



**eLEGAL**

*Specifying Legal Terms of Contract in  
ICT Environment - IST-1999-20570*

## **Deliverable D23:**

# **Library of model contracts**

**Report Version** : Final  
**Report Preparation Date** : 27.08.2002  
**Classification** : Public  
**Contract Start Date** : 01.11.2000 **Duration:** 24 months  
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Project funded by the European Community under the  
"Information Society Technology" Programme (1998-2002)

Deliverable Administration & Summary							
Project acronym :		eLEGAL			Number :		IST-1999-20570
Deliverable no & name :		Deliverable D23: Library of model contracts					
Author(s) :		Eduard Ott (Ott), Ed White and Clive Seddon (Masons)					
Short description:		Sample Contracts for various ICT-environments					
Available to :		eLEGAL consortium, European Commission, General Public					
Version :		<input type="checkbox"/> Plan	<input type="checkbox"/> Draft	<input type="checkbox"/> Working	<input checked="" type="checkbox"/> Final	Date :	27.08.2002
Schedule :		-	6	12	18	Resources pm:	6
Contributions & peer reviews from : (Resources on this task are shown in person-months)		<input type="checkbox"/> Loughborough (-) <input checked="" type="checkbox"/> Masons (1.5) <input type="checkbox"/> SEIB-ITC (-) <input checked="" type="checkbox"/> Ott (2.0) <input checked="" type="checkbox"/> Geodeco (1.0) <input type="checkbox"/> VTT (-) <input type="checkbox"/> ENeF (0.5) <input type="checkbox"/> Ponton (-) <input checked="" type="checkbox"/> Fortum (1.0) <input checked="" type="checkbox"/> Industry ref. group: -					
Internal	Assessment :	<input checked="" type="checkbox"/> Approved <input type="checkbox"/> Rejected <input type="checkbox"/> Improve as below				Date :	26.07.02
	Suggested improvements :						
EC	Review :	<input type="checkbox"/> Approved <input type="checkbox"/> Rejected <input type="checkbox"/> Improve as below				Date :	
	Required improvements :						
Document history : (Description of change from previous version)		Amendments made in response to Peer review				Date :	27.08.02
						By :	Masons
						Date :	
						By :	
						Date :	
						By :	
				Date :			
				By :			

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## 1. Introduction

This eLEGAL project deliverable comprises a set of model, or sample, contracts covering ‘typical’ conditions in construction projects. These are not intended for direct application to a project, as they do not take into account the specific requirements of the participants, and the particular constraints on the project ICT environment.

They are therefore an indicative set of contracts, for teaching purposes, and to illustrate the potential applications of the ICT and ASP contracts that can be defined using the eLEGAL Contracting Software Tools.

The first model contract is the ‘ICT Contract’, which describes how a basic ICT infrastructure, i.e. email, can be given contractual support for use on construction projects.

The second model contract considers the relevant contractual arrangements for use on a construction project using Application Service Providers, or ASPs. This comprises the ASP Contract itself, an ASP Contract Schedule and associated End User Licence Schedules.

## 2. Email environment for UK

This sample contract covers the clauses for a UK project, with only email communication, not using the service of an ASP (Application Service provider).

The following contract is set up for use between a client and the various project participants.

### Email communication on construction sites

#### 1.1 Selection of the degree of electronic communication (please select:)

☐ Any written communication between the participants of this ICT-contract will be executed electronically. Letters, faxes are not allowed.

or

☐ Mix of electronic and paper-based communication: faxes, letters and electronic communication is allowed.

#### 1.2 Non electronic communications

1.2.1 If documents from a source outside the Project Team are being produced in paper form the Project Team member receiving the paper documents must endeavour to ensure that the third party provides them in electronic form or if this is not possible must either

make a detailed electronic record of the existence of those paper documents including a record of where they are located

or

transform them into an electronic format as specified in the user manual (e.g. a \*.pdf-Format, Acrobat Reader Version .... ).

1.2.2 In either case the recipient of the paper documents must digitally sign either the record of them or the new electronic versions in order to make the document contractually valid. Doing this he declares implicitly that the content in the delivered file is identical to the paper version. He can restrict this declaration or make explanations e.g. when a drawing is separated into several \*.pdf-parts. This has to be done in such a manner that it is visible in the same \*.pdf-document. For selection purposes (please crossmark)

☐ key words have to be included in the file name

☐ the use of a DMS (Document management System) is obligatory including mandatory fields which have to be filled out by the sender

1.2.3 Explanation: Building participants from outside the ICT-contract (like public authorities, like suppliers) cannot be forced to provide pure electronic communication. There has to be established a contractual “interface” for bringing this outside information inside the circle of the ICT-contract-participants.

### 1.3 Digital Signature & Encryption

Every electronically transmitted item (notice, file, document) has to be digitally signed. Otherwise it will not be contractually valid. It is in the responsibility of the receiver to validate the authenticity of the sender. Encryption is (please crossmark):

- ☐ obligatory
- ☐ not necessary.

The digital signature has

☐ to fulfil the following requirements: type of encryption (RSA, DSS, ...): , storage of the secret key on smart card/ on PC, storage of the public key in the public database ...,

or

☐ to be applied for at the following Certification Service provider: ....., using the following selection: .....

