

**MASTER SERVICES AGREEMENT and SOFTWARE LICENCE  
("Agreement")**

Between

**Execview Limited** (Trading under the name of "Execview") of **5 Yeoman's Court, Ware Road, Hertford, Hertfordshire SG13 7H** ("LICENSOR")

and

**<Customer Name>** of **<Registered Address>** (for and on behalf of its affiliates ("LICENCEE"))

The terms of this Agreement shall apply to each licence granted for the Software and to all Services provided to THE LICENCEE under this Agreement, details of which shall be included in a Schedule Attached hereto.

The Effective Date of this Agreement shall be **..DD/MM/YYYY...**

.....

Signed for and on behalf of:

**Execview Limited**

Signed: .....

Name: .....

Title: .....

Date: .....

Signed for and on behalf of:

**<Customer Name>**

Signed: .....

Name: .....

Title: .....

Date: .....

## **I. DEFINITIONS**

- 1.1** “**Customer**” means an organisation identified in this agreement at The LICENSOR
- 1.2** “**Documentation**” means the user training guides for use of the Software.
- 1.3** “**Fees**” mean the technical support, hosting fees and other fees listed in an Order Form.
- 1.4** “**Hosting**” means the Service provided by LICENSOR to run and provide access to the Software as described in the Schedule.
- 1.5** “**Project**” means a project described in an Order Form.
- 1.6** “**Software**” means the software owned by or licensed to LICENSOR or any part thereof, further described in Schedule A, for which THE LICENCEE is granted a licence pursuant to this Agreement, and the media, Documentation and Updates thereof.
- 1.7** “**Order Form**” means the document or Schedules to this Agreement by which THE LICENCEE orders the Software and Services, and which is agreed to by the parties. The Order Form shall reference this Agreement and detail the licences granted and the Services purchased.
- 1.8** “**Schedules**” means the schedules appended to the Agreement.
- 1.9** “**Services**” means consultancy, project assurance, Hosting, network access, Technical Support, training or any other services listed in the Schedule hereto and/or included in the Order Form, to be provided by LICENSOR to THE LICENCEE and the Client, as the context shall require and as defined in Schedule B.
- 1.9** “**Service Levels**” means the quality of software or software service delivery provided under this agreement and described in Schedule C.
- 1.10** “**Supplier**” means the commercial organisation from which the software was purchased
- 1.11** “**Technical Support**” means the Software support provided by LICENSOR as described in the Schedule.
- 1.12** “**Update**” means a subsequent release of the Software to include any release, option, or future product including any material enhancements or additional functionality.

## **II. THE SOFTWARE LICENCE**

### **2.1 Rights Granted**

- A. In consideration for the payment of the Fees, LICENSOR grants to THE LICENCEE and the Client a nonexclusive, non-transferable (as further described below) licence to use the hosted Software during the period set out in an Order Form.
- B. A licence granted under clause 2.1 A above shall not include a right for THE LICENCEE or the Client, or any person on behalf of THE LICENCEE or the Client, to:
- provide a copy of the Software to any person for money or for other valuable consideration;
  - use the Software as an integral part of any product which is supplied to any person for money or for other valuable consideration; or
  - use the Software in the development of any product that competes with those of the Licensor; or
  - to exploit commercially the Software; or
  - support itself or to contract with any third party to support or maintain the Software, except if LICENSOR is unable to support the Software itself during the period for which a licence is granted in an Order Form.

### **2.2 THE LICENCEE Use**

- THE LICENCEE may:
- A. use the Software for THE LICENCEE's and its affiliates operations as set out in an Order Form,
- B. use the Documentation provided with the Software in support of THE LICENCEE's use of the Software;
- C. allow third parties to use the Software for the purposes of the Project operations as set out in an Order Form.

### **2.3. Title**

LICENSOR and any third party licensor shall retain all title, copyright, trademark and other proprietary rights in the Software. THE LICENCEE does not acquire any rights, express or implied, in the Software, other than those specified in this Agreement.

