

**(1) Jigsaw M2M Ltd**

**(2) Customer .....**

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**SOFTWARE SUPPORT AND MAINTENANCE AGREEMENT**

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**THIS AGREEMENT** is made the 9 day of Dec 2008

**BETWEEN:**

- (1) Jigsaw M2M Ltd a company registered in the UK ("the Licensor") and
- (2) Customer – to be completed ..... ("the Licensee")

**WHEREAS:**

- (1) The Licensor has developed and owns, or has licensed from third parties, certain embedded computer and web based software applications and has granted to the Licensee a non-exclusive licence to use such programs and their associated documentation under an agreement dated 09/12/08 ('the Licence').
- (2) The Licensor has agreed to provide to the Licensee certain services in respect of the support and maintenance of the computer software applications, and the computer hardware equipment upon which such applications are installed, on the terms and conditions set out in this Agreement.

**NOW IT IS AGREED** as follows:

**1. Definitions**

In this Agreement, unless inconsistent with the context or otherwise specified the following definitions will apply:

- "Basic Enhancements"** changes or additions to the Licensed Programs, including any Error Corrections, which are logical improvements to the Licensed Programs. Basic Enhancements include only those improvements that are generally made available at no additional cost to the Licensor's customers that purchase annual Maintenance;
- "Commencement Date"** the date from which support and maintenance services shall begin for each element of the Supported Software;
- "Documentation"** the operating manuals, user instructions, technical literature and all other related materials supplied to the Licensee by the Licensor for aiding the use and application of the Supported Software;
- "Equipment"** such computer equipment on which the Supported Software is installed and in operational use, including the fuel island terminal.
- "Error"** any failure of the Licensed Programs to substantially conform to the specifications included in the Documentation;
- "Error Correction"** a software modification or addition that, when made or added to the Licensed Programs, establishes material conformity to the specifications in the Documentation;
- "Licensed Program Materials"** the Licensed Programs, the Documentation, and the Media;
- "Licensed Programs"** the systems, applications and computer programs of the Licensor specified in Schedule 1, and all releases and versions thereof;
- "Location"** the Licensee's premises where the Equipment is to be installed;
- "Maintenance Charge"** the fee for Maintenance Services to be provided under this Agreement and specified in Schedule 3;
- "Maintenance Services"** the maintenance services to be provided by the Licensor including analysis, coding, testing, and release of corrections to software faults. Maintenance shall be within reasonable limits, as determined by the Licensor, and does not include requests for basic product training or technical consulting;
- "Major Enhancements"** changes or additions to the Licensed Programs, other than an Error Correction or Basic Enhancement, that
  - (i) contain significant new features;
  - (ii) may be priced and offered separately as optional additions to the Licensed Programs; and
  - (iii) are not made available to customers that purchase annual Maintenance Services from the Licensor without separate charge;
- "the Media"** the media on which the Licensed Programs and the Documentation are recorded or printed, as provided to the Licensee by the Licensor;
- "Normal Support Hours"** from Monday through to Friday and from 0900 to 1700 (excluding national

holidays);

<b>“Specification”</b>	the specification of the Licensed Programs describing the facilities and functions thereof, a copy of which is annexed to this Agreement as Schedule 1 'Supported Software' the Licensed Programs together with any releases or enhancements of software that have been made generally available to the Licensee during the preceding 2 years;
<b>“Support Fee”</b>	the fee for the Support Services to be provided under this Agreement and specified in Schedule 3;
<b>“Support”</b>	support services to be provided by the Licensor in respect of the Licensed Programs and available for the continuance of this Agreement;
<b>“Training”</b>	the programme of training of the Licensee's employees specified in Schedule 4;
<b>“Use the Licensed Program Materials”</b>	to Use the Licensed Programs, to read and possess the Documentation in conjunction with the use of the Licensed Programs and to possess the Media;
<b>“Use the Licensed Programs”</b>	to read all or any part of the Licensed Programs from magnetic or other storage media and to load the Licensed Programs on the Equipment for the storage and running of the Licensed Programs.

