

Introduction, overview and important notes

This Agreement governs your use of Figaro.

You should read all of this Agreement before applying for a subscription for Figaro as by doing so you indicate your acceptance of this Agreement.

By accepting this Agreement you agree that:

- You are authorised to accept it on behalf of the business entity which you represent;
- This Agreement governs the use by your business of Figaro; and
- You, and the business entity which you represent, will comply with all its terms.

If at any time you do not accept this Agreement, we do not permit you to use Figaro. You or the Service Provider may terminate this agreement at any time before you pay the Initial Fee, after that you may cancel your subscription by giving 30 days' notice to the Service Provider. The Service Provider may withdraw the Service by giving you 60 days' notice.

Overview of this Agreement

This Agreement sets out your and our rights and obligations in relation to our provision of Figaro and your use of it. The following is a summary of the more important clauses:

Clause 2 tells you how to purchase a subscription for Figaro and related information concerning set-up and branding.

Clause 3 describes the term of this agreement and Clause 4 sets out how and when subscription fees are calculated and your payment obligations thereto.

Clause 5 sets out what the Service Provider is licensing to you and Clause 6 informs you about how Figaro can be used.

Clauses 7 to 11 inclusive set out the obligations of the Service Provider in connection with maintaining and supporting the Service and the further development thereof.

Clauses 12 to 14 inclusive define what is owned and by whom in relation to intellectual property, subscriber data and how its integrity is kept secure and confidential including the period after the agreement comes to an end.

Clauses 15 to 17 inclusive set out the extent of the Service Provider's and the Subscriber's respective liabilities should something go wrong.

Clause 18 describes how this Agreement can come to an end.

Schedules 1 and 2 detail the two Applications that comprise Figaro.

Questions about Figaro

If you have a question about Figaro, you may find the answer on the Figaro Website <https://my-figaro.com> or in the online Figaro User Guide which is made available to you after the Subscription Commencement Date. If not, you can contact a member of the Figaro team by email to info@my-figaro.com or +44 (0)1923 883490, or using such other details as may be published from time to time.

Parties to this Agreement

This Agreement is between Flint Management Ltd. which is a company registered in England under number 6624441 with a VAT number of GB 937818382 whose contact details are set out above and whose registered office is at The Bristol Office, 2nd Floor, 5 High Street, Westbury-on-Trym, Bristol BS9 3BY ("the Service Provider", "we" or "us") and you the business entity ("the Subscriber", "you") which on accepting this Agreement and paying the Initial Fee will be registered to use Figaro.

Unless you are a sole trader, if you are registering to access and use Figaro in the capacity of an employee or contractor of a separate corporate body, partnership or similar business entity, you must have the authority of that business entity to: (a) use Figaro for that entity's business and (b) accept this Agreement on behalf of that entity. In such circumstances you confirm and warrant to the Service Provider that you are authorised in this way. If you are unsure about this, you must confirm that you have such authority with an appropriately senior manager or director or partner (or equivalent).

This Agreement is made in consideration of the obligations entered into (including for you to pay fees and the Service Provider to permit you to use Figaro) and the rights granted by each of the parties.

The Agreement

You and the Service Provider agree as follows:

1. Definitions and Interpretation

1.1 In this Agreement the following capitalised words shall have the following meanings:

“Applications”	means the selected software applications provided by the Service Provider as set out in Schedule 1 and in Schedule 2 of this agreement;
“ASP Infrastructure”	means the Service Provider’s computer hardware, firmware, software and communications infrastructure which is used to facilitate access to the Figaro Console by the Subscriber and to the Figaro Portal by the Subscriber’s Customers;
“Bespoke Tailoring”	Means changes to the functionality of the Applications named in Schedule 1 and Schedule 2 of this Agreement or to the ASP Infrastructure to be made available for the use of the Subscriber in advance of any generally available Upgrade;
“Business Day”	means any day other than Saturday or Sunday that is not a UK bank or public holiday during which the Service Provider is open for business;
“Business Hour”	means a period of 60 consecutive minutes all of which lie between 09:30 and 18:00 on a Business Day;
“Confidential Information”	means all business, technical, financial or other information created or exchanged between the Parties throughout the Term of this Agreement;
“Effective Date”	means the date upon which full settlement of the Initial Fee is received by the Service Provider;
“Initial Fee”	means the fee charged by the Service Provider under sub-Clause 2.6 of this Agreement;
“Intellectual Property Rights”	means all vested contingent and future intellectual property rights including but not limited to copyright, trade marks, service marks, design rights (whether registered or unregistered), patents, know-how, trade secrets, inventions, set-up and database rights;
“Figaro Console”	means the selected software application provided by the Service Provider which shall be available to the Subscriber, as set out in Schedule 1 of this Agreement;
“Figaro Portal”	means the selected software application provided by the Service Provider which shall be available to the Subscriber and the Subscriber’s Customers, as set out in Schedule 2 of this Agreement;
“Figaro Website”	means www.figaroapp.com ;
“Login Credentials”	means details given by the Service Provider to allow the Subscriber to connect and utilise the Service;
“Non-Subscriber User”	means a non-employee of the Subscriber who may not access the Figaro Console in the absence of written consent from the Service Provider as per sub-Clause 6.5;
“Service”	means, collectively, the Figaro Console, the Figaro Portal, the ASP Infrastructure and support services provided by the Service Provider to the Subscriber;
“Sign-up Form”	means the Page on the Figaro Website entitled “Sign Up”;
“Standard Branding”	means, customising all customer facing media and the Figaro Portal using the Subscriber’s business name, contact details, logo and colour scheme and setting up the Figaro Portal to serve pages at the specified domain name the Subscriber owns and directs to the ASP Infrastructure;
“Subscriber Backup Systems”	means the Subscriber’s computer hardware, firmware, software and communications infrastructure through and on which the Supported Backup Software is used;
“Subscriber’s Customer”	means an affiliate or a reseller or a customer or a potential customer all of the Subscriber;
“Subscriber Data”	means any data belonging to the Subscriber or to third parties and used by the Subscriber under licence which is created using the Figaro Console or the Figaro Portal or otherwise stored in the ASP Infrastructure;
“Subscriber Users”	means an employee of the Subscriber who shall, from time to time, access the Figaro Console through the ASP Infrastructure;