### 1.4 Authorisation for companies

The following persons are authorised to digitally sign on behalf of the following companies:...

### 1.5 Confirmation of receipt

For evidence purposes every receipt of an electronically transmitted info (email /document/file) has to be confirmed by the receiver. This has to be done within .. minutes after receipt.

#### 1.5.1 The confirmation must contain

☐ a full copy of every received, decrypted item. The confirmation has to be signed digitally.

or

☐ the hashvalue created by the sender which has been digitally signed by the receiver.

Explanation: In order to be able to validate the content of the transmission the recipient has to “sign” the content he received and send it back to the sender. Thus the sender is able to proof that the receiver has got the items with exactly the same content he had sent off. The first possibility (sending back the item) is not convenient as the sender has to verify the content he received. Using the second possibility (signing the hashcode) is preferable.

#### 1.5.2 It is in the responsibility of the sender to validate

that sent and received items are identical

that the confirmation of receipt arrived at the sender.

#### 1.5.3 Concerning emails/info the receiver is obliged

to accept them

to read them

to send back a confirmation of receipt to the sender

to verify the message (check of authentication of sender, of integrity of transmitted info)

- 1.5.4 Explanation: Recommended for use for this purposes is an automatic response email-system enabling digital signatures (for e.g.... )

**1.6 Obstacles for sender or receiver of data**

- 1.6.5 If there are technical obstacles in sending the confirmation, the sender has to react immediately: either he

sends a fax to the receiver of the confirmation or

executes a telephone call to the following person:... or

or sends a SMS to the following mobile number: ...

- 1.6.6 Sender failed: If the sender realises that a delivery failed or was not possible or did not lead to a confirmation of receipt within the time limit mentioned above then the sender has to send his email once again. If it does not work sender is authorised to send the email to a default inbox

☐ to be agreed by the parties

☐ with the following email address: ...

Additionally sender has to notify the receiver by means of fax, telephone or SMS. The receiver is obliged to send back a confirmation of receipt of this message.

Explanation: If the sender has used a SMS for notification he is able to get back automatically from his provider a protocol whether and when the receiver received the SMS. Thus using SMS is advantageous.

- 1.6.7 Receiver failed: If the receiver is not able to issue off a confirmation of receipt, he has to notify sender by means of fax, telephone, SMS.

**1.7 Fine or incentivisation for missing confirmation**

- 1.7.1 Fine:

If confirmations have – despite the above-mentioned obligation - not been given the following fines for the receiver apply: for the 3rd and above not transmitted confirmation ...€ for each missing confirmation.

or

Incentivisation: If all parties agree that confirmations have not been a problem each of the parties gets an additional compensation of ... €.

- 1.7.2 Fine or additional compensation is claimed from / granted to (please mark with a cross)

- ☐ the individuals
- ☐ the parties

## 1.8 Time Stamp

The trust centre's time stamp has to be provided for every transaction.

**Explanation:** The time stamp is one of the necessary items for evidence (in order to prove that the transmitted info was delivered from the sender and when it was delivered). The standard case is: when signing an info (e.g. a file) an online connection is established to the trust centre. The centre sends the time info as a self signed file (as an additional file or as an amendment to the signature file). Thus it is visible at which time the signature was executed. This preferably is to be combined with the hashvalue: the hashvalue receives a time stamp. Then authenticity, content and time of the info is visible. To ease the use of this feature the software has to be appropriate.

## 1.9 Accuracy and limitation of the information content

A party may restrict the accuracy of its data provided that it communicates any such restriction to the recipient at the time of sending the information. The limitation takes place even if the data has a much higher accuracy. If a party wants to restrict its data this has to be expressed explicitly. Other restrictions of the data are not admissible.

**Explanation:** Data is sent with an accuracy of say 8 decimal places. For e.g. a preliminary design it may be restricted.

## 1.10 General Reciprocal obligations

Parties agree to use email protocol described in the e-mail Protocol Schedule.

**1.11 Hint: Copyright in drawings:** strict version control, any amendments are to be recorded, easily accessible, full version history must be available, not only storing the current version of the document. That is the key for saying who is the owner of that particular part of the data.

**1.12 Hint: Definition of project's standards:**

Specifying operating environment is necessary for project collaboration.

**Example:**

**1.12.1 Software:** When sending data the parties are obliged to use the following software for creation or altering the data: ... The parties can use different software if the following functions are identical to the above-mentioned software:

**1.12.2 Access to ASP:** provided is access using the internet and the address www...., ... using ISDN or ADSL

**1.12.3 Hardware:** - Standard-PC (recommendation: <sup>3</sup> Pentium II, 400 Mhz, 128 MB Hauptspeicher), CD-ROM- and floppy-drive, at least 17" Monitor, operation system Windows NT 4.0 or <sup>3</sup> Windows 2000 Professional, peripheral devices: plotter, A4 printer, A4-scanner)



- 1.12.4 Others: the naming field has to be positioned and as demonstrated in CAD template ...**
- 1.12.5 Bills of quantities have to be delivered**
  - (a) ☐ in the German GAEB format. Software for reading this format has to be according to the functions used by the software sidoun (manufacturer is ....)
  - (b) ☐ in the existing XML-schema (defined in .... provided by the client)
- 1.12.6 Every other data has to be delivered according to the XML categories defined in ...., provided by the client.**

### 3. ASP Contractual Relationships for a UK Construction Project

This sample contract covers the clauses for a UK project using the service of an ASP (Application Service provider). It is important to note that this sample contract is an indication of one approach which may be taken to providing collaboration technology on a project. It is not suitable as an **“off the shelf” contract** and will need to be modified and possibly negotiated to suit any given project. It does however identify the important issues as a basis for such negotiation.

