

Xpress Election Processing System Software Licensing Agreement

XPRESS SOFTWARE SOLUTIONS LIMITED (1)

And

RUSHCLIFFE BOROUGH COUNCIL (2)

THIS AGREEMENT is made on the 23rd day of July 2007
BETWEEN (1) XPRESS SOFTWARE SOLUTIONS LIMITED a company incorporated
under English Law with Registration Number 04152280 ("the Licensor") and (2)
RUSHCLIFFE BOROUGH COUNCIL of RECTORY ROAD, WEST BRIDGFORD,
NOTTINGHAM, NG2 6BU ("the Licensee")

NOW IT IS AGREED AS FOLLOWS:

1. DEFINITIONS

- 1.1 In this Agreement unless inconsistent with the context or otherwise specified the following definitions will apply
- 1.2 "Agreement" means the terms contained in this agreement
- 1.3 "the Initial Licence Fee" means the sums payable as specified in this Agreement in respect of the supply of the System and the Initial Licence Period
- 1.4 "the Initial Licence Period" means the period commencing on the date of the initial delivery of the System and ending on the last day of March next following
- 1.5 "the Recurring Licence Fee" means the sums specified in this Agreement or such sum as the Licensor may require the Licensee to pay in respect of each and every Licence Period following the Initial Licence Period
- 1.6 "Licence Period" means each consecutive period of ONE (1) calendar year following the Initial Licence Period during which the Licensee may use the System for the Approved Uses and subject to the terms hereof unless otherwise agreed by the parties
- 1.7 "the Documentation" means operating guides user instructions and other related materials supplied to the Licensee by the Licensor (whether physically or by electronic form) for aiding the use of the System
- 1.8 "the System" means the Documentation and the object code for;
 - (a) Version 1 of the Electoral Registration Functions;
 - (b) Version 1 of the Election Management Functions;
 - (c) Version 1 of the Mobile Canvasser App Functions;
- 1.9 "the Approved Uses" means the use of the System solely by the Licensee in respect of no more than ONE HUNDRED AND FIFTY THOUSAND (150,000) electors for the purposes of discharging the duties of creating and maintaining registers of electors managing elections and processing election results
- 1.10 "the Services" means the support services referred to in Clause 6.1 which are to be provided by the Licensor to the Licensee
- 1.11 "the Warranty Period" means a period of 60 days from the acceptance of the System

2. GRANT OF LICENCE

- 2.1 Subject to the Terms of this Agreement the Licensor grants to the Licensee and the Licensee accepts from the Licensor a non-exclusive non-transferable licence ("the Licence") to use the System in the United Kingdom during the Initial Licence Period and subsequent consecutive Licence Periods thereafter until such time as this agreement is terminated in accordance with **Clause 12**

3. DELIVERY

- 3.1 The Licensor will deliver the System to the Licensee in the manner agreed with the Licensee in writing

4. ACCEPTANCE

- 4.1 Acceptance of the System will be deemed to take place unless the Licensee issues a written notice of non-acceptance to the Licensor within THIRTY (30) days of complete installation of the System at the Licensee's premises. Such notice must state the reasonable grounds on which the Licensee refuses to accept the System or part thereof
- 4.2 The Licensee agrees to comply with any reasonable request by the Licensor for information on the Licensee's use of the System within 30 days of receipt of any such request

5. EXTENT OF ANY PERMITTED REPRODUCTION

- 5.1 Save as permitted in this Agreement or by English law, the Licensee is not permitted:
- (a) to sell, transfer, rent, lease, sub-lease or loan the System to any third party or transfer or sub-licence the Licensee's rights under this Agreement to any third party;
 - (b) to copy, modify, adapt, merge, translate the System or any part of it or create derivative works based on the whole or any part of the System or the Documentation;
 - (c) to reverse engineer, decompile or disassemble the System; or
 - (d) to load the System onto the internet or any network or system to which access is available to any third parties

Provided Always that this sub-clause shall not prevent the making of additional copies of the System for the sole and only purpose of carrying out the Approved Uses and for no other purpose whatsoever