“Subscription Commencement Date”	means the date upon which the Service Provider provides the Subscriber with Login Credentials;
“Subscription Fees”	means the sums payable by the Subscriber in return for access to the Figaro Console, the Figaro Portal, the ASP Infrastructure and support services provided by the Service Provider in accordance with sub-Clause 4.1 of this Agreement;
“Supported Access Software”	means any combination of operating system and browser software packages with version numbers according to those listed in Schedule 4 of this agreement or other combinations subsequently approved by the Service Provider and listed as such on the Figaro Website;
“Supported Backup Software”	means AHSAY® OBS backup software with a version number equal to 6.7 or other software or version numbers subsequently approved by the Service Provider and listed as such on the Figaro Website; and
“Upgrade”	means a revision of the Applications made by the Service Provider from time to time to improve their functionality.

1.2 Unless the context otherwise requires, each reference in this Agreement to:

- 1.2.1 “writing”, and any cognate expression, includes a reference to any communication effected by electronic or facsimile transmission or similar means;
- 1.2.2 “person” includes an individual, sole trader, partnership, body corporate, an unincorporated association of persons and any other legal entity;
- 1.2.3 “page” means a website page;
- 1.2.4 technical expressions shall have the relevant meaning commonly attributed to them in the computer software business sector in the U.K.;
- 1.2.5 a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time;
- 1.2.6 “this Agreement” is a reference to this Agreement and each of the Schedules as amended or supplemented at the relevant time;
- 1.2.7 a Schedule is a schedule to this Agreement; and
- 1.2.8 a Clause, sub-Clause or paragraph is a reference to a Clause of this Agreement (other than the Schedules) or a paragraph of the relevant Schedule.

1.3 The headings used in this Agreement are for convenience only and shall have no effect upon the interpretation of this Agreement.

1.4 Words imparting the singular number shall include the plural and vice versa.

1.5 References to any gender shall include the other gender.

2. **Sign-up, Initial Fee, Set-up and Branding**

2.1 Figaro is only intended for business use. You warrant that you will only use Figaro for business purposes.

2.2 You can apply to purchase the setup and subsequent ability to access and use Figaro by completing the Sign-up Form on the Figaro Website. At the end of the process the Sign-up Form will confirm what you have selected to buy and give you the opportunity to read this Agreement.

2.3 During the completion of the Sign-up Form you will be given the option to choose whether or not you require a Custom SSL Certificate and whether or not you require a Customer Portal Dedicated IP Address. The non refundable Initial Fee for your selections and for the set-up and Standard Branding of Figaro will be displayed together with a table of Subscription Fees which depend entirely on the level of use you make of Figaro after the Subscription Commencement Date. VAT will be charged where applicable under the contemporaneous provisions of UK tax legislation. This stage of the process is the Service Provider’s invitation for you to order the setup and subsequent use of Figaro.

2.4 Next you will be able to confirm and submit your order and if you do this you are making a binding offer to use Figaro in accordance with the terms of this Agreement. You are also indicating your acceptance of this Agreement.

2.5 Shortly afterwards we will email you to confirm receipt of your order. Please note that this is only an automatic confirmation of your order. The Service Provider may discuss with the Subscriber details contained in the Sign-up Form to ensure compatibility of the Subscriber Backup Systems with the Service. Where appropriate, the Service Provider may offer recommendations for upgrades and other alterations. In the event that the Service Provider is unable to provide the Service the reasons shall be presented in a written report to the Subscriber thereby terminating this Agreement with immediate effect and for the avoidance of doubt no invoice will be raised for the Initial Fee and no monies will become payable by the Subscriber and any further offer by the Subscriber to use the Service must be initiated by means of a subsequent submission of a completed Signup Form on the Figaro Website.

2.6 Where the Service Provider is satisfied as to the validity of the details contained in the Sign-up Form and as to the compatibility of the Subscriber Backup Systems with the Service he will issue an invoice to the Subscriber for the Initial Fee. The Initial Fee is non refundable and is due within 15 days from the date of the invoice.

2.7 On the date that the Initial Fee is received by the Service Provider the subscription contract (governed by this Agreement) relating to your use of Figaro comes into effect, creating a binding obligation on you and the Service Provider. In this Agreement this date is referred to as the "Effective Date".