### **2.4 Transfer and Assignment**

THE LICENCEE may not assign this Agreement or transfer the Software to a legal entity separate from THE LICENCEE without the prior written consent of LICENSOR.

**III. TECHNICAL SERVICES**

**3.1 Technical Support Services**

Technical Support Services ordered by THE LICENCEE will be provided by LICENSOR for the term of the Technical Support Services ordered.

**3.2 Consulting and Training Services**

The SUPPLIER or LICENSOR (as defined in the Order Form) will provide any consulting, installation (where needed) and training services agreed to by the parties and included in an Order Form under the terms of this Agreement. All consulting services shall be invoiced on a time and materials basis unless the parties expressly agree otherwise in writing. Title to all amendments and Updates to the Software will remain in the ownership of and be vested in LICENSOR unless otherwise agreed by the parties.

**3.3 Incidental Expenses**

For any Services requested by THE LICENCEE, and any on-site Technical Support Services, THE LICENCEE shall reimburse LICENSOR for actual, reasonable travel and out-of-pocket expenses incurred that are agreed in advance.

**IV. TERM AND TERMINATION**

**4.1 Term**

This Agreement and each licence granted under this Agreement are granted from the Effective Date of this Agreement for the period set out in an Order Form.

**4.2 Termination by THE LICENCEE**

THE LICENCEE may terminate this Agreement and any Services as defined in the Notice Period in the Schedule; however, termination shall not relieve THE LICENCEE's obligations hereunder.

**4.3 Termination by LICENSOR**

LICENSOR may terminate this Agreement or any licence or Services provided hereunder upon written notice if THE LICENCEE materially breaches this Agreement and fails to remedy the breach within 30 (thirty) days following written notice specifying the breach.

**4.4 Bankruptcy**

Any licence or Services provided under this Agreement may be terminated immediately by written notice by either party, if the other party, not being a company, commits any act of bankruptcy or compounds or makes any arrangement with its creditors, or if that other party is a company, is wound up, whether compulsorily or voluntarily or an Administrative Receiver, Receiver, Manager or Administrator is appointed over all or part of its property.

**4.5 Effect of Termination**

Termination of this Agreement or termination or expiry of the licence shall not limit nor restrict either party from pursuing any other remedies available to it, including but not limited to injunctive relief, nor shall such termination relieve THE LICENCEE's obligation to pay all Fees and charges that have accrued prior to such termination or are otherwise owed by THE LICENCEE under any Order Form. The parties' rights and obligations under Clauses 2.1.B, 2.1.D, 2.3, and Articles IV, V, VI and VIII shall survive termination of this Agreement. Upon termination, THE LICENCEE shall cease using the software.

**V. INDEMNITY, WARRANTIES, REMEDIES**

**5.1 Infringement Indemnity**

Subject to the terms and conditions specified below, the LICENSOR will defend and indemnify THE LICENCEE against any claim brought against THE LICENCEE or any end user that the Software infringes a copyright or patent or other intellectual property right, provided that: (a) THE LICENCEE notifies LICENSOR in writing within 30 days of the claim; (b) LICENSOR has sole control of the defense and all related settlement negotiations; and (c) THE LICENCEE and Client provide LICENSOR with the assistance, information and authority necessary to perform LICENSOR's obligations under this Section. LICENSOR will reimburse THE LICENCEE's and the Client's reasonable expenses incurred in providing such assistance.

If the Software is held or is believed by LICENSOR to infringe, the LICENSOR shall have the option, at its expense, to (a) modify the Software to be non-infringing; or (b) obtain for THE LICENCEE a licence to continue using the Software.

**5.2 Warranties and Disclaimers**

- A. LICENSOR warrants it has full capacity and authority to enter into and perform this Agreement.
- B. The warranties above are exclusive and to the extent permitted by law, in lieu of all other warranties or conditions, whether express or implied, statutory or otherwise all of which are expressly excluded including without limitation any implied warranties of satisfactory quality, reasonable care and skill, merchantability and fitness for a particular purpose.
- C. LICENSOR provides the software and software services to a reasonable service quality but does not warrant that the operation of the Software will be uninterrupted or error-free. The service quality to be expected is non-contractual and set out in Schedule C.

