

## PRODUCT LICENCE AND SERVICES AGREEMENT

### IMPORTANT INFORMATION – READ CAREFULLY

UNLESS YOU HAVE OBTAINED PERMISSION TO USE THE SOFTWARE UNDER A SEPARATE, DULY SIGNED LICENSE AGREEMENT WITH POPUP MAINFRAME LTD (“POPUP”) OR AN AUTHORIZED RESELLER OR DISTRIBUTOR, THE ACCOMPANYING SOFTWARE IS PROVIDED UNDER THE FOLLOWING TERMS AND CONDITIONS AND ANY SUPPLEMENTAL TERMS REFERENCED BELOW. YOUR RIGHT TO USE THE SOFTWARE IS CONDITIONED UPON YOUR ACCEPTANCE OF THIS PRODUCT LICENSE AND SERVICES AGREEMENT (“AGREEMENT”). IF YOU DO NOT ACCEPT THE TERMS AND CONDITIONS SET FORTH HEREIN, AND YOU DO NOT HAVE A SEPARATE LICENSE AGREEMENT AS REFERENCED ABOVE, YOU MAY NOT USE OR COPY THE SOFTWARE AND YOU MUST CEASE USING THE SOFTWARE AND DELETE ANY COPIES OF IT FROM YOUR SYSTEMS.

#### 1. SCOPE AND KEY TERMS.

- 1.1 **Overview.** This Agreement will govern Licensee’s use of the Software and provision of Services by PopUp to Licensee (customer) under the applicable Order Form (defined in Section 1.2 below) or statement of work. References below to “you” or “your” refer to the Licensee of the Software. PopUp is the “Licensor” whether you received the Software from PopUp directly or an authorized reseller or distributor. The Software is licensed, not sold. The Software is the proprietary information of PopUp Mainframe Ltd or its licensors who retain exclusive title to their intellectual property rights in the Software. The product IBM ZD&T that is embedded into the PopUp mainframe product and all associated software is owned by IBM (International Business Machines Corporation) and under the governance of the IBM licensee agreement in the IBM Programs Attachment set out in sections 13 to 22. Your rights to the Software are limited to those expressly granted below and PopUp Mainframe Ltd reserves all rights not expressly granted in this Agreement.

This Agreement and the Order Form(s) accepted by both you and PopUp or its authorized reseller or distributor will govern your use of the Software and provision of Services by PopUp. All Order Forms are subject to PopUp’s acceptance. If no other PopUp ordering document referencing the license transaction and executed by PopUp is delivered to you, a PopUp invoice referencing this Agreement and issued in response to your correct purchase order shall be considered the applicable Order Form, and issuance of such invoice to you shall be PopUp’s acceptance of the transaction.

- 1.2 **Definitions.** In this Product License and Services Agreement, the following words have the following meanings:

**"Documentation"** means the user documentation, in written, electronic or other format, which describes the Software and its operation and which PopUp makes generally available to its customers and/or licensees for use with the Software.

**“License Term”** means the license duration set forth in the applicable Order Form.

"**License Type**" means the usage rights granted under the applicable Order Form.

"**Order Form**" means a PopUp ordering document which (a) references this Agreement; (b) identifies the specific Services, Software and rights being granted to you under those terms, including the License Type, quantity and License Term; and (c) sets forth the fees and payment terms for the Software licenses and/or Services.

"**Professional Services**" means the installation, configuration, deployment and/or training services offered by PopUp in connection with your use of the Software. Such Professional Services will be set forth in the applicable Order Form and/or statement of work. "Services" means collectively the Support Services, Professional Services and any other services PopUp provides in connection with the Software.

"**Services Warranty Period**" has the meaning set forth in Section 5.3.

"**Software**" means the specific software products provided by PopUp and listed on an Order Form and (a) all related Documentation; and (b) all updates, modifications and results of Services provided to you.

"**Software Warranty Period**" has the meaning set forth in Section 5.1.

"**Support Services**" has the meaning set forth in Section 10.

"**Content**" has the meaning set out in the relevant IBM Programs Attachment section pages in sections 13 to 22.

"**Attachment**" means IBM Program as detailed in sections 13 to 22

1.3 For the avoidance of doubt, a reference in the terms below to PopUp suppliers or vendors includes IBM.

## 2. LICENSE

2.1 License Grant Subject to your compliance with the terms and conditions of this Agreement, PopUp grants you a non-exclusive, non-transferable license, solely during the License Term set out in the applicable Order Form, to: (a) use, operate and/or access the Software (subject to payment of the applicable Software license fees) for your internal business purposes; and (b) copy the Software as reasonably necessary to exercise the license rights granted with regard to the Software, including making a reasonable number of copies for backup and archival purposes.

During the License Term, PopUp may collect, process and store data relating to your use of the Software. Any information we gather regarding you in connection with your use of the Software is subject to the PopUp Privacy Policy, set forth at [www.popup-mainframe.com/privacy-policy](http://www.popup-mainframe.com/privacy-policy) as it may be amended from time to time.

2.2 Conditions The rights granted to you herein are subject to your compliance with the following obligations:

(a) You will not copy the Software or Documentation, in whole or in part, except as expressly authorized in this Agreement.