- 2.8 On receipt of the Initial Fee the Service Provider will without undue delay carry out the set-up work necessary to have the Service working to its full potential with the Subscriber Backup Systems and to have Standard Branding incorporated in the Subscriber's customer facing media. For the avoidance of doubt branding other than Standard Branding is to be regarded as Bespoke Tailoring and the provisions of Clause 11 of this Agreement apply where this is required by the Subscriber.
- 2.9 When the Service Provider has completed the set-up work the Service Provider will notify the Subscriber by email and provide Login Credentials. The date on which the Subscriber is provided with Login Credentials is referred to in this Agreement as the Subscription Commencement Date.

3. **Term**

- 3.1 The term of this agreement (the "Term") shall commence on the Effective Date and will continue unless terminated in accordance with Clause 18 of this Agreement. The minimum subscription term is 12 months.
- 3.2 The subscription term of this Agreement (the "Subscription Term") shall commence on the Subscription Commencement Date and will continue unless terminated in accordance with Clause 18 of this Agreement.

4. **Subscription Fee, Custom SSL Certificate and Customer Portal Dedicated IP Address Fees and Payment thereof**

- 4.1 The Subscription Fee due for the Service is dependent on the level of usage of the Service made by the Subscriber and in the amount specified on the Sign-up Form as submitted by the Subscriber. The Service Provider will calculate the amount of Subscription Fee due on a monthly basis by reference to the number of Active Client Licences including those in their trial period managed within the Subscriber's Figaro Console on the first working day of each calendar month commencing with the month immediately following the Subscription Commencement Date. VAT will be charged where applicable under the contemporaneous provisions of UK tax legislation.
- 4.2 The Custom SSL Certificate fee is due annually on the anniversary of the Effective Date and is in the amount specified on the Sign-up Form as submitted by the Subscriber. The Customer Portal Dedicated IP Address fee is due on the first working day of each month commencing with the month immediately following the Subscription Commencement Date and is in the amount specified in the Sign-up Form as submitted by the Subscriber. If either or both of these features were requested by the Subscriber on completion of the Sign-up Form then The Service Provider will continue to charge these fees on an annual and monthly basis respectively until given notice by the Subscriber to the contrary. VAT will be charged where applicable under the contemporaneous provisions of UK tax legislation.
- 4.3 The Subscriber shall pay to the Service Provider all Subscription Fees and Custom SSL Certificate Fees and Customer Portal Dedicated IP Address Fees due within 15 days of receipt of an invoice raised for the same by the Service Provider in line with sub-Clauses 4.1 and 4.2 of this Agreement.
- 4.4 In the event that the Subscriber does not pay all monies due within the time period specified in sub-Clause 4.3 above, the Service Provider shall have the right to suspend the Subscriber's access to the Service by whatever means it deems appropriate, subject to the requirement that such shall not disrupt any other of the Subscriber's internet operations.
- 4.5 In the event that the Subscriber fails to pay under sub-Clause 4.3 then, without prejudice to sub-Clause 4.4, that amount shall bear interest from the due date until payment is made in full, both before and after any judgment, at 3% per annum over the Bank of England base rate pertaining at the time.
- 4.6 The Service Provider reserves the right to vary the Subscription Fee from time to time as it may deem appropriate. The Subscriber shall receive 30 days' written notice of any such variation. Such variations shall take effect upon expiry of such notice.

5. **Software Licences**

- 5.1 The Subscriber shall use all Applications under a non-exclusive, non-transferrable licence, as set out in this Agreement. This licence permits Subscriber Users to access the Application set out in Schedule 1 of this Agreement at any given time and permits the Subscriber and Subscriber's Customers to access the Application set out in Schedule 2 of this Agreement at any given time and all such access is only permitted through the Supported Access Software as set out in Schedule 4 of this Agreement.
- 5.2 All Applications provided by the Service Provider are the property of the Service Provider and shall be covered by the terms of the licence included in this Agreement.

6. **Applications and ASP Infrastructure Terms of Use**

- 6.1 The Subscriber may only access the Application detailed in Schedule 1 to this agreement and the Subscriber's Customers may only access the Application detailed in Schedule 2 to this Agreement. No access to other parts of the ASP Infrastructure shall be permitted in the absence of express written permission from the Service Provider.
- 6.2 Subscriber Users' access to the Applications and the ASP Infrastructure shall be controlled by means of username and password.
- 6.3 At the Subscriber's option access to the Figaro Console can be restricted to a range of Internet Protocol addresses. The Subscriber must give written notice to the Service Provider of any authorised IP Addresses from which the Subscriber wishes to allow access to the Figaro Console and the period for which this limit is required. The Service Provider will acknowledge this request in writing and afterwards use its best endeavours to maintain this limit at all times during the period it is in force.