Where words appear in square brackets this indicates that additional data needs to be inserted (e.g. names, price information or data which it is not possible for a sample contract to anticipate such as the precise nature of the services to be provided).

#### 3.1 Scope of the Sample Contract

This sample contract includes clauses suitable for use on a UK project where a client is engaging an Application Service Provider (or “ASP”) to provide a web-based project collaboration tool for use by the client and the project team (e.g. architect, consulting engineers, etc).

The contract is therefore between the client and the technology supplier, albeit it requires (at clause 4.1) the services to be provided to the project team (defined as “Authorised Users”) as well.

Because users other than the client are receiving services from the ASP and yet are not a party to this contract a simpler contract is created between them and the ASP via the Authorised User Licence which is included as a schedule to the ASP contract.

The Authorised User Licence contains provisions governing the use of the system by members of the project team. It includes several clauses similar to those in the ASP contract (for example regarding the ASP’s intellectual property rights) but does not include for example payment provisions as the client, and not the users are paying the ASP to provide the services.

## Communication on construction sites using ASPs

### 1. parties/date of agreement

#### 1.1 Parties: Client, ASP

#### 1.2 Date

#### 1.3 Addresses/registered offices

### 2. Definitions

“Agreement”	means this Agreement entered into by the Parties.
“ASP”	means [insert name of ASP].
“Authorised Use Policy”	means the Authorised Use Policy as agreed between the Client and Authorised Users set out in the Authorised Use Policy Schedule.
“Authorised User Licence”	means the Authorised User Licence set out at Appendix [ ] which is entered into by the ASP and those using the System.
“Authorised Users”	means users of the System authorised by the Client who have entered into an Authorised User Licence.
“Business Day”	means any day which is not a Saturday, a Sunday or a public holiday in the City of London.
“Client”	means [identify Project Client].
“Commencement Date”	means [specify date on which service is to commence].
“Data Controller, Data Processor and Personal Data”	shall have the same meanings as in the Data Protection Act 1998.
“Equipment”	means the equipment defined in the User Manual.
“Fees”	means the fees set out in the Fees Schedule payable by the Client to ASP in accordance with this Agreement.
“Information System”	means a system for generating, sending, receiving, storing or otherwise processing electronic communications.
“Intellectual Property Rights”	means patents, trademarks, trade secrets, service marks, registered designs, applications for any of the foregoing, copyright, design rights, database rights; know-how, confidential information, trade and

	business names and any other similar protected rights in any country throughout the world (whether registered or unregistered).
“Metadata”	means information relating to the use of the System by Authorised Users in relation to the Project.
“New Version”	means a new version of the System which supersedes the version used on the Project.
“Normal Working Hours”	means 8am until 6pm Monday to Friday excluding public holidays.
“Party” or “Parties”	means a party or the parties to this Agreement.
“Project”	means [identify project on which the System is to be used].
“Project Data”	means data relating to the Project which may be entered onto the System by an Authorised User.
“Security Policy”	means the security policy set out in the Security Schedule.
“Service Fees”	means the fees payable by the Client to the ASP for the Services as set out in the Fees Schedule.
“Services”	means [specify extent of Services provided by ASP] as set out in the Services Schedule.
“System”	means [specify the ASP’s service offering] which can be accessed by Authorised Users via the Web Site.
“Term”	means the period of [specify minimum estimated project duration] starting on the Commencement Date.
“User Manual”	means the latest version of ASP’s User Manual for use of the System.
“Web Site”	means [identify web address at which System is located].

### 3. Term

- 3.1 This Agreement shall commence on the Commencement Date and shall continue for the Term unless terminated by the Client giving the ASP 28 days written notice, such notice not to expire within 3 months of the Commencement Date, or unless otherwise terminated in accordance with this Agreement.

#### 4. **ASP's obligations**

- 4.1 Subject always to the Client's continued compliance with the Agreement, including but not limited to payment of the Fees ASP shall make the System available to Authorised Users in accordance with this Agreement.
- 4.2 The ASP shall provide the Services subject to the following restrictions:
- 4.2.1 a restricted number of Authorised Users are permitted to use the Services at any one time as set out in the Services Schedule;
  - 4.2.2 the Client must comply and must ensure that each Authorised User complies promptly with any reasonable instructions given by the ASP from time to time in connection with the use of the Services; and
  - 4.2.3 the Client will and will procure that each Authorised User complies with the Authorised Use Policy as set out in the Authorised Use Policy Schedule.
- 4.3 The ASP undertakes to implement and maintain the security procedures to protect the Project Data as set out in the Security Policy.
- 4.4 ASP shall use reasonable skill and care in providing the Services to Client and Authorised Users.
- 4.5 [ASP's obligations to provide remedial services in the event of an interruption to the Services.]
- 4.6 [ASP's obligation to release upgrades to the application containing remedies to bugs or errors identified.]
- 4.7 [ASP's right to interrupt the Services in order to implement the upgrade or release.]
- 4.8 [ASP's obligation to co-operate upon reasonable basis with other ICT service providers to the project.]
- 4.9 [ASP's obligation to install the application.]
- 4.10 [ASP's obligations to install the application to support a new or replacement project participant.]