## 2. **Services to be Provided**

The Licensor agrees to:

- 2.1 provide the Support to the Licensee;
- 2.2 provide the Maintenance Services for the Licensee;
- 2.3 provide electronic training and operating manuals to the Licensee, if appropriate;
- 2.4 provide all GSM & GPRS communications from the hardware terminal;
- 2.5 provide the other services described upon the terms and conditions contained in this Agreement.

## 3. **Term**

The Support and the Maintenance Services shall commence on the Commencement Date and shall remain in force from year to year thereafter, unless and until terminated in accordance with any of the provisions of clause 15 or any other clause of this Agreement.

## 4. **Payment**

- 4.1 The Support Fee shall be paid by the Licensee on the Commencement Date as provided in Schedule 3.
- 4.2 The Licensee shall pay the Maintenance Charge (being non-refundable) periodically in advance in the manner as specified in Schedule 3. No support shall be provided until payment has been received by the Licensor.
- 4.3 Any charges payable by the Licensee under this Agreement in addition to the Support Fee and Maintenance Charge shall be paid within 30 days after the receipt by the Licensee of the Licensor's invoice.
- 4.4 The Support Fee and Maintenance Charge and other charges payable under this Agreement are exclusive of VAT, which shall be payable by the Licensee at the rate and in the same manner for the time being prescribed by law against submission of a valid tax invoice.
- 4.5 The Licensor shall have the right to charge interest on overdue invoices at the rate of 4% per year above the standard base rate, calculated from the date when payment of the invoice becomes due for payment up to and including the date of actual payment, whether before or after judgment.
- 4.6 The Licensor shall be entitled at any time, and from time to time, to increase the Maintenance Charge to accord with any change in the Licensor's standard scale of charges by giving to the client not less than 90 days' prior written notice.

## 5. **Support**

- 5.1 During the continuance of this Agreement, the Licensor shall provide the Licensee with all or any of the following support services:
  - 5.1.1 **Hotline support:** For an urgent problem, the Licensee can telephone or email the Licensor's Hotline which is available during the Normal Support Hours. An urgent problem is degradation or failure of the system, or software performance inconsistent with documentation. Problems which do not inhibit system operation will be handled by written reports.
  - 5.1.2 **Corrections, assistance:** Correction of critical errors or assistance to overcome specific software problems. The Licensor may, in its sole discretion, correct errors by 'patch' or by new version.

- 5.1.3 Consultancy: Consultancy advice on software development, enhancements and modifications, together with estimates for the same.
- 5.2 The Licensee shall supply in writing to the Licensor a detailed description of any fault requiring support services in clause 6.1 and the circumstances in which it arose, and shall submit sufficient material and information to enable the Licensor's support staff to duplicate the problem.
- 5.3 When appropriate, the Licensor will endeavour to give an estimate of how long a problem may take to resolve. The Licensor will keep the Licensee informed of the progress of problem resolution. The Licensor's support staff will attempt to solve a problem immediately, or as soon thereafter as possible and the response times shall be either:
  - 5.3.1 Basic service: between Monday to Friday from 0900 to 1700 (excluding national holidays) the Licensor shall use its reasonable endeavours to respond within 8 hours of receipt of a request

## 6. Maintenance

During the continuance of this Agreement the Licensor shall provide the Licensee with the following maintenance services:

