liability for accidental bodily injury or damage to Third Party property with an indemnity limit of £5 million
Clauses	Indemnity to Principal i) Subject otherwise to the standard terms and conditions of the policy ii) The information provided is based on the insurance arrangements at the time of writing iii) Alterations may be made during the period of cover
Professional Indemnity Insurers	Hiscox Insurance Company Limited
Period of Insurance	Annually from 1st March
Details	Professional Indemnity cover for £3 million for any one claim
Geographical Limits	Worldwide
Jurisdiction	Worldwide excluding USA/Canada
Support Contracts	Each DRL support contract terms and conditions is included within this Engagement Document. Our commitment and liability regarding support issues is clearly defined within these documents.

OpSuite SaaS Agreement

DATED Date

OpSuite (SaaS) Agreement

Company Name

OpSuite Europe:
Davidson Richards Ltd.
Systems House
The Parker Centre
Mansfield Road
Derby
DE21 4SZ

THIS AGREEMENT made this Date

PARTIES

1. **DAVIDSON RICHARDS LIMITED** whose registered office is at: Systems House, The Parker Centre, Mansfield Road, Derby, Derbyshire, DE21 4SZ

2. **CUSTOMER NAME** whose registered office is at the Customer's address ("the Customer").

NOW IT IS AGREED as follows:

1. **Definitions & Construction**

1.1 In this Agreement the following expressions shall apply (save where the context otherwise requires):

"Affiliate"	means each and any Subsidiary or Holding Company of a party and each and any Subsidiary of a Holding Company of a party.
"Authorised Users"	means those employees and independent contractors of the Customer who are entitled to use the Software through the services under this Agreement.
"Commencement Date"	Date
"Customer Data"	means all data processed by OpSuite (DRL) or otherwise provided to OpSuite (DRL) pursuant hereto.
"Customer Equipment"	means the hardware and software which the Customer is required to have in use in order to use and enable the services to be provided in accordance with this Agreement.
"Data Protection Legislation"	(i) unless and until the General Data Protection Regulation (EU 2016/679) (**GDPR**) is no longer directly applicable in the UK, the GDPR and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then (ii) any successor legislation to the GDPR or the Data Protection Act 1998.
"Downtime"	means a period during service hours during which, as a result of OpSuite (DRL)'s failure to provide the services, OpSuite cannot be accessed or used by the Customer.
"Intellectual Property Rights"	means all copyrights, patents, database rights, registered and unregistered design rights, trademarks and service marks and applications for any of the foregoing, together with all trade secrets, know-how, rights to confidence and other intellectual and industrial property rights in all parts of the world and for the full term thereof including all rights to renew the same.
"Month"	means a calendar month and "monthly" shall be construed accordingly.
"OpSuite"	means the Software created by OpSuite (DRL) which provides the functions set out in the Proposal and which will be hosted by OpSuite (DRL) and provided remotely to the Customer as part of the services.

"OpSuite POS"	means the Software created by OpSuite which provides the functions set out in the Proposal and which will be installed at points of sale in the Customer's retail stores.
"Outage"	means an instance of Downtime.
"**Privacy & Data Protection Requirements**"	means the Data Protection Directive (*95/46/EC*), the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (*SI 2000/2699*), the Electronic Communications Data Protection Directive (*2002/58/EC*), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (*SI 2426/2003*) and all applicable laws and regulations relating to the processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner or any other supervisory authority, and the equivalent of any of the foregoing in any relevant jurisdiction.
"Proposal"	means the proposal for the provision of services by OpSuite (DRL) to the Customer "Proposal Name."
"PSA Subscription"	shall have the meaning given to it in the Support Terms.
"Server"	the computer(s) used by OpSuite (DRL) to provide the Services.
"Service Fee"	the fee which covers the provision of the Services and the Support Services for the Term and is payable monthly in advance by Direct Debit.
"Service Hours"	means the hours during which the Services are to be provided as set out in Schedule 1.
"Service Interruption"	means a period during Service Hours during which there is partial loss of the Services.
"Service Levels"	means the levels of performance to which the Services are to be provided to the Customer by OpSuite (DRL) as set out in Schedule 2.
"Services"	means the set-up, and on-going management of the Software and the remote provision and hosting of OpSuite of it to the Customer, as set out in more detail in the Proposal.
"Software"	means OpSuite and/or OpSuite POS as the case may be.
"Support Services"	means the Support Services provided by OpSuite (DRL) to the Customer, in accordance with the Support Terms.
"Support Terms"	means OpSuite's (DRL's) Terms and Conditions of business (as amended from time to time) for the provision of Support Services, as detailed within the Engagement Document or available upon request.
"System Management Regulations"	means regulations introduced by OpSuite (DRL) from time to time for the better management of the Services and which may include (but are not limited to): (i) Defining minimum specifications for Equipment used by the Customer to interface with the Services (including, but not limited to, routers, firewalls and PCs); (ii) regulations to ensure that the network through which the Services are provided is not overloaded and that the security and

integrity of the network is maintained and including regulations which arise from the need to comply with regulations of any data centre facility engaged by OpSuite (DRL) in connection with the Services; and

(iii) Regulations to ensure that any database or other applications which form part of the Services are used to the best effect and within their capacities.

"Term" means the effective Term of this Agreement as defined in clause 3.

1.2 The headings in this Agreement do not affect its interpretation. Save where the context otherwise requires, references to clauses and schedules are to clauses and schedules of this Agreement.

1.3 Unless the context otherwise so requires:

1.3.1 References to OpSuite (DRL) and the Customer include their permitted successors and assigns;

1.3.2 References to statutory provisions include those statutory provisions as amended or re-enacted;

1.3.3 References to any gender include all genders;

1.3.4 Words in the singular include the plural and in the plural include the singular.

2. Provision of Services & Licences

2.1.1 OpSuite (DRL) agrees with effect from the Commencement Date in consideration of the payment of the Service Fee by the Customer to supply the Services on a non-exclusive basis upon the Terms and Conditions of this Agreement.

2.1.2 The Customer acknowledges that OpSuite (DRL) may at any time, and without notice, incorporate licence management software into the Software for the purposes of ensuring that licence rights are not exceeded.

2.1.3 Where the Customer purchases Support Services from OpSuite (DRL), the Customer acknowledges and accepts that the Support Services shall be subject to, and be provided in accordance with, the Support Terms.

3. Term

3.1 This Agreement shall commence on the Commencement Date and shall (subject to the provisions for termination set out in this Agreement) continue unless terminated by in accordance with clause 3.2.

3.2 Either party may terminate this Agreement: at any time on giving not less than [90] days' notice.

4. Service Fee

4.1 The Customer undertakes to pay the Service Fee for the Services and additional fees to OpSuite (DRL) for any other services provided by OpSuite (DRL), such charges to be based on OpSuite (DRL)'s then current charging rates.

4.2 OpSuite (DRL) shall require the Customer to pay the Service Fee monthly in advance by Direct Debit as set out in the Proposal.

4.3 The Service Fee covers the number of Stores, Lanes & any additional back office users required as set out in the Proposal; any increase in the number of Authorised Users or additional heavy usage surcharges will result in a pro-rated increase. If such increase occurs during the course of the Month, the remainder of that period as well as future Months will be subject to the pro-rated increase.

4.4 All usage invoices, including the PSA Subscription (if requested), are payable by Direct Debit unless otherwise stated in writing. All professional services and/or hardware are payable upon the non-Direct Debit terms stated in the proposal unless otherwise stated in writing in the standard Terms & Conditions.

4.5 OpSuite (DRL) shall be entitled to suspend service to the Customer by restricting access to the Software until the overdue payments are made and OpSuite (DRL) retains the right to charge the Customer interest in respect of the late payment of any sums due under this Agreement (after as well as before judgement) on a daily basis at the rate of 3 percent per annum above the base rate of Barclays Bank plc. from the due date therefore until payment.

4.6 OpSuite (DRL) will uplift the Service Fee annually on the 1st of October or by giving at least 90 days' prior written notice (email shall be regarded as an acceptable form of notice) as to what the new Service Fee will be. The annual uplift will be based around the annual inflation rates for Wage Inflation and CPI (Consumer Price Index). The uplift is required to maintain the service fee at a stable market value over the long term.

4.7 All sums due under this Agreement are expressed exclusive of VAT but will be subject to VAT which will be payable by the Customer.

5. Service Levels

5.1 OpSuite (DRL) undertakes with the Customer that it will use its reasonable endeavours to ensure that the Services and each component thereof will, subject to Clauses 10.5 and 15, be provided to the levels of performance specified in the Service Levels save where otherwise expressly provided for by this Agreement. Support Services offered by OpSuite (DRL) will be governed by the Support Terms.

6. Outages, Service Interruptions & Changes to Services

6.1 Outages or Service interruptions will be made by OpSuite (DRL) when, in its reasonable opinion, they are necessary to facilitate improvements to or maintenance of the Services. OpSuite (DRL) will use reasonable endeavours to minimise the Outages or Service Interruptions that may be caused by a change.

6.2 When Outages or Service Interruptions are required under Clause 6.1, OpSuite (DRL) will endeavour to schedule them so as to minimise impact on the Services and will notify the Customer of the anticipated commencement time and its estimated duration. These interruptions will not be considered a break in service.

6.3 Customer requested interruptions (including, but not limited to, cessation of operations whilst suspected employee fraud is investigated) will be fulfilled but will not be considered a break in service, and will not be a factor when calculating breaches of the Service Levels for any purpose or give rise to any liability on the part of OpSuite (DRL). The Customer is required to request such interruptions via the customer support number and the request will generate consultancy charges for the time required. This type of request will require an absolute minimum notice period of 1 hour during normal support desk operational hours. These restrictions can be facilitated within the OpSuite application therefore the Customer can provide their own protections at zero costs from OpSuite (DRL).

6.4 OpSuite (DRL) shall provide initial notice to the Customer's Representative by telephone, email, or comparable notification service within 8 hours of OpSuite (DRL) becoming aware of an event that has caused or may cause an unscheduled Outage. If the Customer becomes aware of such event without having been previously notified thereof by OpSuite (DRL), the Customer shall promptly provide initial notice to OpSuite (DRL) via customer support. Status reports about the event will continue at daily intervals until either the event has been resolved or OpSuite (DRL) and the Customer have agreed a course of action that does not require continued notification.

