

VeriFi FMS Software as a Service Agreement

Terms and Conditions

Tuesday, April 15, 2014

PARTIES:

- (1) VeriFi CCTV Limited (T/A VeriFi FMS) a company incorporated in England(registration number 7307582) having its registered office at; 70 Seabourne Road, Southbourne, Bournemouth. BH5 2HT (the **"Licensor"**); and
- (2) Any individual, company or any other organisation that the Licensor has agreed to provide services to and has issued a Username and Password enabling access to and use of VeriFi Software as a Service applications (the **"Licensee"**)

BACKGROUND:

"The Licensor has copyright in certain Software forming elements of the Service, and the parties have agreed that the Licensor will license that Service and provide any associated equipment and services as set out in the Quotation & Schedule to the Licensee on the terms of this Agreement".

VERSION:

The Licensor may from time to time amend the terms of this agreement as it appears electronically, it is the responsibility of the Licensee to print and retain a hard copy on the **"Effective Date"** which shall be the date on which the **"Username & Password"** are first used by the Licensee, in the absence of such hard copy the current terms as they appear electronically will apply.

AGREEMENT:

1. Definitions and interpretation

1.1 In this Agreement:

"Agreement" means this Service agreement (including the appended Quotation and Schedule);

"Business Day" means any weekday, other than a bank or public holiday in England

"Business Hours" means between 09:00 and 17:00 on a Business Day, which shall be Monday to Friday excluding Bank Holidays

"Charges" means the amounts payable by the Licensee to the Licensor under or in relation to this Agreement (as set out in the Quotation & Schedule)

"Consumables" means items purchased by the Licensee from the Licensor from time to time as required and as referred to and listed in the **"Quotation & Schedule"**

"Critical issues" means defects, errors and bugs that render the system incapable usefully of performing tasks which it was intended.

"Effective Date" means the date of execution of this Agreement which shall be the date on which the **"Username & Password"** are first used by the Licensee.

"Equipment" means any equipment property of the Licensee or that which may be supplied to the Licensee by the Licensor which is referred to and listed in the **"Quotation & Schedule"**

"Force Majeure Event" means an event, or a series of related events, that is outside the

reasonable control of the party affected (including [failures of or problems with the internet or a part of the internet, hacker attacks, virus or other malicious software attacks or infections,] power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars);

“Intellectual Property Rights” means all intellectual property rights wherever in the world, whether registered or unregistered, including any application or right of application for such rights (and the “intellectual property rights” referred to above include copyright and related rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trade-marks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs);

“Non-Critical issues” means defects, errors and bugs that do not adversely affect the system in that it is capable of continuing to usefully of perform the tasks which it was intended.

“Quotation & Schedule” means the quotation provided separate to this agreement.

“Software as a Service” means the Cloud based computer applications identified in the Quotation & Schedule.

“Term” means the term of this Agreement.

“Username & Password” means the username and password as issued and amended from time to time by the Licensor enabling the Licensee to access the Software.

“VeriFi EIDOS” is the brand applied to the Licensors Software as a Service Management Information System.

“VeriFi Building Services Data Policy” incorporates the Annual Compliance Audit & CCTV Assessment and is as described in the Service Specification found on the VeriFi website.

1.2 In this Agreement, a reference to a statute or statutory provision includes a reference to:

(a) that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and

(b) any subordinate legislation made under that statute or statutory provision.

1.3 The Clause headings do not affect the interpretation of this Agreement.

2. Term

This Agreement will come into force on the Effective Date and will continue in force for a minimum period of three years unless otherwise specified in the Quotation and Schedule it may however be terminated earlier in accordance with Clause 7.

3. Delivery of Service

3.1 In the case of the VeriFi EIDOS Management Information System the Licensor will deliver the Username and Password to the Licensee by Email upon receipt of the Licensee's Purchase Order.

3.2 In the case of the VeriFi Building Services Data Policy and Annual Compliance Audit & CCTV Assessment the Licensor will deliver the Username and Password to the Licensee by Email upon completion of the initial Policy Document, Audit & Assessment.

3.3 Unless otherwise indicated in the Quotation & Schedule the Licensee will make available and maintain all equipment necessary to operate the Service/Application.

3.4 The Licensee will be responsible for obtaining and or granting any necessary permissions for the Licensor to connect peripherals to the Licensees' PC, Wi-Fi and Mobile Phone network.

3.5 The Licensor will provide telephone 'Help Desk' support during normal Business Hours.

4. Invoicing and payment

4.1 The Licensor will issue invoices for the Charges to the Licensee on or after the invoicing dates set out in Quotation and Schedule.

4.2 The Licensee will pay the Charges to the Licensor within 30 days of the date of an invoice issued in accordance with Clause [4.1].

4.3 All Charges stated in or in relation to this Agreement are stated exclusive of VAT, unless the context requires otherwise.

4.4 Charges must be paid by bank transfer (using such payment details as are notified by the Licensor to the Licensee from time to time).

4.5 If the Licensee does not pay any amount properly due to the Licensor under or in connection with this Agreement, the Licensor may suspend the service until such time as the due amount is paid. The Licensee will in this case forfeit the period of suspension.