- 6.1 Error Correction
  - 6.1.1 If the Licensee shall discover that a current release fails to perform in accordance with the Documentation, then the Licensee shall, within 14 days after such discovery, notify the Licensor in writing of the defect or error in question and provide the Licensor (so far as the Licensee is able) with a documented example of such defect or error.
  - 6.1.2 The Licensor shall thereupon use its reasonable endeavours to correct promptly such defect or error. Forthwith upon such correction being completed, the Licensor shall update the fuel island terminal, web site or both, together with the appropriate amendments (if any) to the Documentation, specifying the nature of the correction and providing instructions for the proper use of the corrected version of the current release. The Licensor shall provide the Licensee with all assistance reasonably required by the Licensee to enable the Licensee to implement the use of the corrected version of the current release.
  - 6.1.3 The foregoing error correction service shall not include service in respect of:
    - 6.1.3.1 defects or errors resulting from any modifications of the current release made by any person other than the Licensor;
    - 6.1.3.2 any version of the Licensed Programs other than the current release or the immediate current release;
    - 6.1.3.3 incorrect use of the current release or operator error;
    - 6.1.3.4 any fault in the Equipment or in any programs used in conjunction with the current release;
    - 6.1.3.5 defects or errors caused by the use of the current release on or with equipment (other than the Equipment) or programs not supplied by or approved in writing by the Licensor, provided that for this purpose any programs designated for use with the current release in the Specification shall be deemed to have the written approval of the Licensor.
  - 6.1.4 The Licensor shall make an additional charge in accordance with its standard scale of charges for the time being in force for any services provided by the Licensor:
    - 6.1.4.1 at the request of the Licensee, but which do not qualify under the aforesaid error correction service by virtue of any of the exclusions referred to in clause 7.1.3 above; or
    - 6.1.4.2 at the request of the Licensee but which the Licensor finds are not necessary.

For the avoidance of doubt nothing in this clause shall impose any obligation on the Licensor to provide services in respect of any of the exclusions referred to in clause 7.1.3.
- 6.2 Releases
  - 6.2.1 The Licensor shall update the web site and on site terminals from time to time as deemed appropriate.
  - 6.2.2 The Licensor shall, from time to time, update the manual in accordance with any major update of the web or fuel island software.
  - 6.2.3 If required by the Licensee, the Licensor shall provide training for the Licensee's staff in the use of the new release at the Licensor's standard scale of charges for the time being in force as soon as reasonably practicable after the delivery of any new release.
  - 6.2.4 The new release shall thereby become the current release and the provisions of this Agreement shall apply accordingly.
- 6.3 Advice
  - The Licensor will provide the Licensee with such technical advice by telephone, telex or mail (including

electronic mail), as shall be necessary to resolve the Licensee's difficulties and queries in using the current release.

#### 6.4 Changes in Law

The Licensor will from time to time make such modifications to the current release as shall ensure that the current release conforms to any change of legislation or new legal requirements which affect the application of any function or facility described in the Documentation.

### 7. Excluded Support and Maintenance

7.1 The Licensor shall be under no obligation to provide Support and Maintenance in respect of:

7.1.1 problems resulting from any modifications or customisation of the Licensed Program Materials or the Equipment not authorised in writing by the Licensor. For the avoidance of doubt, modifications to the Licensed Program Materials shall include but not be limited to changes to the logical or physical database schema for the Licensed Program Materials, changes to the disk layout and configuration, and hand-modified changes to the data within the database;

7.1.2 any software other than the Licensed Program Materials;

7.1.3 incorrect or unauthorised use of the Licensed Program Materials or operator error where these are defined as use or operation not in accordance with the Documentation;

7.1.4 any fault in the Licensees PC Equipment;

7.1.5 any programs used in conjunction with the Licensed Program Materials;

7.1.6 use of the elements of the Licensed Program Materials in any combination other than those specified in the Documentation;

7.1.7 use of the Licensed Program Materials with computer hardware, operating systems or other supporting software other than those specified in the Documentation; and

7.1.8 the Licensee's failure to install and use upon the Equipment in substitution for the previous release and new release of the Licensed Programs within 7 days of its receipt.

7.2 The Licensor shall upon request by the Licensee provide Support and Maintenance notwithstanding that the fault results from any of the circumstances described in clause 8.1 above. Any time spent by the Licensor investigating such faults will be chargeable at the Licensor's then current rates. The Licensor shall invoice such charges at its discretion and such shall be paid within 30 days of the date of said invoice.

7.3 The Licensor reserves the right to discontinue the Support and the Maintenance for any prior version of the Supported Software if a superseding version has been available to the Licensee.

7.4 The Licensor shall not be obliged to make modifications or provide support in relation to the Licensee's computer hardware, operating system software, or third party application software or any data feeds or external data.