#### 5. **INTELLECTUAL PROPERTY**

- 5.1 The Client acknowledges that the Intellectual Property Rights in the System and Services are owned by ASP and are only made available to the Client and Authorised Users in accordance with the Agreement and for so long as the Agreement remains in force and thereafter the Client and Authorised Users shall cease to use the System and Services.
- 5.2 ASP is either the sole and exclusive owner or an authorised licensee or user of all Intellectual Property Rights in the System and Services and reserves all such rights to itself. No title or ownership of the System or Services or of any third party right comprised in them is transferred to the Client or any Authorised User and neither may transfer, sub-licence, rent, lease, network, distribute or grant the rights granted to them in respect of the System or the Services to any other party.

#### 6. **CONFIDENTIALITY**

- 6.1 The ASP shall keep confidential all Project Data put onto the Web Site by any of the Parties. The ASP shall not disclose the Project Data to any third party save:

6.1.1 any officer, employee or contract staff for the time being working for the ASP who may reasonably need to know it; or

6.1.2 as otherwise required by law;

provided that the ASP shall be responsible for ensuring that any person to whom Project Data is disclosed complies with any conditions of confidentiality applying to such information under this Agreement.

6.2 The Client shall keep confidential all information about the ASP and its technology which it gains from its use of the System. The Client shall not disclose any such information to any third party save:

6.2.1 any officer, employee or contract staff for the time being working for the Client who may reasonably need to know it; or

6.2.2 as otherwise required by law;

provided that the Client shall be responsible for ensuring that any person to whom such information is disclosed complies with any conditions of confidentiality applying to such information under this Agreement.

6.3 Nothing in Clauses 6.2.2 and 6.2.3 shall apply to any information:

6.3.1 which is (or which becomes) available to the public other than by breach of this Agreement or of any other duty;

6.3.2 which the party receiving the information already possesses or which it obtains or originates independently in circumstances in which that party is free to disclose it.

6.4 The obligations in this clause shall survive termination of this Agreement for a period of [5] years after such termination.

6.5 [ASP's obligation to implement access control policy as agreed by the project participants as described in the Security Schedule.]

## 7. **password protection**

7.1 The ASP will provide the Client and Authorised Users with a user name and password to enable them to log onto a secure area via the URL <http://www. ....> in order to access the Services.

7.2 Each user name and password will give the Client and Authorised Users access to the Services that they require.

7.3 The Client will and will procure that Authorised Users will:

7.3.1 Use the user name and password solely for the purpose of enabling it to access the Services for the purposes of the Project;

7.3.2 Keep the user name and password confidential;

7.3.3 Store the user name and password securely; and

7.3.4 Not divulge the user name and password to any third party.

- 7.4 The Client will promptly notify the ASP of any changes in the number and identity of Authorised Users and their user names and passwords.<sup>1</sup>

## 8. **OWNERSHIP AND TREATMENT OF Data**

- 8.1 The Client warrants that it is the owner of the Data it loads onto the System. In the course of providing the Services, the ASP or its agents, contractors or sub-contractors may need to copy, modify or adapt the Project Data and the Client grants to the ASP and its agents, contractors or sub-contractors a non-exclusive licence to use the Project Data for the purpose of providing the Services.
- 8.2 The Client warrants that the Data that it loads onto the System will not contain any material which is unlawful, obscene, defamatory, incites racial hatred, breaches third party intellectual property rights or violates any export control laws and that the Client's use of the Services will comply in all respects with the Authorised Use Policy.
- 8.3 In the event that there is a breach of the warranty given by the Client in Clauses [ ] or [ ] above or if there is any breach of the Authorised Use Policy by the Client the ASP may subject to giving 24 hours notice suspend access to the Services by any party and/or remove Project Data from its servers.
- 8.4 The ASP will back up Project Data in accordance with the Security Schedule and will not be responsible for backing up any Project Data which has not been saved to its servers due to either the relevant file remaining open or the person using the Services failing to save such Project Data.
- 8.5 Upon termination of the Agreement the ASP shall keep the Project Data for a period of [ ] and shall make the same available for collection by the Parties in the format specified in the Security Schedule.

## 9. **Data Protection**

- 9.1 All rights, title and interest in any personal data contributed to the Web Site shall vest solely in those who contribute those personal data.
- 9.2 The Client acknowledges that in providing the Web Site the ASP is acting as a Data Processor under the Data Protection Act 1998 (the "Act") and the Client is the Data Controller under the Act.
- 9.3 The instructions given by the Client to the ASP in respect of the Personal Data must at all times be in accordance with the laws of the United Kingdom.
- 9.4 The ASP will process the Personal Data to provide the Web Site in terms of this Agreement and in accordance with the Client's instructions given from time to time.
- 9.5 The ASP will not use the Personal Data for any purposes which are inconsistent with those instructed by the Client.
- 9.6 The ASP will not disclose any Personal Data to a third party except at the specific request of the Client or where obliged to do so by law.
- 9.7 The ASP warrants that it has appropriate operational and technological processes and procedures in place to safeguard against any unauthorised access, loss, destruction, theft, use or disclosure of Client's Personal Data.

