

## **Framework Agreement for the supply of ADLIB software products and the associated usage rights and maintenance services by ADLIB INFORMATION SYSTEMS LIMITED**

This Framework Agreement, which is deemed inclusive of its recitals, is entered into by and between:

a. ADLIB INFORMATION SYSTEMS LIMITED, with offices at 11 Pine Court, Kembrey Park, Swindon, SN2 8AD, United Kingdom, hereinafter called: "AIS"

and

b. **[client name]**, with registered offices at XXXXXXXXX in XX, represented by XXXXXXXXXXXXXXXXXXXXXXXXXXXX, hereinafter called: "CLIENT",

both jointly hereinafter referred to as the "parties",

WHEREAS:

- (a) AIS grants usage licences for a model application which is sufficient for many CLIENTS (often museums, libraries and archives) to meet part of their information needs, namely that part which relates to the collection or to the library and/or the archive. AIS also issues usage licences for ADLIB Designer, the 'ADLIB toolkit' with which heritage institutions are able to produce their own specific modifications or implementations of ADLIB products. The ADLIB toolkit contains the same tools as those with which AIS builds and maintains the model applications;
- (b) AIS offers all sorts of services for the development of additional applications in addition to the above. Those applications are sometimes built using ADLIB Designer, and sometimes on another development platform;
- (c) AIS supports the principle that ADLIB users can use ADLIB Designer and that ADLIB applications can be used in applications which go beyond the limits of the ADLIB-based system;
- (d) The CLIENT wishes to have software products, the associated usage rights and - if required - the associated maintenance services supplied by AIS;
- (e) This Framework Agreement will constitute the framework under which AIS will offer its services;
- (f) This Framework Agreement is intended to apply as an umbrella agreement which will apply to all (service) agreements ("Sub-Agreements") which AIS will conclude with the CLIENT, both at the time of entering into this Framework Agreement and in the future; each Sub-Agreement will provide additional provisions applicable to that Sub-Agreement;
- (g) The above considerations result from the discussions conducted between the parties in connection with the services potentially to be provided by AIS, the key agreements of which are set out below in writing.

The parties agree the following:

## 1. Definitions

<b><u>Agreement</u></b>	The totality of this Framework Agreement, entered into by both parties, together with all Sub-Agreements (inclusive of any attachments forming a part thereof, if any) between the parties which refer to this Framework Agreement and relate to the ADLIB product(s) and ADLIB service(s) (if applicable), together with and as amended by all amendments thereto agreed in accordance with clause 18. of this Framework Agreement or the corresponding clause governing changes in one or more of the linked Sub-Agreements.
<b><u>ADLIB service(s)</u></b>	The services to be provided by AIS under the Agreement, under one or more Sub-Agreements and the associated Appendices thereto, for the benefit of the CLIENT, which may include but not be limited to the provision of ADLIB products to the CLIENT, possible training and installation thereof at the CLIENT and where agreed the maintenance of ADLIB products.
<b><u>ADLIB product(s)</u></b>	Standard software, possibly hosted via the Internet, provided by AIS, including user documentation as described in a Sub-Agreement ('Licensing Agreement') and its associated Appendices) which forms part of the overall Agreement.
<b><u>Appendices</u></b>	The documentation attached to and forming part of the Framework Agreement and/or the Sub-Agreements.
<b><u>Sub-Agreement(s)</u></b>	Linked agreement(s) (inclusive of any attachments forming a part thereof, if any) between the parties which refer to this Framework Agreement and relate to the ADLIB product(s) and/or ADLIB service(s) (if applicable), together with any amendments thereto.
<b><u>Bug</u></b>	A ' <u>bug</u> ' is a deviation from <u>the working of an ADLIB product which could be expected in view of the user documentation</u> <b>or</b> which is caused by that product.
<b><u>Users group</u></b>	An association of ADLIB users.
<b><u>User documentation</u></b>	Description of the functionality and working of the ADLIB products.

<p><b><u>Tailored software</u></b></p>	<p>Standard software which has been specially modified and/or expanded for the CLIENT by AIS on the instructions of the CLIENT and software which has been specially developed for the CLIENT.</p>
<p><b><u>Standard software</u></b></p> <p>One or more of the following, as called up in a Sub-Agreement of the Agreement: The ADLIB standard software is divided into (1) Basic software and (2) Applications. These are summarised on the right:</p>	<p><b>(1) Basic software:</b> (a) ADLIB core software: The basic program on which ADLIB applications and databases run (adlwin.exe). The ADLIB core software is the motor of the ADLIB package (similar to Access.exe). The software is supplied in various versions depending on the licensing model chosen which match different types of database (e.g.: file-based ADLIB database, MS SQL, Oracle). (b) ADLIB Designer: The program (the ADLIB tool) with which the ADLIB applications and databases are built and modified (ADLIBDesigner.exe). <u>AIS</u> uses this program itself to build the model applications. (c) ADLIB Internet server: The program that <u>AIS</u> has developed as a link between the ADLIB database and the Internet.</p> <p><b>(2) Applications:</b> The standard applications which <u>AIS</u> has built with its knowledge of practice in libraries, museums and archives and which it supplies ready-to-use, including: - ADLIB Museum - ADLIB Library - ADLIB Archive - ADLIB Plus / Xplus; a combination of the Museum, Library and Archive application</p>
<p><b><u>System software</u></b></p>	<p>The <u>operating system software</u>, the database management software and the web server software which the ADLIB products use and on which they are reliant.</p>

