

BLACKRAINBOW – END USER LICENSE, SUPPORT, MAINTENANCE & SERVICE AGREEMENT (EULA).**1. Definitions.**

In this document:

(a) EULA means this End User License, Support, Maintenance & Service Agreement and incorporates the Quotation; (b) BlackRainbow means any member of the Black Rainbow Group including, Black Rainbow Holdings Ltd, Black Rainbow Ltd, Black Rainbow Consulting Services Ltd, & Black Rainbow Inc. and is the owner of the Software and the IP (c) “API” means a set of commands, functions, protocols, and/or objects that can be used to create software or interact with external systems; (d) Commencement Date means the earlier of the commencement date set out in the Quotation or the date on which Licensee first installs or uses the Software as an application or a service; (e) Confidential Information means: (i) information, whether in visual, oral, documentary, electronic, machine-readable, tangible, intangible or any other form, relating to BlackRainbow (including but not limited to any specifications, formulae, know how, concepts, inventions, ideas, software, designs, copyright, trade secrets or any information relating to any business, products, markets, operations, processes, techniques, technology, forecasts, strategies or any other matter); (ii) negotiations in relation to, and the terms of, this EULA; (iii) information designated as confidential by BlackRainbow; and (iv) information that is by its nature confidential; (f) Data Protection Laws” means the applicable legislation protecting the fundamental rights and freedoms of individuals and, where required by law, legal entities, and in particular, their right to privacy with respect to the processing of Personal Data including, but not limited to, the General Data Protection Regulation ((EU) 2016/679), any national legislation supplementing same, and UK GDPR; (g) Documentation means any documentation which accompanies the Software and is provided by BlackRainbow to Licensee; (h) “Hosted Basis” means the purchase and use of the Software, as described in this EULA, by the Licensee on the basis that it is hosted and operated on platform infrastructure (inclusive of internet locations and servers as the case may be) which is provided and operated by BlackRainbow and for which BlackRainbow is responsible; (i) “Hosting Agreement” means the binding written agreement between BlackRainbow and the Licensee for the use of the Software by the Licensee in terms of this EULA on a Hosted Basis; (j) Expiry Date means the expiry date set out in the Quotation; (k) Initial Term means the period from the Commencement Date to the Expiry Date; (l) Intellectual Property Rights means any present and future rights conferred by statute, common law or equity throughout the world including rights in respect of or in connection with any confidential information, copyright, trademarks, service marks, designs, patents, circuit layouts, business names, domain names, inventions or other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields whether or not registered or registrable and includes any right to apply for the registration, renewal and extension of such rights; (m) License Fee means the license fee set out in the Quotation; (n) Licensee means the entity who acquires the license rights from BlackRainbow to use the Software pursuant to this EULA; (o) “Licensee Data” means all electronic data or information submitted to the Software by Licensee or any member of Licensee’s Personnel (which may include Personal Data); (p) “Quotation” means the quotation(s) or other document(s) provided by BlackRainbow to Licensee from time to time setting out details in relation to Licensee’s use of the Software and applicable fees; (q) “Renewal Term” means any further term granted by BlackRainbow; (r) “Personal Data” means any information relating to an identified or identifiable natural person (an identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual); (s) SDK means a set of development tools that allows for the creation of any applications, including but not limited to, software package, software framework, hardware platform, computer system, operating system, or similar platform; (t) “Self-Hosted Basis” means the purchase and use of the Software as described in this EULA, by the Licensee on the basis that it is wholly hosted and operated upon and within systems and platform infrastructure (inclusive of servers) internal to the operations of the Licensee and for which the Licensee is responsible; (u) “Software” means the object code version of the software (including any upgrades or updates) supplied by Software means the object code version of the software (including any upgrades or updates) supplied by BlackRainbow to Licensee as an

application, hosted application or Software as a Service; (v) Taxes means any present or future tax, fee, levy, duty, charge, withholding, penalty, fine, impost or interest imposed by any government or governmental, semi-governmental or administrative body, department, commission, authority, agency, minister, statutory corporation, instrumentality or entity (which is not the subject of a valid certificate of exemption) including but not limited to any tax in relation to sales, use, property, value added, goods and services, turnover, stamp duty, interest equalization, business, occupation, excise, income, profits or receipts; (w) Term means the Initial Term plus any Renewal Term(s); (x) Territory means the territory set out in the Agreement (or, in the absence of a territory in the Quotation, worldwide except for countries which are the subject of any United States trade restriction, export control or embargo); and (u) User means any person who uses the Software. (y) "UK GDPR" has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018; and (z) "User" means any person who uses the Software. (aa) "Black Rainbow" is the owner of the Software and the IP; (bb) "Black Rainbow License Key" is an encrypted file provided by Black Rainbow, which unlocks the Software and enables the use of the Software by a User (cc)) "Person" means an individual, corporation, partnership, joint venture, limited liability company, governmental authority, unincorporated organization, trust, association or other entity; (dd) "Personnel" means any employee, servant, contractor, subcontractor, agent, partner, director or officer of a party; (ee) "Related Body Corporate" means a body corporate that is, in relation to another body corporate: (i) a holding company of that other body corporate; (ii) a subsidiary of that other body corporate; or (iii) a subsidiary of a holding company of that other body corporate (ff)) "SMS" means the support and maintenance services to be provided by BlackRainbow to the Licensee in relation to the Licensee's use of the Software under this EULA, which such support and maintenance services shall be provided strictly pursuant to and in accordance with the terms of the Support and Maintenance Agreement; (gg) Support and Maintenance Agreement" means the binding written agreement to be entered into between BlackRainbow and the Licensee under which BlackRainbow shall provide the SMS to the Licensee on such terms as are set out therein for the Term.