(b) You will not sell, resell, distribute, transfer, assign, lease, lend, sublicense or rent the Software or Documentation, or make the functionality of the Software available to any other party through any means, including, without limitation, by uploading the Software to a network, or file-sharing service or through any hosting, application services provider, service bureau, time-sharing or other type of services, except as expressly authorized in this Agreement.

(c) Customer is not authorized to use any IBM product or other third party product/software/solution that is a constituent part of the Product, separately from the Product itself. Notwithstanding the foregoing, Customer will reimburse to Supplier any charges levied on Supplier for use by Customer in excess of its authorisations.

(d) You will not disassemble, decompile, reverse engineer, modify or create derivative works of the Software or Documentation nor permit any third party to do so, except to the extent such restrictions are prohibited by applicable mandatory local law.

(e) You will not allow the Software to be accessed or used by anyone other than your employees and contractors (as permitted in Section 2.3 below).

(f) You will not delete or in any manner alter the copyright, trademark or other proprietary rights notices appearing on the Software as delivered by PopUp. You will reproduce such notices on all copies you are authorized to make of the Software. The terms upon which the Customer is licensed to use the Products are described herein and in the relevant Attachment.

(g) Your use of the Software is time-limited to the License Term set out in the applicable Order Form, and access may be regulated through a license management tool. You will not install or use the Software in any manner that circumvents or interferes with the operation of such a tool or any other technological measure that controls access to the Software.

**2.3 Contractors.** You may allow contractors who require access to and use of the Software solely for your benefit, provided that:

(a) you are responsible for the acts and omissions of such contractors with respect to Software licensed under this Agreement.

(b) you ensure the Software is completely and irretrievably uninstalled from any such contractors' equipment and premises (except for those modules necessary to view results and other data generated from using the Software) immediately upon completion of such contractors' services requiring use of the Software; and

(c) you have written agreement(s) in place with such contractors requiring such contractors protect the Software, Confidential Information and intellectual property of PopUp at least to the same extent as set forth in this Agreement. You acknowledge that PopUp has no warranty or other obligations to your contractors.

**2.4 Special Terms for Third Party Software.** The Software may contain open source or community source software ("Open Source Software") provided under separate license terms (the "Open Source License Terms"). Your use of the Open Source Software in conjunction with the Software in a manner consistent with the terms of this Agreement is permitted; however, you may have broader rights under the applicable Open Source License Terms and nothing in this Agreement is intended to impose further restrictions on your use of the Open Source Software.

- 2.5 **Feedback.** You may choose, but are not required, to provide suggestions, data, feedback and other information to PopUp, its subcontractors or authorized resellers or distributors regarding possible improvements in the operation, functionality or use of PopUp’s software products. You hereby grant to PopUp and its subcontractors and authorized resellers and distributors, without charge, the right to use, distribute, copy, modify and create derivative works of any such suggestions, data, feedback and information solely for the purpose of improving the operation, functionality or use of PopUp’s existing and future product offerings and commercializing such offerings.
- 2.6 **Deliverables.** PopUp will own all right, title and interest in and to the Deliverables. For purposes of an Order Form and/or statement of work, the term “Deliverables” shall mean any deliverables created by PopUp during the performance of the Professional Services that are specifically identified in such Order Form and/or statement of work, whether published or unpublished. PopUp hereby grants to Licensee and its Affiliates (defined below) a revocable, worldwide, royalty-free, non-exclusive, non-transferable, limited, right and license to use, execute or copy the Deliverables solely for its internal business purposes and solely in connection with Licensee’s use of the Software and/or Deliverables. For purposes of this Agreement, the terms “Affiliates” shall mean any entity that Controls, or is Controlled by, or is under common Control with Licensee, where “Control” means ownership, directly or indirectly, of fifty percent (50%) or more of the voting interest of Licensee.
- 2.7 **Trial Use.** If PopUp has provided you with Software for evaluation only, you have sixty (60) days from installation date and/or access date to evaluate the Software (“Evaluation Period”). If you decide to license use of any of the Software after the Evaluation Period, you must obtain a paid license under terms set out in the applicable Order Form. If you decide not to obtain a paid license for any Software after the Evaluation Period, you must cease using the Software and delete any copies of it from your systems. Software licensed during the Evaluation Period is provided “as-is” and PopUp does not provide technical and maintenance services or offer any warranties until a paid license is obtained.

### 3. NON-POPUP SOFTWARE.

The Software may interoperate with third party products (by way of example, plugins) (“NonPopUp Software”) and you may choose to make such interoperability on your own or through a third-party vendor. The use of any such Non-PopUp Software with the Software licensed hereunder is subject to the paid License Term specified under the applicable Order Form. PopUp makes no representations whatsoever about the Non-PopUp Software and PopUp has no control over such Non-PopUp Software. You acknowledge and agree that PopUp: (a) is not responsible for such Non-PopUp Software, including without limitation, technical and maintenance services; and (b) cannot guarantee the continued availability of such Non-PopUp Software. Further, you acknowledge and agree that the use of any Non-PopUp Software is governed by such Non-PopUp Software third party vendor’s terms and conditions or such other agreement.