- 6.4 Use of the Figaro Console by Non-Subscriber Users is not permitted under this Agreement in the absence of express written consent from the Service Provider, such consent not to be unreasonably withheld. The Service Provider may require such details as the reason that access to the Figaro Console and ASP Infrastructure is required by the Non-Subscriber User, details of the Non-Subscriber User and other information which may be specified from time to time.
- 6.5 The Subscriber shall use the Service exclusively for the purposes of carrying on its business of on-line backup using the Supported Backup Software.
- 6.6 The Service Provider shall monitor the Subscriber's use of the Applications and ASP Infrastructure from time to time to ensure compliance with the terms and conditions of this Agreement and specifically to calculate the monthly Subscriber's Fee according to the requirement contained in sub-Clause 4.1 this Agreement
- 6.7 The Subscriber is exclusively responsible for its use of the Service, including the conduct of individual Subscriber Users and of any authorised Non-Subscriber Users and must ensure that all use is in accordance with this Agreement. The Subscriber shall notify the Service Provider immediately of any breaches of this Agreement by any Subscriber Users or Non-Subscriber Users.
- 6.8 Access to the Applications is only permitted through Supported Access Software via the ASP Infrastructure. Under no circumstances may the Subscriber download, store, reproduce or redistribute the Applications or any other part of the ASP Infrastructure, without first obtaining the express written permission of the Service Provider.
- 6.9 The Subscriber's use of the Applications and ASP Infrastructure may, from time to time, be governed by statutory or regulatory rules and requirements external to the terms and conditions of this Agreement. It shall be the Subscriber's exclusive responsibility to ensure that their use of the Service is in compliance with any such laws.
- 6.10 The Subscriber's use of the Service shall be subject to the following limitations, any of which may be waived by the Service Provider giving their express written consent:
- 6.10.1 The Subscriber may not use or redistribute the Applications or the ASP Infrastructure for the purpose of conducting the business of an Application Service Provider;
- 6.10.2 The Subscriber may not redistribute or reproduce the Applications or the ASP Infrastructure through any network; and
- 6.10.3 The Subscriber may not allow any unauthorised third party to access the Applications or the ASP Infrastructure.
- 6.11 Neither the Subscriber, nor anyone on their behalf may, in the absence of written consent from the Service Provider:
- 6.11.1 Make changes of any kind to the Applications or the ASP Infrastructure; or
- 6.11.2 Attempt to correct any fault or perceived fault in the Applications or the ASP Infrastructure.
- 6.12 The Subscriber shall ensure that no Subscriber Backup Systems are connected to a third party ASP system or other service, communications system or network in such a way that the Service may be accessed by unauthorised third parties.
- 6.13 Where, in the opinion of the Service Provider, Subscriber Backup Systems are likely to cause disruption to the ASP Infrastructure, the Service Provider may request that the Subscriber disconnects from the ASP Infrastructure until advised that reconnection is possible. The Service Provider may require changes such as upgrades or equipment replacement to be made to the Subscriber Backup Systems prior to reconnection.

7. Security

- 7.1 The Service Provider shall ensure that at all times redundant internet connectivity and redundant power is available to the ASP Infrastructure and subject to the provisions of Clause 8 shall make all best efforts to maintain the security and accessibility of the system.
- 7.2 The Service Provider shall make daily backups of all data on the primary servers that form part of the ASP Infrastructure. Such backups will be made to secondary servers located off-site from the primary servers. All backed up databases shall be stored in an encrypted format on servers with strict requirements designed to limit access to the Service Provider.

8. Maintenance

- 8.1 The Service Provider shall be responsible for all maintenance and Upgrades to the Service which may from time to time be required. Subject to the provisions of Clause 9, the Subscriber shall be responsible for all maintenance and Upgrades to the Subscriber Backup Systems which may from time to time be required.
- 8.2 Whenever possible, the Service Provider shall use its best and reasonable endeavours to undertake maintenance or Upgrade work outside of the Subscriber's business hours.
- 8.3 Unless maintenance is corrective in nature, the Service Provider shall aim to provide at least 5 Business Days' notice of any maintenance or Upgrade which may affect the Subscriber's use of the Service. The Service Provider shall use its best and reasonable endeavours to provide as much notice as possible in the case of corrective maintenance, however advance notice may not always be possible.
- 8.4 Where maintenance or Upgrade will disrupt the Service, the Service Provider shall aim to complete all necessary work within 2 Business Hours or as soon as possible thereafter where resolution in that time is not possible.
- 8.5 Whenever possible, the Service Provider shall provide a workaround solution to the Subscriber to enable the Subscriber's continued use of the Service or to enable use that is as close to normal as is possible under the prevailing circumstances.

9. Support

- 9.1 The Service Provider shall provide telephone, email and online support services during Business Hours and shall provide ticket based support outside Business Hours. The support provided by the Service Provider shall relate only to the Applications and ASP Infrastructure. Any problems which are related to Subscriber Backup Systems must be resolved by the Subscriber's own support staff.
- 9.2 When seeking support the Subscriber shall use its best and reasonable endeavours to provide the fullest information possible to aid the Service Provider in diagnosing any faults in either the Applications or the ASP Infrastructure.
- 9.3 The Service Provider shall use its reasonable endeavours to respond within 20 minutes to problems raised during Business Hours and within the first Business Hour following receipt of a support ticket at any other time and shall aim to resolve all support problems within 1 hour of this response or as soon as possible thereafter where resolution in that time is not possible.
- 9.4 Whenever possible, the Service Provider shall provide a workaround solution to the Subscriber to enable the Subscriber's continued use of the Service or to enable use that is as close to normal as is possible under the prevailing circumstances.

10. Training

- 10.1 For the Subscription Term of this Agreement the Service Provider shall make available to the Subscriber a comprehensive and up to date on line user guide designed to support the Subscriber's use of the Service.
- 10.2 In the event that any Subscriber Users or Subscriber's Customers require training in order to use the Applications, it shall be the responsibility of the Subscriber to ensure that all such users are appropriately trained and to bear any costs associated with such training. The Service Provider is not required to provide training of any kind save for advice on appropriate courses and materials. From time to time the Service Provider may provide training for which the Subscriber shall bear the training course charge as and when this is advertised on the Figaro Website.