7. Warranties & Indemnities

7.1 OpSuite (DRL) warrants to and undertakes with the Customer that:

7.1.1 OpSuite (DRL) will use its reasonable efforts to provide the Services and to exercise reasonable care and skill and in accordance with the terms of this Agreement; and

7.1.2 OpSuite (DRL) has full rights, power and authority to provide the Services to the Customer in accordance with the terms of this Agreement.

7.2 Except for the express warranties set forth in this Clause 7, the Services are provided on an "as is" basis, and the Customer's use of the Services is at its own risk. OpSuite (DRL) does not make, and hereby disclaims, any and all other express and/or implied warranties, statutory or otherwise, including, but not limited to, warranties of merchantability, fitness for a particular purpose and any warranties arising from a course of dealing, usage, or trade practice.

7.3 OpSuite (DRL) does not warrant that the Services will be uninterrupted, error-free, or completely secure even allowing for the fact the hosting partner, where the OpSuite solution resides, offers advanced firewall and anti-virus protection.

7.4 OpSuite (DRL) does not and cannot control the flow of data to or from its network and other portions of the Internet. Such flow depends in large part on the performance of Internet services provided or controlled by third parties. At times, actions or omissions of such third parties can impair or disrupt connections to the Internet (or portions thereof). OpSuite (DRL) will not be liable for any interruption of the Services arising out of or in connection with such impairment or disruption.

8. <u>Customer Obligations & Warranties</u>

8.1 The Customer is required at all times during the term to maintain the Customer Equipment in good order and working condition and to provide prior written notification to OpSuite (DRL) of any changes it makes in respect thereof. At no time during the Term shall the Customer permit the Customer Equipment to fall below the specifications therefore contained in the Engagement Document Schedule 1 and, if present, the Proposal. If there is any breach by the Customer of this clause 8.1 the Supplier will not be liable for any lack of compatibility between the Software and the Equipment.

8.2 The Customer shall provide all such assistance, facilities and information to OpSuite (DRL) as OpSuite (DRL) may reasonably require in order to enable it to carry out its obligations under this Agreement.

8.3 The Customer undertakes at all times during the Term to comply with all current System Management Regulations. OpSuite (DRL) shall give not less than 28 days' written notice (to include email as a valid type of communication) to the Customer of additions and changes to System Management Regulations.

8.4 In the event that the Customer is in breach of any of its obligations under this Agreement, then:-

8.4.1 OpSuite (DRL) cannot be held responsible should the Services fail to comply with the Service Levels as a result (directly or indirectly) of such Customer breach;

8.4.2 OpSuite (DRL) shall be entitled to charge the Customer for staff time engaged on rectifying any resulting problems at OpSuite (DRL)'s then current standard charging rates; and

8.4.3 OpSuite (DRL) may without any liability terminate or suspend the Services without prejudice to any other pre-existing rights and obligations of either party.

8.5 The Customer represents, warrants and undertakes that:

8.5.1 It has and shall during the Term have the legal right and authority to use and have used the Service as contemplated under this Agreement;

8.5.2 It will use the Services only for lawful purposes and in accordance with this Agreement; and

8.5.3 any software, data, equipment or other materials provided by the Customer to OpSuite (DRL) or employed by the Customer in its use of or receipt of the Services shall not infringe any Intellectual Property Rights of any third party and shall not be obscene or defamatory of any person and shall not violate the laws or regulations of any state or nation which may have jurisdiction over such activity.

8.6 In the event of any breach of any of the foregoing representations or warranties, in addition to any other remedies available at law or in equity, OpSuite (DRL) will have the right to suspend immediately any related Services if deemed reasonably necessary by OpSuite (DRL) to protect the proper interests of OpSuite (DRL) or its other customers.

9. <u>Security</u>

9.1 Each party recognises that it is impossible to maintain flawless security but (where relevant) OpSuite (DRL) shall take all reasonable steps to prevent security breaches in its servers' interaction with the Customer and security breaches in any interaction with resources or users outside of any firewall that will be built into OpSuite (DRL)'s servers.

9.2 The Customer is responsible for maintaining the confidentiality of any passwords which are required to access the Software and the Services and is solely responsible for any damage caused by any such unauthorised access.

10. Limitation of Liability

10.1 Except as expressly stated in Clause 10.2:

10.1.1 OpSuite (DRL)'s liability, whether under this Agreement or any collateral contract, for loss of or damage to the Customer's tangible property caused by the negligence of OpSuite (DRL), its officers, employees, contractors or agents or by its or their breach of contract, breach of statutory duty or otherwise, shall not exceed the Service Fees paid at the point at which the breach or negligence or other event giving rise to a claim takes place.

10.1.2 OpSuite (DRL) shall have no liability for any losses or damages which may be suffered by the Customer (or any person claiming under or through the Customer), 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, which fall within any of the following categories:

10.1.2.1 Special damage, even though OpSuite (DRL) was aware of the circumstances in which such special damage could arise;

10.1.2.2 Loss of profits;

10.1.2.3 Loss of anticipated savings;

10.1.2.4 Loss of business opportunity;

10.1.2.5 Loss of goodwill;

10.1.2.6 Loss of or damage to data;

provided that this Clause 10.1.2 shall not prevent claims for loss of or damage to the Customer's tangible property that fall within the terms of Clause 10.1.1 or any other claims for direct financial loss that are not excluded by any of categories set out in Clauses 10.1.2.1 -10.1.2.6 inclusive of this Clause 10.1.2.

10.1.3 to the extent that not excluded by Clauses 10.1.1, 10.1.2, 10.3, 10.4, 10.5 or otherwise, the total liability of OpSuite (DRL), whether in contract, tort (including negligence) or otherwise and whether in connection with this Agreement or any collateral contract, shall in no circumstances exceed in aggregate a sum equal to the Service Fee payable by the Customer during the previous 24 month period.

10.1.4 the Customer agrees that, in entering into this Agreement, either it did not rely on any representations (whether written or oral) of any kind or of any person other than those expressly set out in this Agreement or (if it did rely on any representations, whether written or oral, not expressly set out in this Agreement) that it shall have no remedy in respect of such representations and (in either case) OpSuite (DRL) shall have no liability otherwise than pursuant to the express terms of this Agreement;

10.2 The exclusions in Clause 10.1 shall apply to the fullest extent permissible at law but OpSuite (DRL) does not exclude liability for:

10.2.1 Death or personal injury caused by the negligence of OpSuite (DRL), its officers, employees, contractors or agents; or

10.2.2 Fraud or fraudulent misrepresentation; or

10.2.3 Breach of the obligations implied by Section 12 Sale of Goods Act 1979 or Section 2 Supply of Goods and Services Act 1982; or

10.2.4 Any other liability which cannot be excluded by law.

10.3 OpSuite (DRL) shall not be liable for any loss or damage of whatsoever nature suffered by the Customer arising out of or in connection with any act, omission, misrepresentation or error made by or on behalf of the Customer or arising from any cause beyond OpSuite (DRL)'s reasonable control.

10.4 The Customer accepts that OpSuite (DRL) is in no way liable for any virus or other contaminants which enter the Customer's email system or computer network via email or the effects of any virus on the central OpSuite Servers/s hosted at the hosting partner.

10.5 OpSuite (DRL) shall not be liable for any interruptions to the Services or Outages arising directly or indirectly from:-

10.5.1 Interruptions to the flow of data to or from the internet;

10.5.2 Changes, updates or repairs to the network or the Software subject to OpSuite (DRL) striving to minimise the interruptions/outages that may be caused by such change;

10.5.3 The effects of the failure or interruption of services provided by third parties;

10.5.4 Factors set out in Clause 14;

10.5.5 Any actions or omissions of the Customer (including, without limitation, breach of the Customer's obligations set out in this Agreement or the Proposal) or any third parties;

10.5.6 Problems with the Customer’s Equipment and/or third party equipment;

10.5.7 Interruptions to the Services requested by the Customer.

10.6 The Customer agrees that it is in a better position to foresee and evaluate any loss it may suffer in connection with this Agreement and that the Service Fee has been calculated on the basis of the limitations and exclusions in this Clause 10 and that the Customer will effect insurance as is suitable having regard to its particular circumstances and the terms of this Clause 10.

11. <u>Intellectual Property Rights</u>

11.1 In relation to the Software:

11.1.1 The Supplier hereby grants to the Customer on and subject to the terms and conditions of this agreement a non-exclusive, non-transferable license to allow users authorised by the Supplier to access the Software through the Services and to use the Software solely for the Customer's business purposes;

11.1.2 The Customer shall not store, distribute or transmit any Virus, or any material through the Services that is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; facilitates illegal activity; depicts sexually explicit images; or promotes unlawful violence, discrimination based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activities;

11.1.3 The rights provided under this clause 11.1 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer;

11.1.4 The Customer shall not:

a) attempt to copy, duplicate, modify, create derivative works from or distribute all or any portion of the Software except to the extent expressly set out in this agreement or as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties; or

b) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software, except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties; or

c) Access all or any part of the Software or Services in order to build a product or service which competes with the Software and/or the Services;

d) Attempt to obtain, or assist third parties in obtaining, access to the Software; or

e) Allow any third party to maintain the Software.

11.1.5 The Customer shall use reasonable endeavours to prevent any unauthorised access to, or use of, the Software and notify the Supplier promptly of any such unauthorised access or use.

11.2 Without prejudice to the Customer's rights in its own materials, the parties hereby agree that the Customer shall not acquire any Intellectual Property Rights whatsoever in respect of the Software, documentation and other materials used by OpSuite (DRL) in connection with or related to the provision of the Services hereunder.

11.3 OpSuite (DRL) warrants that it has all necessary rights, title and interest to enable the Customer to benefit from the Services in accordance with this Agreement.

11.4 The Customer hereby grant to OpSuite (DRL):

11.4.1 A non-exclusive, royalty-free, world-wide licence during the Term to use, copy, reproduce, and manipulate data provided by the Customer or resulting from the Services for the purposes of using the data for the provision of the Services; and

11.4.2 A non-exclusive, royalty-free, world-wide licence during the Term to use, reproduce and display the Customer's trade marks for the purposes of using the data for the provision of the Services.