### 4. CONFIDENTIALITY.

- 4.1 **Confidential Information.** “Confidential Information” means: regardless of whether information is marked or otherwise identified in writing as confidential, (a) Deliverables, Licensee Materials and each party’s software products, in byte code or source code form; (b) any authorization keys and passwords delivered in order to operate such products; (c) Documentation, product road maps and development plans, and product pricing information; (d) any business, technical or



training information; and (e) the specific business terms, discounts and pricing set forth in any quotation, Order Form and/or this Agreement.

- 4.2 Exclusions. The obligations in Section 4.3 will not apply to the extent any information: (a) is or becomes generally known to the public through no breach of this Agreement by the receiving party ("Receiving Party"); (b) was rightfully in the Receiving Party's possession at the time of disclosure, without an obligation of confidentiality; (c) is independently developed by the Receiving Party without use of the disclosing party's ("Disclosing Party") Confidential Information and without breach of this Agreement; or (d) is rightfully received by the Receiving Party from a third party without restriction on use or disclosure. The existence of this Agreement and the nature of the business relationship between the parties are not considered Confidential Information.
- 4.3 Use and Disclosure Restrictions. Receiving Party will: (i) not use the Disclosing Party's Confidential Information, except as necessary to exercise the rights granted under this Agreement or to evaluate opportunities to license additional Software pursuant to this Agreement; and (ii) not disclose such Confidential Information to any third party, other than to its employees, contractors and as permitted under this Section 4.3. The foregoing obligations will not restrict either party from disclosing the other party's Confidential Information or the terms and conditions of this Agreement: (a) pursuant to the order or requirement of a court, administrative agency, or other governmental body, provided that the party required to make such a disclosure gives reasonable notice to the other party to enable it to contest such order or requirement; (b) on a confidential basis to its legal or financial advisors that need to know in order to provide business advice to such party; (c) as required under applicable securities regulations; or (d) on a confidential basis to present or future providers of venture capital and/or potential private investors in or acquirers of such party.

## 5. WARRANTY.

- 5.1 Limited Software Warranty. For a period of forty-five (45) days from the License Term start date set forth on the applicable Order Form ("Software Warranty Period"), PopUp warrants that, under normal authorized use: (a) the Software will substantially conform to the functional specifications set forth in the Documentation; and (b) it has used commercially reasonable efforts in accordance with industry standards to screen the Software, and to its knowledge, the Software, as delivered, does not contain any virus, Trojan horse, or trap door. PopUp Product License and Services Agreement (Commercial)
- 5.2 Software Warranty Remedy. If, during the Software Warranty Period, PopUp receives written notice from you of any non-conformity of the Software with the warranty set forth in Section 5.1, PopUp will, as your sole and exclusive remedy and PopUp's and its licensors' sole and exclusive liability for such non-conformity: (a) deliver a correction or workaround for the nonconformity; or (b) if PopUp is unable to deliver such a correction or workaround, provide written notice to you and, upon your return or confirmed destruction of all copies of the nonconforming Software to PopUp, refund the license fees paid by you for such non-conforming Software. THE FOREGOING STATES YOUR SOLE AND EXCLUSIVE REMEDY FOR WARRANTY CLAIMS RELATED TO THE SOFTWARE.
- 5.3 Services Warranty. PopUp warrants that the Professional Services will be performed in a professional manner in accordance with applicable industry standards. This warranty will be in effect for a period of thirty (30) days from the completion of the Professional Services set forth in the applicable Order Form or statement of work (the "Services Warranty Period"). If during the Services Warranty Period, PopUp receives written notice from you of non-conformity with

the performance of the Professional Services set forth in this Section 5.3, PopUp will, as your sole and exclusive remedy and PopUp's entire liability for any breach of the foregoing warranty, at its sole option and expense, promptly re-perform any Professional Services that fail to meet this limited warranty or refund to you the services fees paid for the non-conforming Professional Services. THE FOREGOING STATES YOUR SOLE AND EXCLUSIVE REMEDY FOR WARRANTY CLAIMS RELATED TO THE SERVICES.

- 5.4 Exclusions. The warranty set forth in Section 5.1 above shall not apply if the failure of the Software results from or is otherwise attributable to: (a) repair, maintenance or modification of the Software by persons other than authorized personnel of PopUp; (b) accident, negligence, abuse or misuse of the Software by Licensee or by persons other than authorized personnel of PopUp; or (c) your use of the Software other than in accordance with this Agreement. The warranty set forth in Section 5.3 above shall not apply if the failure to perform the Professional Services results from or is otherwise attributable to any failure by Licensee to comply with its responsibilities under Section 9.2.
- 5.5 Disclaimer. EXCEPT FOR THE WARRANTIES EXPRESSLY STATED IN THIS AGREEMENT, POPUP AND ITS LICENSORS DISCLAIM ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, ACCURACY OR COMPLETENESS OF RESULTS, CONFORMANCE WITH DESCRIPTION, NON-INFRINGEMENT AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING, USAGE OR TRADE, EXCEPT TO THE EXTENT THAT ANY WARRANTIES IMPLIED BY LAW CANNOT BE VALIDLY WAIVED. POPUP DOES NOT WARRANT THAT THE SOFTWARE WILL MEET YOUR REQUIREMENTS OR THAT USE THERE OF WILL BE UNINTERRUPTED OR ERROR-FREE.