### 8. Warranty

8.1 The Licensor warrants to the Licensee that all services supplied under this Agreement will be carried out with reasonable care and skill by personnel whose qualifications and experience will be appropriate for the tasks to which they are allocated.

8.2 The Licensee acknowledges that it is the responsibility of the Licensee to ensure that the facilities and functions described in the Specification meet its requirements.

8.3 Except as expressly provided in this Agreement, no warranty, condition, undertaking or term, express or implied, statutory or otherwise, as to the satisfactory quality, fitness for purpose, or ability to achieve a particular result, of the Licensed Program Materials is given or assumed by the Licensor, and all such warranties, conditions, undertakings and terms are excluded.

8.4 The Licensee agrees that its sole remedy in respect of any non-conformance with any warranty in this Agreement is that the Licensor will remedy such non-conformance (either by itself or through a third party) and if, in the Licensor's reasonable opinion, it is unable to remedy such non-conformance, the Licensor will refund the Maintenance Charge for the year in which the services, the subject of such claim, were supplied, if paid, whereupon this Agreement shall immediately terminate.

8.5 The Licensor does not warrant that all Errors can and will be corrected. The Licensor shall use its reasonable endeavours to correct Errors so long as the Errors are replicable by the Licensor, or to provide a software patch; or to bypass around such Error.

8.6 The Licensee must promptly notify the Licensor of any non-conformance to the above warranties in order to benefit from the remedy stated above, and in any event within 3 months.

### 9. Liability

9.1 [The Licensor shall during the term of this Agreement, maintain employer's liability, third party liability, product liability and professional negligence insurance cover in respect of its liabilities arising out of or connected with this Agreement, such cover to be to a minimum value of £1,000,000 and with an insurance company of repute. The Licensor shall on request supply copies of the relevant certificates of insurance to the Licensee as evidence that such policies remain in force. The Licensor undertakes to use reasonable

commercial efforts to pursue claims under such insurance policies.]

- 9.2 The Licensor shall indemnify the Licensee for personal injury or death caused by the negligence of its employees in connection with the performance of their duties under this Agreement or by defects in any product supplied pursuant to this Agreement.
- 9.3 The Licensor will indemnify the Licensee for direct damage to tangible property caused by the negligence of its employees in connection with the performance of their duties under this Agreement or by defects in any product supplied pursuant to this Agreement. The Licensor's total liability under this clause shall be limited to £500,000 for any one event or series of connected events.
- 9.4 Save in respect of claims for death or personal injury arising from the Licensor's negligence, in no event will the Licensor be liable for any damages resulting from loss of data or use, lost profits, loss of anticipated savings, nor for any damages that are an indirect or secondary consequence of any act or omission of the Licensor, whether such damages were reasonably foreseeable or actually foreseen.
- 9.5 Except as provided above in the case of personal injury, death and damage to tangible property, the Licensor's maximum liability to the Licensee under this Agreement or otherwise for any cause whatsoever (whether in the form of the additional cost of remedial services or otherwise) will be for direct costs and damages only and will be limited to the greater of:
- 9.5.1 the sum for which the Licensor carries comprehensive insurance cover pursuant to clause 10.1 above; or
- 9.5.2 a sum equivalent to the price paid to the Licensor for the products or services that are the subject of the Licensee's claim, plus damages limited to 25% of the same amount for any additional costs directly, reasonably and necessarily incurred by the Licensee in obtaining alternative products and/or services.
- 9.6 The Licensee's statutory rights as a consumer (if any) are not affected. All liability that is not expressly assumed in this Agreement is excluded. These limitations will apply regardless of the form of action, whether under statute, in contract or tort, including negligence, or any other form of action. For the purposes of this clause, the 'the Licensor' includes its employees, sub-contractors and suppliers who shall all have the benefit of the limits and exclusions of liability set out above in terms of the Contracts (Rights of Third Parties) Act 1999. Nothing in this Agreement shall exclude or limit liability for fraudulent misrepresentation.