11. Bespoke Tailoring

- 11.1 The Subscriber may by giving written notice to the Service Provider at any time request a written quote for changes to the functionality of the Applications named in Schedule 1 and Schedule 2 of this Agreement or to the ASP Infrastructure to be made available for the for use of the Subscriber in advance of any generally available Upgrade.
- 11.2 Within 10 working days of receipt of a request for a written quote or such other period as may be agreed between the parties the Service Provider shall indicate by notice in writing to the Subscriber the terms upon which it will perform the requested functionality changes together with justification for it's terms which should be based on the Service Provider's charges as described in Schedule 3 below as adjusted by reference to generally accepted inflation rates between the Effective Date and the date of Subscriber's request.
- 11.3 By issuing the written request according to sub-Clause 11.1 irrespective of whether or not the Bespoke Tailoring is subsequently undertaken the Subscriber hereby disowns any Intellectual Property Rights subsisting in the requested change of functionality and the Service Provider hereby retains the right to incorporate the functionality changes in any subsequent generally available Upgrade to the Service.

12. Intellectual Property

- 12.1 Subject to sub-Clause 13.2 all Intellectual Property Rights subsisting in the Applications and the ASP Infrastructure, including any Bespoke Tailoring and any supporting software and documentation are the property of the Service Provider. For the purposes of this Clause 12, 'Applications' and 'ASP Infrastructure' along with supporting software and documentation are taken to include the manner in which all such material is compiled and presented.
- 12.2 Where expressly indicated, the Intellectual Property Rights subsisting in certain Applications including any supporting software and documentation may be the property of named third parties.
- 12.3 The Subscriber shall not either during the Term of this Agreement or after the expiry of this Agreement permit or cause to occur any infringement of any Intellectual Property Rights covered by this Clause 12. Use by the Subscriber and its employees of the Service shall be only within the terms of this Agreement.
- 12.4 The Subscriber shall not, in the absence of the Service Provider's written consent, reproduce, adapt, translate, reverse-engineer, or make available to any third party any of the Applications, any part of the ASP Infrastructure, or any other material associated with this Agreement where such activity goes beyond the scope of actions permitted by the terms and conditions of this Agreement.
- 12.5 Where the Subscriber either suspects or is aware of any breach of Intellectual Property Rights covered by this Clause 12 it shall be under a duty to inform the Service Provider of such breach immediately.

13. Subscriber Data

- 13.1 Subject to sub-Clause 13.2 all Intellectual Property Rights subsisting in Subscriber Data are and shall remain the property of the Subscriber.
- 13.2 Certain Subscriber Data may belong to third parties. In such cases, the Subscriber warrants that all such Subscriber Data is used with the consent of relevant third parties.
- 13.3 Within 14 Business Days of the termination of this Agreement in accordance with this Clause 18, the Service Provider shall uninstall or otherwise remove any Subscriber Data from the ASP Infrastructure supplied by the Subscriber during the Term of this Agreement. Immediately following taking such action, the Service Provider shall inform the Subscriber in writing that such action has been taken.

14. Confidentiality

- 14.1 During the Term of this Agreement and after the termination or expiration of this Agreement for any reason, the Service Provider shall use its best and reasonable endeavours to ensure that all Subscriber Data is kept secure and confidential. The Service Provider shall not, in the absence of express written consent from the Subscriber, disclose Subscriber Data to any third party unless such disclosure is required by law in which case the Subscriber shall be notified in writing of the disclosure.
- 14.2 During the Term of this Agreement and after termination or expiration of this Agreement for any reason for a period of ten years starting on the Effective Date of this agreement, the following obligations shall apply to the Party receiving Confidential Information (the "Receiving Party") from the other Party (the "Disclosing Party").
- 14.3 Subject to sub-Clause 14.4, the Receiving Party:
- 14.3.1 may not use any Confidential Information for any purpose other than the performance of their obligations under this Agreement;
 - 14.3.2 may not disclose any Confidential Information to any third party except with the prior written consent of the Disclosing Party; and
 - 14.3.3 shall make every effort to prevent the unauthorised use or disclosure of the Confidential Information.
- 14.4 The obligations of confidence referred to in this Clause 14 (excluding sub-Clause 14.1) shall not apply to any Confidential Information that:
- 14.4.1 is in the possession of and is at the free disposal of the Receiving Party by means of express written consent from the Disclosing Party or is published or is otherwise in the public domain prior to its receipt by the Receiving Party;
 - 14.4.2 is or becomes publicly available on a non-confidential basis through no fault of the Receiving Party;
 - 14.4.3 is required to be disclosed by any applicable law or regulation; or
 - 14.4.4 is received in good faith by the Receiving Party from a third party who, on reasonable enquiry by the Receiving Party claims to have no obligations of confidence to the Disclosing Party in respect thereof and who imposes no obligations of confidence upon the Receiving Party.
- 14.5 Without prejudice to any other rights or remedies the Disclosing Party may have, the Receiving Party acknowledges and agrees that in the event of breach of this Clause the Disclosing Party shall, without proof of special damage, be entitled to an injunction or other equitable remedy for any threatened or actual breach of the provisions of this Clause in addition to any damages or other remedies to which they may be entitled.