## 6. INDEMNIFICATION.

- 6.1 Infringement Indemnity. PopUp will defend or settle, at its expense, any third party action or suit brought against you alleging that the Software or Deliverables provided by PopUp to you hereunder directly infringes any UK patent or any copyright or misappropriates any trade secret during the paid License Term ("Claim"), and PopUp will pay any damages awarded in final judgment against you or agreed to in settlement by PopUp that are attributable to any such Claim, provided that you: (a) promptly notify PopUp in writing of the Claim; (b) grant PopUp sole control of the defence and any related settlement of the Claim; and (c) provide PopUp, at PopUp's expense, with all assistance and information reasonably required for the defense and resolution of the Claim. PopUp will not be responsible for any compromise made or expense incurred without its consent.
- 6.2 Remedy. If use of any of the Software or Deliverables is, or in PopUp's reasonable opinion is likely to be, the subject of a Claim specified in Section 6.1 above, then PopUp may, at its sole option and expense: (a) procure for you the right to continue using the Software or Deliverables; (b) replace or modify the affected Software or PopUp Deliverables so that it is non-infringing while maintaining substantially equivalent in function to the original Software or Deliverables; or (c) if options (a) and (b) above cannot be accomplished despite PopUp's reasonable efforts, then PopUp may terminate your rights and PopUp's obligations hereunder (i) with respect to such Software and refund the unamortized portion of the license fees paid for such Software, based upon a straight line depreciation calculation over the term of the license for such Software commencing as of the date you received such Software; or (ii) within thirty (30) days after such termination shall grant Licensee credit for the fees paid under the applicable Order Form and/or

statement of work for the infringing Deliverables giving rise to the Claim. Upon such termination, Licensee will have no further right to the Deliverables and shall promptly return any such Deliverables to PopUp.

- 6.3 Exclusions. PopUp's obligations under Section 6.1 above shall not apply to the extent any Claim results from: (a) modifications to the Software or Deliverables made by a party other than PopUp, if the infringement or misappropriation would not have occurred but for such modifications; (b) the combination, operation or use of the Software with equipment, devices, software, systems or data not supplied by PopUp or intended by the license of the Software by PopUp to you, if the infringement or misappropriation would not have occurred but for such combination, operation or use; (c) your failure to use updated or modified Software provided by PopUp to avoid infringement or misappropriation; (d) PopUp's compliance with any designs or specifications provided by you; (e) your use of the Software or Deliverables other than in accordance with this Agreement; or (f) Software licensed for no fee, including Software licensed during the Evaluation Period. THE PROVISIONS OF THIS SECTION 6 SET FORTH POPUP'S AND ITS LICENSORS' SOLE AND EXCLUSIVE LIABILITY AND YOUR SOLE AND EXCLUSIVE REMEDY FOR ANY CLAIMS OF INTELLECTUAL PROPERTY INFRINGEMENT OR MISAPPROPRIATION.

## 7. **LIMITATION OF LIABILITY.**

- 7.1 IN NO EVENT WILL POPUP OR ITS LICENSORS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF USE, DATA, BUSINESS OR PROFITS, REVENUE, GOODWILL, OR OTHER ECONOMIC LOSS OR FOR THE COST OF PROCURING SUBSTITUTE PRODUCTS OR SERVICES, ARISING OUT OF THIS AGREEMENT, REGARDLESS OF THE THEORY OF LIABILITY AND WHETHER OR NOT POPUP WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGE OR LOSS. IN NO EVENT WILL POPUP OR ITS LICENSORS' AGGREGATE LIABILITY ARISING OUT OF THIS AGREEMENT, FROM ALL CAUSES OF ACTION AND UNDER ALL THEORIES OF LIABILITY, EXCEED THE AMOUNT PAID BY YOU FOR THE AFFECTED SOFTWARE OR SERVICES DURING THE TWELVE (12) MONTH PERIOD PRIOR TO ANY CLAIM. THE FOREGOING LIMITATIONS SHALL SURVIVE AND APPLY REGARDLESS OF THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. You agree that the foregoing limitations of liability constitute a material inducement for PopUp to enter into this Agreement and that the purchase price and fees charged to you would be substantially higher without such limitations.

## 8. **EXPIRATION AND TERMINATION.**

- 8.1 Termination for Cause. Either party will have the right to terminate this Agreement or any Order Form if the other party breaches any material term of this Agreement or applicable Order Form, as the case may be, and fails to cure such breach within thirty (30) days after receiving written notice thereof from the non-breaching party. Either party will have the right to terminate this Agreement if the other becomes insolvent or makes an assignment for the benefit of creditors, or a trustee or receiver is appointed for such other party or for a substantial part of its assets, or bankruptcy, reorganization or insolvency proceedings shall be instituted by or against such other party. Termination of this Agreement under this section will terminate all Order Forms and Software licenses granted hereunder.
- 8.2 Effect of Termination or Expiration. Upon termination or expiration of this Agreement or an Order Form, all Software licenses, and rights to use Confidential Information that are granted

there under shall terminate and the rights shall immediately and automatically fall back to PopUp. Upon termination of this Agreement or expiration of the License Term in any Order Form, you will: (i) promptly return to PopUp or destroy the applicable Software and Confidential Information and all copies and portions thereof, in all forms and types of media; and (ii) promptly pay all fees owing up to the date of termination.