2. EULA.

THIS EULA IS A LEGALLY BINDING AGREEMENT BETWEEN BLACKRAINBOW AND THE LICENSEE FOR USE OF THE SOFTWARE. THE EULA CONSISTS OF THESE TERMS AND THE QUOTATION. BY INSTALLING THE SOFTWARE OR OTHERWISE USING THE SOFTWARE, LICENSEE ACKNOWLEDGES THAT LICENSEE HAS READ, UNDERSTANDS, AND AGREES TO BE BOUND BY THE TERMS OF THIS EULA. UNLESS LICENSEE AGREES WITH THE TERMS OF THIS EULA, LICENSEE IS NOT AUTHORIZED TO USE THE SOFTWARE. BY INSTALLING OR OTHERWISE USING ANY UPDATES AND/OR UPGRADES, LICENSEE AGREES TO BE BOUND BY ANY LICENSE TERMS FOR THE UPDATES AND/OR UPGRADES. IF LICENSEE DOES NOT AGREE TO THE LICENSE TERMS FOR UPDATES AND/OR UPGRADES, LICENSEE IS NOT AUTHORIZED TO USE THE UPDATES AND/OR UPGRADES.

3. License.

3.1 Grant of License. Subject to the terms of this EULA, in consideration of payment of the License Fee by Licensee, BlackRainbow hereby grants to Licensee a non-exclusive, non-transferable, non-assignable, revocable, license to use the Software for Licensee's internal use only in the Territory for the Term in accordance with the terms of this EULA.

3.2 Prohibitions. Licensee must not: (a) copy, modify, adapt, translate, create a derivative work of, clone, reverse engineer, reverse assemble, disassemble or decompile the Software or any part of the Software (or any accompanying hardware) or otherwise attempt to discover any part of the source code of the Software; (b) use any unauthorized modified version of the Software, including (without limitation) for the purpose of building similar or competitive software or for the purpose of obtaining unauthorized access to the Software; (c) use the Software in a manner that is contrary to any law or in violation of any Intellectual Property Rights or privacy rights; (d) publish, post, upload or otherwise transmit Licensee Data that contains any viruses, Trojan horses, worms, time bombs, corrupted files or other computer programming routines that are intended to damage, detrimentally interfere with information or property of any person; (e) use or knowingly permit the use of any security testing tools in order to probe, scan or attempt to penetrate or ascertain the security of the Software; (f) not used; (g) permit or authorize any third party to use or copy the Software; (h) rent the use of the Software to any third parties; (i) gain revenue, profit or benefit from the use of any trial Software; (j) take any action that may compromise or jeopardize

BlackRainbow's Intellectual Property Rights; (k) remove or deface any confidentiality, copyright or other proprietary notice placed on the Software or Documentation; (l) make any representations or warranties to any third parties that could be construed as being representations or warranties from BlackRainbow in relation to the Software or any other matter; (m) use the Software in any way that involves service bureau use, outsourcing, renting, SAAS or cloud services, reselling, sublicensing, or time-sharing of the Software; (n) duplicate the virtual environment where the Software resides, to the extent that such duplication would exceed the Licensee's authorized usage of the Software; or (o) do any other thing in relation to the Software specifically prohibited by BlackRainbow in the Documentation or otherwise communicated by BlackRainbow to Licensee in writing.

3.3 Provision of purchased Software. BlackRainbow will (a) make the Software available to Licensee pursuant to this Agreement and the applicable Quotation, (b) provide applicable BlackRainbow support as detailed in the Quotation, (c) use commercially reasonable efforts to make the online Software available 24 hours a day, 7 days a week, except for: (i) planned downtime (of which BlackRainbow shall give advance electronic notice), and (ii) any unavailability caused by circumstances beyond BlackRainbow's reasonable control, including, for example, an act of God, act of government, flood, fire, earthquake, civil unrest, act of terror, strike or other labour problem (other than one involving BlackRainbow employees), Cloud service provider failure or delay, Non-BlackRainbow application, local IT environment, or denial of service attack, and (d) provide the Software in accordance with laws and government regulations applicable to BlackRainbow's provision of its Software to its customers generally, and subject to Licensee's and Users' use of the Software in accordance with this Agreement, the Quotation.

3.4 Fees. Licensee will pay the License Fee, and any other fees set forth in the Quotation, to BlackRainbow within 30 days of the date of each invoice. Compound interest will accrue on any outstanding amounts at a rate of 5% per month or the maximum rate allowed by law, whichever is lesser. Licensee will pay any Taxes, in relation to the Software or this EULA. BlackRainbow may issue Licensee a temporary license for the Software until the License Fee has been paid in full as described herein. Should Licensee not pay the applicable License Fee as set forth herein, BlackRainbow may suspend Licensee's use of the Software. All fees due hereunder are non-refundable.

3.5 Synchronization of invoicing. If BlackRainbow has granted multiple licenses to Licensee that expire in a particular quarter, BlackRainbow may synchronize the invoicing dates for such licenses to the last day of that quarter.

3.6 Use of APIs and/or SDKs and/or Scripts and/or Bespoke Applications (ASSBs). At its sole and absolute discretion, BlackRainbow may provide BlackRainbow ASSBs to Licensee, which may be used in conjunction with the Software. BlackRainbow provides these ASSBs on an "AS IS" basis and may not provide support for the ASSBs. Licensee assumes all risk of use of the ASSBs in connection with the Software. The restrictions set forth in this EULA that apply to Software, also apply to ASSBs. Licensee acknowledges that BlackRainbow owns title and all intellectual property rights to the ASSBs. BlackRainbow may terminate Licensee's use of the ASSBs on 30 days written notice to Licensee.

3.7 Integration with Non-BlackRainbow Applications. The Software may contain features designed to interoperate with Non-BlackRainbow Applications. BlackRainbow cannot guarantee the continued availability of such features, and may cease providing them without entitling Licensee to any refund, credit, or other compensation, if for example and without limitation, the provider of a Non-BlackRainbow Application ceases to make the Non-BlackRainbow Application available for interoperation with the corresponding Software features in a manner acceptable to BlackRainbow.