11.5 Subject to any contrary provision in this Agreement, OpSuite (DRL) undertakes only to use the Customer's trade marks for the purpose of providing the Services.

12. Termination

12.1 For the purposes of this Clause 12, the following events shall be deemed "acts of default":

12.1.1 If the Customer fails to pay any moneys due pursuant hereto within seven days of the due date therefore;

12.1.2 if a party commits any material breach of any term of this Agreement (other than one falling under Clause 12.1.1 above) and which, in the case of a breach capable of being remedied, shall not have been remedied within 30 days of a written request by the other party to remedy the same;

12.1.3 If a party is unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986), or becomes insolvent, or is subject to an order or a resolution for its liquidation, administration, winding-up or dissolution (otherwise than for the purposes of a solvent amalgamation or reconstruction), or has an administrative or other receiver, manager, trustee, liquidator, administrator or similar officer appointed over all or any substantial part of its assets, or enters into or proposes any composition or arrangement with its creditors generally, or is subject to any analogous event or proceeding in any applicable jurisdiction.

12.2 Without prejudice to the Supplier, rights under clause 12.1.1 or clause 12.1.2, If the Customer commits an act of default then OpSuite (DRL) may forthwith suspend the provision of the Services and/or the Support Services (or any of them or any part of them) until such breach, if capable of remedy, is remedied and no such suspension shall be deemed a breach of any term or provision of this Agreement or give rise to any service credits.

12.3 OpSuite (DRL) shall have the right, without prejudice to its other rights or remedies, to terminate this Agreement immediately by notice to the Customer if the Customer:

12.3.1 Undergoes a change of control which does not result in control passing to a company that, immediately prior to the change in question, was an Affiliate of the Customer; or

12.3.2 Sells all of its assets or is merged or re-organised in circumstances where it is not the surviving entity; or

12.3.3 Disputes the ownership or validity of OpSuite (DRL)'s Intellectual Property Rights.

12.4 Any termination of this Agreement for any reason shall be without prejudice to any other rights or remedies a party may be entitled to hereunder or at law and shall not affect any accrued rights or liabilities of either party nor the coming into force or the continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.

12.5 In the event that this Agreement is terminated by OpSuite (DRL) under this Clause 12 then the Customer shall pay OpSuite (DRL) a sum by way of agreed and liquidated damages for OpSuite (DRL)'s losses and damages by reason thereof such sum being equal to 3 Months cumulative subscription value.

12.6 In the event of termination of this Agreement:-

12.6.1 The Customer agrees to promptly to pay to OpSuite (DRL) all outstanding payments;

12.6.2 OpSuite (DRL)'s entitlement to use the Customer's trademarks ceases immediately except as necessary for the provision of any post-termination services;

12.6.3 OpSuite (DRL) may in its sole discretion agree to provide any assistance reasonably requested by the Customer in connection with the hand-over to a third party of any Services provided by OpSuite (DRL) hereunder, and the Customer shall pay OpSuite (DRL) in accordance with OpSuite (DRL)'s then current standard rates for any such assistance;

12.6.4 The Customer's right to receive the Services shall cease automatically;

12.6.5 Each party shall immediately return to the other all property and materials containing Confidential Information (as defined in Clause 13) belonging to the other, including the Customer's data in the predefined format.

12.7 Any termination of this Agreement (howsoever occasioned) shall not affect any accrued rights or liabilities of either party, nor shall it affect the coming into force or the continuance in force of any provision of this Agreement which is expressly, or by implication, intended to come into force or continue in force on or after that termination.

13. <u>Confidentiality, Ownership of Customer Data and Data Protection</u>

13.1 Subject to Clause 13.3, each party receiving information pursuant to this Agreement ("Receiving Party") shall, during the term of this Agreement and thereafter, keep confidential, and shall not use for its own purposes, nor without the prior written consent of the other party ("Disclosing Party") disclose to any third party, any and all information of a confidential nature (including trade secrets and information of commercial value) that may become known to the Receiving Party and which relate to the Disclosing Party or any of its Affiliates (**Confidential Information**).

13.2 The provisions of Clause 13.1 above shall not apply to the whole or any part of the Confidential Information to the extent that it is:

13.2.1 Trivial or obvious;

13.2.2 Already in the Receiving Party's possession without duty of confidentiality on the date of its disclosure to it by the Disclosing Party;

13.2.3 In the public domain other than as a result of a breach of this clause; or

13.2.4 To the extent that disclosure of such information may be required by any governmental agency or by operation of law and, in either such case, the Receiving Party required to make such disclosure shall, unless legally precluded from doing so, use reasonable endeavours to notify the Disclosing Party of such requirement prior to making the disclosure.

13.3 Each of OpSuite (DRL) and the Customer hereby undertakes to the other to make all relevant employees agents and sub-contractors aware of the confidentiality of the Information and the provisions of this Clause 13.

13.4 For the avoidance of doubt, all Customer Data shall remain at all times the exclusive property of the Customer.

13.5 The provisions of Clause 13 shall remain in full force and effect notwithstanding any termination of this Agreement.

13.6 The Customer shall own all rights, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.

13.7 The Customer Data may only be used by OpSuite (DRL) in order to fulfil its obligations pursuant hereto and OpSuite (DRL) hereby undertakes not, without the Customer's written consent, to disclose the Customer Data in whole or in part to any other person save those of its employees agents and sub-contractors involved in the provision of the Services and who have, and to the extent that they have, a need to know the same. This clause 13.7 is without prejudice to the generality of clause 13.10.1 to the extent that the Customer Data contains any personal data.

13.8 In the event of any loss or damage to Customer Data by the Supplier, the Customer's sole and exclusive remedy shall be for the Supplier to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by the Supplier in accordance with the archiving procedure described in Schedule 2. The Supplier shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party.

13.9 If the Supplier processes any personal data on the Customer's behalf when performing its obligations under this Agreement, the parties record their intention that the Customer shall be the data controller and the Supplier shall be a data processor (where personal data, data controller and data processor have the meanings as defined in the Data Protection Legislation) and in any such case:

13.9.1 the Customer shall (without prejudice to the generality of clause 13.9.2 below) ensure that the Customer is entitled to transfer the relevant personal data to the Supplier and has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data so that the Supplier may lawfully process the personal data for the duration of and, in accordance with this Agreement; and

13.9.2 both parties shall comply with all applicable requirements of the Data Protection Legislation. This clause 13.9.2 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

13.10 Without prejudice to the generality of clause 13.9.2, the Supplier shall, in relation to any personal data processed in connection with the performance by the Supplier of its obligations under this Agreement:

13.10.1 process that personal data only on the written instructions of the Customer unless the Supplier is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Supplier to process personal data (**Applicable Laws**). Where the Supplier is relying on laws of a member of the European Union or European Union law as the basis for processing personal data, the Supplier shall notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Supplier from so notifying the Customer;

13.10.2 ensure that it has in place appropriate technical and organisational measures, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures;

13.10.3 ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential;

13.10.4 not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Customer has been obtained;

13.10.5 assist the Customer, at the Customer's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

13.10.6 notify the Customer on becoming aware of a personal data breach;

13.10.7 at the written direction of the Customer and so far as it is technically possible to do so, delete or return personal data and copies thereof to the Customer on termination of this Agreement unless required by Applicable Law to store the personal data; and

13.10.8 maintain complete and accurate records and information to demonstrate its compliance with this clause 13.10.

13.11 The Customer acknowledges that the Supplier is reliant on the Customer for direction as to the extent to which the Supplier is entitled to use and process the personal data. Consequently, the Supplier will not be liable for any claim brought by a data subject or any action of any regulator (including, for the avoidance of doubt any fine) arising from any action or omission by the Supplier to the extent that such action or omission resulted from the Customer's instructions and the Customer shall indemnify the Supplier in full against any costs, claims, damages or expenses incurred by the Supplier as a result of any action by a data subject or regulator resulting from the Supplier following the instructions of the Customer.

13.12 The Customer warrants and represents that:

13.12.1 the processing of the personal data from time to time (including processing for direct marketing purposes) has been carried out in accordance with the Privacy and Data Protection Requirements and/or Data Protection Legislation at all times;

13.12.2 it is not aware of any circumstances likely to give rise to breach of any of the Privacy and Data Protection Requirements and Data Protection Legislation in the future;

13.12.3 the Supplier is entitled to process the personal data for the provision of Data Services and such use will comply with all Privacy and Data Protection Requirements and the Data Protection Legislation; and

13.12.4 where required by the Data Protection Legislation all data subjects relating to the personal data have given their valid written consent and, where required under the Privacy and Data Protection Requirements and/or the Data Protection Legislation, their explicit consent to the transfer of their personal data by the Customer to the Supplier and to the processing of their personal data by the Supplier for the provision of Data Services.

14. Force Majeure

14.1 Neither party hereto shall be liable for any breach of its obligations hereunder, except in respect of payment, resulting from causes beyond the reasonable control of the party in default (or its sub-contractors) including but not limited to acts of God, war, insurrection, riot, civil commotion, Government regulation, embargo, explosion, power cut, strike, labour dispute, illness, flood, fire or tempest (an ‘Event of Force Majeure’). Any time limit or estimate for a party to perform any act hereunder shall be suspended during an Event of Force Majeure.

14.2 Each of the parties hereto agrees to give notice forthwith to the other upon becoming aware of an Event of Force Majeure, such notice to contain details of the circumstances giving rise to the Event of Force Majeure.

14.3 If a default due to an Event of Force Majeure shall continue for more than 30 days then the party not in default shall be entitled to terminate this Agreement. Neither party shall have any liability to the other in respect of the termination of this Agreement as a result of an Event of Force Majeure but such termination shall not affect any pre-existing rights or obligations of either party.

15. Waiver

The waiver by either party of a breach or default of any of the provisions of this Agreement by the other party shall not be construed as a waiver of any succeeding breach of the same or other provisions nor shall any delay or omission on the part of either party to exercise or avail itself of any right, power or privilege that it has or may have hereunder operate as a waiver of any breach or default by the other party.