## 5.2 Content

The LICENSEE is responsible for all aspects of the business or other data stored by the LICENSEE and its permitted third parties, subsidiaries and affiliates in the software. This includes input, bulk loading and automated updates, manual data entry, editing, deletion and configuration and running of reports.

The nature of the content and its use is the responsibility of the LICENSEE who has entire responsibility for its input and use. The LICENSEE indemnifies the LICENSEE against any claim related to the legality, copyright of data stored in the software.

Where data held would be subject to the Data Protection Act the LICENSEE is responsible for ensuring that any required registrations are implemented.

## 5.3 Exclusive Remedies

For any breach of the warranties contained in Section 5.2, LICENSOR shall:

- A. For the Software,  
Correct the Software errors that cause breach of the warranty, or if LICENSOR is unable to amend the breach of warranty, THE LICENCEE shall be entitled to terminate the Software licence.
- B. For Services,  
Re-performance of the Services, or if LICENSOR is unable to perform the Services as warranted, THE LICENCEE shall be entitled to recover the Services Fees or Technical Support Fees as applicable paid to LICENSOR for the period of unsatisfactory Services.

## VI. PAYMENT PROVISIONS

### 6.1 Fees and Prices

Fees and expenses for any Software or Services provided under this Agreement shall be as specified in the Schedule A or on an Order Form. The Fees shall increase on each anniversary of this Agreement by the percentage increase on RPIX in the previous 12 months.

### 6.2 Invoicing and Payment

All fees and charges shall be due and payable 30 days from the invoice date. If not otherwise stated in the Order Form, Software services and Technical Support fees shall be invoiced quarterly in advance.

### 6.3 Late Payment

Any amount payable by THE LICENCEE to LICENSOR or SUPPLIER under this Agreement which is not in dispute and has not been paid in accordance with Clause 6.2, shall be deemed

overdue and shall be subject to a late payment charge, on a day to day basis from the date payment should have been made until payment in full is made, of 2% above The Royal Bank of Scotland's base lending rate from the time being in force during the period of delay.

## 6.4 Taxes and Duties

Fees are exclusive of, and LICENSOR is responsible for, all duties or taxes payable on the licences or Services, which shall be paid as soon as they become due. Value Added Tax shall be charged in addition at the rate in effect on the date of invoice.

## VII. INDEMNITY AND LIMITATION OF LIABILITY

Nothing in this Agreement shall limit either party's liability for personal injury or death caused by the negligence of LICENSOR, or LICENSOR's liability in the tort of deceit.

7.2 Unless otherwise expressly stated in this Agreement, and whether or not either party has been advised of the possibility of such loss, Neither party shall be liable in contract, tort or otherwise for:

- (a) indirect or consequential loss;
- (b) loss of revenue;
- (c) loss of profits;
- (d) loss of business or goodwill; or
- (f) loss of availability;
- (g) loss of data;
- (h) accidental disclosure of information;
- (h) liquidated damages;

arising out of or in connection with a the Software licence or Services or otherwise under, in connection with or in relation to this Agreement.

7.3 Subject to Clauses 7.1, 7.2 and 7.3, LICENSOR's total liability in contract, tort or otherwise arising out of or in connection with a the Software licence or Services or otherwise under, in connection with or in relation to each Order Form shall be limited to the fees paid under the relevant Order Form.

7.4 Unless In any other event, the maximum possible claim is limited to a total sum of £1,000,000, only in the situation where the terms of the claim falls within the underwriting provided by the LICENSORS professional indemnity insurance.

7.5 Where a third party SUPPLIER is responsible for providing ancillary services and support to the LICENSEE, and any aspect of this delivery results in a claim of any sort, the LICENSOR has no liability whatsoever in respect of this service provision or any claim resulting.

## VIII. GENERAL TERMS

### 8.1 Non-disclosure

By virtue of this Agreement, the parties may have access to information that is confidential to one another ("Confidential Information").