## 10. Licensee's Warranty

- 10.1 The Licensee warrants that it has not relied on any oral representation made by the Licensor or upon any descriptions, illustrations or specifications contained in any catalogues and publicity material produced by the Licensor which are only intended to convey a general idea of the products and services mentioned. The Licensee has however relied upon the descriptions, illustrations, functions, specifications contained in the user manual and software specification in Schedule 1.
- 10.2 The Licensee warrants that it shall comply in all material respects with all applicable laws, regulations and codes of conduct (whether statutory or otherwise) of the United Kingdom, and that all licences, permissions and consents required for carrying on its business have been obtained and are in full force and effect.

## 11. Licensee's Obligations

- 11.1 The Licensee shall:
- 11.1.1 by arrangement, grant access to premises and/or systems at all times for support and maintenance;
- 11.1.2 make hardware accessible to the Licensor's support staff, and when required enable logons or passwords required for such support staff (who will have their own logons);
- 11.1.3 permit the Licensor to install the current version of software from time to time when upgrades or fixes occur, to provide a reasonable level of assistance in implementation and testing;
- 11.1.4 provide notice of intention to change hardware or operating system or data-feeds.
- 11.2 The Licensee shall provide the Licensor with reasonable direct and remote access to the Licensee's equipment and the Software, and shall provide such reasonable assistance as the Licensor may request, including, but not limited to, providing sample output and other diagnostic information.

## 12. Confidential Information

- 12.1 The Licensee undertakes to treat as confidential and keep secret the payment terms of this Agreement and all information contained or embodied in the Licensed Program Materials and the Specification and all documentation and/ or information conveyed to the Licensee in respect of the software (collectively referred to as 'the Information')
- 12.2 The Licensee shall not, without the prior written consent of the Licensor divulge, any part of the Information to any person except:
- 12.2.1 the Licensee's own employees and then only to those employees who need to know the same;
- 12.2.2 the Licensee's auditors, an officer of Inland Revenue, an officer of HM Customs and Excise and any other persons or bodies having a right, duty or obligation to know the business of the Licensee, and then only in pursuance of such right, duty or obligation;

- 12.2.3 any person who is for the time being appointed by the Licensee to maintain any equipment on which the Licensed Programs are for the time being used (in accordance with the terms of the Licence) and then only to the extent necessary to enable such person to properly maintain such equipment.
- 12.3 The Licensee undertakes to ensure that persons and bodies mentioned in clause 12.2 are made aware, before the disclosure of any part of the Information, that the same is confidential, and that they owe a duty of confidence to the Licensor. The Licensee shall indemnify the Licensor against any loss or damage which the Licensor may sustain or incur as a result of the Licensee failing to comply with such undertaking.
- 12.4 The Licensee shall promptly notify the Licensor if it becomes aware of any breach of confidence by any person to whom the Licensee divulges all or any part of the Information and shall give the Licensor all reasonable assistance in connection with any proceedings which the Licensor may institute against such person for breach of confidence.
- 12.5 The foregoing obligations as to confidentiality shall remain in full force and effect notwithstanding any termination of the Licence or this Agreement.
13. **Security and Control**
- The Licensee shall during the continuance of the Licence:
- 13.1 effect and maintain adequate security measures to safeguard the Licensed Program Materials from access or use by any unauthorised person; including access to the fuel island controller.
- 13.2 retain the Licensed Program Materials and all copies thereof under the Licensee's effective control;
- 13.3 maintain a full and accurate record of the Licensee's copying and disclosure of the Licensed Program Materials and shall produce such record to the Licensor on request from time to time;
- 13.4 comply with all reasonable instructions of the Licensor with regard to the use of the Licensed Program Materials, including, without limitation, the implementation of upgrades to the Licensed Programs, third party software, specified operating system and computer hardware which the Licensor may provide from time to time.
14. **Termination**
- 14.1 The Licensee may terminate this Agreement at any time by giving at least 90 days' prior written notice to the Licensor.
- 14.2 The Licensor may terminate this Agreement forthwith on giving notice in writing to the Licensee if:
- 14.2.1 the Licensee commits any serious breach of any term of this Agreement and (in the case of a breach capable of being remedied) shall have failed, within 90 days after the receipt of a request in writing from the Licensor so to do, to remedy the breach (such request to contain a warning of the Licensor's intention to terminate); or
- 14.2.2 the Licensee permanently discontinues the use of the Licensed Program Materials.
- 14.3 Forthwith upon the termination of this Agreement, any licence made between the Licensor and the Licensee, and relating to any software or other materials subject to the Support and the Maintenance supplied under this Agreement, shall terminate in the manner provided in any such licence agreement.
- 14.4 Any termination of this Agreement (howsoever occasioned) shall not affect any accrued rights or liabilities of either party, nor shall it affect the coming into force or the continuance in force of any provision hereof which is expressly or by implication intended to come onto or continue in force on or after such termination.
- 14.5 If the Licensor terminates this Agreement pursuant to clause 14.2, then the Licensee shall not be entitled to any refund of the [Support Fee and the Maintenance Charge] or any part thereof that has been paid.
15. **Alterations**
- The Licensee undertakes not to alter or modify the whole or any part of the Licensed Program Materials in any way whatsoever, nor to permit the whole or any part of the Licensed Programs to be combined with, or become incorporated in, any other programs.
16. **Training**
- 16.1 The Licensor undertakes to provide training in the use of the Licensed Programs for the staff of the Licensee as set out in Schedule 4.
- 16.2 Any additional training required by the Licensee shall be provided by the Licensor in accordance with its standard scale of charges from time to time in force.
17. **Licensee's Confidential Information**
- 17.1 The Licensor shall be entitled to identify the Licensee as a licensee of the Program Materials in the Licensor's publicity materials, subject to the Licensee's prior written approval on each publicity document.
- 17.2 Subject to clause 19.1 above, the Licensor shall treat as confidential all information supplied by the Licensee under this Agreement which is designated as confidential by the Licensee, or which is by its nature clearly confidential, provided that this clause shall not extend to any information which was rightfully in the

