

AnyComms Plus

End User Licence Agreement

Agreement for the provision of data exchange software licence for end users

Terms & Conditions

Definitions and Interpretation

- “Commencement Date” means the date that the Licence shall commence as stated in Schedule A.
- “Enhancement” means additional and improved software functionality.
- “Licence” means the licence granted by the Licensor to the Licensee to use the Software.
- “Licensee” means the Education Establishments and Local Authority using the service
- “Licensor” mean Avco Systems Ltd
- “Disabling Code” means computer instructions that alter, destroy or inhibit the operation of the Software and/or alter the Licensee’s processing environment.
- “Schedule” means a schedule to this Agreement;
- “Update” has the same meaning as a Release;
- “Version” means a Release containing Enhancements;

Licence

- The Software Licence terms are set out in Schedule A and Schedule C.
- The Licensee is permitted to use the Software for internal and external data processing in support of its normal business pursuits.
- If the Licensee elects to appoint a third party to carry out data processing on its behalf then the Licensor agrees to allow the Licensee to grant a sub-licence to such third party to carry out the Licensee’s data processing work using the Software.
- The Licensor will make no further charge for such sub-licence provided that the Licensee does not use the Software concurrently with the sub-licensee and that the sub-licensee uses the Software on equivalent terms as apply to the Licensee’s rights of use.
- Any sub-licence granted by the Licensee will protect the Licensor’s full rights hereunder. The Licensee shall however be entitled to retain copies of the Software on its computer systems for the purposes of data security back-up and contingency use e.g. in the event of the sub-licensee’s inability to process the Licensee’s data.

Permission to Copy or Modify the Licensor's Products

The Licensee may copy documentation associated with the Software for internal and external purposes. The Licensee may make a copy of the Software available to a third party solely for contingency and disaster recovery purposes in support of the Licensee. The Licensee will secure a confidentiality undertaking from such third party as the Licensor may reasonably require. The original and all copies of the Software and related materials shall remain the property of the Licensor.

Except with the Licensor's prior written consent and as permitted by the terms of the Licence, the Licensee agrees not to make the Software available in any form to any person. In performing its duties under this Agreement the Licensor undertakes to ensure that its employees, agents or subcontractors who are required to perform any services at the Licensee's site(s) comply with the Licensee's site security and health and safety procedures and IT security standards. In particular the Licensor shall ensure that its employees, agents or subcontractors do not load any software on the Licensee's systems unless expressly permitted by the Licensee.

Copyright

The Licensor warrants that it has full authority to license the Software to the Licensee and that there are no claims liens or encumbrances which may affect the Licensee's use of the Software.

Warranty

The Licensor warrants that each Release and Version will perform in accordance with the Licensee's data exchange requirements. In the event of breach of this warranty the Licensor undertakes to modify the Software free of further charges to enable it to perform in accordance with the Licensee's requirements. The Licensor warrants that each Release/Version shall be free from Disabling Code at all times.

Confidentiality

Neither party shall disclose or pass on any information concerning the business of the other or copy or utilise other than in connection with the purposes of this Agreement any information trade or professional secrets of the other party, which shall be deemed to include the Software. Each party shall procure that its employees, agents and subcontractors shall observe these conditions. This restriction shall not apply to information, which is now or later becomes generally available in the public domain, or to information, which is independently developed by parties without use of any such confidential information.

Publicity

The Licensor shall neither disclose the making of this Agreement in any journal magazine, publication or other medium nor use the Licensee's name in any of its advertising material without the Licensee's prior written consent.

Assignment

Unless expressly provided herein, neither party shall without the prior written consent of the other assign this Agreement nor any part thereof nor delegate any of its responsibilities or obligations hereunder.

Computer Virus

The Licensor will use best endeavours to ensure that no computer virus is introduced on to the Licensee's computer equipment or systems. In the event that a computer virus is introduced on to the Licensee's computer systems caused by any act, omission or negligence of the Licensor, its employees, agents or subcontractors the Licensor will use its best endeavours at the Licensee's request to restore the Licensee's system to normal operational readiness.

Indemnities

Liability under any indemnity provided by the Licensor under this License Agreement, including all its supplements, shall be limited, for each and every claim, to the value of the Licensor's then insurance at the time, and paid out by the Licensor's insurance policies, which shall be a minimum of:

public and product insurance = five million pounds (£5,000,000);
employer's liability Insurance = ten million pounds (£10,000,000); and
professional indemnity insurance = one million pounds (£1,000,000).

Variation

No variation to this Agreement shall be effective unless in writing signed by a Director (or other duly authorised officer) of each of the parties hereto.

Notices

All notices shall be confirmed in writing by pre-paid post to the address of the relevant party set out in this Agreement or to such other address as either party may have notified in writing to the other. Notices shall be deemed (in the absence of evidence of earlier receipt) to have been delivered 48 hours after despatch.

General

A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement. This Agreement shall be subject to and interpreted in accordance with the Laws of England.