- A. A party's Confidential Information shall not include information that: (a) is or becomes a part of the public domain through no act or omission of the other party; (b) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (c) is lawfully disclosed to the other party by a third party without restriction on disclosure; or (d) is independently developed by the other party.

The parties agree to hold each other's Confidential Information in confidence during the term of this Agreement and for a period of five years after termination of this Agreement. The parties agree, unless required by law, not to make each other's Confidential Information available in any form to any third party for any purpose other than the implementation of this Agreement. Each party agrees to take all reasonable steps to ensure that Confidential Information is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement.

## **8.2 Notice**

All notices, including notices of address change, required to be sent hereunder shall be in writing and shall be deemed to have been given when mailed by first class mail to the first address listed in the relevant Order Form (if to THE LICENCEE) or to the LICENSOR address on the Order Form (if to LICENSOR).

To expedite order processing, THE LICENCEE agrees that LICENSOR may treat Order Forms faxed or e-mailed by THE LICENCEE to LICENSOR as original documents.

## **8.3 Severability**

If any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement will remain in full force.

## **8.4 Personnel**

The LICENCEE shall not seek directly or through any third party to employ permanently or temporarily engaged personnel who are supplying Services during the period of the Agreement, any extension thereof or for six working months after termination or expiry thereof. Any such approach shall result in payment by the Client of damages including but not limited to, loss of revenue and expertise. As an agreed pre-estimate of damages, this sum shall be 6 working months of the standard price applicable to the person(s) affected and payable upon presentation of its invoice by LICENSOR.

## **8.5 Entire Agreement**

This Agreement including any Schedule and Order Forms constitutes the complete agreement between the parties and supersedes all prior or contemporaneous agreements or representations, written or oral, concerning the subject matter of this Agreement. This Agreement may not be modified or amended except in writing signed by a duly authorized representative of each party.

It is expressly agreed that the terms of this Agreement, Schedule And any Order Form shall supersede the terms in any purchase order or other ordering document.

## **8.7 Governing Law**

This Agreement and all matters arising out of or relating to this Agreement shall be governed by and interpreted in accordance with English law. The parties agree to submit to the exclusive jurisdiction of the Courts of England and Wales.

## **SCHEDULE A – SOFTWARE LICENCE**

**The Software and Software Services means**

<Add details of the license to the Licensee here>

**Fees:**

**Licence Fees:** <Describe agreed fees and fee basis/unit costs, steps here>

**LICENSOR-specific Services Fees:** <None>

**LICENSOR-specific Technical Support Fees:** <None>

**LICENSOR-specific Hosting fees:** <None>

**Fees payable to:** The Supplier / the Licensor

**Payment terms:** Payment terms to be defined here

**Duration of License**

**Start Date:** <Date>

**Start Date:** <Date>

**Termination notice period:** <xx months>

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**SCHEDULE B – SERVICES AGREEMENT**

**The Services means**

<Add details of the license to the Licensee here>

**Fees:**

**Day rates:** <Add details here>

**Other service costs:** <Add details here>

**Expenses:** <Add details here>

**Fees payable to:** The Supplier / the Licensor

**Payment terms:** Payment terms to be defined here

**Duration of services**

**Start Date:** <Date>

**Start Date:** <Date>

**Key milestones**

Milestone or delivery date	Date



# execview MASTER SERVICE AGREEMENT AND SOFTWARE LICENCE

## SCHEDULE C – EXECVIEW SOFTWARE SERVICE QUALITY

### 1. Service agreement

This Execview Service agreement sets out the expected service quality and management to be provided to clients. The nature of software service provision means that whilst all reasonable care will be taken to meet the service quality described, these are not contractually binding.

### 2. Availability

The Execview Software platform is available 24x7 with targeted availability of 99.5% within Normal Operational Hours. Normal Operational hours are 24x7 excluding Planned Downtime.

### 3. 'Core' Support hours

Core Support hours are from 0830 – 1800 Monday to Friday UK timezone.

### 4. Planned Downtime

Planned Downtime will normally be announced at least 24 hours in advance via email to system administrators. Downtime for upgrades will last less than thirty minutes, and typically occur on a Thursday or Friday evening. Any lengthy period of planned downtime (i.e. over one hour) will be scheduled to occur at weekends.