possession of the Licensor prior to the commencement of the negotiations leading to this Agreement, or which is already public knowledge or becomes so at a future date (otherwise than as a result of a breach of this clause). The Licensor shall not divulge any confidential information to any person except to its own employees, and then only to those employees who need to know the same. The Licensor shall ensure that its employees are aware of and comply with the provisions of this clause. The foregoing obligations shall survive any termination of the Licence or this Agreement.

18. **Data Protection**

The parties undertake to comply with the provisions of the Data Protection Act 1998 and any related legislation in so far as the same relates to the provisions and obligations of this Agreement.

19. **Agency, Partnership**

This Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the parties other than the contractual relationship expressly provided for in this Agreement.

20. **Amendments**

This Agreement may not be released, discharged, supplemented, interpreted, amended, varied or modified in any manner except by an instrument in writing signed by a duly authorised officer or representative of each of the parties to this Agreement.

21. **Announcements**

No party shall issue or make any public announcement or disclose any information regarding this Agreement, unless prior written consent has been obtained from the other party.

22. **Assignment**

22.1 This Agreement is personal to the parties and neither this Agreement nor any rights, licences or obligations under it, may be assigned by either party without the prior written approval of the other party.

22.2 Notwithstanding the foregoing, either party may assign this Agreement to any acquirer of all, or of substantially all, of such party's equity securities, assets or business relating to the subject matter of this Agreement, or to any entity controlled by, that controls, or is under common control with, a party to this Agreement. Any attempted assignment in violation of this clause will be void and without effect.

23. **Entire Agreement**

This Agreement supersedes all prior agreements, arrangements and undertakings between the parties and constitutes the entire agreement between the parties relating to the subject matter of this Agreement. However, the obligations of the parties under any pre-existing non-disclosure agreement shall remain in full force and effect in so far as there is no conflict between the same. The parties confirm that they have not entered into this Agreement on the basis of any representation that is not expressly incorporated into this Agreement.

24. **Force Majeure**

Neither party shall have any liability under or be deemed to be in breach of this Agreement for any delays or failures in performance of this Agreement which result from circumstances beyond the reasonable control of that party. If such circumstances continue for a continuous period of more than 3 months, either party may terminate this Agreement by written notice to the other party.