## 2. Agreement

2.1 AIS and CLIENT have entered into an Agreement consisting of:

- (1) This document which is a Framework Agreement, which is intended to describe the elements which apply to the Agreement as a whole (unless

- otherwise specifically stated in a Sub-Agreement), and a number of binding Sub-Agreements;
- (2) The granting of usage rights for ADLIB products (in one or more separate Licensing Agreements each to be linked as Sub-Agreements to this Framework Agreement);
  - (3) Insofar as contracted, the provision of services agreements, possibly including maintenance services for ADLIB products (in a separate Maintenance Agreement to be linked to this framework agreement) as a linked Sub-Agreement.
- 2.2 AIS and the CLIENT are of the opinion that Agreement consisting of the specified Sub-Agreements together with this Framework Agreement set out the service to be provided to the CLIENT by AIS as AIS offers it to the CLIENT and as the CLIENT has accepted it.
- 2.3 Agreements involving the instruction to AIS to develop Tailored Software, the use thereof and any maintenance of such will only be a part of this Agreement if specifically stated to be so in a Sub-Agreement, and will only apply for maintenance purposes if and to the extent expressly stated therein given that such maintenance may potentially not be possible for ADLIB products if Tailored Software adversely affects the maintenance of ADLIB products. Tailored Software developed by anyone other than AIS is a matter for the CLIENT and AIS cannot maintain that or any affected ADLIB products or take responsibility for any infringement of intellectual property rights caused by or resulting from such, although for the avoidance of doubt the CLIENT must in no way endanger AIS' rights in ADLIB products, and the agreements for Tailored Software by anyone other than AIS or Tailored Software by the CLIENT itself are a matter between the CLIENT, and such third party if applicable, and shall not be part of this Agreement.
- 2.4 This Framework Agreement includes the following Appendix which will be an integral part hereof:
- Appendix 1: information about contact persons, addresses, telephone numbers and contactability of (representatives of) the CLIENT and AIS.

### **3. Parties' obligations**

- 3.1 AIS undertakes to the CLIENT to provide the agreed ADLIB products and services. The products and/or services and the terms under which they are provided are described in more detail in the particular Sub-Agreements and may if stated include the installation of ADLIB products at the CLIENT, the granting of usage rights for ADLIB products and the maintenance of ADLIB products licensed by the CLIENT.
- 3.2 The CLIENT undertakes to AIS to use the ADLIB product(s) and purchase the ADLIB services at the agreed price(s) and subject to the agreed procedures.
- 3.3 All prices to be charged annually are payable in advance. Such costs will be increased annually in line with the latest published Consumer Price Index figure. AIS undertakes to inform the CLIENT in writing of any other increases in costs at least 3 (three) months before the start of a new charging period.

#### **4. Use**

The CLIENT will ensure that the ADLIB products are only used in accordance with the terms set out in the Licensing Agreement, and the User Documentation.

#### **5. Maintenance**

If the CLIENT does not conclude a Maintenance Agreement Sub-Agreement for software set out in the Licensing Agreement Sub-Agreement, AIS is not obligated to provide maintenance and/or other service activities to the CLIENT except insofar as is specified in the Warranty clause set out in the Licensing Agreement.

#### **6. Guarantee and liability**

6.1 The successful operation of ADLIB products is dependent on the successful operation of the underlying System software and on the underlying hardware and network systems. AIS accepts no responsibility whatsoever for the good working of - nor for the maintenance of - any System software, hardware or networks.

6.2 Each of the parties hereto shall indemnify the other in respect of personal injury or death caused by its negligence as required by English law, and nothing in this Agreement shall operate to exclude or restrict such liability.

6.3 Except as provided in sub-clause 6.2 or as limited or excluded by the other provisions of this clause, the total liability of AIS in respect of any loss or damage, of whatever nature, to the CLIENT under or in relation to a Sub-Agreement shall in the case of direct loss or damage caused by AIS' negligent acts or omissions not exceed an aggregate total during the life the Sub-Agreement (or each annual period where it is a Maintenance or Hosting Sub-Agreement) of £1 million, whether occurring in contract, tort, negligence or otherwise.

6.4 Should AIS's liability nonetheless be established in any court having jurisdiction or in any final settlement in cases where there is no intent or gross negligence on its part as specified in sub-clause 6.3 of this Agreement, this shall be limited to an amount which corresponds to the charges (excluding VAT) which AIS has billed to the CLIENT during the 12 months prior to the incident which caused the loss.