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<sup>1</sup> Depending on the method used, a participating Party may be able to issue user names and passwords (up to a specified number) to its own personnel.

- 9.8 The Client indemnifies ASP against all costs, expenses, (including legal expenses), damage, loss (including loss of business and loss of profits), liabilities, claims, actions or proceedings, which the ASP may incur arising out of the ASP's processing of the Client's Personal Data in accordance with the Client's instructions in its capacity as Data Processor.
10. **Fees**
- 10.1 The ASP's Fees are set out in the Fees Schedule as varied from time to time.
11. **Client's Obligations**
- 11.1 In consideration of ASP providing the System and Services the Client agrees to pay to ASP the Fees in accordance with the Fees Schedule.
- 11.2 The Client warrants that it shall use the System and Services strictly and only in accordance with this Agreement.
- 11.3 The Client shall indemnify ASP against all and any loss, damage, cost, expense or other claim arising from any breach of the warranties given by the Client in this Clause.
12. **new versions**
- 12.1 For the duration of this Agreement the ASP will:
- 12.1.1 inform the Client of any planned or completed New Version;
- 12.1.2 offer to the Client the opportunity to examine:
- (a) any New Version; and
- (b) any tests or results of tests of such New Version that the ASP may carry out, or may have carried out; and
- (c) at the Client's request install and integrate such New Version in the System [on the ASP's normal commercial terms/at a charge to be determined pursuant to this Agreement].
- 12.2 If the ASP releases a New Version and the Client decides not to implement such New Version then such decision will not give rise to any right to terminate this Agreement nor will it result in any adverse effect on the Services or the performance of the ASP's obligations under this Agreement. However, if the ASP has released [a][two] New Version[s] since the version which forms part of the System, and the Client has not, within [24 months] of the ASP's having notified the Client that the [second] New Version is available, acquired and installed either of those two New Versions, then (provided such failure is not attributable to a failure of the New Version in question to achieve acceptance pursuant to Clauses [ ] and [ ]) the ASP will be entitled to terminate this Agreement by [three months'] written notice to the Client.
13. **ORDERS FOR OPTIONAL SERVICES AND VARIATIONS**
- 13.1 The Client may from time to time require the ASP to supply optional services of the type set out in the Services Schedule or implement variations to the System at the rates set out in the Services Schedule (as varied from time to time in accordance with this Agreement). The ASP will use all reasonable endeavours to comply with the Client's request but the Client acknowledges that the ASP's ability to do so will depend upon the availability of appropriate resources at the time in question.



- 13.2 Where the ASP agrees to provide optional services or variations such agreement will be embodied in an order for optional services or variation. Each such order will be made under, and will incorporate, the terms of this Agreement.

**14. Variations to the contract**

- 14.1 Any amendment, waiver or variation of this Agreement will not be binding on the Parties unless set out in writing, expressed to amend this Agreement and signed by or on behalf of each of the Parties.

**15. Termination**

- 15.1 Either Party may terminate this Agreement forthwith on giving written notice in writing to the other Party, if the other Party:

15.1.1 commits any material breach of this Agreement and, in the case of a breach capable of being remedied, the parties fail to reach an agreed resolution by the dispute resolution procedure set out in clause [ ];

15.1.2 convenes any meeting of creditors or passes a resolution for winding up or suffers a petition for winding up which is not discharged within 21 days;

15.1.3 has an administrative receiver appointed over the whole or part of its assets or suffers the appointment of an administrator; or

15.1.4 being an individual compounds with its creditors or comes to any arrangements with any creditors.

- 15.2 ASP may terminate this Agreement forthwith without notice if the Client fails to pay invoices presented by the ASP in accordance with clause [11.1] above.

- 15.3 Termination of this Agreement howsoever caused shall not affect the rights of either Party under this Agreement which may have accrued up to the date of termination.

- 15.4 During the period of notice referred to above the ASP shall provide the Services and make the Website available to the Client and the Authorised Users.

**16. Consequences of termination**

- 16.1 The Client and the Authorised Users own all data and Metadata produced on and in connection with the Web Site.

- 16.2 All of the data and metadata are subject to the confidentiality provisions under clause [6] of this Agreement.

- 16.3 Upon termination or expiry of this Agreement (for whatever reason) if the Client or an Authorised User so requires [and subject to the Client paying all outstanding sums due to the ASP] the ASP shall provide the Client or the Authorised User with reasonable assistance at the ASP's standard fees in providing for the orderly migration of the data from the Website in accordance with the User Manual and backup copies of all data not already provided in accordance with this Agreement.

**17. INSURANCE AND Limitation of LIABILITY**

- 17.1 On signature of this Agreement, the ASP will provide to the Client evidence that it has in force an insurance policy which will, inter alia, provide professional indemnity or errors and omission cover of not less than £[ ] per claim or series of related claims per year. The ASP will maintain such policy in force for the term of this Agreement and one year thereafter.