16. Notices

Any notice request instruction or other document to be given hereunder shall be delivered or sent by first class post or email (email transmission notice to be confirmed by read receipt) to the address or to the email address of the other party set out in this Agreement (or such other address or email addresses as may have been notified) and any such notice or other document shall be deemed to have been served if sent by post upon the expiration of 48 hours after posting and if sent by email upon the expiration of 12 hours after dispatch subject to confirmation as set out above.

17. Publicity

No announcement or information concerning this Agreement or any ancillary matter shall be made or released or authorised to be made or released in any advertising publicity promotional or other marketing activities by either of the parties without the prior written, including email, consent of the other party.

18. <u>Invalidity & Severability</u>

If any provision of this Agreement shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable the invalidity or unenforceability of such provision shall not affect the other provisions of this Agreement and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect. The parties hereby agree to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible the economic, legal and commercial objectives of the invalid or unenforceable provision.

19. <u>Entire Agreement</u>

19.1 Subject to Clause 19.2, this written Agreement (including the Schedules) and the Proposal constitute the entire agreement between the parties hereto relating to the subject matter hereof. Nothing in this Clause 19.1 or Clause 10.1.4 shall relieve either party of liability for fraudulent misrepresentations and neither party shall be entitled to any remedy for either any negligent or innocent misrepresentation except to the extent (if any) that a court or Third Party appointed under Clause 23 may allow reliance on the same as being fair and reasonable.

19.2 No change, alteration or modification to this Agreement shall be valid unless in writing and signed on behalf of both parties hereto.

20. <u>Successors</u>

This Agreement shall be binding upon and endure for the benefit of the successors in title of the parties hereto.

21. **<u>Assignment</u>**

The Customer shall not be entitled to assign this Agreement nor all or any of its rights and obligations hereunder.

22. <u>Sub-contracting</u>

OpSuite (DRL) shall be entitled to sub-contract the whole or any part of its obligations hereunder to any third party but shall remain liable as if it were performing the Services itself.

23. **<u>Law</u>**

This Agreement shall be governed by and construed in accordance with English law and (subject always to Clause 23) the parties submit to the exclusive jurisdiction of the courts of England and Wales.

24. <u>Third Party Rights</u>

No term of this Agreement is intended to confer a benefit on or to be enforceable by, any person who is not a party to this Agreement.

IN WITNESS WHEREOF the parties have signed this Agreement on the date hereof

SIGNED as a **Deed** by the said

OpSuite (DRL) ....

In the presence of:-

Witness

Signature ....

Name ....

Address ....

....

....

Occupation ....

SIGNED as a **Deed** by the said

Customer Name ....

In the presence of:-

Witness

Signature ....

Name ....

Address ....

....

....

Occupation ....

SCHEDULE 1

SERVICE FEES

The specific monetary amount is set out in the associated proposal and may vary monthly depending on any over usage surcharges and/or changes in the commercial requirements of the Customer, specifically opening or closing stores, adding or removing POS points and adding or removing back office users.

This is payable by direct debit every month on or around the 20th of the month in advance.

SERVICE HOURS

The Services will be available for the Customer to connect to and use 24 hours a day except when there are maintenance, upgrades or technical problems.

CUSTOMER EQUIPMENT SPECIFICATIONS

The OpSuite User must have sufficient bandwidth, for example a minimum of broadband, and a suitable device that can run the OpSuite Client. This is dependent on other factors including the size and nature of your organisation.

The OpSuite solution (back-office functionality) is designed and tested on the WPF Client. Please refer to the OpSuite Tested and Supported Environments details provided in this document.

The Handheld element of the OpSuite solution (HTML) operates on Android / Chrome devices (supplied by OpSuite Partner). Please refer to the OpSuite Tested and Supported Environments details provided in this document.

OpSuite POS requires EPoS devices. Please refer to the OpSuite Tested and Supported Environments details provided in this document.

OpSuite Back Office Client performance is significantly affected by the device utilised: More RAM and a faster processor will deliver better performance – bandwidth is only one factor. Note – Third party applications can also affect the performance/resource of the device.

Peripherals – e.g. Scanners – Please consult with the OpSuite Partner.

SCHEDULE 2

SERVICES AND SERVICE LEVELS

PART I – SERVICES

1. Online Availability

The Services will be available to the Customer for a minimum of **95%** of the Service Hours. The percentage of online availability will be calculated on a monthly basis, and will be a reflection of the availability of the Services over the total number of "Service Hours" for the month. Time specifically spent on 'housekeeping tasks' will not count within the percentage of offline time for the purposes of the monthly calculation.

2. Agreed Outages

Housekeeping tasks

Housekeeping tasks, if required, will be performed (**UK time**) between the hours of **19:00 and 06:00.**

Software Upgrades will take place between **21:00 and 01:00 –** during this time OpServices will also become unavailable at some point and therefore any 3rd Party connecting to OpServices (OpSuite Web Services) should ideally avoid attempting to connect during this period.

Hardware, System Patches & Upgrades

Any and all necessary maintenance, replacement, updates or upgrades will only be applied should they be required to enhance the solution and/or ensure continued support by the vendors of relevant elements of the overall solution including, but not exclusively, hardware, operating systems and database engines.

3. Hosting Services

Installation and configuration

The Supplier shall procure, install and configure the hosting equipment to provide access to the Software.

Internet Connectivity

The Supplier shall provide internet connectivity through an internet service provider at the hosting facility. The Customer shall make its own arrangements for internet access in order to access the Software.

Back Up

The Supplier shall perform back-ups, provide routine and emergency data recovery, and manage the archiving process. The back-up schedule shall include at least weekly full back-ups and daily incremental back-ups. In the event of data loss, the Supplier shall provide recovery services to try to restore the most recent back-up.

Security Services

The Supplier shall provide security services as follows:

a) Hosting facility access shall be limited to the Supplier and contracted third-party personnel;
b) Data access security shall be provided through managed firewall services and user authentication.

Monitoring Services

The Supplier shall provide monitoring of the OpSuite (not OpSuite POS) computing, operating and networking infrastructure to detect and correct abnormalities. This includes environmental monitoring, network monitoring, web server and database monitoring, firewall monitoring, and intrusion detection.

4. Consequences Relating To Failure to Meet Terms of Service Levels

Availability:

Failure to sustain 95% availability - 10% of the monthly fee will be credited from the following Month's charge.

Total Systems Failure:

For each separate failure to recover from a "Total Systems Failure" within 72 hours, 10% of the monthly fee will be credited from the following Month's charge.

Terms & Conditions

The customer's attention is particularly drawn to the provisions of clause 10.

1 Interpretation

Definitions

In these Conditions, the following definitions apply:

Actual Monthly Usage: the total time used by the Customer (calculated in 6 minute increments) under the PSA in any one month

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Commencement Date: has the meaning set out in clause 2.2.

Conditions: these terms and conditions as amended from time to time in accordance with clause 13.7.

Contract: the contract between the Supplier and the Customer for the supply of goods and/or services in accordance with these Conditions.

Customer: the person or firm who purchases the goods and/or services from the Supplier.

Data Protection Legislation: (i) unless and until the General Data Protection Regulation (EU 2016/679) (GDPR) is no longer directly applicable in the UK, the GDPR and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then (ii) any successor legislation to the GDPR or the Data Protection Act 1998.

Deliverables: the deliverables set out in the Order.

Delivery Location: has the meaning set out in clause 3.3.

Force Majeure Event: has the meaning given to it in clause 12.1.

Goods: the goods (or any part of them) set out in the Order.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications 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.

Manufacturer: means the firm, company, business, individual who manufactures the goods (or any part of the goods).

OpSuite: the cloud-based business management software solution of that name.

Order: the Customer's order for the supply of goods and/or services, as set out in the Customer's purchase order form, or the Customer's written acceptance of the Supplier's quotation, or the Customer’s email approval of the Supplier’s proposal, as the case may be.

Privacy and Data Protection Requirements: the Data Protection Directive (*95/46/EC*), the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (*SI 2000/2699*), the Electronic Communications Data Protection Directive (*2002/58/EC*), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (*SI 2426/2003*) and all applicable laws and regulations relating to the processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the

Information Commissioner or any other supervisory authority, and the equivalent of any of the foregoing in any relevant jurisdiction.

PSA: the Supplier's professional services access subscription scheme

PSA Excess Fee: the fee payable by the Customer to the Supplier being the difference between the Actual Monthly Usage and the Subscribed Usage.

PSA Subscription Fee: the monthly fee agreed between the Supplier and the Customer payable for the Subscribed Usage.

Services: the Services, including the Deliverables and the Support Services (and where applicable, Software Development Services), supplied by the Supplier to the Customer as set out in the Service Specification.

Service Specification: the description or specification for the services provided in writing by the Supplier to the Customer.

Software Development Services: means the software development services supplied by the Supplier to the Customer, as per the Order and, in accordance with the provisions of Appendix 2.

Subscribed Usage: the total time (calculated in 6 minute increments) that the Customer is obliged to pay for in advance under the PSA in any one month.

Supplier: Davidson-Richards Limited registered in England and Wales with company number 04385701 and whose registered office address is Systems House, The Parker Centre, Mansfield Road, Derby, Derbyshire, DE21 4SZ.

Supplier Materials: has the meaning set out in clause 6.1(g).

Support Services: the Supplier's remote, telephone and email support for OpSuite.

Support Services Terms: the terms and conditions for the provision of the Support Services detailed in Appendix 1.

Construction

In these Conditions, the following rules apply:

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

(b) a reference to a party includes its personal representatives, successors or permitted assigns;

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

(d) any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and

(e) references to writing include e-mails

2 Basis of Contract

2.1 The Order constitutes an offer by the Customer to purchase goods and/or services in accordance with these Conditions. Where the Customer requests software development services, the provisions of Appendix 2 shall apply.

2.2 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order at which point and on which date the contract shall come into existence (**Commencement Date**).

2.3 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 the Supplier which is not set out in the contract.

2.4 Any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions of the goods or illustrations or descriptions of the services contained in the supplier's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the services and/or goods described in them. They shall not form part of the contract or have any contractual force.

2.5 These Conditions apply 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.

2.6 Any proposal given by the Supplier shall not constitute an offer, and is only valid for a period of 10 Business Days from its date of issue.

2.7 All of these Conditions shall apply to the supply of both goods and services except where application to one or the other is specified.