15. Liability

- 15.1 Nothing in this Agreement shall exclude or limit the Service Provider's liability for (a) fraud, (b) death or personal injury arising out of the Service Provider's or (c) any warranty about title or uninterrupted possession implied by statute.
- 15.2 Subject to sub-Clause 15.1, in no event will the Service Provider be liable for:
- 15.2.1 lost income, lost profits or lost business, wasted time, anticipated savings, lost goodwill, third party costs and charges, or any business interruption, in each case whether caused directly or indirectly;
 - 15.2.2 any circumstances arising out of or in connection with the Internet, any third party or your telecommunication service, third party or your computer system, and/or associated or supporting systems not provided by us and used by you to use or otherwise access the Service;
 - 15.2.3 any indirect, consequential, incidental or special damage, in the case of each of sub-Clauses 15.2.1 to 15.2.3, however caused and whether arising under contract, tort including negligence, statute or otherwise, even if we knew or ought to have known of such potential liability.
- 15.3 Subject to sub-Clauses 15.1 and 15.2, the Service Provider's total liability shall not exceed the greater of: (a) the amount of charges actually paid by the Subscriber to use the Service in the two months prior to the date the circumstances causing such liability first arose, or (b) one thousand pounds sterling.
- 15.4 The limitation of liability in this Clause 15 has been calculated to be proportionate to the charges paid by the Subscriber to use the Service and takes into account the notice period for cancellation contained in sub-Clause 18.2.6 and the fact that it is not within our control how you use the Service.

16. Indemnity

- 16.1 The Subscriber will fully indemnify the Service Provider against all costs, expenses, liabilities, losses, damages and judgments that the Service Provider may incur or be subject to as a result of any of the following:
- 16.1.1 the Subscriber's misuse of the Applications, ASP Infrastructure or any other element of the Service;
 - 16.1.2 the Subscriber's breach of this Agreement; or
 - 16.1.3 the Subscriber's negligence or other act of default.
- 16.2 The Service Provider shall be under no obligation to indemnify the Subscriber against any costs, expenses, liabilities, losses, damages and judgments that the Subscriber may incur or be subject to arising out of any matter covered by this Agreement.

17. Force Majeure

- 17.1 Neither the Service Provider nor the Subscriber shall be liable for breaching this Agreement where that breach results from Force Majeure.
- 17.2 Force Majeure refers to any event that is beyond the reasonable control of the parties and includes, but is not limited to: power failure, internet service provider failure, industrial action, civil unrest, theft, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is beyond the control of the Party in question.

18. Termination

- 18.1 The Service Provider reserves the right to terminate this Agreement or to suspend the Service with immediate effect in any of the following circumstances:
- 18.1.1 at any time prior to the Effective Date and for the avoidance of doubt this includes the period after the Service Provider has delivered an invoice for the Initial Fee to the Subscriber under sub-Clause 2.6 of this Agreement which has remained unpaid;
 - 18.1.2 if the Subscriber fails to pay monies due under sub-Clause 4.1 and 4.2 of this Agreement within the time prescribed in sub-Clause 4.3;
 - 18.1.3 if the Subscriber is in breach of the terms of this Agreement;
 - 18.1.4 if the Subscriber becomes the subject of a voluntary arrangement under Section 1 of the Insolvency Act 1986;
 - 18.1.5 if the Subscriber is unable to pay its debts within the definition of Section 123 of the Insolvency Act 1986;
 - 18.1.6 if the Subscriber has a receiver, manager, administrator or administrative receiver appointed over all or a substantial part of its undertakings, assets, or income; has passed a resolution for its winding up; or is the subject of a petition presented to a court for its winding up or for an administration order; or
 - 18.1.7 after the Effective Date and upon the expiry of 60 days' prior written notice having been given by the Service Provider to the Subscriber of his intention to terminate this Agreement.
- 18.2 The Subscriber reserves the right to terminate this Agreement in any of the following circumstances:
- 18.2.1 at any time prior to the Effective Date and for the avoidance of doubt this includes the period after the Service Provider has delivered an invoice for the Initial Fee to the Subscriber under sub-Clause 2.6 of this Agreement which has remained unpaid;
 - 18.2.2 if the Service Provider is in breach of the terms of this Agreement;
 - 18.2.3 if the Service Provider becomes the subject of a voluntary arrangement under Section 1 of the Insolvency Act 1986;
 - 18.2.4 if the Service Provider is unable to pay its debts within the definition of Section 123 of the Insolvency Act 1986;
 - 18.2.5 if the Service Provider has a receiver, manager, administrator or administrative receiver appointed over all or a substantial part of its undertakings, assets, or income; has passed a resolution for its winding up; or is the subject of a petition presented to a court for its winding up or for an administration order; or
 - 18.2.6 after the Effective Date and upon the expiry of 30 days' prior written notice having been given by the Subscriber to the Service Provider of his intention to terminate this Agreement.

19. General Terms

- 19.1 To the maximum extent permitted by law and to the extent consistent with validly entering into a binding agreement, the controlling language of this Agreement is English as spoken in the United Kingdom and any translation you have received has been provided solely for your convenience. In the event you have entered into this Agreement by means of the display of a translated version of this Agreement in a language other than English, you may request an English language version of this Agreement by notice to us. To the maximum extent permitted by applicable law, all correspondence and communication between you and the Service Provider under this Agreement must be in English.
- 19.2 All notices under this Agreement shall be in writing and should be addressed to the most recent address, e-mail address, or facsimile number notified to the other Party and shall be deemed to have been duly given:
- 19.2.1 when delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient; or
 - 19.2.2 when sent, if transmitted by fax or e-mail and a successful transmission report or return receipt is generated; or
 - 19.2.3 on the fifth business day following mailing, if mailed by national ordinary mail, postage prepaid; or
 - 19.2.4 on the tenth business day following mailing, if mailed by airmail, postage prepaid.
- 19.3 If any provision of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability will not affect the other provisions of this Agreement which will remain in full force and effect. If any provision of this Agreement is so found to be invalid or unenforceable but would cease to be invalid or unenforceable if some part of the provision were deleted, the provision in question will apply with such modification as may be necessary to make it valid and enforceable.