- 5.2 To the extent that English Law gives the Licensee the right to decompile the System in order to obtain information necessary to render the System interoperable with other computer programs, the Licensor hereby undertakes to make that information readily available to the Licensee where the Licensee has the right to such information. The Licensor shall have the right to impose reasonable conditions such as a reasonable fee for doing so. In order to ensure that the Licensee receives the appropriate information the Licensee must first give the Licensor sufficient details of the Licensee's objectives and the other software concerned. Requests for the appropriate information should be made to the Licensor
- 5.3 Nothing in this Agreement shall prohibit the Licensee from entering into any facilities management agreement or arranging for the system to be utilised by any third party

contractor carrying out the Approved Uses on behalf of the Licensee provided that the Licensee shall procure that any such third party complies with the terms of this Agreement

6. TRAINING AND SUPPORT SERVICES

6.1 Subject to **Clause 6.2** and subject to payment by the Licensee of the Initial Licence Fee and the Recurring Fee payable for the respective Licence Period, then provided that the Licensee undertakes to use only reasonably trained and competent staff to operate the System the Licensor shall provide the Licensee with the following support services during the continuance of this Agreement

- (a) at the request of the Licensee from time to time education relating to the use of the System at the Licensor's prevailing charges
- (b) telephone assistance to provide advice on the use of the System on all normal working days (for the avoidance of doubt this shall be deemed to mean those days on which the Licensor's Offices are open to the public) such assistance to be available between 8.00am and 6.00pm Mondays to Fridays
- (c) upgrades. (These will not include new versions of the System which will be made available as the subject of a separate contract. The Licensor will have absolute discretion as to what constitutes an upgrade and a new version of the System). The Licensee is responsible for installation of any upgrades.
- (d) the Licensor will use reasonable endeavours to make available to the Licensee modifications to the System to facilitate compliance with changes in legislation the regulations governing elections or electoral registration ("the Changes) provided that this sub clause shall not apply in the event that any or all of the Changes are so substantial as to require in the Licensor's reasonable opinion the replacement or total revision of the System
- (e) At all times after the expiry of the Warranty Period the Licensor may at its own discretion use reasonable endeavours to remedy any material defect or error in the System provided that the Licensee has issued the Licensor with written notice of the defect

6.2 After completion of the Initial Licence Period the Licensor may at any time discontinue any or all of the Services under this **Clause 6** (without prejudice to the Licensor's right to retain any title copyright or other proprietary rights in the System so amended modified or extended) provided that

- (a) the Licensor gives the Licensee not less than 90 days prior notice in writing of its intent so to do
- (b) the Licensor shall extend at no cost to the Licensee the extant Licence Period so that it continues until the Eightieth anniversary of the date of this Agreement

7. CHARGES

7.1 In pursuance of the terms of this Agreement the Licensee agrees to pay to the Licensor the Initial Licence Fee of ELEVEN THOUSAND NINE HUNDRED AND ELEVEN POUNDS (£11,911) within 14 days of acceptance of the System.

7.2 In pursuance of the terms of this Agreement the Licensee agrees to pay to the Licensor the Recurring Licence Fee in the sum of ELEVEN THOUSAND NINE HUNDRED AND ELEVEN POUNDS (£11,911) per annum or such other sum as may

be required by the Licensor in accordance with this agreement in respect of each Licence Period.

- 7.3 The Licensor shall have the right to vary the Recurring Licence Fee with effect from the completion of the first Licence Period after the Initial Licence Period and will issue an invoice for the Recurring Licence Fee one month prior to the expiration of the current Licence Period
- 7.4 The Recurring Licence Fee may be increased by an amount equal to the percentage increase in the United Kingdom All Item Index of Retail Prices ("RPI") in the 12 month period prior to each review
- 7.5 If the RPI shall cease to be published or if there shall be any material change after the date hereof in the methods used to compile the said index or if any event shall happen whereby it shall become impossible or impractical to implement the provisions to calculate the RPI percentage referred to in **Clause 7.4** then the Licensor shall determine and apply the nearest equivalent method
- 7.6 The Licensee agrees to pay to the Licensor fees based upon the Licensor's then prevailing charges for any additional services or training provided
- 7.7 The Licensee agrees to pay to the Licensor upon receipt of an invoice for the same the reasonable occasional travelling accommodation subsistence and other like or similar expenses incurred by the Licensor in providing the Services under the terms of this Agreement
- 7.8 The fees and charges payable under this Agreement ("Payments") are where applicable subject to VAT and any other taxes duties or levies and the then prevailing rate ("Duties"). The Licensee will pay the Payments and the Duties to the Licensor at the time that it is obliged to pay the Payments under this Agreement.
- 7.9 In the event of any monies being outstanding from the Licensee to the Licensor for a period in excess of 30 days after delivery of an invoice then without prejudice to the Licensor's other rights and remedies the Licensor shall be entitled to charge interest on such overdue sums (both before and after judgment) on a daily basis from the date that such sums were due until such date that the sums and accumulated interest has been paid. The rate of the interest payable under this Clause will be 4 per centum above the base rate of Lloyds TSB Bank plc for the time being in force