3.8 Confidential Information. Licensee acknowledges the Software and Documentation may contain Confidential Information. Licensee is not entitled to use, disclose or copy the Confidential Information other than strictly in accordance with this EULA and will keep the Confidential Information secure at all times.

3.9 Compliance. Licensee warrants that Licensee's use of the Software will comply with all laws, treaties, regulations, and conventions (including but not limited to laws in relation to privacy, electronic communications and anti-spam).

4. Intellectual Property Rights

4.1 BlackRainbow's Intellectual Property. Licensee acknowledges BlackRainbow owns, or is an authorized licensee of, all rights, title and interest in all Intellectual Property Rights in the Software and the Documentation. The license granted to Licensee pursuant to this EULA does not convey any express or implied Intellectual Property

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5. Terms of Service

5.1 User Access. Licensee will authorize access to and assign unique passwords and usernames to each User. User logins are for designated Users and cannot be shared or used by more than one User, but any User login may be reassigned to another User. Licensee is responsible for all activities conducted under User logins.

5.2 Security. Licensee shall maintain and enforce technical and organizational safeguards against accidental, unlawful or unauthorized access to or use of the Software that ensures a level of security appropriate to the risks presented by the use of any software that handles sensitive data, consistent with best industry practice and standards. Licensee will be responsible for the security, confidentiality and use of usernames and passwords. Licensee must prevent unauthorized access to or use of usernames and passwords.

5.3 Support and Maintenance. The license grant is expressly subject to Licensee's purchase of support and maintenance services for the Software pursuant to Section 9.0 of this Agreement.

5.4 The provision of support by BlackRainbow shall be strictly subject to the conditions of this Agreement. In the event that an agreement to provide support is not validly entered into, or is otherwise lapsed or terminated before the Expiry Date, BlackRainbow shall have no obligation to provide support to the Licensee and, for the avoidance of doubt but without prejudice to any other term of this EULA, the terms of clause 12.1(a) shall apply.

6. Suspension or Termination

6.1 Infringement. BlackRainbow may suspend access to the Software or terminate this EULA if BlackRainbow reasonably considers that Licensee or any User has infringed, or threatens to infringe, BlackRainbow's Intellectual Property Rights.

6.2 Non-payment. BlackRainbow may suspend access to the Software or terminate this EULA if any amount due and payable by Licensee is unpaid after BlackRainbow has sent two (2) notices to Licensee seeking payment and at least thirty (30) days have passed since the date of the first notice;

6.3 Breach. Without derogating from BlackRainbow's rights under this EULA or otherwise, if Licensee is in breach of this EULA, BlackRainbow may provide a written notice to Licensee specifying the breach and requiring Licensee to remedy the breach within 7 days and if Licensee does not remedy the breach within 7 days after receiving such notice, BlackRainbow may suspend access to the Software or terminate this EULA.

6.4 Harm. BlackRainbow may suspend access to the Software if BlackRainbow reasonably considers that any part of the Software is being used for illegal activity or the use of the Software is causing material and ongoing harm to BlackRainbow or any third party. BlackRainbow will endeavour to provide reasonable notice of any such suspension to Licensee.

6.5 No Liability. Licensee agrees BlackRainbow will not be liable to Licensee or any third party for any loss, liability, cost, payment, damages, debt or expense arising directly or indirectly from any suspension or termination in accordance with this clause.

6.6 Consequences of Termination. (1) License Ends. Upon the expiration or termination of this EULA: (a) all rights granted to Licensee under this EULA will cease; (b) Licensee will have no rights to use the Software and must cease using the Software; (c) Licensee must take such action as reasonably directed by BlackRainbow for the protection and preservation of the Confidential Information, BlackRainbow's Intellectual Property Rights and all other items of BlackRainbow's property; (d) not do any act or thing which may injure, impair or reduce the goodwill or reputation of BlackRainbow and (e) except where and to such extent as may be otherwise provided in the Support and Maintenance Agreement, the Support and Maintenance Agreement shall terminate and the obligations upon BlackRainbow to provide the SMS to the Licensee shall cease.

(2) Payment. Upon the expiration or termination of this EULA, all amounts owing by Licensee to BlackRainbow will become immediately due and payable and Licensee will immediately pay all such amounts to BlackRainbow. If this EULA terminated for any reason set out in Clause 5, BlackRainbow will, in addition to any other rights under this EULA or otherwise, be entitled to all of the License Fees payable under this EULA for the entire Term.

7. Warranty

7.1 NO WARRANTY DISCLAIMER. BLACKRAINBOW MAKES NO EXPRESS OR IMPLIED REPRESENTATIONS, WARRANTIES OR CONDITIONS WITH RESPECT TO THE SOFTWARE (INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, OR SUITABILITY FOR LICENSEE'S REQUIREMENTS). WITHOUT LIMITING THE FOREGOING, BLACKRAINBOW DOES NOT WARRANT THAT THE SOFTWARE WILL MEET LICENSEE'S REQUIREMENTS OR THAT ANY USE OF THE SOFTWARE WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE OR THAT ANY ERRORS OR DEFECTS IN THE SOFTWARE WILL BE CORRECTED OR THAT THE SOFTWARE WILL DETECT OR CORRECT ANY THREATS OR HARMFUL COMPONENTS. THE SOFTWARE IS PROVIDED TO LICENSEE ON AN 'AS IS' AND 'AS AVAILABLE' BASIS AND FOR COMMERCIAL USE ONLY. LICENSEE IS RESPONSIBLE FOR DETERMINING WHETHER ANY INFORMATION GENERATED FROM USE OF THE SOFTWARE IS ACCURATE AND SUFFICIENT FOR LICENSEE'S PURPOSES.

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8. Liability and Indemnity.