- 17.2 The liability of the ASP to the Client will not exceed the amount of £[ ] per claim or series of related claims per year (whether or not such sum, or any sum, is recoverable under the policy referred to in Clause 17.1) and shall not exceed the aggregate amount of £[ ] in any year.
- 17.3 Nothing in this Clause 17 will be construed as attempting to limit the liability of either Party in respect of injury to or the death of any person caused by any wilful or negligent act or omission of either Party, its employees, agents or subcontractors, or for fraud.
- 17.4 The ASP will not be liable for any loss or damage caused by or resulting from any defect or inaccuracy in the System or services if the loss or damage occurred after the Client had been supplied with any modification which did not contain the defect or inaccuracy concerned.
- 17.5 The liability of the Client to the ASP will not exceed the amount of £[ ] per claim or series of related claims per year and shall not exceed the aggregate amount of £[ ] in any year.
18. **Entire Agreement**
- 18.1 This Agreement is the complete and exclusive statement of the Agreement between the parties relating to the subject matter of the Agreement and supersedes all previous communications, representations and arrangements, written or oral. Except as aforesaid, each Party acknowledges that no reliance is placed on any representation made but not embodied in this Agreement.
19. **Notices**
- 19.1 Any notice given under or in relation to this Agreement will be by e-mail in which case it will be deemed to have been signed provided the full name, position and company of the sender is clearly shown.
- 19.2 Any such notice will be deemed to have been received [in the case of e-mail at the time that the e-mail enters [an] [the Designated] Information System of the intended recipient provided that no error message indicating failure to deliver has been received by the sender.
- 19.3 Provided that if deemed receipt occurs before 9am on a Business Day the notice will be deemed to have been received at 9am on that day, and if deemed receipt occurs after 5pm on a Business Day, or on a day which is not a Business Day, the notice will be deemed to have been received at 9am on the next Business Day.]
- 19.4 The addresses of the parties for the purposes of this-clause are:
- [the Client representative]
- [Position]
- [E-mail:]
- [Address]:
- [etc.]
- 19.5 In proving such service it will be sufficient to prove that the e-mail was sent to the relevant Party in accordance with this Clause.

## 20. **Dispute resolution**

20.1 It is the intention of the Parties to settle amicably by negotiation all disagreements and differences of opinion including matters of performance, procedure and management arising out of this Agreement. Accordingly it is agreed that the following procedure will be followed prior to the serving of written notice terminating this Agreement or in relation to any matter of dispute between the Parties.

20.2 In the event that any disagreement or difference of opinion arises between the Parties under this Agreement the matter will be disposed of in the following way:

20.2.1 the Client and the ASP will meet to attempt resolution of the dispute. Should they not meet within [fourteen (14) days] of the date on which either Party convenes a meeting to resolve the matter or should they not be able to resolve the matter within [fourteen (14)] days of first meeting, then the matter will promptly be referred by either Party to the [state individual's position] of the Client and the [state individual's position] of the ASP for immediate resolution.

20.2.2 If, within [14 days] of the matter first having been referred to the [last level of escalation] no agreement has been reached between the Parties as to the matter in dispute, the dispute resolution process will be deemed to have been exhausted in respect of the matter in dispute, and each Party will be free to pursue the rights granted to it by this Agreement in respect of such matter without further reference to the dispute resolution process.

20.3 For the avoidance of doubt, this Clause will not prevent either Party from seeking injunctive relief in the case of any breach or threatened breach by the other or any obligation of confidentiality or any infringement by the other of the first-named Party's Intellectual Property Rights.

## 21. **Jurisdiction and choice of law clause**

21.1 This Agreement will be governed by and construed in accordance with English law and each Party hereby submits to the exclusive jurisdiction of the courts of England and Wales

## 22. **Support**

22.1 [Some alternatives:

ASP will provide telephone helpdesk support during Normal Working Hours.

Or

ASP will provide telephone helpdesk support 24 hours a day, 7 days a week, every day of the year for logging problems with the service. In addition, ASP will be available to respond to queries during Normal Working Hours.

Or

ASP will provide telephone helpdesk support 24 hours a day, 7 days a week, every day of the year.]

## 23. **Operating Environment**

23.1 Each Party will ensure that it has and uses the Equipment required to access the Web Site as set out in the User Manual. For the avoidance of doubt ASP is not responsible for providing PCs, modems, printers or other equipment that Authorised Users may need to access the services.

**24. Service levels availability**

24.1 With effect from the Commencement Date and during the term of this agreement the ASP will provide that:

24.1.1 the Web Site will remain connected to and accessible via the internet;

24.1.2 the Web Site will be available [ ]% of the time, to be calculated in accordance with Clause 24.8;

24.2 ASP shall monitor and report to the Client its compliance with its obligations under this Clause 24.

24.3 The Client accepts and acknowledges that compliance with Clauses 24.1 may be affected by events beyond ASP's reasonable control (including faults caused by the acts or omissions of the network provider and/or the availability of the underlying telecommunications systems) and the Client agrees that in no circumstances will ASP have any liability in respect of and to the extent of such events.

24.4 ASP may from time to time, carry out routine maintenance work in respect of servers and associated systems equipment used in provision of the Web Site, to ensure that they remain in good and working order and condition, provided that such routine maintenance work does not cause the Web Site to be unavailable or inaccessible.