- 19.4 No failure or delay of either party to exercise any rights or remedies under this Agreement shall operate as a waiver of that failure or delay, nor shall any single or partial exercise of the same or other rights or remedies prevent any further or other exercise of the same or other rights or remedies, nor shall any waiver of any rights or remedies with respect to any circumstances be constructed as a waiver of those rights or remedies with respect to any other circumstances.
- 19.5 This Agreement constitutes the entire agreement between the Subscriber and the Service Provider with respect to the Subscriber's access and use of the Service, and supersede all documentation, information and other communications (in each case whether spoken or written) between the parties with respect to such access and use. The Subscriber acknowledges that in entering into this Agreement he has not relied on any documentation, information, representation, warranty, collateral contract or other assurance (except those set out in this Agreement) made by the Service Provider before the date the Subscriber accepted this Agreement. The Subscriber waives all rights and remedies which, but for this clause might otherwise be available to him in respect of any such representation, warranty, collateral contract or other assurance. Every sentence of this sub-Clause is subject to clause 15.1.
- 19.6 Subject to clause 15.1, the Service Provider shall not be liable for and shall be excused from any failure to perform his obligations in this Agreement due to causes beyond his reasonable control.
- 19.7 Nothing in this Agreement shall confer on any third party any right or benefit under the Contracts (Rights of Third Parties) Act 1999, except that the benefit of Clause 15 may be exercised by the relevant third parties, provided that this Agreement may be terminated and varied without those third parties' consent.
- 19.8 From time to time the Service Provider we may modify this Agreement by notifying the Subscriber in accordance with sub-Clause 19.2 that it has been modified. The Subscriber agrees to immediately read such modified terms and, if he agrees to them, he will indicate his acceptance of them by continuing to use the Service. If the Subscriber does not accept such modified terms, he should contact the Service Provider using the contact details given at the beginning of this Agreement to discuss the situation. If the Subscriber does not accept such modified terms, he may terminate this Agreement, by giving the Service Provider written notice. This will take effect at the next billing period. Until then, the unmodified terms shall apply to the Subscriber's use of the Service.
- 19.9 Neither Party shall assign, transfer, sub-contract, or in any other manner make over to any third party the benefit and/or burden of this Agreement without the prior written consent of the other, such consent not to be unreasonably withheld.
- 19.10 The relationship between the Parties under this Agreement is and shall remain non-exclusive. Both parties are free to enter into similar relationships with other parties.
- 19.11 "Figaro" is a registered trademark of the Service Provider. Third party product and service names may comprise trade marks of their respective proprietor, in which case the Service Provider acknowledges those marks.

20. **Dispute Resolution (Arbitration)**

- 20.1 It is agreed that where any dispute or difference relating to this Agreement arises between the Parties that matter shall be referred to the arbitration of a single arbitrator with appropriate qualifications and practical experience to resolve the particular dispute.
- 20.2 The arbitrator shall be agreed by the Parties or in the event of failure to agree shall be appointed by the President for the time being of the Law Society of England and Wales.
- 20.3 The arbitration shall take place in London and shall be in accordance with the Arbitration Act 1996 or any re-enactment or modification of that Act for the time being in force.
- 20.4 The Parties shall promptly furnish to the arbitrator all information reasonably requested by him relating to the particular dispute, imposing appropriate obligations of confidence.
- 20.5 The Parties shall require the arbitrator to use all reasonable endeavours to render his decision within 30 days following his receipt of the information requested or if this is not possible as soon thereafter as may reasonably be practicable. The Parties shall co-operate fully with the arbitrator to achieve this objective.
- 20.6 The Parties shall share the fees and expenses of the arbitrator equally. The decision of the arbitrator shall be final and binding upon both Parties.
- 20.7 The Parties agree to exclude any right of application or appeal to the courts of England and Wales concerning any question of law arising in the course of the arbitration.

21. **Law and Jurisdiction**

- 21.1 This Agreement shall be governed by the laws of England and Wales.
- 21.2 Any dispute between the Parties relating to this Agreement shall fall within the jurisdiction of the courts of England and Wales.

SCHEDULE 1

1 Name of Application: **Figaro Console**

2 Minimum Functionality Statement:

Figaro Console Minimum Functionality Statement

Functionality for the accounting department

Flexible pricing

The Figaro Console's package manager provides for the definition of individual packages to support truly flexible billing. For each package, storage quotas can be priced by Fixed Rate, Variable Rate or by using Price Breaks.

Fixed Rate	Fixed Rate pricing allows for a flat fee per gig.;
Variable Rate	Variable Rate pricing offers a sliding scale for per-gig pricing where the fee reduces as the storage increases;
Price Breaks	Price Breaks allow different fees to be charged for different quota ranges.