- 8.3 Further termination rights may be set out in the termination section of the applicable “IBM Programs Attachment”
- 8.4 If Customer’s access to the Products is terminated due to Customer’s breach, Customer is not entitled to a refund or credit of any unused portion of the Products.
- 8.5 Survival. Sections 1, 2.2, 2.4, 2.5, 2.6, 4, 5.5, 6, 7, 8.2, 8.3, 11 and 12 will survive the termination or expiration of this Agreement or of any Order Form.

## 9. **PROFESSIONAL SERVICES.**

- 9.1 Performance of Services. PopUp will perform the Professional Services in accordance with the terms and conditions of this Agreement and of each Order Form and/or statement of work. Licensee shall have no obligation whatsoever to engage PopUp to provide any Professional Services, except as specifically agreed in writing in an Order Form and/or statement of work. Conversely, PopUp shall have no obligation to provide any requested Professional Services until it accepts an Order Form and/or agrees to the terms of a statement of work. Upon the signing (i) of an Order Form by Licensee and/or (ii) by both parties of a statement of work, PopUp’s employees and/or PopUp’s contractors or subcontractors shall perform the Professional Services in accordance therewith and this Agreement. PopUp shall be responsible for the compliance of its employees, contractors and subcontractors with this Agreement.
- 9.2 Licensee Responsibilities. Licensee will provide PopUp with access to Licensee's sites and facilities during Licensee's normal business hours as reasonably required by PopUp to perform the Professional Services. Licensee will also make available to PopUp any data, information and any other materials reasonably required by PopUp to perform the Professional Services, including, but not limited to, any data, information or materials specifically identified in the statement of work (collectively, "Licensee Materials").

## 10. **SUPPORT SERVICES.**

PopUp shall provide Support Services for the Software in accordance with the current version of the PopUp Support Policies located at: <https://docs.popup-mainframe.com/Support/>

“Support Services” means the technical maintenance and support services offerings or plans described in the PopUp Support Policies. The applicable Support Services offering or plan will be identified on the applicable Order Form at the time of order placement.

- 10.1 Customer must contact PopUp and not IBM for warranty support of zD&T.

## 11. **DELIVERY; INVOICING; PAYMENT; AND TAXES.**

- 11.1 Electronic Delivery. PopUp only distributes its Software electronically via download from the Internet.

- 11.2 Electronic invoicing; Expenses; and Payment. PopUp only invoices customers via electronic methods, either by email or through an online payment system. If you require use of an online payment system, you will need to provide PopUp with setup and login instructions. Failure to provide a billing email address will delay ordering. You will reimburse PopUp for all reasonable and customary travel, lodging and other related expenses incurred by PopUp or its personnel in connection with the performance of services specified under the Order Form and/or statement of work. Unless agreed otherwise under the applicable Order Form, you will prepay the total fees stated under such Order Form. Invoices will be paid by you within thirty (30) days from date of receipt of invoice from PopUp.
- 11.3 PopUp have the right to invoice immediately after supplying the software regardless of whether a Purchase Order (PO) has been issued by the customer.
- 11.4 If customer does not make full payment within 30 days from the date of invoice, PopUp may invoice for late payment charges. Such charges will be calculated on the basis of the lower of: (i) a monthly rate of two per cent (2%) of the unpaid amount, or (ii) the maximum rate permitted by the Late Payment of Commercial Debts (Interest) Act 1998 from time to time. Customer agrees to pay any such late payment charges upon receipt of invoice.
- 11.5 If PopUp's suppliers/vendors announce any annual price increase for the Products, Supplier reserves the right to pass the price increase(s) to the Customer. Price increases are not retroactive and will not exceed 10% per year.
- 11.6 Pricing and discounts with Customer must remain confidential and Customer shall not share them with any third party.
- 11.7 Taxes. Your purchase price does not include any tariffs, customs or duties that may be applicable to the sale of the PopUp Software and Services. When PopUp has the legal obligation to collect such tariffs, customs or duties, the appropriate amount shall be added to your invoice and paid by you. Prices do not include any national, regional, and local excise, sales, use, withholding or similar taxes.
- 12. GENERAL.**
- 12.1 Export Control. If Customer exports or imports Product, Content, or related technical data, Customer will act as the exporter or importer and will comply with all clearance requirements, obtain any required export and import licenses, and make all proper filings. You will, at PopUp's request, demonstrate compliance with all such applicable export laws, restrictions and regulations.
- 12.2 Compliance with Laws. You will be solely responsible for your compliance with, and agree to comply with, all applicable laws in connection with your use of the Software.
- 12.3 Remarketing. Except as expressly stated herein, this agreement does not grant Customer any rights in any of IBMs or its suppliers/vendors, or any of their affiliated companies' or any other third parties' patents, copyrights, trademarks, trade names, or service marks.
- 12.4 Assignment. You may not assign this Agreement, in whole or in part, by operation of law or otherwise, without PopUp's express prior written consent. Notwithstanding the above, if you merge with another company or are acquired, the surviving entity may continue to use the licenses to the Software licensed to you under accepted Order Forms, upon prior written notice to PopUp, in compliance with the terms and conditions of this Agreement. Any attempt to

assign this Agreement without such consent will be void and of no effect. Subject to the foregoing, this Agreement will bind and inure to the benefit of each party's permitted successors and assigns.