8.1 **DISCLAIMER OF LIABILITY.** EXCEPT FOR CLAIMS OF INTENTIONAL MISCONDUCT, GROSS NEGLIGENCE, DEATH OR PERSONAL INJURY, OR ANY CLAIM THAT CANNOT BE LIMITED BY LAW, BLACKRAINBOW WILL NOT BE LIABLE TO LICENSEE (UNDER STATUTE, CONTRACT, TORT, NEGLIGENCE OR OTHERWISE) IN RELATION TO ANY (A) SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES, OR ANY INDIRECT, INCIDENTAL OR CONSEQUENTIAL LOSS (INCLUDING BUT NOT LIMITED TO ANY BUSINESS INTERRUPTION, OR ANY LOSS OR CORRUPTION OF DATA, OR ANY LOSS OF ACTUAL OR ANTICIPATED PROFITS, REVENUE, SAVINGS, PRODUCTION, BUSINESS, CONTRACTS, OPPORTUNITY, ACCESS TO MARKETS, GOODWILL, REPUTATION, PUBLICITY, INFORMATION, OR USE), OR ANY REMOTE, ABNORMAL, UNFORESEEABLE OR SIMILAR LOSS, WHETHER OR NOT THE POSSIBILITY OF SUCH DAMAGES OR LOSSES WERE IN THE CONTEMPLATION OF EITHER PARTY; OR (B) CLAIMS MADE A SUBJECT OF A LEGAL PROCEEDING AGAINST BLACKRAINBOW MORE THAN ONE YEAR AFTER ANY SUCH CAUSE OF ACTION FIRST AROSE. LICENSEE AGREES THAT THE CONSIDERATION PAYABLE BY LICENSEE UNDER THIS EULA DOES NOT INCLUDE CONSIDERATION FOR THE ASSUMPTION OF THE RISK OF ANY SUCH DAMAGES OR LOSSES. TO THE EXTENT PERMITTED BY LAW, LICENSEE USES THE SOFTWARE AT LICENSEE'S OWN RISK.

8.2 **LIMITATION OF LIABILITY.** EXCEPT FOR CLAIMS OF INTENTIONAL MISCONDUCT, GROSS NEGLIGENCE, DEATH OR PERSONAL INJURY, OR ANY CLAIM THAT CANNOT BE LIMITED BY LAW, BLACKRAINBOW'S LIABILITY TO LICENSEE IN RELATION TO THE SOFTWARE AND THIS EULA (WHETHER UNDER STATUTE, CONTRACT, TORT, NEGLIGENCE OR OTHERWISE) WILL BE LIMITED TO THE AMOUNT OF THE LICENSE FEE PAID BY LICENSEE IN ACCORDANCE WITH THIS EULA. LICENSEE AGREES THAT THE CONSIDERATION PAYABLE BY LICENSEE UNDER THIS EULA DOES NOT INCLUDE CONSIDERATION FOR THE ASSUMPTION OF THE RISK OF ANY FURTHER POTENTIAL DAMAGES OR LOSSES.

8.3 **Indemnity.** Licensee will, at Licensee's expense, indemnify BlackRainbow in relation to any loss, liability, cost, payment, damages, debt or expense, or any claim, demand, action, suit or proceeding, arising directly or indirectly in relation to any use of the Software, negligence, infringement of Intellectual Property Rights, use or disclosure of any Confidential Information, breach of this EULA or breach of any law, treaty, regulation, or convention by Licensee, any member of Licensee's Personnel or any Related Body Corporate of Licensee.

9. General

9.1 **Responsibility.** Licensee is responsible and liable for each member of Licensee's Personnel and each Related Body Corporate of Licensee and any act, omission or breach by any member of Licensee's Personnel or any Related Body Corporate of Licensee will be deemed to be an act of Licensee.

9.2 **Force Majeure.** BlackRainbow will not be liable for any failure or delay in performing any obligation under this EULA where such failure or delay is due to any cause beyond BlackRainbow's reasonable control (including but not limited to any natural catastrophe, governmental act or omission, law or regulation, labor strike or difficulty, transportation stoppage or slowdowns or inability to procure personnel, parts or materials) and, if any such cause prevents or delays performance for more than thirty (30) days, BlackRainbow may terminate this EULA.

9.3 **Audit.** BlackRainbow may audit Licensee's compliance with the terms of this EULA at any time on reasonable notice to Licensee and Licensee will provide access to any hardware, software, systems, documents and Personnel of Licensee, and will provide all reasonable co-operation to BlackRainbow for the purposes of any such audit. Each party will bear its own costs of the audit, provided that should Licensee be found to be in breach of this Agreement, Licensee shall bear all the costs of the audit.

9.4 **Disputes.** If Licensee has any dispute or disagreement with BlackRainbow in relation to any matter relating to this EULA, Licensee will provide a written notice to BlackRainbow setting out all relevant details and background information in relation to the dispute and Licensee's proposal for resolution of the dispute. If the parties are unable to resolve any dispute or agreement within thirty (30) days of either party receiving written notice thereof, either party may initiate arbitration in accordance with the provisions set forth below in this EULA.

9.5 **Relationship.** This EULA does not create any partnership, joint venture, agency or relationship of employment

between the parties

9.6 Third Party Beneficiaries; Rights. This EULA is entered into solely for the benefit of BlackRainbow and Licensee. No third party will have the right to make any claim or assert any right under it, and no third party will be deemed a beneficiary of this EULA. Solely in the event that the law of England and Wales applies to this Agreement, the Contracts (Rights of Third Parties) Act 1999 (the “Act”) shall not apply to this Agreement and no Person other than the parties hereto (which term shall, for the purposes of this clause, include all permitted assignees) and BlackRainbow Affiliates shall have any rights under the Act, nor shall this Agreement be enforceable under the Act by any Person other than the parties to it.