3 Goods and Delivery of Goods

3.1 The goods are as described in the manufacturer's catalogue.

3.2 The Supplier shall ensure that each delivery of the goods is accompanied by a delivery note which shows the type and quantity of the goods.

3.3 The Supplier shall deliver the goods to the location set out in the Order or such other location as the parties may agree (**Delivery Location**) at any time after the Supplier notifies the Customer that the goods are ready.

3.4 Delivery of the goods shall be completed on the goods' arrival at the delivery location when risk in the goods shall pass to the Customer.

3.5 Any dates quoted for delivery of the goods are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the goods that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the goods.

3.6 If the Supplier fails to deliver the goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the goods. The Supplier shall have no liability for any failure to deliver the goods to the extent that such failure is caused by a Force Majeure Event, the Customer's failure to provide the Supplier with adequate delivery instructions for the goods or any relevant instruction related to the supply of the goods.

3.7 Notwithstanding delivery and the passing of risk in the goods, the property in the goods shall not pass to the Customer until the Supplier has received in cash or cleared funds payment in full of the price of the goods and all other goods agreed to be sold by the Supplier to the Customer for which payment is then due.

3.8 Until title to the goods has passed to the Customer, the Customer shall:

3.8.1 hold the goods on a fiduciary basis as the Supplier's bailee;

3.8.2 store the goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;

3.8.3 not remove, deface or obscure any identifying mark or packaging on or relating to the goods;

3.8.4 maintain the goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery; and

3.8.5 notify the Supplier immediately if it becomes subject to any of the events listed in **clause 11.2**.

3.9 If before title to the goods passes to the Customer the Customer becomes subject to any of the events listed in Clause 11.2, or the Supplier reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided that the goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy the Supplier may have, the Supplier may at any time require the Customer to deliver up the goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

4 Quality of Goods and Warranty

4.1 The Supplier does not provide any undertaking or guarantee in respect of the description, quality or fitness for purpose of the goods.

4.2 The Supplier does not provide any warranty that the goods shall be fit for any particular purpose, other than for the purpose that has been expressly held out by the Supplier (if any).

4.3 The Supplier shall provide the goods to the Customer with the benefit of any manufacturer's warranties that the Supplier is in receipt of (if any) and the period of such warranty shall mirror the warranty period (as far as possible) that is provided to the Supplier by the manufacturer (**Warranty Period**). For the avoidance of doubt, if no manufacturer's warranties are provided to the Supplier, the Supplier shall provide no warranty in respect of the goods to the Customer.

4.4 In the event that the goods are defective or do not conform in all material respects with their specification, the Customer must report such issues to the manufacturer and for the avoidance of doubt, all warranty issues must be addressed to the manufacturer and not the Supplier provided always that the Supplier shall give the Customer reasonable assistance and administrative support in its dealings with the manufacturer.

4.5 The Supplier shall have no liability to the Customer in respect of the goods' failure to comply with any manufacturer's warranties.

5 Supply of Services

5.1 The Supplier shall provide the services to the Customer in accordance with the service specification and (in the case or the support services) the support services terms in all material respects.

5.2 The Supplier shall use all reasonable endeavours to meet any performance dates for the services specified in an Order, but any such dates shall be estimates only and time shall not be of the essence for the performance of the services.

5.3 The Supplier 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 affect the nature or quality of the services, and the Supplier shall notify the Customer in any such event.

5.4 The Supplier warrants to the Customer that the services will be provided using reasonable care and skill.

6 Customer's Obligations

6.1 The Customer shall:

(a) ensure that the terms of the Order are complete and accurate;

(b) co-operate with the Supplier in all matters relating to the services;

(c) provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier to provide the services;

(d) provide the Supplier with such information and materials as the Supplier may reasonably require to supply the services, and ensure that such information is accurate in all material respects;

(e) prepare the Customer's premises for the supply of the services;

(f) obtain and maintain all necessary licences, permissions and consents which may be required for the services before the date on which the services are to start; and

(g) keep and maintain all materials, equipment, documents and other property of the Supplier (**supplier materials**) at the Customer's premises in safe custody at its own risk, maintain the supplier materials in good condition until returned to the Supplier, and not dispose of or use the supplier materials other than in accordance with the Supplier's written instructions or authorisation.

6.2 If the Supplier's performance of any of its obligations in respect of the services is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

(a) the Supplier shall without limiting its other rights or remedies have the right to suspend performance of the services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;

(b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 6.2; and

(c) the Customer shall reimburse the Supplier on written demand for any costs (including, but not limited to, wasted time, and any direct expenses incurred or which are irrecoverable) sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

7 Charges and Payments

7.1 The price for goods and/ or the services shall be the price set out in the Order or, if no price is quoted, the price set out in the Supplier's published price list as at the date of delivery. The price of the goods is exclusive of all costs and charges of packaging, insurance, transport of the goods, which shall be paid by the Customer when it pays for the goods.

7.2 The Supplier reserves the right to pass on to the Customer any increase in the cost to the Supplier of any price increase imposed by the Supplier’s suppliers between the date of the Order and the date of the delivery of the goods or services (as the case may be).

7.3 Where the Supplier performs services for the Customer on a goodwill basis, the Supplier shall record the amount of time it has spent providing the services to the Customer and any expenses incurred in doing so. The Supplier reserves the right to charge the Customer for all such time and expenses at its discretion provided always that the Supplier shall lose the right to charge for any such costs on the date falling 24 months from when they were incurred.

7.4 Unless otherwise agreed between the parties and subject to clause 7.5 in relation to PSA subscriptions, the Supplier shall invoice the Customer monthly in advance and, the Customer shall pay such invoices within 30 days of the date of invoice to an account nominated by the Supplier from time to time.

7.5 The Supplier shall invoice the Customer for any PSA Excess Fee monthly in arrears and the Customer shall pay such invoice within 30 days of its date for the avoidance of doubt if there is no PSA Excess Fee payable because the Actual Monthly Usage is lower than the Subscribed Usage (**Usage Shortfall**) in any one month the Customer shall not be entitled to a refund of any fee paid for the Subscribed Usage and nor shall they be entitled to roll over or offset any Usage Shortfall in any way. In the case of any discrepancy between the records of the Customer and the records of the Supplier concerning the Actual Monthly Usage the records of the Supplier shall be definitive.

7.6 The Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Supplier engages regarding the services including, but not limited to, travelling expenses, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Supplier for the performance of the services, and for the cost of any materials. The Customer shall pay such charges on receipt of the Supplier’s invoice.

7.7 The Supplier shall amend the charges for the services on October 1 in each year and the new charges shall apply from that date. In addition, the Supplier reserves the right, on giving the Customer 30 days’ written notice to increase the charges for the services as any other time and the new charges shall apply from the expiry of such notice.

7.8 Time for payment shall be the essence of the contract.

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

7.10 If the Customer fails to make any payment due to the Supplier under the contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4% per annum above Barclays Bank Plc'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 Customer shall pay the interest together with the overdue amount.

7.11 Where the Customer disputes an invoice (or any part of it), the Customer must notify the Supplier of the disputed invoice on receipt, and in any event, within 5 Business Days following the date of the invoice.

7.12 The Customer shall pay all amounts due under the contract in full without any set-off, counterclaim, deduction or withholding except as required by law. The Supplier may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

8 Intellectual Property Rights

8.1 All Intellectual Property Rights in or arising out of or in connection with the services shall be owned by the Supplier.

8.2 The Customer acknowledges that, in respect of any third party Intellectual Property Rights in the services, the Customer's use of any such Intellectual Property Rights is conditional on the Supplier obtaining a written licence from the relevant licensor on such terms as will entitle the Supplier to license such rights to the Customer.

8.3 All supplier materials are the exclusive property of the Supplier.

9 Confidentiality and Data Protection

9.1 A party (receiving party) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (disclosing party), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause 9 shall survive termination of the contract.

9.2 To the extent that the Supplier processes any personal data on the Customer’s behalf when performing its obligations under the Contract, the parties record their intention that the Customer shall be the data controller and the Supplier shall be a data processor (where personal data, data controller and data processor have the meanings as defined in the Data Protection Legislation) and in any such case:

(a) the Customer shall (without prejudice to the generality of clause 9.2(b) below) ensure that the Customer is entitled to transfer the relevant personal data to the Supplier and has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data so that the Supplier may lawfully process the personal data for the duration of and, in accordance with the Contract; and

(b) both parties shall comply with all applicable requirements of the Data Protection Legislation. This clause 9.2(b) is in addition to, and does not relieve, remove or replace, a party’s obligations under the Data Protection Legislation.

9.3 Without prejudice to the generality of clause 9.2(b), the Supplier shall, in relation to any personal data processed in connection with the performance by the Supplier of its obligations under the Contract:

(a) process that personal data only on the written instructions of the Customer unless the Supplier is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Supplier to process personal data (**Applicable Laws**). Where the Supplier is relying on laws of a member of the European Union or European Union law as the basis for processing personal data, the Supplier shall notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Supplier from so notifying the Customer;

(b) ensure that it has in place appropriate technical and organisational measures, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures;

(c) ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential;

(d) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Customer has been obtained;

(e) assist the Customer, at the Customer's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

(f) notify the Customer on becoming aware of a personal data breach;

(g) at the written direction of the Customer and so far as it is technically possible to do so, delete or return personal data and copies thereof to the Customer on termination of the Contract unless required by Applicable Law to store the personal data; and

(h) maintain complete and accurate records and information to demonstrate its compliance with this clause 9.3.

9.4 The Customer acknowledges that the Supplier is reliant on the Customer for direction as to the extent to which the Supplier is entitled to use and process the personal data. Consequently, the Supplier will not be liable for any claim brought by a data subject or any action of any regulator (including, for the avoidance of doubt any fine) arising from any action or omission by the Supplier to the extent that such action or omission resulted from the Customer's instructions and the Customer shall indemnify the Supplier in full against any costs, claims, damages or expenses incurred by the Supplier as a result of any action by a data subject or regulator resulting from the Supplier following the instructions of the Customer.