25. **Notices**

25.1 All notices under this Agreement shall be in writing.

25.2 Notices shall be deemed to have been duly given:

25.2.1 when delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient; or

25.2.2 when sent, if transmitted by fax or e-mail and a successful transmission report or return receipt is generated; or

25.2.3 on the fifth business day following mailing, if mailed by national ordinary mail, postage prepaid; or

25.2.4 on the tenth business day following mailing, if mailed by airmail, postage prepaid

in each case addressed to the most recent address, e-mail address, or facsimile number notified to the other party.

26. **Severance**

If any provision of this Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from this Agreement and rendered ineffective as far as possible without modifying the remaining provisions of this Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of this Agreement.

27. **Successors and Assignees**

27.1 This agreement shall be binding upon, and inure to the benefit of, the parties and their respective successors and permitted assignees, and references to a party in this Agreement shall include its successors and permitted assignees.

27.2 In this Agreement references to a party include references to a person:

27.2.1 who for the time being is entitled (by assignment, novation or otherwise) to that party's rights under this Agreement (or any interest in those rights); or

27.2.2 who, as administrator, liquidator or otherwise, is entitled to exercise those rights;

and in particular those references include a person to whom those rights (or any interest in those rights) are transferred or pass as a result of a merger, division, reconstruction or other reorganisation involving that party. For this purpose, references to a party's rights under this Agreement include any similar rights to which another person becomes entitled as a result of a novation of this Agreement.

28. **Waiver**

No delay, neglect or forbearance on the part of either party in enforcing against the other party any term or condition of this Agreement shall either be or be deemed to be a waiver or in any way prejudice any right of that party under this Agreement. No right, power or remedy in this Agreement conferred upon or reserved for either party is exclusive of any other right, power or remedy available to that party.

29. **Counterparts**

This Agreement may be executed in any number of counterparts or duplicates, each of which shall be an original, and such counterparts or duplicates shall together constitute one and the same agreement.

30. **Time of the Essence**

Time shall be of the essence in this Agreement as regards any time, date or period mentioned in this agreement or subsequently substituted as a time, date or period by agreement in writing between the parties.

31. **Sub-contracting**

With the prior written consent of the Licensee (such consent not to be unreasonably withheld or delayed) the Licensor may perform any or all of its obligations under this Agreement through agents or sub-contractors, provided that the Licensor shall remain liable for such performance and shall indemnify the Licensee against any loss or damage suffered by the Licensee arising from any act or omission of such agents or sub-contractors.

32. **Costs and Expenses**

Each party shall bear its own legal costs and other costs and expenses arising in connection with the drafting, negotiation, execution and registration (if applicable) of this Agreement.

33. **Third Parties**

The parties confirm their intent not to confer any rights on any third parties by virtue of this Agreement and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement.

34. **Proper Law and Jurisdiction**

34.1 This Agreement and all matters arising from it and any dispute resolutions referred to below shall be governed by and construed in accordance with English law notwithstanding the conflict of law provisions and other mandatory legal provisions save that:

34.1.1 the Licensor shall have the right to sue to recover its fees in any jurisdiction in which the Licensee is operating or has assets; and

34.1.2 the Licensor shall have the right to sue for breach of its intellectual property rights and other proprietary information and trade secrets ('IPR') (whether in connection with this Agreement or otherwise) in any country where it believes that infringement or a breach of this Agreement relating to its IPR might be taking place. For the avoidance of doubt, the place of performance of this Agreement is agreed by the parties to be England.

34.2 Each party recognises that the other party's business relies upon the protection of its IPR and that in the event of a breach or threatened breach of IPR, the other party will be caused irreparable damage and such other party may therefore be entitled to injunctive or other equitable relief in order to prevent a breach or threatened breach of its IPR.