9.7 Assignment. Licensee may not assign any of its rights under this EULA without the prior written consent of BlackRainbow. Any purported assignment or delegation in violation of this clause and the License shall be null and void. An amalgamation, merger, change in control, re-organisation or other similar transaction by the Licensee (including, but not limited to an asset sale, stock sale, reverse merger, reverse triangular merger) shall require consent pursuant to this Section.

9.8 Severability. If any provision, or the application of any provision, of this EULA is prohibited, invalid, void, illegal or unenforceable in any jurisdiction: (a) this will not affect the validity and enforceability of the provision or part in other jurisdictions; (b) the provision or part will only be ineffective to the extent of the prohibition, invalidity, voidness or illegality; and (c) the provision or part will be severed and will not affect the validity or enforceability of the remaining provisions or parts of this EULA.

9.9 Precedence. If there is any conflict or inconsistency between the terms of the body of this EULA and any other Terms and Conditions, the terms of this EULA will take precedence.

9.10 Entire Agreement. This EULA supersedes all prior undertakings, arrangements and agreements and constitutes the entire agreement between the parties.

9.11 Waiver. Any waiver, variation or amendment of a right or term under this EULA must be in writing and signed by the party granting the waiver and will not operate as a waiver in relation to any subsequent matter. Any failure, delay, forbearance or indulgence by a party in an exercise, or partial exercise, of a right arising under this EULA will not result in a waiver of that right or prejudice or restrict the rights of the party.

9.12 Cumulative Rights. The rights arising out of this EULA do not exclude any other rights of either party. Each indemnity in this EULA is a continuing obligation that is separate and independent from the other obligations under this EULA. BlackRainbow is not obliged to take any action, or incur any expense, before enforcing any indemnity under this EULA. Each exclusion, limitation, indemnity or other benefit set out in this EULA for the benefit of BlackRainbow will also be held by BlackRainbow for the benefit of each member of BlackRainbow’s Personnel.

9.13. The Software may not be accessed for purposes of monitoring their availability, performance or functionality, or for any other benchmarking or competitive purposes.

9.14. BlackRainbow’s direct competitors are prohibited from accessing the Services, except with BlackRainbow’s prior written consent.

9.15 Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and in English language, and shall be deemed to have been given: (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile or e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient; or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the addresses set forth on the Quotation (or to such other address that may be designated by a Party from time to time).

9.16 Waiver of Jury Trial. EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY THAT MAY ARISE UNDER THIS EULA IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS EULA, INCLUDING ANY EXHIBITS, SCHEDULES, ATTACHMENTS OR APPENDICES ATTACHED TO THIS EULA AND THERETO, THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY, OR THE VALIDITY, PROTECTION, INTERPRETATION OR ENFORCEMENT

THEREOF.

9.17 Arbitration. EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY DISPUTE, CONTROVERSY OR CLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHER LEGAL THEORY (INCLUDING, BUT NOT LIMITED TO, ANY CLAIM OF FRAUD OR MISREPRESENTATION) ARISING OUT OF OR RELATING TO THIS EULA, THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY, OR THE BREACH, TERMINATION, OR VALIDITY THEREOF, (“DISPUTE”), SHALL BE SUBMITTED TO MANDATORY, FINAL AND BINDING ARBITRATION BEFORE THE INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION, IN ACCORDANCE WITH THE INTERNATIONAL ARBITRATION RULES IN EFFECT AT THE TIME OF FILING OF THE DEMAND FOR ARBITRATION.

The Arbitration will take place as follows: (a) There shall be three (3) arbitrators. The Parties each will select one (1) arbitrator within thirty (30) days of the receipt by respondent of a copy of the demand for arbitration. The two (2) arbitrators so appointed shall nominate the third and presiding arbitrator (the Chair) within thirty (30) days of the appointment of the second arbitrator (the three arbitrators shall be collectively referred to as the Tribunal). If either Party fails to appoint an arbitrator, or if the two-party appointed arbitrators fail to appoint the Chair, within the time periods specified herein, such arbitrator shall, at the request of either Party, be appointed by the International Centre for Dispute Resolution. (b) The language of the arbitration shall be English. The place of arbitration shall be decided by the Tribunal. (c) The arbitration shall be the sole and exclusive forum for resolution of the Dispute, and the award shall be in writing, state the reasons for the award and be final and binding. Judgment thereon may be entered, registered or filed for enforcement in any court of competent jurisdiction and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. (d) By agreeing to arbitration, the Parties do not intend to deprive any court of its jurisdiction to issue a pre-arbitral injunction, pre-arbitral attachment, or other order in aid of arbitration proceedings and the enforcement of any award. Without prejudice to such provisional remedies as may be available under the jurisdiction of a court, the Tribunal shall have full authority to grant provisional remedies and to direct the Parties to request that any court modify or vacate any temporary or preliminary relief issued by such court, and to award damages for the failure of any Party to respect the arbitral tribunal’s orders to that effect. In any such judicial action each of the Parties irrevocably consents to service of process by first-class certified mail, return receipt requested, postage prepaid to the address set forth herein. (e) The prevailing Party, as determined by the Tribunal, shall be entitled to recover its reasonable costs and, attorneys’ fees and costs from the non-prevailing Party. The non-prevailing Party shall be responsible for all fees and costs of the Tribunal. The Tribunal may not award punitive damages. (f) Except as may be required by applicable law, the Parties shall preserve the confidentiality of all aspects of the arbitration.

10. Support Services

10.1 Scope of Support Services. Scope of the Support Services covers: (a) Error verification, analysis and correction; and (b) any additional services specifically provided for in the Quotation.

10.2 Where the Licensee purchases Support &/or Maintenance Services, the provision of these Services by BlackRainbow shall be strictly subject to BlackRainbow and Licensee validly entering into and maintaining in place the relevant Quotation or contract. In the event that the relevant Support and Maintenance Agreement is not validly entered into, or is otherwise lapsed or terminated before the Expiry Date, BlackRainbow shall have no obligation to provide Support &/or Maintenance Services to the Licensee.