9.5 The Customer warrants and represents that:

9.5.1 the processing of the personal data from time to time (including processing for direct marketing purposes) has been carried out in accordance with the Privacy and Data Protection Requirements and/or Data Protection Legislation at all times;

9.5.2 it is not aware of any circumstances likely to give rise to breach of any of the Privacy and Data Protection Requirements and Data Protection Legislation in the future;

9.5.3 the Supplier is entitled to process the personal data for the provision of Data Services and such use will comply with all Privacy and Data Protection Requirements and the Data Protection Legislation; and

9.5.4 where required by the Data Protection Legislation all data subjects relating to the personal data have given their valid written consent and, where required under the Privacy and Data Protection Requirements and/or the Data Protection Legislation, their explicit consent to the transfer of their personal data by the Customer to the Supplier and to the processing of their personal data by the Supplier for the provision of Data Services.

10 Limitation of Liability: The Customer's Attention Is Particularly Drawn to This Clause

10.1 Nothing in these Conditions shall limit or exclude the Supplier'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;

(c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);

(d) breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or

(e) defective products under the Consumer Protection Act 1987.

10.2 Subject to clause 10.1 and clause 6.2 (c) neither party shall under any circumstances whatever be liable to the other, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any:

(a) loss of profit; or
(b) indirect loss; or
(c) consequential loss, arising under or in connection with the contract

10.3 Subject to clause 10.1 the Supplier's total liability to the Customer in respect of all losses arising under or in connection with the contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the amount paid by the Customer to the Supplier for the supply of goods and/or services in the six months immediately preceding the date of the alleged breach.

10.4 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and 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 the contract.

10.5 This clause 10 shall survive termination of the contract.

11 Termination

11.1 Without limiting its other rights or remedies either party may terminate the contract by giving the other party not less than 3 months' written notice.

11.2 Without limiting its other rights or remedies, the Supplier may terminate the contract with immediate effect by giving written notice to the Customer if:

(a) the Customer commits a material breach of its obligations under this contract and (if such breach is remediable) fails to remedy that breach within 7 days after receipt of notice in writing to do so;

(b) the Customer 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 (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;

(c) the Customer 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 (where a company) 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 the Customer;

(d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;

(e) the Customer (being an individual) is the subject of a bankruptcy petition or order;

(f) a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;

(g) 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 Customer (being a company);

(h) the holder of a qualifying charge over the assets of the Customer (being a company) has become entitled to appoint or has appointed an administrative receiver;

(i) 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;

(j) any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 11.2(b) to clause 11.2(i) (inclusive);

(k) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business;

(l) the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the contract has been placed in jeopardy; or

(m) the Customer fails to pay any amount due under this contract on the due date for payment.

11.3 Without limiting its other rights or remedies, the Supplier may suspend the supply of services, access to OpSuite and/or all further deliveries of goods under the contract or any other contract between the Customer and the Supplier if the Customer fails to pay any amount due under this contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 11.2(b) to clause 11.2(m), or the Supplier reasonably believes that the Customer is about to become subject to any of them.

11.4 On termination of the contract for any reason:

(a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of services supplied but for which no invoice has yet been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;

(b) the Customer shall return all of the supplier materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this contract;

(c) the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the contract which existed at or before the date of termination or expiry; and

(d) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

12 Force Majeure

12.1 For the purposes of this contract, Force Majeure Event means an event beyond the reasonable control of the Supplier including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, illness of personnel, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

12.2 The Supplier shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this contract as a result of a Force Majeure Event.

12.3 If the Force Majeure Event prevents the Supplier from providing any of the services and/or goods for more than 4 weeks, the Supplier shall, without limiting its other rights or remedies, have the right to terminate this contract immediately by giving written notice to the Customer.

13 General

13.1 Assignment and Other Dealings

(a) The Supplier may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the contract and may subcontract or delegate in any manner any or all of its obligations under the contract to any third party.

(b) The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with all or any of its rights or obligations under the contract.

13.2 Notices

(a) Any notice of termination given to a party under or in connection with this contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally or sent by prepaid first-class post or other next working day delivery service or by commercial courier.

(b) A notice of termination shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 13.2(a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

(c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action

13.3 **Severance**

(a) If any provision or part-provision of the contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the contract.

(b) If any provision or part-provision of this contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

13.4 **Waiver**

A waiver of any right under the contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the contract or by law shall constitute a waiver of that or any other right or remedy, nor prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

13.5 **No Partnership or Agency**

Nothing in the contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, nor constitute either party the agent of another party for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

13.6 **Third Parties**

A person who is not a party to the contract shall not have any rights to enforce its terms.

13.7 **Variation**

Except as set out in these Conditions, no variation of the contract, including the introduction of any additional terms and conditions shall be effective unless it is agreed in writing and signed by the Supplier.

13.8 **Governing Law**

This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

13.9 **Jurisdiction**

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this contract or its subject matter or formation (including non-contractual disputes or claims).

Appendix 1 – Software Support (Not Infrastructure Support)

1 Scope

1.1 The standard full service (helpdesk staffed by dedicated staff, able to remotely access the Customer's OpSuite system and to utilise second line development and testing) will be performed between the working hours of 0900 to 1700, Monday to Friday, excluding English Public & Bank Holidays.

1.2 The supplementary weekend and Public & Bank Holiday service, if contracted, will be performed between the working hours of 0900 to 1700.

1.3 The supplementary weekend and Public & Bank Holiday service currently offers partial cover compared to the standard full weekday service and is performed by mobile phone (not included as standard) and includes remote access to the Customers' systems.

1.4 Outstanding issues logged prior to the supplementary service period or new issues arising during the supplementary service period that require the second line involvement of consultants, development or testing resources will be 'on hold' during this period until the standard full service resumes.

1.5 The Supplier shall use its reasonable endeavours to attend to a service call request (**Request**) with an initial response during the same or next working day.

1.6 The Supplier shall use reasonable endeavours to respond to a Request within 1 working hour of receiving such Request. However the Supplier does not guarantee to the Customer that this service level shall be met for all and any Requests.

2 Details of Support Services

2.1 The Supplier shall during the term of the contract provide to authorised users that have been *authorised by the Supplier to receive support assistance (*have attended all necessary training, as determined by the Supplier, that has been provided directly by the Supplier) the following services under the contract:

(a) Assistance with queries relating to the use and understanding of OpSuite as supplied (but not, for the avoidance of doubt, queries relating to Customer side infrastructure).
(b) Assistance, investigation and research into queries relating to program and system errors including and involving third party suppliers of packaged software found within OpSuite & OpSuite POS. Resolutions will be offered wherever possible including suggestions of 'work-arounds' to minimise the impact of any software faults on the operations of the business.
(c) Employing reasonable endeavours to arrange the timely supply, where possible, of any revised and corrected programs from within OpSuite and also arising from the notification of software faults by the Supplier to any third party supplier.

2.2 For the avoidance of doubt, all authorised users under clause 2.1 above (**authorised user**), must hold a requisite level of support desk knowledge. This includes a general level of competence and reasonable understanding of information technology, retail management and OpSuite. The Customer accepts and understands that it is not possible for the Supplier to provide a responsive and effective service to the Customer where the authorised users do not understand the basics of information technology, retail management or the navigation or functionalities of OpSuite. The Supplier will not accept any liability nor be responsible for any delay or failure in providing the support services to the Customer where the authorised users are unable to comply with this clause 2.2.

2.3 The support services aim to assist competent and knowledgeable operators that have specific difficulties (regardless of whether they are procedural, configuration or technical). The Customer accepts that the support services are not in any way offered as an on-line training, systems consultancy, administration or management service.

2.4 In the event that an authorised user is replaced within the Customer's business then the replacement is required to obtain the necessary Supplier training (as specified in clause 2.1) before such replacement may become an authorised user.

2.5 Anyone that is not an authorised user is not authorised by the Supplier to utilise the support services and the Supplier shall not provide any part of the support services to anyone that is not an authorised user without a PSA subscription in place or other specific written agreement to pay the Supplier for time utilised.

2.6 The Supplier may at its sole discretion exceed the limits of its cover to provide support services beyond the limits and constraints of its obligations, as a gesture of goodwill (see Terms and Conditions clause 7.3). The Supplier reserves the right to limit its services to those of the support services only.

2.7 The support services do not include:

2.7.1 Attendance on site to carry out any of the above services, unless such visits are specifically provided for in writing, between the parties.

2.7.2 Services required due to issues resulting from (without limitation) misuse of the Software, user mistakes and errors, the Customer's internal security procedures being breached, unsuitable environmental conditions (such as incorrect browser versions, low specification devices or insufficient bandwidth), use of the Software on non-approved devices, electrical current fluctuations or failures, any force of nature or any Customer side infrastructure impeding the functions of the OpSuite system.

2.7.3 Repeat issues where a valid resolution or an alternative process or 'work-around' has been provided by the Supplier and the Customer has refused to follow such advice or instruction; resulting in the same issue arising again.

2.7.4 Service required due to the associated use of incompatible Software or operating systems or bespoke systems unless such systems are covered in Appendix 2. If it is found that any non-supported software has had an adverse effect on the supported software then the Customer shall be liable for all and any costs incurred by the Supplier in seeking to identify and offer a resolution to the issue. The Supplier shall not be liable for the resolution of the said issue.

2.7.5 Basic product training, systems consulting, administration or management.

2.7.6 Service(s) requested to be performed by non-authorised users.

2.7.7 Service(s) requested to be performed outside contracted hours.

2.7.8 All support contracts explicitly do not cover the Customer for the impact of computer viruses or worms or any other malicious software entity. All Supplier time involved in the investigation, identification and elimination of the effects of a virus/worm infection will result in charges, payable by the Customer.

2.7.9 If the Customer is in breach of any terms of the licensing for OpSuite, the contract support terms shall automatically become invalidated and the Supplier reserves the right to refuse service until such breach has been rectified.

2.7.10 If the issue is occurring due to the lack of reasonable maintenance of suitable, up to date and robust infrastructure by the Customer. It is the Customer's responsibility to maintain, manage and ensure that configurations in terms of users and roles are relevant and correct and that data within the system is accurate and correct (high quality). Issues resulting from poor data (including, but not limited to, inaccurate tax rates, prices, wrong start dates for promotion initiation, duplication of entry for records such as Customers or Suppliers) causing unexpected outcomes are not covered.

In the event of being requested to carry out any of the above work (section 2.7 inclusive), it is implicit that a charge will be made to the Customer at the consultancy rates applicable at the time, together with travelling expenses.