Customer Payment methods

The Figaro Console supports different customer payment methods including BACS, Cheque and integrated direct debit using the SmartDebit®

Discounts

The Figaro Console Packages Module provides for tailored payment plans to be allocated to individual customers and groups of customers. With a default package for the majority of customers and an unlimited number of additional packages for special cases, the Figaro Console will automatically work out amounts due for each backup account on the system.

Invoicing

Customers can be set to be invoiced on a specified day of the month or on the anniversary of their sign up date. On a customer's invoice day the Figaro Console calculates amounts due by reference to each of their accounts, adds this to any pending charges that have accumulated since the last invoice day and generates an appropriate customer VAT invoice automatically.

Paying affiliates

Each month the Figaro Console calculates the amount of commission due to affiliates.

Functionality for sales staff

Notification system and audit history.

The Figaro Console automatically raises notifications for important changes and actions and doubles up as a warning system to catch and prevent problems arising. Notifications can be read, actioned and closed as staff complete their activities to help efficiently manage their work load. Throughout the Figaro Console there is an integrated audit trail tool that automatically records changes and allows staff to manually add and view notes.

Commission Records

Figaro allows for the specification of customised sales target thresholds and personalised rates for customer account managers, and ensures accurate auditable calculation of the sales commission they have earned.

Affiliate Scheme

To improve sales, customers may be designated as affiliates and assigned a unique affiliate code and URL for their referred customers to use. The new customers thus brought in are linked to the affiliate and the Figaro Console will calculate the affiliate reward according to the affiliate's commission rates and by reference to levels of new business generated.

Resellers

The functionality of the Figaro Console Portal will encourage resellers to generate more sales business without increasing the administrative burden for existing sales staff.

SCHEDULE 1 (Continued)

Functionality for technicians

Server Administration

The Figaro Console provides for the easy creation, moderation and removal of backup accounts on the Subscriber Backup Systems. Technicians can easily add new backup accounts, amend account quotas and modules and check the status of backup servers. Where accounts need to be migrated from one backup server to another, the Figaro Console will detect the change and issue a prompt for an action.

Quota Increases

Accounts can be set to automatically increase their quota by a percentage or fixed amount when they approach their quota limit. The Figaro Console will present warning notifications and quota usage bars to show which accounts are reaching their limits.

Reconciliation

The Figaro Console's Management Dashboard provides technicians with a solution to view and handle orphaned accounts that exist on a backup server but are not linked to customers in the Figaro Console and missing accounts that exist in the Figaro Console but are not found on their backup server. Backup accounts can be connected to customers, hidden or removed at the click of a button. Active backup accounts can also be orphaned on demand, for example where there is a need move an account from one customer to another.

Functionality for managers

In depth reporting

Detailed reports to maintain control of the business and assets are easily viewed and downloaded. The Reporting Module intelligently mines the data that is generated from the usage of The Figaro Console and presents it human-readable form. Each report can be filtered and sorted as desired and can be exported into multiple formats, including Microsoft Excel, Adobe PDF and CSV.

Reports include:

- Customer Report
- Customer Account Report
- Invoice Report
- Customer Credit Report
- Backup Account Report
- Commission Report
- Affiliate Report
- Reseller Report

Segregation of Duties

The Figaro Console User Accounts are fully customisable using groups and permissions. Each member of staff can be quickly setup with their own unique login for the Figaro Console can be easily organised into groups and assigned permissions based on their job roles. For example sales staff may be blocked from access to finance reports.

SCHEDULE 2

1 Name of Application : **Figaro Portal**

2 Minimum Functionality Statement:

Figaro Portal Minimum Functionality Statement

Functionality for the Subscriber

The Figaro Portal supports the Subscriber's company branding.

Functionality for Subscriber's Customer

Customers are able to login and manage their own backup accounts and details and view and download their own billing history. Account requests such as quota increases can be sent via notification through the portal directly to the customer's account manager.

The Figaro Portal also features a Sign Up Form for potential clients to create a free trial account which will be either automatically cleaned out or converted to a permanent account depending on the receipt of payment at the expiration of the trial period.

Functionality for the Subscriber's resellers

The Figaro Portal supports access from a reseller's own branded web site. When a reseller logs into the Figaro Portal, he is provided with a list of his customers and is able to carry out the same functions for each customer as can a direct customer of the subscriber.

The Figaro Portal allows a reseller to integrate a brandable free trial sign up form into their website. Any accounts created using this form will automatically appear in the reseller's list of accounts when they are signed into the Figaro Portal.

SCHEDULE 3

Scale Rates

The Service Provider's scale rates for additional development work are shown exclusive of VAT in the following table

Type of work	Hourly Rate in GBP	Hourly Rate in USD (applicable to Subscribers with a billing address in USA and Canada)
Design	£38.50	\$61.50
Junior Programming	£55.00	\$88.00
Senior Programming	£75.00	\$120.00
Project Management	£75.00	\$120.00
Training Course	£38.50 plus travelling or connection costs	\$61.50 plus connection costs

SCHEDULE 4

Supported Access Software

The Applications are a web-based service and access is supported via all major operating systems including Microsoft Windows, Mac OSX and Linux using a modern web browser. At the date of this agreement the Service Provider supports the following web browsers:

Microsoft Internet Explorer Version (Version 8 and above)
 Google Chrome (All versions)
 Mozilla Firefox (Version 5 and above)
 Apple Safari (Version 4 and above)