10.3 Support Efforts. If a Licensee is not available to assist the Support Team in the resolution of the issue, BlackRainbow will not be responsible for adhering to the Response or Resolution Time. At no time does BlackRainbow guarantee a “fix” for any issue raised. BlackRainbow will use commercially reasonable efforts commensurate with the then applicable industry standards to provide the Support in a professional and workmanlike manner, but BlackRainbow does not guarantee that every question or problem raised by Licensee will be resolved. BlackRainbow does not provide fixed resolution times and/or service level credits. Notwithstanding Black Rainbow’s support for supported prior versions, BlackRainbow in its sole and absolute discretion may choose to correct certain bugs, security flaws, etc. only in the current release version of the Software; in those instances, Licensee understands and acknowledges that it assumes the risk of not updating to the current release version.

10.4 Onsite Support. When, at Black Rainbow’s discretion and following agreement from the Licensee that on-site Support is required, Licensee will reimburse BlackRainbow for all related traveling expenses and costs for travel

time, board and lodging with all professional service to be rendered at BlackRainbow's then current rates.

10.5 Basic Support Response. BlackRainbow will make available to Licensee an email address to the BlackRainbow Support Portal for Licensee to initiate trouble reports requesting support service of the Software. The Support Email is accessible at all times via the Support Portal.

10.6 Remedial Support. BlackRainbow support is accessed through the (a) BlackRainbow Support Portal: support.BlackRainbow.com (or other such URL as BlackRainbow makes available from time to time) and (b) other methods referred to in the Quotation. The support issue will be reviewed & logged by the BlackRainbow support teams based in the United Kingdom. The BlackRainbow Support Portal is operational 24/7 and is staffed from 09.00 to 17.00 Monday to Friday. Support coverage over weekends and out of hours is excluded from the scope normal support service. Except as provided otherwise below, all response times are during standard business hours as described above. Licensee will receive immediate email notification of receipt of a support request and the support issue will be dealt with according to its priority and severity. Upon receipt of a support request, the Support Team will respond as detailed below:

Black Rainbow Standard Support Structure

1. Method of access: BlackRainbow Support Portal:
2. BlackRainbow response method: BlackRainbow Support Portal

Priority / Severity	Example	Response Time	Target Resolution Time
P1	Entire service unavailable from multiple locations	1 hours	4 hours
P2	Key functionality for multiple users unavailable without workaround	4 hours	8 hours
P3	Key functionality for multiple users disrupted where workaround is available.	8 hours	Next Maintenance Phase
User Support	Assisting a user with logon or feature usage	8 hours	8 hours
Feature Request	Request for new or amended functionality.	24 hours	To be scoped & agreed with Licensee

10.7 Exclusions to Support. Support does not include services where the Licensee requests custom development, consulting, or professional services. In addition, Support does not include: (a) Versions of the Software other than the most recent major version or the most recent prior major version; (b). Administrator or end user training; (c). Support of Scripts or APIs provided by BlackRainbow, unless accompanied by a mutually executed order form or statement of work that expressly sets forth Black Rainbow's continuing support obligation; (d) Support of requested (or Licensee created) enhancements or features to the Software; (e) Software installation or troubleshooting of software installation issues not directly associated with the Software (including, but not limited to Elasticsearch); (f) Environment configuration; (g) Environment troubleshooting issues not directly associated with the Software; (h) Troubleshooting data specific issues not directly caused by or related to the Software; or (i) Onsite support.

10.8 Fees for Excluded Services. Fees for accepted work that is excluded from support services shall be determined on a case by case basis by BlackRainbow and the Licensee pursuant to a separate services agreement and a mutually

agreed upon statement of work.

10.9 Licensee Responsibilities. (a) Licensee Contacts: Licensee shall appoint personnel who are trained and knowledgeable in the operation of the Software to serve as the primary contacts with BlackRainbow for all Support communication (BlackRainbow Trained Users). (b) Training: Licensee shall properly train its personnel in the proper use of the Software and the equipment on which the Software is loaded and operating. (c) Reporting: Licensee shall document and promptly report all errors or malfunctions of the Licensed Software to BlackRainbow. BlackRainbow will provide Licensee with a trouble ticket number that Licensee will use to track the status of each issue. Licensee shall take all steps necessary to carry out any procedures BlackRainbow may give for the rectification of errors or malfunctions within a reasonable time after such procedures have been provided. BlackRainbow reserves the right to close the trouble ticket without further responsibility if Licensee does not provide appropriate feedback to BlackRainbow within thirty (30) days of receiving updated Software, a workaround for a problem, or fails to respond to a request for additional information. (d) be responsible for users' compliance with this Agreement and Quotation, (e) be responsible for the accuracy, quality and legality of Licensee Data, the means by which Licensee acquired Licensee Data, Licensee's use of Licensee Data with the Software, and the interoperation of any Non-BlackRainbow Applications with which Licensee uses the Software, (f) use commercially reasonable efforts to prevent unauthorized access to or use of Software, and notify BlackRainbow promptly of any such unauthorized access or use,

11. Maintenance Services

11.1 Updates. During the Term, BlackRainbow will maintain the Software by providing to Licensee any and all software updates and enhancements to the offered by BlackRainbow under its general maintenance policies. All Updates provided shall be subject to the terms and conditions of this Agreement. Updates will be provided when available and include bug fixes, security updates, new features, enhancements to existing features, or performance enhancements to existing features. Updates do not include product extensions to different hardware platforms, different operating system platforms, or different database platforms. Updates also do not include new applications, new third party tools, new functionality being sold to new Licensees as separate modules, or add-on modules or custom software (whether created by Licensor, Licensee, or a third party).

11.2 Supported versions. BlackRainbow will provide Maintenance services for the current major release and the major release immediately prior. BlackRainbow shall have no further responsibility for supporting and maintaining prior releases.