### 5. Unplanned Downtime

Unplanned outages occur where the software service needs to be taken out of service for maintenance purposes during the Normal Operational Hours. We will endeavour to notify affected system administrators by email, with an estimate of the outage period and our understanding of the problem and how it is being resolved.

### 6. Security policy

It is the responsibility of the LICENSEE to administer user accounts, create new users, grant access rights, and delete or lock out users when their use of the Software is completed. Each LICENSEE is required to have at least one Administrator role for this purpose.

- Execview requires passwords to have at least one uppercase and one digit, and be of at least eight characters in length.
- Users are required to change their passwords every 30 days.
- After three incorrect attempts to login locks the user's account.
- If no login occurs for 90 days, the user's account is expired.
- Statistics of login frequency, last login and duration of login are available and will be provided on request.

### 7. Back-up and disaster recovery

Our data centre hosting provider, Rackspace, provides data storage, all physical and logical security and all backup and restore operations.

Backups are taken nightly, with full backups weekly and incremental backups nightly. Backups are stored off-site. The LICENSOR test restores on a regular basis to assure that backups will provide valid recovery.

Rackspace provide business continuity and disaster recovery measures which, in the unlikely event of them being needed, would see an alternative hosted service restored within 48 hours.

Restoration of service in the event of a full disaster recovery invocation could take up to 5 days.

### 8. Maintainability, Change Control and Software Updates

"Major defects" are software fault which renders a large part, or all, of the Execview service unusable, and for which there is no reasonable workaround. Should such a defect arise, the LICENSOR would probably shut down the service in order not to exacerbate the problem for customers. Such a defect may cause data integrity issues, delaying, and making more complex, restoration of normal service.

Execview would make all reasonable endeavours to communicate with User Administrators within 30 minutes with a statement of the problem and action plan to resolve it.

Since the nature of such a fault cannot be predicted, it is not possible to offer a guaranteed fix time. Software bugs and enhancements can be logged via the online bug reporting tool. At agreed intervals, Execview account managers meet with their clients to review the accumulated log of such reports, so that progress can be tracked, queries raised and dealt with, and a high level of understanding of the client's needs grown and maintained.

Execview operate an Agile software development methodology, whereby releases typically occur every two weeks. We use a software change control tool to manage all new developments, operating separately branched code for major new features which are only merged with the core software set once tested and ready.



Account Managers discuss, agree and confirm with their clients timescales for all bugs and enhancements. We do not offer set response times to meet enhancement requests, but bugs will be fixed on the following basis:

- Critical fixes: Worked on and released either immediately or on the evening of the day they are completed.
- Top priority ("P1"): in the next release
- Medium priority ("P2"): normally in the release after next but certainly within two months
- Low priority ("P3"): within four months

In the unlikely event that an upgrade should be rolled back, keep backup copies of the Execview database and can restore these to revert all data to the moment before the upgrade. Selective reversion of specific features is much harder; the most practical course of action in almost all cases is to fix the issue(s).

Execview is hosted by a major hosting provider based in the London area, directly connected to LINX (the London INternet eXchange). This affords Execview excellent bandwidth availability via multiple Tier 1 Internet Service Providers, alongside high volume sites serving the UK such as Google, Yahoo and bbc.co.uk.

Execview's hosting provider delivers:

- SSL security
- 24 hour availability
- Daily back-ups stored offsite
- Multiple site hosting with the ability to restore the full service within 5 days in the event of a disaster
- SAS 70 audit
- Zero-Downtime Network
- 1-Hour Hardware Replacement
- Unlimited access to 24x7x365 dedicated support team including Level 3 Tech Support
- Instant Emergency Response
- Full administrative access
- Fully resilient DNS infrastructure
- Automated Microsoft Security Patching
- Execview's front-end is written in C-sharp using Microsoft Visual Studio plus some Ajax and Java controls. Execview's back-end uses Microsoft SQL Server technology using stored procedures written in Microsoft Transact SQL.