Schedule A – Licence Details

Software

AnyComms Plus web application.

Scope of Use

The Licence permits the Licensee to load and use the AnyComms Plus application and assigned number of accounts for which the Licensee has purchased a Licence.

Scope of Installation

The AnyComms Server installation to a single, central server is included in the above fee.

Schedule B - AnyComms Plus Licence Supplement & Data Processing Agreement

DEFINITIONS

“Confidential Information” means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either Party and all Personal Data and Sensitive Personal Data within the meaning of the DPA. Confidential Information shall not include information which:

- (i) **was public knowledge at the time of disclosure (otherwise than by breach of clause 1 (Confidential Information; Disclosure of Information and Freedom of Information));**
- (ii) **was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;**
- (iii) **is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or**
- (iv) is independently developed without access to the Confidential Information.

“Data Processor” has the meaning set out in the DPA;

“Data Subject” has the meaning set out in the DPA;

“DPA” means the Data Protection Act 1998 and any subordinate legislation made under such Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

“FOIA” means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Authority or relevant government department in relation to such legislation and the Environmental Information Regulations 2004;

“Indirect Losses” means loss of profits (other than profits directly and solely attributable to the provision of the Services), loss of use, loss of production, increased operating costs, loss of business, loss of business opportunity, loss of reputation or goodwill or any other consequential or indirect loss of any nature, whether arising in tort or on any other basis;

“Losses” means all damage, loss, liabilities, claims, actions, costs, expenses (including the cost of legal and/or professional services) proceedings, demands and charges whether arising under statute, contract or at common law but, excluding Indirect Losses;

“Personal Data” means data which relates to a living individual who can be identified from that data, or from that data and other information which are in the possession of or are likely to come into the possession of either Party. They include, without limitation, expressions of opinion or intentions in respect of such a living individual;

“Sensitive Personal Data” means Personal Data consisting of information as to the racial or ethnic origin, the political beliefs, religious or similar beliefs, trade union membership, details of physical or mental health, sexual life and alleged commissions of crimes or criminal record of the data subject;

1. CONFIDENTIALITY; DATA PROTECTION AND FREEDOM OF INFORMATION

1.1 CONFIDENTIALITY

1.1.1 Except where otherwise provided for in this Agreement, Confidential Information is owned by the Party that discloses it (the “Disclosing Party”) and the Party that receives it (the “Receiving Party”) has no right to use it.

1.1.2 Subject to Clauses 1.1.3 and 1.1.4, the Receiving Party agrees:

- (a) to use the Disclosing Party’s Confidential Information only in connection with the Receiving Party’s performance under this Agreement;
- (b) not to disclose the Disclosing Party’s Confidential Information to any third party or to use it to the detriment of the Disclosing Party; and
- (c) to maintain the confidentiality of the Disclosing Party’s Confidential Information and to return it immediately on receipt of written demand from the Disclosing Party.

1.1.3 The Receiving Party may disclose the Disclosing Party's Confidential Information:

- (a) in connection with any litigation between the Parties;
- (b) to comply with the law;
- (c) to its staff, consultants and sub-contractors, who shall in respect of such Confidential Information be under a duty no less onerous than the Receiving Party's duty set out in clause 1.1.2;
- (d) to comply with a regulatory bodies request.

1.1.4 The obligations in clause 1.1.1 and clause 1.1.2 will not apply to any Confidential Information which:

- (a) is in or comes into the public domain other than by breach of this Agreement;
- (b) the Receiving Party can show by its records was in its possession before it received it from the Disclosing Party; or
- (c) the Receiving Party can prove that it obtained or was able to obtain from a source other than the Disclosing Party without breaching any obligation of confidence.

1.1.5 The obligations in clause 1.1 and clause 1.2 shall not apply where the Confidential Information is related to an item of business at a board meeting of the Council or of any committee, sub-committee or joint committee of the Council or is related to an executive decision of the Council and it is not reasonably practicable for that item of business to be transacted or that executive decision to be made without reference to the Confidential Information, provided that the Confidential Information is exempt information within the meaning of Section 101 of the Local Government Act 1972 (as amended), the Council shall consider properly whether or not to exercise its powers under Part V of that Act or (in the case of executive decisions) under the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 as amended to prevent the disclosure of that Confidential Information and in doing so shall give due weight to the interests of the Service Provider and where reasonably practicable shall consider any representations made by the Service Provider.

1.2 DATA PROTECTION

1.2.1 The Parties acknowledge their respective duties under the DPA and shall give all reasonable assistance to each other where appropriate or necessary to comply with such duties.