11.3 Non supported elements. BlackRainbow assumes no responsibility for the operation or performance of any add-on modules, custom software, or integrated applications, whether created by BlackRainbow, Licensee, or a third party unless specifically agreed in writing on the Quotation.

11.4 Services Not Included. Maintenance and Support Services do not include any of the following: custom programming services; on-site support, including installation of hardware or software; support of any software not Covered Software; training; out-of-pocket and reasonable expenses, including hardware and related supplies; or any other activity that is deemed an additional service.

12. Data Protection

12.1 For the purposes of this clause 12, the following definitions shall apply:

<p>“Applicable Laws”:</p>	<p>means:</p> <p>a)To the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom.</p> <p>b)To the extent EU GDPR applies, the law of the European Union or any member state of the European Union to which BlackRainbow is subject.</p>
<p>“Applicable Data Protection Laws”:</p>	<p>means:</p> <p>a)To the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of personal data.</p> <p>b)To the extent the EU GDPR applies, the law of the European Union or</p>

	any member state of the European Union to which BlackRainbow is subject, which relates to the protection of personal data.
“Licensee Personal Data”:	means any personal data which BlackRainbow processes in connection with this Support Agreement, in the capacity of a processor on behalf of the Licensee.
“EU GDPR”:	means the General Data Protection Regulation ((EU) 2016/679).
“Hosted Basis”	means the purchase and use by the Licensee of the Software as described in the relevant Agreement, on the basis that the Software is hosted and operated on platform infrastructure (inclusive of internet locations and servers as the case may be) provided and operated by BlackRainbow and for which BlackRainbow is responsible;
“Hosting Agreement”	means the binding written agreement between BlackRainbow and the Licensee for the provision of services to the Licensee by BlackRainbow, such Services to include the use of the Software by the Licensee on a Hosted Basis
“Purpose”:	means the purposes for which the Licensee Personal Data is processed, as set out in clause 11.6(a).
“Self-Hosted Basis”	means the purchase and use of the Software as described in the relevant Agreement by the Licensee on the basis that the Software is wholly hosted and operated upon and within systems and platform infrastructure (inclusive of servers) internal to the operations of the Licensee and for which (i) the Licensee is responsible; and (ii) BlackRainbow has no responsibility
“Software”	means the object code version of the software (including any upgrades or updates) supplied by BlackRainbow to the Licensee
“UK GDPR”:	has the meaning given to it in the Data Protection Act 2018
“controller”, “processor”, “data subject”, “personal data”, “personal data breach” and “processing”:	shall each have the meaning given to them as terms in the UK GDPR.

Where and to the extent that the Licensee purchases and uses the Software on a strictly Self-Hosted Basis:

(a) except in cases where the Licensee has purchased, and is entitled to receive, Support & Maintenance Services, it is agreed and understood that BlackRainbow shall have no access to the Licensee’s instance of the Software and shall accordingly have no access to, visibility of or obligations to any extent in connection with the Licensee Data under applicable Data Protection Laws;

(b) where the Licensee has purchased, and is entitled to receive, Support & Maintenance Services, BlackRainbow’s obligations as regards the Licensee Data in terms of the applicable Data Protection Laws shall be as set out in the relevant Support and Maintenance clauses in this agreement.

12.2 Where and to the extent that the Licensee purchases and uses the Software on a Hosted Basis, Black Rainbow’s obligations with regard to the Licensee Data under applicable Data Protection Laws shall be as set out in the relevant Hosting Agreement entered into between the parties, except in relation to the provision of Support for which Black Rainbow’s obligations under applicable Data Protection Laws are set out in Schedules 1-3 of this Agreement.

12.3 The Licensee and BlackRainbow (each a “party” and collectively the “parties”) will comply with all applicable requirements of Applicable Data Protection Laws. This clause 12 is in addition to, and does not relieve, remove or replace, a party’s obligations or rights under Applicable Data Protection Laws.

12.4 The parties have determined that, for the purposes of Applicable Data Protection Laws that BlackRainbow shall process the personal as a processor as set out in Schedule 1 on behalf of the Licensee in respect of the processing activities set out in Schedule 2.

12.5 Without prejudice to the generality of clause 12.2, the Licensee will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of (and access to) the Licensee Personal Data to (and by) BlackRainbow and lawful collection of the same by BlackRainbow for the duration and purposes of this Support

Agreement

12.6 In relation to the Licensee Personal Data, Schedule 2 sets out the scope, nature and purpose of processing by BlackRainbow, the duration of the processing and the types of personal data and categories of data subject.

12.7 Without prejudice to the generality of clause 12.2 BlackRainbow shall, in relation to Licensee Personal Data:

- (a) process that Licensee Personal Data only on the documented instructions of the Licensee, which shall be to process the Licensee Personal Data for the purposes set out in Schedule 2, unless BlackRainbow is required by Applicable Laws to otherwise process that Licensee Personal Data. Where BlackRainbow is relying on Applicable Laws as the basis for processing Licensee Processor Data, BlackRainbow shall notify the Licensee of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit BlackRainbow from so notifying the Licensee on important grounds of public interest. BlackRainbow shall inform the Licensee if, in the opinion of BlackRainbow, the instructions of the Licensee infringe Applicable Data Protection Laws;
- (b) implement the technical and organisational measures set out in Schedule 3 to protect against unauthorised or unlawful processing of Licensee Personal Data and against accidental loss or destruction of, or damage to, Licensee Personal Data, which the Licensee has reviewed and confirms are 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 any personnel engaged and authorised by BlackRainbow to process Licensee Personal Data have committed themselves to confidentiality or are under an appropriate statutory or common law obligation of confidentiality;
- (d) assist the Licensee insofar as this is possible (taking into account the nature of the processing and the information available to BlackRainbow), and at the Licensee's cost and written request, in responding to any request from a data subject and in ensuring the Licensee's compliance with its obligations under Applicable Data Protection Laws with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (e) notify the Licensee without undue delay on becoming aware of a personal data breach involving the Licensee Personal Data;
- (f) at the written direction of the Licensee, delete or return Licensee Personal Data and copies thereof to the Licensee on termination of the Support Agreement unless BlackRainbow is required by Applicable Law to continue to process that Licensee Personal Data. For the purposes of this clause 12.6(f) Licensee Personal Data shall be considered deleted where it is put beyond further use by BlackRainbow; and
- (g) maintain records to demonstrate its compliance with this clause 12.