34.3 With respect to all other disputes which are not IPR related pursuant to clauses 34.1 and 34.2 above and its special rules, the following procedures in clauses 34.3 to 34.5 shall apply. Where there is a dispute, the aggrieved party shall notify the other party in writing of the nature of the dispute with as much detail as possible about the deficient performance of the other party. A representative from senior management of each of the parties ('representatives') shall meet in person or communicate by telephone within 5 business days of the date of the written notification in order to reach an agreement about the nature of the deficiency and the corrective action to be taken by the respective parties. The representatives shall produce a report about the nature of the dispute in detail to their respective boards and if no agreement is reached on

corrective action, then the chief executives of each party shall meet in person or communicate by telephone, to facilitate an agreement within 5 business days of a written notice by one to the other. If the dispute cannot be resolved at board level within a further 5 business days, or if the agreed upon completion dates in any written plan of corrective action are exceeded, either party may seek its legal remedies as provided below.

- 34.4 If the parties cannot resolve a dispute in accordance with the procedure in clause 34.3 above, then they shall with the assistance of the Centre for Effective Dispute Resolution ('CEDR'), seek to resolve the dispute or difference amicably by using an Alternative Dispute Resolution ('ADR') procedure acceptable to both parties before pursuing any other remedies available to them. If either party fails or refuses to agree to or participate in the ADR procedure or if in any event the dispute or difference is not resolved to the satisfaction of both parties within 90 days after it has arisen, the matter shall be settled in accordance with the procedure below.
- 34.5 If the parties cannot resolve the dispute by the procedure set out above, the parties shall irrevocably submit to the exclusive jurisdiction of the courts of England and Wales for the purposes of hearing and determining any dispute arising out of this Agreement.
- 34.6 While the dispute resolution procedure above is in progress and any party has an obligation to make a payment to another party or to allow a credit in respect of such payment, the sum relating to the matter in dispute shall be paid into an interest bearing deposit account to be held in the names of the relevant parties at a clearing bank and such payment shall be a good discharge of the parties' payment obligations under this Agreement. Following resolution of the dispute, whether by mediation or legal proceedings, the sum held in such account shall be payable as determined in accordance with the mediation or legal proceedings, and the interest accrued shall be allocated between the parties pro rata according to the split of the principal sum as between the parties.

#### **SCHEDULE 1** **The Software Specification**

This is software that provides facilities to:

- 1/ Gather on site information regarding the fuelling of vehicles, identifying when vehicles were fuelled, with which product and by what amount. Optionally, the fueller/driver will be additionally identified.
- 2/ Communicate the data gathered in (1) and pass this data back over the Internet to a central data store.
- 3/ Option to provide a web based software system to present the data gathered in (1) back to the licensee in a format which will enhance his business operation.

#### **SCHEDULE 2** **The Equipment**

##### **1. Hardware**

The equipment comprises of a Fuel Island Controller which contains an embedded software application. This agreement covers only the maintenance of this internal software. Access to any Web based facilities are achieved using licences own Computer equipment, typically a PC using Windows Explorer.

##### **2. Operating System**

The fuel Island controller is embedded and as such has no operating system associated. Any Licensee Equipment that can access the internet should be appropriate to browse the fuelling information on the Jigsaw Web Site, but if in any doubt, access to a test site can be arranged before installation of the equipment. Typically, a modern PC using Windows XP Professional and Internet Explorer will be used, although other operating systems such as Linux may operate equally well.

#### **SCHEDULE 3** **Annual Support and Maintenance Fees**

##### **For first 12 months**

On delivery	£250	per terminal
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##### **After first 12 months**

At start of each period	£250	per terminal
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#### **SCHEDULE 4** **Training and Set-up**

- 1 The Licensor will provide training for the site personnel in the use of the fuel island terminal on the day of installation. Web set up instruction will be available in the form of a downloadable or on screen viewable manual. Additionally, web set up phone support will be available to a nominated member of staff in order to facilitate the initial input of fleet information.

**IN WITNESS WHEREOF** this Agreement has been duly executed the day and year first before written

SIGNED by

<<Name and Title of person signing for Licensor>>  
for and on behalf of Jigsaw M2M Ltd

In the presence of  
<<Name & Address of Witness>>

SIGNED by

<<Name and Title of person signing for Licensee>>  
for and on behalf of .....

In the presence of  
<<Name & Address of Witness>>