8. PROPRIETARY RIGHTS

- 8.1 The Licensee will not acquire any title copyright or other proprietary rights in the System or in any copies of it
- 8.2 The Licensee agrees not to remove suppress or modify in any way any proprietary marking including any trademark or copyright notice on or in the System which is visible during its operation and the Licensee shall incorporate such proprietary markings in any back up copies
- 8.3 The Licensee shall notify the Licensor immediately if the Licensee becomes aware of any unauthorised access use or copying of any part of the System by any person
- 8.4 The Licensee shall permit the Licensor to check the use of the System by the Licensee at all reasonable times and the Licensor may upon reasonable notice send its representatives to any of the Licensee's premises to verify compliance with this Agreement and the Licensee irrevocably consents to the Licensor's representative entering upon its premises for this purpose

9. CONFIDENTIALITY

- 9.1 The Licensee and the Licensor shall keep confidential all information concerning the other party imparted or received under or in conjunction with this Agreement and/or during the negotiations leading thereto and shall not divulge the same to any third party without the prior written consent of the other party
- 9.2 The Licensee agrees that the Licensor may include in any of its advertising or marketing material a reference to the fact that the Licensee is a customer of the Licensor
- 9.3 The Licensee undertakes to treat as confidential the information comprised in or relating to the System
- 9.4 The Licensee undertakes not to make available to third parties any part of the System and agrees to use its best endeavours to ensure that its employees agents and sub-contractors who are permitted to have access to the System shall preserve the confidentiality of the System for the protection of the Licensor

10. WARRANTY

- 10.1 The Licensor warrants that
 - (a) the System when properly used will provide the facilities and functions and perform substantially as described in the Documentation provided that this warranty shall be applicable in respect of each part of the system only for "the Warranty Period" and provided further that if the System is modified by the Licensee otherwise than in accordance with the Documentation this warranty shall not apply
- 10.2 If the Licensor receives written notice during the Warranty Period from the Licensee of any breach to the warranty in **Clause 10.1** the Licensor shall within a reasonable time after receiving such notice use its reasonable endeavours to; either (a) remedy the defect or error in question; or (b) replace the System with a reasonably equivalent System; or (c) refund the Initial Licence Fee to the Licensee. The course of action to be taken by the Licensor pursuant to this sub-clause shall be at the sole discretion of the Licensor
- 10.3 Subject to **Clauses 10.1 and 9.3**, the liability of the Licensor under the terms of this warranty is subject to the Licensee having complied with all the terms of this Agreement and having supplied to the Licensor all reasonable assistance to establish the nature of the defect or error in the System
- 10.4 The Licensee acknowledges that in selecting the System the Licensee has used its own skill and judgement in identifying the requirements and suitability of the System for the specific use for which it is required and recognises that the Licensor cannot warrant that the System will operate error free or without interruption or in combination with any other software except as expressly provided in the Documentation and the Licensee further acknowledges that any defects that manifest themselves may not be reasonably correctable