The Supplier will employ reasonable endeavours to co-operate with those responsible for the rest of the installation to achieve, where possible, resolutions however these services will result in the Customer being charged for time utilised at the Supplier's current consultancy rates.

Appendix 2 – Software Development Services

The provisions of this appendix 2 shall apply to all and any contracts where the Customer has requested, and the Supplier has agreed to supply, software development services. This appendix must be read in conjunction with the Supplier's conditions.

1 Interpretations

In this appendix:

1.1 the following expressions have the following meanings unless inconsistent with the context:

Acceptance Certificate: a certificate to be signed by the Customer accepting the Supplier Software.

Acceptance Date: the date on which the Acceptance Certificate is issued by the Customer under clause 6(a).

Bespoke Software: software programs developed by the Supplier specifically for the Customer as part of the Supplier Software.

Business: the business of the Customer.

Business Requirements Specification: the specification agreed between the Customer and the Supplier which sets out the Customer's business requirements regarding the Supplier Software.

Change Agreement: an agreement made under clause 8.3.

Completion Date: the estimated date specified in the Implementation Plan (which may be varied in accordance with clause 7) by which the Supplier is to provide the Supplier Software Ready for Service.

Computer Hardware: the computers and other equipment to be used by the Customer in conjunction with the Supplier Software.

Customer Representative: a person duly authorised by the Customer to act on its behalf for the purposes of the Software Development Services and identified to the Supplier by written notice from the Customer.

Defect: an error in the Supported Software that causes it to fail to operate substantially in accordance with the relevant Documentation.

Good Industry Practice: the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector.

Implementation Plan: the time schedule and sequence of events for the performance of the agreement between the Supplier and the Customer, which may be varied in accordance with clause 7.

Installation Date: the estimated date by which the Supplier will complete installation of a specified Software Module as specified in the Implementation Plan.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications 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, including the right to sue for and recover damages for past infringements.

Licence: the licence granted under clause 10.

Licensed Software: the Supplier Software as notified by the Supplier to the Customer and all subsequent amendments and updates to, or new versions of, such Supplier Software as may be provided in accordance with this appendix 2.

Licensed Users: the employees and agents of the Customer who use the Licensed Software.

Modified Software: the standard software programs proprietary to the Supplier and/or third parties, configured by the Supplier in accordance with the Order.

New Release: a new release of all or any part of the Supported Software suitable for use by the Customer in which previously identified faults have been remedied or to which any modification, enhancement, revision or update has been made, or to which a further function or functions have been added.

New Version: a new version of the Licensed Software released by the Supplier after the Acceptance Date which provides additional or improved functionality or performance.

Normal Working Hours: the hours 09.00 am to 17.00 pm GMT, Monday to Friday, except English Public and Bank Holidays.

Price: the aggregate price for the Work and the Licence.

Project Manager: the Supplier employee who has overall responsibility for the Work.

Ready for Service: installed, tested and having passed or deemed to have passed.

Site(s): the location(s) at which the Supplier Software is to be used as specified in the Order.

Software Delivery Date: the estimated delivery date specified in the Implementation Plan on which the Supplier will deliver a Software Module to the Site(s).

Software Module: any one of the individual software programs in the Supplier Software.

Source Code: the source code of the software to which it relates, in the language in which the software was written, together with all related flow charts and technical documentation, all of a level sufficient to enable the Supplier's development personnel to understand, develop and maintain that software.

Supplier Software: the Modified Software and/or the Bespoke Software.

Supported Software: those Supplier Software programs defined as Supported Software and as notified by the Supplier to the Customer and all subsequent amendments and updates to and New Releases of such programs.

Support Staff: those officers, employees, agents or subcontractors of the Supplier, including those individuals who perform the Supplier's obligations under the contract.

Technical Specification: the specification of the Supplier Software as provided by the Supplier to the Customer and as agreed between the Supplier and the Customer to meet the Business Requirements Specification.

User Acceptance Tests: the tests of the Supplier Software to be undertaken in accordance with clause 5

Work: all the works, duties and obligations to be carried out by the Supplier as per the Order.

2 Software

The Supplier shall provide the Supplier Software in accordance with the provisions of this appendix 2.

3 Software Development Services

3.1 The Supplier shall develop the Bespoke Software and/or configure the Modified Software in accordance with the requirements of the Technical Specification.

3.2 The Supplier agrees:

(a) (if required) to deliver and install the Supplier Software at the site(s); and

(b) to provide reasonable endeavours to advise and guide the Customer in its performance of the User Acceptance Tests.

4 Software Delivery, Installation and Delays

4.1 The Supplier shall use reasonable endeavours to deliver the Supplier Software to the Site(s) by the applicable software delivery date but time shall not be of the essence in relation to the software delivery date and the Supplier shall not be liable for any costs, damages claims or expenses of the Customer or any third party resulting directly or indirectly from any failure to deliver the Supplier Software on the software delivery date.

4.2 The Customer shall, at its own expense, prepare the Site(s) in accordance with information provided by the Supplier in advance of each software delivery date. On completion of such preparation, the Supplier shall inspect the Site(s) and specify, within a reasonable time before the software delivery date, any corrections or modifications required. If the Supplier fails to inspect the Site(s) before the software delivery date, the Supplier shall in no circumstances be liable for remedying any deficiency in the Site(s) preparation that is discovered after that date.

4.3 The Customer shall be responsible for ensuring that each item of computer hardware is installed and is in working order and available to the Supplier no later than the relevant date specified in the Implementation Plan.

4.4 If any delivery is delayed at the request of the Customer, or because of his acts or omissions, the Implementation Plan shall be amended to take account of such delay in accordance with clause 7.3. If the Supplier can demonstrate that the delay has resulted in an increase in cost to the Supplier of carrying out its obligations under the contract, the Supplier may, at its sole discretion, notify the Customer that it wishes to increase the Price by an amount not exceeding any such demonstrable cost. The Supplier may invoice the Customer for any additional monies that become payable in this way, within 30 days of demonstrating the increase in costs.

5 User Acceptance Tests

Unless otherwise agreed user accepting testing for the Supplier Software will be conducted as follows:

(a) the Supplier shall load the Supplier Software onto a test rig (provided by the Customer) and present this to the Customer together with a timetable for user acceptance testing (the UAT Timetable);

(b) during the UAT Timetable the Customer shall undergo such training (funded by the Customer) as the Supplier deems to be necessary in relation to the Supplier Software;

(c) during the UAT Timetable the Customer shall perform user acceptance testing and shall be entitled to request in writing reasonable changes to the Supplier Software which (if accepted by the Supplier at its discretion) shall be made by the Supplier within a reasonable time;

(d) if no changes are required or if changes have been made by the Supplier the Supplier Software shall (in the absence of any manifest variation between the Supplier Software and the agreed specification for it) be considered accepted.

6 Acceptance

Acceptance of the Supplier Software shall be deemed to have occurred on whichever is the earliest of:

(a) the signing by the Customer of an acceptance certificate;

(b) the expiry of five days after the completion of all the UAT Timetable, unless there are outstanding changes requested by the Customer under clause 5(b) in which case acceptance shall take place on completion by the Supplier of such changes;

(c) the expiry of ten days after the Installation Date of the final Software Module if the User Acceptance Tests for that module have not started, or have not been pursued with due diligence; or

(d) the use of the Supplier Software by the Customer in the normal course of the Business.

7 Implementation Plan and Extension of Time

7.1 Both parties shall use reasonable endeavours to perform their obligations in relation to the Software Development Services in accordance with the Implementation Plan.

7.2 The Supplier shall use reasonable endeavours to attempt to materially complete the Work in each stage of the Implementation Plan by the date specified in the Implementation Plan, subject to clause 7.3.

7.3 The Supplier shall be given an extension of the timetable of any one or more of the stages in the Implementation Plan if one of more of the following events occurs:

(a) a variation to the Supplier Software is made at the Customer's request under the change request procedures set out in clause 8;

(b) a Force Majeure Event occurs;

(c) a delay is caused in whole or in part by an action or omission of the Customer or its employees, agents or third-party contractors;

(d) any difficulties or delays attributable (in whole or in part) to the Customer's infrastructure;

(e) if the Supplier has underestimated the time required to develop or configure (as the case may be) the Supplier Software;

(f) unforeseen technical, licensing or legislative issues arise.

7.4 If the Supplier is entitled to an extension of time under clause 7.3, it shall give written notice to the Customer not later than seven days after the beginning of the event. Such notice shall specify the event relied on and, in the case of a Force Majeure Event, shall estimate the probable extent of the delay.

7.5 The Customer representative and the project manager shall use best endeavours to agree in writing, signed by both parties, what extension of time is reasonable in the circumstances. The Implementation Plan shall be deemed amended accordingly.

8 Change Request and Technology Substitution

8.1 The Customer may, by giving written notice to the Supplier at any time during the term of the contract, request a change to the Supplier Software.

8.2 Within a reasonable time of receipt of such notice, the Supplier shall, at its standard rates then in force, prepare for the Customer a written quote for any increase or decrease in the Price, and of any effect that the requested change would have on the Implementation Plan.

8.3 Within a reasonable time of receipt of the written quote referred to in clause 8.2, the Customer shall inform the Supplier in writing of whether or not the Customer wishes the requested change to be made. If the change is required, the Supplier shall not make the requested change until the parties have agreed and signed a written agreement (**Change Agreement**) specifying, in particular, any changes to the Implementation Plan and Price.

8.4 The Supplier shall offer to the Customer, and the Customer may at any time before the relevant Software Delivery Date choose to obtain from the Supplier, any item of software in substitution for any corresponding item of Supplier Software where the substitute item contains new technology or has better performance characteristics than such Supplier Software. As part of the offer, the Supplier shall notify the Customer of any change in the Price which would result from such substitution. If the Customer chooses to obtain any such substitute item, the parties shall use reasonable endeavours to agree and execute a Change Agreement in accordance with clause 8.3.

9 Ownership

9.1 The Intellectual Property Rights in the Supplier Software are, and shall remain, the property of the Supplier, and the Supplier reserves the right to grant a licence to use such Supplier Software to any other party or parties.