24.5 ASP may need to carry out non-routine maintenance which causes the Web Site to be unavailable or inaccessible for a limited period of time. ASP will advise the Client of the time at which such non-routine maintenance occurs and if possible give prior notice of it.

24.6 Subject to payment of the Fees, ASP will supply to the Client on or before the [ ] day of each [month] a statement detailing the access and usage of the Web Site and the amount of time expressed as a percentage that the Web Site was available during the preceding month.

24.7 The level of availability shall be calculated using the following formula:

$$A = (T-D)/T$$

where:

A = Availability (expressed as a percentage)

T = Time

D = Downtime during any given month which means periods of scheduled maintenance for which ASP shall give Client 48 hours notice and which shall only be carried out between 8pm and 8am UK time.

24.8 To the extent that the Web Site is not available as a result of any act or omission on an the Client's part (whether directly or indirectly), or as a result of the factors contemplated in Clause 24.1, such failure will not be taken into account in the calculation of availability.

24.9 If the report provided pursuant to Clause 24.2 indicates an availability percentage of less than [ ]% ASP will provide a credit against the fees payable for the following month as follows:

[DEFINE CREDITS]

- 24.10 Notwithstanding any other provision in this Agreement ASP will be entitled, without notice, at any time, to change the bandwidth and/or storage allocation of the Web Site and to make any changes to the hosting services which are necessary to comply with any applicable safety, security or other statutory requirements, or which do not materially affect the nature or quality of the services.

**25. BENEFIT OF AGREEMENT**

- 25.1 No term of this Agreement is intended to confer a benefit on, or be enforceable by, any person who is not a Party to the Agreement (whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise).

## **ASP CONTRACT SCHEDULES**

### **SERVICES SCHEDULE**

1. [Describe in broad terms the functionality or functions of the application, for example:
  - 1.1 Document management system (storage and retrieval)
  - 1.2 Project management system
  - 1.3 Communication system
2. Describe the performance levels which the ASP and the Client agree in terms of:
  - 2.1 The hardware and operating environment.
  - 2.2 Search capabilities to be able to easily find relevant information in data which is stored on the ASP's server. This includes devices for easy tracking of failures and responsibilities. The ASP provides for this purpose the following software: .... XML-field: This includes capabilities for (please mark):
    - 2.2.1 selecting info contained in CAD drawings
    - 2.2.2 selecting notices and confirmation of notices
    - 2.2.3 searching requests and approvals of relevant persons
    - 2.2.4 searching which people were involved in a certain detail of the project
    - 2.2.5 providing court evidence including printing relevant data on paper]

## AUTHORISED USER LICENCE SCHEDULE

*It is important to note that this sample licence is an indication of one approach which may be taken to providing collaboration technology on a project. It is not suitable as an “off the shelf” contract and will need to be modified and possibly negotiated to suit any given project. It does however identify the important issues as a basis for such negotiation.*

*Where words appear in square brackets this indicates that additional data (e.g. names, price information) needs to be inserted.*

*Because users other than the client are receiving services from the ASP and yet are not a party to the ASP contract this simpler contract is created between them and the ASP.*

*The Authorised User Licence contains provisions governing the use of the system by members of the project team. It includes several clauses similar to those in the ASP contract (for example regarding the ASP’s intellectual property rights) but does not include for example payment provisions as the client, and not the users are paying the ASP to provide the services.*

### AUTHORISED USER LICENCE

1. The ASP (“we” or “us”), [INSERT NAME] of [INSERT ADDRESS], supplies the Services to [INSERT NAME OF CLIENT], the Client.
2. The Client has identified you as an Authorised User of the Services. Before ASP will accept you as an Authorised User, you must agree to the terms of the following Authorised User Licence. IF YOU DO NOT INDICATE THAT YOU WISH TO BE BOUND BY THE TERMS OF THE AUTHORISED LICENCE BY CLICKING ON “AGREE” AT THE FOOT OF THIS PAGE, YOU WILL NOT BE PERMITTED TO USE ANY SERVICE.
3. **TERMS AND CONDITIONS**
4. **GRANT OF LICENCE**
  - 4.1 ASP grants you a non-exclusive licence (i) to participate in the Project conducted by the Client using ASP services provided by ASP and (ii) to access remotely and use the Services solely in connection with the Project for the duration of the Project.
  - 4.2 You acknowledge that ASP charges fees to the Client in respect of your use of the Web Site. You confirm you understand that:
    - 4.2.1 failure by the Client to make such payments; or
    - 4.2.2 receipt by ASP of a Client’s instruction that ASP should cease giving you access to the Web Sitewill entitle ASP to terminate or suspend your access to and use of the Web Site without ASP incurring any liability to you.
5. **TITLE AND COPYRIGHT**
  - 5.1 ASP is either the sole and exclusive owner or an authorised licensee or user of all Intellectual Property Rights in the Services (including any images, “applets”, photographs, animations, video, audio, music and text incorporated into the Services) and reserves all its rights. No title or ownership of the Services or of any third party right comprised in it is

transferred to you, and you may not transfer, sublicense, rent, lease, network, distribute, or grant your right to access the Services in this Authorised User Licence to any other party. If you learn of any claim that the Services infringe any rights of any third party and (i) you inform us of the claim and let us settle or litigate it and do not yourself settle or litigate it, and (ii) the claim does not arise from your breach of this Authorised User Licence, we will indemnify you against any damages or costs arising from the claim, and we will pay your expenses if you co-operate with us in our settlement or litigation concerning it. This will be your entire remedy in respect of any Intellectual Property Right infringement.