1.2.2 To the extent that the Service Provider is acting as a Data Processor on behalf of the Council, the Service Provider shall, in particular, but without limitation:

- (a) only process such Personal Data and/or Sensitive Personal Data as is necessary to perform its obligations under this Agreement, and only in accordance with any instruction given by the Council under this Agreement;
- (b) put in place appropriate technical and organisational measures against any unauthorised or unlawful processing of such Personal Data and/or Sensitive Personal Data, and against the accidental loss or destruction of or damage to such Personal Data and/or Sensitive Personal Data having regard to the specific requirements in this Agreement, the state of technical development and the level of harm that may be suffered by a Data Subject whose Personal Data and/or Sensitive Personal Data is affected by such unauthorised or unlawful processing or by its loss, damage or destruction;
- (c) take reasonable steps to ensure the reliability of staff who will have access to such Personal Data and/or Sensitive Personal Data, and ensure that such staff are properly trained in protecting Personal Data and Sensitive Data;
- (d) provide the Council with such information as the Council may reasonably require to satisfy itself that the Service Provider is complying with its obligations under the DPA;
- (e) promptly notify the Council of any requests for disclosure of or access to the Personal Data and/or Sensitive Personal Data;
- (f) promptly notify the Council of any breach of the security measures required to be put in place pursuant to this clause 1.2.2;
- (g) ensure it does not knowingly or negligently do or omit to do anything which places the Council in breach of the Council's obligations under the DPA.
- (h) to the extent that any Council data is held and/or processed by the Service Provider, the Service Provider shall supply that Council data to the Council as requested by the Council.
- (i) ensure that it is registered under the DPA and the registration covers any processing required under this Agreement.

1.2.3 The Service Provider and the Council shall ensure that Personal Data and sensitive personal Data is safeguarded at all times in accordance with the law.

1.3 FREEDOM OF INFORMATION AND TRANSPARENCY

1.3.1 The Parties acknowledge their respective duties under the FOIA and shall give all reasonable assistance to each other where appropriate or necessary to comply with such duties.

1.3.2 If the Service Provider is not a public authority, the Service Provider acknowledges that the Council is subject to the requirements of the FOIA and will assist and co-operate with the Council to enable the Council to comply with its disclosure obligations under the FOIA. Accordingly, the Service Provider agrees:

- (a) that this Agreement and any other recorded information held by the Service Provider on the Council's behalf for the purposes of this Agreement are subject to the obligations and commitments of the Council under the FOIA;
- (b) that the decision on whether any exemption to the general obligations of public access to information applies to any request for information received under the FOIA is a decision solely for the Council;
- (c) that if the Service Provider receives a request for information under the FOIA, it will not respond to such request (unless directed to do so by the Council) and will promptly (and in any event within 2 working days) transfer the request to the Council;
- (d) that the Council, acting in accordance with the codes of practice issued and revised from time to time under both section 45 of the FOIA, and regulation 16 of the Environmental Information Regulations 2004, may disclose information concerning the Service Provider and this Agreement either without consulting with the Service Provider, or following consultation with the Service Provider and having taken its views into account; and
- (e) to assist the Council in responding to a request for information, by processing information or environmental information (as the same are defined in the FOIA) in accordance with a records management system that complies with all applicable records management recommendations and codes of conduct issued under section 46 of the FOIA, and providing copies of all information requested by an authority within 5 working days of such request and without charge.

- 1.3.3 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Agreement is not Confidential Information.
- 1.3.4 Notwithstanding any other provision of this Agreement, the Service Provider hereby consents to the publication of this Agreement in its entirety including from time to time agreed changes to this Agreement subject to the redaction of information that is exempt from disclosure in accordance with the provisions of the FOIA.
- 1.3.5 In preparing a copy of this Agreement for publication pursuant to clause 1.1.4 the Council may consult with the Service Provider to inform its decision making regarding any redactions but the final decision in relation to the redaction of information shall be at the Council's absolute discretion.
- 1.3.6 The Service Provider shall assist and co-operate with the Council to enable the Council to publish this Agreement.
- 1.3.7 In order to comply with the Government's policy on transparency in the areas of Agreements and procurement the Council will be disclosing information on its website in relation to expenditure over £500 (five hundred pounds) in relation to this Agreement. The information will include the Service Provider's name and the Charges paid. The Parties acknowledge that this information is not Confidential Information or commercially sensitive information.
- 1.3.8 The Service Provider shall comply with any requirements (including compliance with any appropriate information assurance scheme and the Computer Misuse Act 1990) in relation to its security policies, procedures and control of Confidential Information, Personal Data and Sensitive Personal Data.
- 1.3.9 The Service Provider shall be responsible for any costs associated with compliance with the provisions of this clause 1.
- 1.4 The Service Provider shall indemnify the Council and shall keep the Council indemnified against Losses and Indirect Losses suffered or incurred by the Council as a result of any breach of this clause 1.
- 1.5 The Parties acknowledge that damages may not be an adequate remedy for any breach of this clause 1, and in addition to any right to damages the Council shall be entitled to the remedies of injunction, specific performance and other equitable relief for any threatened or actual breach of this clause 1. This clause 1 shall not limit the Public Interest Disclosure Act 1998 in any way whatsoever.