11. LIABILITY

- 11.1 The Licensee acknowledges that the Licensor's obligations and liabilities in respect of the System are exhaustively defined in this Agreement. The Licensee agrees that the express obligations and warranties made by the Licensor in this Agreement are in lieu of and to the exclusion of all other warranties conditions terms undertakings and representations of any kind express or implied relating to anything supplied or services provided under or in connection with this Agreement including (without limitation) any warranty as to the condition quality performance merchantability or fitness for purpose of the System or any part of it. The exclusions and limitations of liability in **Clause 11** only operate to the extent permitted by law.
- 11.2 The Licensee is responsible for the consequences of any use of the System. The Licensor will not be liable for any indirect or consequential loss damage or expense of any kind whatever and however caused whether arising under contract tort (including negligence) or otherwise including (without limitation) loss of production loss of or corruption to data loss of profits or of contracts loss of operation time and loss of goodwill or anticipated savings even if the Licensor has been advised of their possibility
- 11.3 Notwithstanding any other provision to the contrary, the Licensor accepts liability to the extent that it results from negligence of the Licensor and its employees for
- (a) death or injury without limit
 - (b) physical damage to or loss of Licensee's tangible property up to the amount of £250,000 in respect of each incident or series of connected incidents.
- 11.4 In all other cases not falling within **Clause 11** the Licensor's total liability (whether in contract tort (including negligence) or otherwise) under or in connection with this Agreement or based on any claim for indemnity or contribution will not exceed the respective initial Licence fee or the Recurring Licence Fee paid by the Licensee in the respective initial Licence fee or the licence period in which the loss arose.
- 11.5 The Licensee agrees that except as expressly provided in **Clauses 10** and **11.3** the Licensor will not be under any liability of any kind whatever and however caused (whether in contract, tort (including negligence) or otherwise) arising directly or indirectly in connection with this Agreement. The Licensee will indemnify the Licensor in respect of any third party claim for any injury loss damage or expense occasioned by or arising directly or indirectly from the Licensee's possession operation or use of the System except and insofar as the Licensor is liable as expressly provided in this Agreement
- 11.6 The Licensee acknowledges and agrees that the allocation of risk contained in this clause is reflected in the Licence Fee and the Recurring Fee and is also a recognition of the fact that inter alia the System cannot be tested in every possible combination and it is not within the Licensor's control how and for whatever purpose the System is used by the Licensee

12. TERMINATION

- 12.1 The Licensee may terminate this Agreement upon giving six months written notice to The Licensor and in the event thereof there shall be no entitlement to any refund of sums paid to the Licensor

- 12.2 The Licensor may without prejudice to any other of its rights or remedies and without being liable to the Licensee for any loss or damage which may be occasioned give written notice to the Licensee terminating this Agreement with immediate effect if the Licensee
- (a) expressly or impliedly repudiates this Agreement by refusing or threatening to refuse to comply with any of the provisions of this Agreement or
 - (b) shall be in breach of the provisions of this Agreement and if capable of remedy shall have failed to rectify such breach within 30 days of being given written notice by the Licensor so to do
 - (c) gives written notice to the Licensor of non-acceptance in accordance with **Clause 4**
- 12.3 Without prejudice to any other right or remedy the Licensee shall be entitled to give written notice to the Licensor terminating this Agreement with immediate effect if the Licensor shall be in breach of the provisions of this Agreement and if capable of remedy shall have failed to rectify such breach within 30 days of being given notice by the Licensee to do so.

13. POST TERMINATION

- 13.1 On termination of the Licence however caused the Licensee's authorisation to use the System will automatically cease and the Licensee undertakes immediately to cease to use the System and to either return to the Licensor the System and all copies of it or if requested by the Licensor to destroy or otherwise make permanently unusable the System and all whole or partial copies of the System within the Licensee's control or possession and to certify to the Licensor in writing that such action has been taken
- 13.2 Within 10 days of the date of termination the Licensee shall return to the Licensor all copies of the System unless notified in writing to the contrary by the Licensor
- 13.3 Termination of the Licence however caused shall not affect the rights of either party under this Agreement which may have accrued up to the date of termination and for the avoidance of doubt **Clauses 9 and 11** shall survive termination of this Agreement. Any other provision which expressly or by implication is intended to come into or remain in force on or after termination shall continue in full force and effect.