**6. intellectual property rights**

- 6.1 In consideration of the Licence granted to you by Clause [ ] you grant ASP a non-exclusive and non-transferrable licence to provide to other Authorised Users involved in a Project access to any information you place on the Web Site for the purposes of the Project.

**7. RESTRICTIONS ON USE**

- 7.1 You must use the Web Site in accordance with the User Manual.
- 7.2 The licence granted to you in Clause 1 is personal to you and your staff and you may not other than necessitated by the use permitted under Clause 1, copy any component of the Services or download any component to a computer of any kind, or re-transmit, disseminate or otherwise make information or data in connection with the Project available to any third party without our prior written consent, or (ii) modify, disassemble, reverse engineer, translate, decompile, create derivative works or otherwise alter the Services except as permitted under national or EU law and in any such case subject to informing us in advance.

**8. CONFIDENTIALITY**

- 8.1 The Services licensed to you in this Authorised User Licence is confidential to ASP, having been developed by ASP at great expenditure of time, resources and money. In consideration of the licence granted to you in Clause 1, you agree to keep the Services and all related information you may receive concerning it in the strictest confidence and to exercise the highest degree of care to safeguard the confidentiality of the Services, and inform all relevant employees, agents and sub-contractors that the Services comprises ASP confidential information and ensure that they comply with these confidentiality provisions.
- 8.2 Much of the data and information comprised in the Services may be confidential to ASP, or to the Client or to other Authorised Users. In consideration of the licence granted to you in Clause 1, you agree to keep all data and information you may receive in the course of participating in the Project in the strictest confidence unless the data or information are manifestly in the public domain or cannot reasonably be regarded as being of a confidential nature.

**9. COMPLIANCE WITH LAWS**

- 9.1 If at any time your access to the Services is in breach of or not in compliance with any applicable law or regulation you will be in breach of this Authorised User Licence and we will be entitled, at our sole discretion, to terminate it immediately and without notice. You acknowledge and agree that we are entitled to report such a breach or non-compliance to any relevant regulatory body or agency and that we shall not incur any liability as a result of the breach, the non-compliance, or our reporting of it.

**10. LIMITED WARRANTY**

- 10.1 If the System fails to execute its programming instructions, we warrant and undertake to use reasonable commercial efforts to correct any documented error which can be duplicated.



Due to the complex nature of the software, we do not warrant that access to or operation of the Services will be uninterrupted or error-free.

## 11. **LIABILITY**

- 11.1 In view of your limited licensed access to and use of the Services, you agree that our liability to you or to any third party for any losses, damages, claims, penalties, costs or expenses (including lost profits) arising out of or relating to the Project or the inability to use the Services in any way, including but not limited to any delay, inaccuracies, errors or omissions and howsoever occasioned shall not exceed [INSERT FIGURE]. You further agree that ASP shall not be liable to you or to any third party for any lost revenues or profits, loss of data or other special, direct, indirect, incidental, or consequential damages, even if ASP has been advised of the possibility of such damages.

## 12. **INDEMNITY**

- 12.1 In consideration of the licence granted to you in Clause 4, you undertake that if ASP suffers any loss, damage, fine or expense as a result of (i) any unauthorised access to, or use or misuse of, the Services by any of your employees, agents or subcontractors, (ii) any unauthorised access to, or use or misuse, by any third party if that access or use or misuse was enabled or permitted by such an employee, agent or subcontractor, or (iii) as a result of your breach of any provision of this Agreement, you will fully indemnify ASP in respect of such loss, damage, fine or expense.

## 13. **TERMINATION**

- 13.1 This Authorised User Licence shall commence on the Commencement Date and shall continue in force for the Term unless terminated in accordance with this Clause 13.
- 13.2 We may terminate this Authorised User Licence;
- 13.2.1 at any time by giving you 90 days written notice; or
- 13.2.2 immediately in accordance with Clause 4.2 above.
- 13.3 Either party may terminate this Authorised User Licence immediately by notice in writing to the other if the other party is in material or continuing breach of any of its obligations under the Agreement and fails to remedy the same (if capable of remedy) for a period of 30 days after written notice of the breach by the other party;

## 14. **JURISDICTION**

- 14.1 This Authorised User Licence shall be governed by, and construed in accordance with, English law and the parties hereby submit to the non-exclusive jurisdiction of the English Courts.

**FEES SCHEDULE**

[The Service Fees comprise:

1. ....;
2. a one-off training fee of [£ ] for [ ] days initial training by the ASP at [£ ] per day payable on completion of such training;
3. any additional training required by the Client from the ASP will be provided at a rate of [£ ] per day.]

**AUTHORISED USE POLICY SCHEDULE****SECURITY SCHEDULE****ACCESS CONTROL SCHEDULE**

To be drafted according to the individual needs of the parties.