12.8 The Licensee hereby provides its prior, general authorisation for BlackRainbow to:

- (a) appoint processors to process the Licensee Personal Data, provided that BlackRainbow:
 - (i) shall ensure that the terms on which it appoints such processors comply with Applicable Data Protection Laws, and are consistent with the obligations imposed on BlackRainbow in this clause 11;
 - (ii) shall remain responsible for the acts and omission of any such processor as if they were the acts and omissions of BlackRainbow; and
 - (iii) shall inform the Licensee of any intended changes concerning the addition or replacement of the processors, thereby giving the Licensee the opportunity to object to such changes provided that if the Licensee objects to the changes and cannot demonstrate, to BlackRainbow's reasonable satisfaction, that the objection is due to an actual or likely breach of Applicable Data Protection Law, the Licensee shall indemnify BlackRainbow for any losses, damages, costs (including legal fees) and expenses suffered by BlackRainbow in accommodating the objection.
- (b) transfer Licensee Personal Data outside of the UK as required for the Purpose, provided that BlackRainbow shall ensure that all such transfers are effected in accordance with Applicable Data Protection Laws. For these purposes, the Licensee shall promptly comply with any reasonable request of BlackRainbow, including any request to enter into standard data protection clauses adopted by the EU Commission from time to time (where the EU GDPR applies to the transfer) or adopted by the UK Information Commissioner from time to time

(where the UK GDPR applies to the transfer).

12.9 Either party may, at any time on not less than 30 days' notice, revise clause 12 by replacing it (in whole or part) with any applicable standard clauses approved by the EU Commission or the UK Information Commissioner's Office or forming part of an applicable certification scheme or code of conduct (Amended Terms). Such Amended Terms shall apply when replaced by attachment to this Support Agreement, but only in respect of such matters which are within the scope of the Amended Terms.

12.10 Notwithstanding any other terms of any other agreement BlackRainbow's total aggregate liability in contract, tort (including negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement or any collateral contract insofar as it relates to the obligations set out in this clause 11, or Applicable Data Protection Laws shall be limited to the fee paid for Support and Maintenance.

12.11 Term and Termination. This Agreement will commence on the date when BlackRainbow delivers the license key for the Software to the Licensee (or otherwise set out in the Contract) and, unless terminated earlier in accordance with the terms of the Contract, for a period of one (1) year (or for term purchased if different than one year) thereafter (the "Initial Term"). The agreement will automatically renew for additional one (1) year terms (or for term purchased if different than one year) (each, a "Renewal Term," and the Initial Term, collectively with any and all Renewal Terms, shall be referred to as the "Support Term"), unless either party provides the other (or if purchased through a reseller, Licensee provides reseller) with written notice of its intent not to renew the agreement at least thirty (30) days prior to the end of the then current Initial Term or Renewal Term. If Licensees allows the Support Term to expire, it must expire for all licenses. In the event Licensee allows Support to lapse, it may thereafter renew such Support for the affected software (i.e., Licensee must renew all of its licenses) by paying, in addition to the then current annual Support Fee, an amount equal to the total aggregate Support Fee that would have been payable for the affected software during the period of lapse.

SCHEDULE 1

Role of the Parties

BlackRainbow shall be the processor

Licensee shall be the controller

SCHEDULE 2

PARTICULARS OF THE PROCESSING

1.1 SCOPE

The scope of the processing shall include information relating to provision of support as per the Agreement to the Licensee.

1.2 NATURE

The nature of the processing involves the provision of software support to Licensees as per the Agreement.

1.3 PURPOSE OF PROCESSING

Data is processed for the purpose of providing support to Licensees in order to fulfil the requirements of the Agreement.

1.4 DURATION OF THE PROCESSING

The duration of the processing shall be the duration of the Agreement.

2 TYPES OF PERSONAL DATA

Where BlackRainbow staff are shown personal data or special category personal data in the provision of support (such as through a screenshare, screenshot or export of file/s) the types of data included is at the discretion of the Licensee and in so doing the Licensee authorises such processing. BlackRainbow will not retain or make copies of any such information that is supplied.

Logging of support tickets may include personal data that relates to users of the Software and their activities (names, contact details, audit records) and also this may include information about individuals whose details the Licensee has recorded within the Software.

Licensees are discouraged from including unnecessary personal data in requests for support, if this occurs it shall be redacted and/or removed from BlackRainbow systems.

3 CATEGORIES OF DATA SUBJECT

- Users of the software
- Third parties as determined by Licensee during support (this may include individuals about whom the Licenses have recorded within the Software)

SCHEDULE 3

Technical and organisational measures

BlackRainbow maintains an information security management system that is certified to ISO 27001. We are audited annually to ISO 27001 to ensure compliance with legal statutory, and regulatory compliance obligations. This includes the Technical and Organisational Measures as required by UK GDPR and EU GDPR.

A dedicated information security team is responsible for all security governance, risk and compliance.

Risks to the company are managed through a formal risk management process that is aligned with ISO 27001. Regular risk management meetings are held which are attended by senior management, risks are identified, analysed and appropriate treatment actions are agreed and implemented.

BlackRainbow has an appointed DPO responsible for data protection. DPIAs are completed for projects across the company. All processing activities are documented within the company's record of processing activities.