14. BRIBERY AND CORRUPTION

- 14.1 The Licensee shall be entitled to cancel this Agreement and to recover from the Licensor the amount of any loss or damage resulting from such cancellation if
- (a) the Licensor shall have offered or given or agreed to give to any person any gift or reward for doing or not doing any action in relation to this Agreement or any other contract with the Licensee or
 - (b) the like acts shall have been done by any person employed by the Licensor acting on its behalf or
 - (c) in relation to any contract with the Licensee the Licensor or person employed by it or acting on its behalf shall commit any offence under the prevention of the Bribery Act 2010 or have given any reward receipt of which is an offence under Section 117(2) of the Local Government Act 1972

15. FORCE MAJEURE

- 15.1 Neither party will be liable for any delay in performing or failure to perform any of its obligations (other than a payment obligation) under this Agreement if such failure or delay is caused by any event outside the reasonable control of the defaulting party including without limitation any outbreak of war, any government act, explosion, riot, industrial dispute or strike, fire, flood, or any other act of God.

16. ASSIGNMENT

- 16.1 This Agreement is personal to the Licensee and the Licensor and neither party may assign sub-licence or otherwise transfer any of the rights or obligations under this Agreement without the prior written consent of the other party such consent not to be unreasonably withheld

17. NOTICES

- 17.1 All notices which are required to be given under this Agreement shall be in writing addressed to the other party at the address specified within this Agreement (or at such other address as a party may specify) and shall be deemed to have been duly given if made by letter sent by pre-paid first-class mail 48 hours after posting or if by facsimile or telex on the day following the date of despatch

18. SEVERABILITY

- 18.1 If any of the terms or conditions or any part of the terms and conditions of this Agreement should be determined invalid unlawful or unenforceable to any extent then such provision shall be severed to that extent from the remaining terms and conditions which shall continue to be valid to the fullest extent permitted by law

19. WAIVER

- 19.1 No delay or failure by either party to exercise any of its powers rights or remedies under this Agreement will operate as a waiver of them. Any waiver to be effective must be in writing. The Waiver by either party or any breach of this Agreement shall not prevent the subsequent enforcement of that provision in respect of any subsequent breach of that or any other provision.

20. ENTIRE AGREEMENT

- 20.1 This agreement supersedes any arrangements understandings promises or agreements made or existing between the parties prior to or simultaneously with this Agreement and constitutes the entire agreement between the parties in respect of its subject matter. The Licensee acknowledges that in entering into this Agreement it has not relied on any oral representation made by the Licensor or upon any description illustration or specification contained in any catalogue or publicity material produced by the Licensor. Notwithstanding any Provision to the Contrary, the Licensor does not exclude liability for fraudulent misrepresentations. All implied terms whether arising by common law, statute, conduct or otherwise are hereby excluded to the maximum extent permitted by law.
- 20.2 Except as otherwise permitted by this Agreement no change to its terms will be effective unless it is in writing and signed by persons authorised on behalf of both parties

21. GOVERNING LAW

- 21.1 This Agreement shall be construed in accordance with and governed by the law of England and Wales and each party agrees to submit to the exclusive jurisdiction of the Courts of England and Wales.
- 21.2 Headings have been included for convenience only and shall not be used in construing any provision in this Agreement.
- 21.3 Words imparting the singular in this Agreement shall include the plural and vice versa.
- 21.4 All Payments made by the Licensee to the Licensor under this Agreement shall be made free of any restriction or condition and without any deduction or withholding (except to the extent required by law) on account of any other amount, whether by way of set-off or otherwise.

22. FREEDOM OF INFORMATION ACT

- 22.1 The Freedom of Information Act 2000 gives a general right of public access to all types of 'recorded' information held by public authorities, sets out exemptions from that general right, and places a number of obligations on public authorities with regard to the disclosures of information. The Licensee will, as a general rule, allow public access to recorded information where possible and the Licensor shall agree to the Licensee making any disclosures in accordance with the Act.

AS WITNESS whereof the Licensor and the Licensee have hereunto set their hands the day and year first before written

Signed for and on behalf of the Licensor

By 

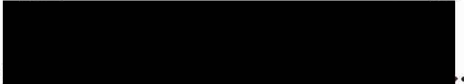
Name Jamie Doig

Title Director of Operations

Date 23 / 07 / 2007

Signed for  censee

By 

Name 

Title Elections And Corporate Information Manager

Date 30 / 7 / 2007