9.2 The Licensed Software is the property of the Supplier and the Customer acquires no rights in or to the Licensed Software other than those expressly granted by this agreement.

9.3 The Customer shall do, and execute or arrange for the doing and executing of, each necessary act, document and thing that the Supplier may consider necessary or desirable to protect the right, title and interest of the Supplier in and to the Intellectual Property Rights in the Supplier Software.

9.4 The Customer shall use best endeavours to prevent any infringement of the Supplier's Intellectual Property Rights in the Licensed Software and shall promptly report to the Supplier any such infringement that comes to its attention. In particular, the Customer shall:

(a) ensure that each Licensed User, before starting to use the Licensed Software, is made aware that the Licensed Software is proprietary to the Supplier and that it may only be used and copied in accordance with this agreement; and

(b) not permit third parties to have access to the Licensed Software without the prior written consent of the Supplier, who may require that such third party executes a written confidentiality agreement before being given access to the Licensed Software.

10 Software Licence

10.1 The Supplier grants the Customer, subject to the Conditions and the terms of this appendix 2, the non-exclusive, non-transferable right to use the Licensed Software for any purpose related to the Business (**Licensed Purposes**).

10.2 The Licensed Software may be used only by Licensed Users at the Site(s), except as follows:

(a) the Licensed Software may be used on any replacement for all or any part of the Computer Hardware;

(b) the Licence may, with the prior written consent of the Supplier, be extended to additional Licensed Users, provided that any appropriate additional fee is paid to the Supplier before such use;

(c) if the Customer transfers the whole of the Business permanently to another site, the Licensed Software may be used at the new site by the Licensed Users, provided that the Supplier is informed in writing of the change of site before use of the Licensed Software commences at the new site;

(d) if the Computer Hardware becomes inoperable for any reason, the Licensed Software may be temporarily used on backup equipment until the Computer Hardware is repaired, and the Customer may use the Licensed Software for the purpose of testing whether any such backup equipment is suitable for use while the Computer Hardware is inoperable; and

(e) if any Site becomes temporarily unusable due to flood, fire or similar damage, or an emergency situation, the Licensed Software may be used at an alternative site until the Site is again usable, provided that the Customer gives the Supplier notice of such alternative site and permits the Supplier to inspect such site once the Licensed Software is again in use at the Site to ensure that no copy of all or any part of the Licensed Software remains at the temporary site. If the alternative site is managed by a third party, the third party must have signed a confidentiality undertaking addressed to the Supplier to protect the Supplier's Confidential Information before the Licensed Software is transferred to the alternative site.

11 Transfer or Reproduction of Licenced Software

11.1 The Customer may make such copies of the Licensed Software as are reasonably necessary for use in accordance with the Conditions and this appendix 2 and for the purposes of backup and security. The Customer has no right to make, or authorise the making of, any other copies of the Licensed Software.

11.2 The Customer shall not:

(a) sub-license, rent, lend, assign or transfer in any other way this agreement or the Licensed Software to any person without the prior written consent of the Supplier; and

(b) give access to the Licensed Software through any network of computers to users who are not employees or agents of the Customer.

12 Use and Adaptation of Licenced Software

12.1 The Customer may use the Licensed Software with other software.

12.2 The Customer may not make adaptations or variations of the Licensed Software without the prior consent of the Supplier.

12.3 The Customer may not disassemble, decompile, reverse translate or in any other manner decode the Licensed Software, except as permitted by law.

13 Supplier Software: Project Management

13.1 No later than five days after the Commencement Date, the Customer shall notify the Supplier of the name of the person appointed as the Customer Representative.

13.2 The Supplier shall appoint the Project Manager, who shall have the responsibility and commensurate authority for the overall progress of the Work and to whom all questions regarding this agreement can be referred. The name of the appointed individual shall be notified in writing to the Customer Representative.

13.3 The Customer Representative shall co-operate with the Project Manager and shall attend meetings and engage in formal communication (whether in person or via remote means) as scheduled by the Project Manager at reasonable intervals and assist the Supplier on all matters relating to the Work.

13.4 The provision of employees, subcontractors and agents of the Supplier to carry out the Work shall be at the discretion of the Supplier.

13.5 The Supplier agrees that the Project Manager shall not be replaced before the Acceptance Date without notice to the Customer, unless:

(a) the individual to be replaced is prevented by ill-health or compassionate leave from carrying out his duties in connection with the agreement for a significant period;

(b) the individual resigns from employment with the Supplier;

(c) the contract of employment of the individual is terminated; or

(d) the Customer makes a reasonable, written request to the Supplier to replace the individual because he has performed unsatisfactorily or has caused a breach of any of the Supplier's obligations under the contract.

13.6 If any such person is replaced, the Supplier shall consult with the Customer Representative about the identity of a suitable replacement.

13.7 The Customer agrees that the Customer Representative shall not be replaced before the Acceptance Date without notice to the Supplier, unless:

(a) the individual to be replaced is prevented by ill-health or compassionate leave from carrying out his duties in connection with the agreement for a significant period;

(b) the individual resigns from employment with the Customer;

(c) the contract of employment of the individual is terminated;

(d) the Supplier makes a reasonable, written request to the Customer to replace the individual because he has performed unsatisfactorily or has caused a breach of any of the Customer's obligations under the contract.

13.8 The Customer shall consult with the Project Manager about the identity of a suitable replacement.

14 Warranties

14.1 The Supplier warrants that:

(a) the Bespoke Software is proprietary to the Supplier (except as otherwise notified by the Supplier to the Customer) and that it has the right to license all UK Intellectual Property Rights in and to the Bespoke Software, to the Customer;

(b) none of the New Release or New Versions supplied by the Supplier under the contract infringes the UK Intellectual Property Rights of any third party; and

(c) the Supplier Software at the Acceptance Date, and for six months after that date, will perform materially in accordance with any Technical Specification.

14.2 The sole remedies for breach of the warranties in clause 14.1(a) and clause 14.1(b) are set out in clause 15.

14.3 The sole remedy for breach of the warranty under this clause 14.1(c) shall be correction of Defects by the Supplier within a reasonable time from notification by the Customer of the Defect that constitutes such breach.

14.4 The warranties set out in clause 14.1 are in lieu of all other express or implied warranties or conditions, including implied warranties or conditions of satisfactory quality and fitness for a particular purpose, in relation to the contract. Without limitation, the Supplier specifically denies any implied or express representation that the Supplier Software will be fit:

(a) to operate in conjunction with any hardware items or software products other than with those that are identified in the Documentation as being compatible with the Supplier Software; or

(b) to operate uninterrupted or error-free.

14.5 The Supplier does not warrant or guarantee that it will be able to rectify all Defects, nor that any Defect which does not materially affect the Customer's operations using the Supported Software will be corrected before the issue of the next New Release.

14.6 Any unauthorised modifications, use or improper installation of the Supplier Software by, or on behalf of, the Customer shall render all the Supplier's warranties and obligations under the contract null and void.

14.7 The Supplier shall not be obliged to rectify any particular Defect if attempts to rectify such Defect other than normal recovery or diagnostic procedures have been made by the Customer's personnel or third parties without the permission of the Supplier.

15 Intellectual Property Rights Indemnity

15.1 The Supplier shall indemnify the Customer against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Customer arising out of or in connection with any claim made against the Customer for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with use of the Supplier Software, any new release or new version, provided that, if any third party makes a claim, or notifies an intention to make a claim, against the Customer which may reasonably be considered likely to give rise to a liability under this indemnity (**Claim**), the Customer:

(a) as soon as reasonably practicable, gives written notice of the Claim to the Supplier, specifying the nature of the Claim in reasonable detail;

(b) does not make any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of the Supplier (such consent not to be unreasonably conditioned, withheld or delayed);

(c) gives the Supplier and its professional advisers access at reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of the Customer, so as to enable the Supplier and its professional advisers to examine them and to take copies for the purpose of assessing the Claim; and

(d) subject to the Supplier providing security to the Customer to the Customer's reasonable satisfaction against any claim, liability, costs, expenses, damages or losses which may be incurred, takes such action as the Supplier may reasonably request to avoid, dispute, compromise or defend the Claim

15.2 The Supplier shall not in any circumstances have any liability for any claim of infringement of Intellectual Property Rights:

(a) caused or contributed to by the Customer's use of the Supplier Software or any New Release (as the case may be) in combination with software not supplied or approved in writing by the Supplier (other than the operating system of any Computer Hardware, provided that the Supplier was notified in writing of the identity of this operating system before the contract was entered into);

(b) based on use of any version of the Supplier Software other than the latest version supplied by the Supplier, if such claim could have been avoided by the use of such supplied version; or

(c) where the claim for infringement arises in respect of a feature of the Supplier Software which was specified by the Customer in the Business Requirements Specification.

15.3 If use of the Supplier Software becomes, or in the opinion of qualified legal counsel is likely to become, the subject of any such claim, the Supplier may:

(a) replace all or part of the Supplier Software, the new releases or new versions (as the case may be) with functionally equivalent software or documentation without any charge to the Customer;

(b) modify the Supplier Software, the new releases or new versions (as the case may be) as necessary to avoid such claim, provided that the Supplier Software, the new releases or new versions (as amended) functions in substantially the same way as the Supplier Software, the new releases or new versions (as the case may be) before modification;

(c) procure for the Customer a licence from the relevant claimant to continue using the Supplier Software or the new releases (as the case may be).

15.4 If:

(a) use of the Supplier Software or any new Release (as the case may be) is determined in a court of law to be infringing;

(b) the Supplier is advised by a barrister of at least ten years' call that use or possession by the Customer of the Licensed Software and/or the Documentation in accordance with this appendix 2 is likely to constitute infringement of a third party's rights; or

(c) if an injunction or similar order is granted in connection with a claim of the types referred to in clause 15.1 which prevents or restricts the use or possession by the Customer of the Licensed Software and/or the Documentation in accordance with this appendix 2,

and the Supplier is unable, after best efforts, to procure for the Customer the right to continue using the Supplier Software, the new releases or new versions (as the case may be) or to provide the Customer with functionally equivalent non-infringing software, the contract and the Licence will be terminated.

15.5 Nothing in this clause shall restrict or limit the Customer's general obligation at law to mitigate a loss it may suffer or incur as a result of an event that may give rise to a claim under this indemnity.