- 12.5 **Governing Law and Jurisdiction.** This Agreement will be governed by and construed in accordance with the laws England without regard to application of conflicts of law rules or principles. The United Nations Convention on Contracts for the International Sale of Goods will not apply. The Uniform Computer Information Transactions Act as enacted shall not apply. Any legal action or proceeding arising under this Agreement will be brought exclusively in the courts of England you and PopUp irrevocably consent to the personal jurisdiction and venue therein.
- 12.6 **Verification.** Upon PopUp's written request, you will furnish PopUp with: (i) a certification signed by an officer of your company providing user or access information that identifies whether the Software is being used in accordance with the terms of this Agreement and the applicable Order Forms; and (ii) log files from any support or license tools that regulate access to the Software. Upon at least thirty (30) days prior written notice, PopUp may engage, at its expense, an independent auditor to audit your use of the Software to ensure that you are in PopUp compliance with the terms of this Agreement and the applicable Order Forms. Any such audit will be conducted during regular business hours at your facilities and will not unreasonably interfere with your business activities. You will provide the auditor with access to the relevant records and facilities. If an audit reveals that you have underpaid fees to PopUp during the period audited, then PopUp will invoice you, and you will promptly pay PopUp for such underpaid fees based on PopUp's price list in effect at the time the audit is completed. If the underpaid fees exceed five percent (5%) of the license fees paid by you for the Software, then you will also pay PopUp's costs of conducting the audit.
- 12.7 **Nonexclusive Remedy.** Except as expressly set forth in this Agreement, the exercise by either party of any of its remedies under this Agreement will be without prejudice to any other remedies under this Agreement or otherwise.
- 12.8 **Right of Equitable Relief.** The parties acknowledge that violations of the covenants and obligations of this Agreement may cause the non-breaching party irreparable injury for which an adequate remedy at law may not be available. Therefore, the non-breaching party shall be entitled to seek all remedies that may be available under equity, including immediate injunctive relief, in addition to whatever remedies may be available at law.
- 12.9 **Force Majeure.** Neither party will be responsible for any failure or delay in its performance under this Agreement (except for any payment obligations) due to causes beyond its reasonable control, including, but not limited to, labour disputes, strikes, lockouts, shortages of or inability to obtain labour, energy, raw materials or supplies, war, terrorism, riot, epidemic, pandemic, natural disasters or governmental action.
- 12.10 **Notices.** All notices required or permitted under this Agreement will be in writing. Notices will be effective upon delivery if delivered in person and upon mailing if delivered by courier service, overnight delivery services or by a form of certified or express mail. Notices affecting this Agreement as a whole will be sent to the address set forth above, if any, or to such other address of a party as such a party may identify in writing; notices related to a particular transaction will be sent to the primary corporate addresses set forth in the Order Form or to such other address as you or PopUp may notify the other party in writing.

- 12.11 Modification and Waiver. Failure to enforce any provision of this Agreement will not constitute a waiver of future enforcement of that or any other provision. Any waiver, modification or amendment of this Agreement will be effective only if in writing and signed by you and an authorized representative of PopUp.
- 12.12 Severability. If for any reason a court of competent jurisdiction finds any provision of this Agreement invalid or unenforceable, that provision will be enforced to the maximum extent permissible, and the other provisions of this Agreement will remain in full force and effect.
- 12.13 Relationship of the Parties. PopUp is performing the Professional Services as an independent contractor, not as an employee, agent, joint ventures or partner of Licensee. PopUp acknowledges and agrees that its personnel are not eligible for or entitled to receive any compensation, benefits or other incidents of employment that Licensee makes available to its employees. Accordingly, for a period of twelve (12) months following the completion of Professional Services, Licensee agrees not to directly or indirectly solicit for employment any PopUp employees, contractors or subcontractors, provided that a job posting available to the general public shall not be deemed such a solicitation.
- 12.14 Entire Agreement. This Agreement, including all accepted Order Forms and statements of work referencing this Agreement and any documents incorporated thereto, constitutes the entire agreement between you and PopUp with respect to the subject matter hereof, and supersedes all prior, contemporaneous written or oral agreements, understandings and communications on the subject. Any terms or conditions contained in your PopUp purchase order or other ordering document that are inconsistent with or are addition to the terms and conditions of this Agreement are hereby rejected by PopUp and shall be deemed null.