5. Warranties

5.1 The Licensee warrants and represents to the Licensor that it has the legal right and authority to enter into and perform its obligations under this Agreement.

5.2 The Licensor warrants and represents to the Licensee:

(a) that it has the legal right and authority to enter into and perform its obligations under this Agreement;

(b) that the Service supplied by the Licensor will at the date of delivery perform substantially in accordance with the documentation accompanying the Service;

(c) that the use by the Licensee, in accordance with the terms of this Agreement, of the Service supplied by the Licensor will not:

(i) infringe any person's Intellectual Property Rights or other legal rights;

[(ii) breach any laws, statutes or regulations; or

(iii) give rise to a cause of action against the Licensor or the Licensee or any other person, in each case in any jurisdiction and under any applicable law; and

5.3. The Licensee acknowledges that complex software is never wholly free from defects, errors and bugs, and the Licensor gives no warranty or representation that the Service will be wholly free from such defects, errors and bugs.

Provided that any such anomalies are notified to the licensor by means of the 'Feedback' facilities that are integral to the system:

- (i) Critical Issues will be resolved within 24 hours of notification being logged.
- (ii) Non Critical Issues will be resolved in the next software version routinely released at 90 day intervals.

5.4 All of the parties' warranties and representations in respect of the subject matter of this Agreement are expressly set out in the terms of this Agreement. To the maximum extent permitted by applicable law, no other warranties or representations concerning the subject matter of this Agreement will be implied into this Agreement.

6. Limitations and exclusions of liability

6.1 Nothing in the Agreement will:

- (a) limit or exclude the liability of a party for death or personal injury resulting from negligence;
- (b) limit or exclude the liability of a party for fraud or fraudulent misrepresentation by that party;
- (c) limit any liability of a party in any way that is not permitted under applicable law; or
- (d) exclude any liability of a party that may not be excluded under applicable law.

6.2 The limitations and exclusions of liability set out in this Clause 6 and elsewhere in the Agreement:

- (a) govern all liabilities arising under the Agreement or any collateral contract or in relation to the subject matter of the Agreement or any collateral contract, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty; and

[(b) will not limit or exclude / limit and exclude, the liability of the parties under the express indemnities set out the Agreement.

6.3 The Licensor will not be liable in respect of any loss of profits, income, revenue.

6.4 The Licensor will not be liable for any loss of business, contracts or commercial opportunities.

6.5 The Licensor will not be liable for any loss of or damage to goodwill or reputation.

6.6 The Licensor will not be liable for any losses arising out of a Force Majeure Event.

6.7 The Licensor's liability in relation to any event or series of related events will not exceed the total amount paid and payable by the Licensee to the Licensor under the Agreement during the 30 day period immediately preceding the event or events giving rise to the claim.

7. Termination

7.1 Either party may terminate this Agreement with immediate effect by giving written notice if the other party:

- (a) commits any material breach of any term of this Agreement, and:
 - (i) the breach is not remediable; or
 - (ii) the breach is remediable, but the other party fails to remedy the breach within 30 days of receipt of a written notice requiring it to do so; or
- (b) persistently breaches the terms of this Agreement (irrespective of whether such breaches collectively constitute a material breach).

(c) provides the Service as a contractor to a third party and their contract with that third party is terminated and documentary evidence of termination is shown.

7.2 Either party may terminate this Agreement with immediate effect if; by giving written notice if:

- (a) the other party:
 - (i) is dissolved;
 - (ii) ceases to conduct all (or substantially all) of its business;
 - (iii) is or becomes unable to pay its debts as they fall due;
 - (iv) is or becomes insolvent or is declared insolvent; or
 - (v) convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;
- (b) an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party;
- (c) an order is made for the winding up of the other party, or the other party passes a resolution for its winding up (other than for the purpose of a solvent company reorganisation where the resulting entity will assume all the obligations of the other party under this Agreement); or
- (d) (where that other party is an individual) that other party dies, or as a result of illness or incapacity becomes incapable of managing his or her own affairs, or is the subject of a bankruptcy petition or order.

8. Effects of termination

8.1 Upon termination of this Agreement, all the provisions of this Agreement will cease to have effect.

8.2 Termination of this Agreement will not affect either party's accrued liabilities or rights as at the date of termination.

8.3 In the case of 7.1 no credit or refund will be due to the licensee for any unexpired portion of payment due for the 12 month period in which the termination is effected.

9. General

9.1 No breach of any provision of this Agreement will be waived except with the express written consent of the party not in breach.

9.2 If a Clause of this Agreement is determined by any court or other competent authority to be unlawful and/or unenforceable, the other Clauses of this Agreement will continue in effect. If any unlawful and/or unenforceable Clause would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the Clause will continue in effect (unless that would contradict the clear intention of the parties, in which case the entirety of the relevant Clause will be deemed to be deleted).

9.3 Nothing in this Agreement will constitute a partnership, agency relationship or contract of employment between the parties.

9.4 This Agreement may not be varied except by a written document signed by or on behalf of each of the parties.