## IBM Programs Attachment

### Definitions

In this Attachment, definitions in the foregoing Product License and Services Agreement (PLSA) apply, and:

“Content” includes any information or data Customer may provide, make available or grant access to in connection with PopUp providing Program support. Customer shall provide all necessary rights and permissions to enable, and grants such rights and permissions to IBM, PopUp and their contractors, and sub-processors to use, provide, store, and process Content in Program support.

The term “**Product**” includes Programs;

A “**Hosted Product**” means PopUp is providing access to the Product from one or more remote data centre's to Customers over the internet or a private network. Access to a Hosted Product by Customer must be consistent with the Program's LI (as defined below).

A “**Program**” is an IBM-branded computer program and related material available for license subject to the payment of charges.

“**IPLA Program Terms**” means 1) the PLSA and all accepted Order Forms and applicable amendments, Attachments and transaction documents provided by PopUp and/or its suppliers/vendors and 2) IBM software policies that may be found at the IBM Software Policy website ([www.ibm.com/softwarepolicies](http://www.ibm.com/softwarepolicies)), including but not limited to those policies concerning backup, sub-capacity pricing, and migration.

“LI” has the meaning set out in clause 2 below

### 13. Licence

- 13.1 Subject to payment of the charges, PopUp licences the Program (on a non-exclusive, nontransferable basis), as part of the Products, to Customer [who may access and use Programs solely as part of a Hosted Product.]
- 13.2 Program details may be described in an Attachment called License Information (LI) available at <https://www.ibm.com/support/customer/csol/terms/?id=i125-3301&lc=en#detail-document>. Programs are copyrighted and licensed (not sold). If applicable, the LI related to the Program identified in this PLSA and all applicable Order Forms and licensed to the Customer is hereby incorporated into and forms part of, this PLSA (and Customer shall comply with the same). However, terms in the LI referencing the IBM International Program License Agreement do not apply and terms in the LI referencing pricing metrics do not apply to the extent they conflict with this.
- 13.3 Certain Programs may contain third party code licensed under separate agreements identified in the applicable LI.
- 13.4 All licenses on a server or capacity-based metric must be licensed to the full capacity of the server on which the Program is installed, unless otherwise agreed.

### 14. Hosted Product

- 14.1 PopUp may provide Programs as part of a Hosted Product if permitted in this PLSA.
- 14.2 All copies of any Program used to provide a Hosted Product must always reside on PopUp servers, unless otherwise specified in the PSLA and accepted Order Forms. Copies of any Program may not be downloaded or copied by Customer except as necessary to allow Customers to access the Product.
- 14.3 Customers shall not read, display, copy or transmit the actual code or documentation of Programs, and Supplier may implement controls on physical access, communications and software access for this purpose.

## **15. Use Restrictions**

- 15.1 The license granted for a Program is subject to Customer complying with the PLSA, including:
  - 15.1.1 not reverse assembling, reverse compiling, translating, or reverse engineering the Program (except as expressly permitted by law without the possibility of contractual waiver);
  - 15.1.2 not using any of the elements of the Program or related licensed material separately from the Program;
  - 15.1.3 using the Program only as part of the Product; and
  - 15.1.4 not modifying any Program or any proprietary notice or trademark contained in any Program without Supplier's prior written consent.
- 15.2 The licence of the Program is a non-exclusive license subject to any applicable LI, to 1) use the Program in accordance with the authorized use provisions of the PLSA, 2) make and install copies to support such authorized use, and 3) make a backup copy, all provided that:
  - 15.2.1 the backup copy does not execute unless the backed-up Program cannot execute;
  - 15.2.2 Customer reproduces all copyright notices and other legends of ownership on each copy, or partial copy, of the Program;
  - 15.2.3 Customer ensures that anyone who uses the Program (accessed either locally or remotely) 1) does so only on Customer's behalf and 2) complies with the terms of the PLSA;
  - 15.2.4 Customer does not 1) use, copy, modify, or distribute the Program except as expressly permitted in the PLSA; 2) use any of the Program's components, files, modules, audio-visual content, or related licensed materials separately from that Program; or 3) sublicense, rent, or lease the Program.
- 15.3 This license applies to each copy of the Program that Customer makes.
- 15.4 If the Program is replaced by a trade-up Program, the replaced Program's license is promptly terminated.
- 15.5 When Customer receives an update, fix, or patch to a Program, Customer accepts any additional or different terms that are applicable to such update, fix, or patch that are specified in its LI. If no additional or different terms are provided, then the update, fix, or patch is subject solely to



the PLSA and all accepted Order Forms. If the Program is replaced by an update, Customer agrees to promptly discontinue use of the replaced Program.

## **16. Termination**

16.1 PopUp may terminate Customer's license if Customer fails to comply with the terms of the PLSA.

16.2 If the license is terminated for any reason by either party, Customer agrees to promptly discontinue use of and destroy all of Customer's copies of the Program.

## **17. Refunds/Taxes/Charges**

17.1 Supplier does not give credits or refunds for charges already due or paid, except as specified elsewhere in the PLSA.

17.2 If Customer wishes to increase its usage, it must notify PopUp and pay any applicable charges.

17.3 If any authority imposes on the Program a duty, tax, levy, or fee, excluding those based on the net income of Supplier or its suppliers/vendors, then Customer agrees to pay that amount, as specified in an invoice, or supply exemption documentation. Customer is responsible for any personal property taxes for the Program from the date the customer obtains it.

## **18. Customer Responsibilities**

18.1 Customer remains responsible for 1) any data and the content of any database Customer makes available to PopUp or its suppliers/vendors 2) the selection and implementation of procedures and controls regarding access, security, encryption, use, and transmission of data (including any personally identifiable data), and 3) backup and recovery of any database and any stored data.

18.2 Unless otherwise agreed, Customer will not send or provide Supplier or its suppliers/vendors access to any personally-identifiable information, whether in data or any other form, and will be responsible for reasonable costs and other amounts that Supplier or its suppliers/vendors may incur relating to any such information mistakenly so provided or the loss or disclosure of such information by Supplier or its suppliers/vendors, including those arising out of any third party claim.

18.3 Customer may not transfer the Program without Supplier's prior written consent and subject to such conditions as it may impose (including without limitation that the transferee agrees to the terms of this Attachment and any further applicable PSLA and applicable Order Forms terms.)

18.4 PopUp shall pass on to Customers the content of any notices and information (such as a "NOTICES file") that is included with each Program and Customer shall comply with such notices files (including non-IBM licensing files which apply to non-IBM Code). This clause does not apply to PLSA and applicable Order Forms for Hosted Products.

18.5 Customer shall contact PopUp, and not IBM, in the event that the Program materials (including but not limited to the Program's LI) direct the Customer to contact IBM. This clause does not apply to PLSA and applicable Order Forms for Hosted Products.

## **19. IPLA Program Terms**

- 19.1 The rights and obligations set forth in this paragraph remain in effect during the period the Program is licensed to Customer, and for two years thereafter.
- 19.2 Customer is responsible for 1) ensuring that it does not exceed its authorized use, and 2) being and remaining compliant with the IPLA Program Terms.
- 19.3 Upon reasonable notice, PopUp and/or its suppliers/vendors PopUP and/or its suppliers/vendors may verify Customer's compliance with IPLA Program Terms at all sites and for all environments in which Customer uses (for any purpose) Programs subject to IPLA Program Terms. Such verification will be conducted in a manner that minimizes disruption to Customer's business, and may be conducted on Customer's premises, during normal business hours. Supplier and/or its suppliers/vendors may use an independent auditor to assist with such verification, provided they have a written confidentiality agreement in place with such auditor.
- 19.4 Customer will be notified in writing if any such verification indicates that Customer has used any Program in excess of its authorized use or is otherwise not in compliance with the IPLA Program Terms. Customer agrees to promptly pay directly to PopUp and/or its suppliers/vendors the charges that the relevant supplier/vendor (or PopUp) specifies in an invoice for 1) any such excess use, 2) support for such excess use for the lesser of the duration of such excess use or two years, and 3) any additional charges and other liabilities determined as a result of such verification

## **20. Support**

- 20.1 Support for a particular version or release of a Program is available only until suppliers/vendors withdraw support for that Program's version or release. If PopUp suppliers/vendors withdraw support during any term of support that customer has paid in advance for, PopUp will pass on any pro-rated refund that it may receive from such suppliers/vendors.
- 20.2 Support will be provided using reasonable care and skill. Customer will provide timely written notice of any failure to comply with this warranty so Supplier can take corrective action. However, neither Supplier nor its suppliers/vendors warrant uninterrupted or error-free provision of support, or that all defects will be corrected.

## **21. Warranty**

- 21.1 PopUp warrants that Programs used in their specified operating environment conform to their official published specifications. The warranty period for a Program is one year, or the initial license term if less than one year, unless another warranty period is specified in an PLSA and applicable Order Forms. During the Program warranty period, PopUp will provide Subscription and Support (S&S), entitling Customer to defect correction information, restrictions, bypasses, and new releases and versions (to the extent made generally available by PopUp's vendors/suppliers). After the Program warranty period, Customer may purchase S&S renewals.
- 21.2 If a Program does not function as warranted during its warranty period and PopUp is unable to repair or replace it with a functional equivalent, Customer may return it to Supplier for a refund of the amount Customer paid (for recurring charges, up to twelve months' charges) and Customer's license or right to use it terminates.
- 21.3 If PopUp suppliers/vendors withdraw any Program from further marketing, S&S for that Program may not be available.

**22. General**

- 22.1 Neither Customer nor PopUp is responsible for failure to fulfil any obligations due to causes beyond its control.

**23. SIGNATURE**

<p><b><u>Customer:</u></b></p>	<p><b><u>Supplier:</u></b> PopUp Mainframe Limited a company incorporated and registered in England (company number 13661957) which has its registered office at 1010 Eskdale Road, Winnersh Triangle, Berkshire, Wokingham RG41 5TS</p>
<p>Signed by (Signature):</p>	<p>Signed by (Signature):</p>
<p>Name:</p>	<p>Name:</p>
<p>Title:</p>	<p>Title:</p>
<p>Date:</p>	<p>Date:</p>