6.5 Without prejudice to the warranty obligations contained in the Licensing Sub-Agreement, AIS expressly rules out any further liability, including but not limited to loss of profits, lost savings, loss as a result of business stagnation, corruption and/or loss of data, and damage to third parties' materials or software, unless such loss is the direct result of intent or gross negligence on the part of AIS, and AIS excludes any and all liability on its part for any indirect and consequential loss of whatever nature and howsoever caused.

6.6 If AIS is asked to provide a higher level of liability cover it will be pleased to discuss this with the CLIENT for a Sub-Agreement but such will be at an additional cost to the CLIENT.

6.7 Any entitlement to compensation may fail if the CLIENT has failed to take steps to mitigate any loss occurring as soon as it discovered such so as to prevent other or additional loss from arising.

## **7. Confidentiality**

Each party shall treat as confidential all information obtained from the other pursuant to this Agreement and shall not divulge such information to any person (except to such party's own employees and persons professionally engaged by the parties to this Agreement, in each case on a need to know basis) without the other party's prior written consent provided that this restriction shall not extend to information which was rightfully in the possession of such party free of restriction prior to the commencement of the negotiations leading to this Agreement, and/or which is already public knowledge or becomes so at a future date (otherwise than as a result of a breach of this clause), and/or which is obtained from a third party free of restriction. Each party shall use all reasonable endeavours to ensure that its employees comply with the provisions hereof and are bound by suitable confidentiality restrictions, including if in their contract of employment post-termination of employment confidentiality restrictions. If AIS appoints any sub-contractor, then AIS may disclose confidential information of the CLIENT to such sub-contractor provided the sub-contractor gives to AIS an undertaking in similar terms to the provisions of this clause. The foregoing obligations as to confidentiality shall continue to apply notwithstanding the termination of this Agreement.

## **8. Intellectual Property**

All intellectual property rights, including but not limited to copyright, in and to the ADLIB products and services, (which terms shall include but not be limited to the versions, releases, workarounds, patches and/or tailored products thereof) are vested in and will remain with AIS and/or its licensors unless expressly agreed otherwise (in writing signed by representatives of both parties hereto).

## **9. Intellectual Property Indemnity**

- 9.1 Subject as herein provided, ADLIB shall indemnify the CLIENT against any actions and related claims that the normal use or possession of the ADLIB products licensed under the Agreement infringes the intellectual property rights of any third party provided that AIS is given immediate and complete control of any such claim, that the CLIENT does not prejudice AIS' and/or its licensors' defence of such claim and that the CLIENT gives AIS all reasonable assistance with such claim (for which AIS shall reimburse all costs or expenses properly incurred by the CLIENT in providing such assistance) and AIS shall pay all damages and costs finally assessed by a duly authorised court against the CLIENT or payable by the CLIENT to such third party in relation to such infringement.
- 9.2 AIS shall have the right to replace or change all or any part of the infringing item in order to avoid infringement provided such replacement or change does not materially adversely affect the performance of the ADLIB products.
- 9.3 AIS shall have no liability to the CLIENT to the extent that any infringement or claim thereof is based i/. on the use of ADLIB products by the CLIENT in combination with equipment or software not supplied by AIS under this Agreement where ADLIB products would not otherwise infringe, and/or ii/. on AIS following detailed design or programming instructions or information provided by the CLIENT, and/or iii/. on failure by the CLIENT to install and use a replacement of all or part of ADLIB products supplied by AIS pursuant to the earlier provisions of this clause to avoid an actual or alleged infringement and/or iv/. on use of ADLIB products by the CLIENT in an

application or for a purpose or in an environment for which it was not designed or use permitted.

- 9.4 If an infringement is held to exist, where AIS feels unable to obtain on a reasonable basis the right for the CLIENT to continue to use that part of ADLIB products which is held to infringe the rights of a third party and AIS feels unable to provide an alternative replacement part of an ADLIB product, AIS reserves the right to discontinue the CLIENT's licence to use such part and instead refund to the CLIENT such part of the Licence Fee as amounts, in percentage terms, to a percentage equal to the amount of the affected ADLIB product for which licence use is withdrawn, less 20% for each complete year of use by the CLIENT to date. Where ADLIB maintenance services or Hosting Fees are being provided, AIS will also refund a proportion of the current year's support/Hosting fee as equates to the percentage of the ADLIB product affected less one twelfth for each complete month of support/Hosting already provided.
- 9.5 The CLIENT warrants that any design or instruction provided by it or any change to an ADLIB product not authorised by AIS will not be such as to cause AIS to infringe the intellectual property rights of any third party, and to the extent that it does so the CLIENT will indemnify AIS accordingly, subject to limitation equivalent to those claimed in 9.1 to 9.3 above.
- 9.6 The provisions of 9.1 to 9.4 state the entire liability of AIS to the CLIENT in respect of the infringement of the intellectual property rights of any third party.

## **10. References**

The CLIENT grants AIS permission to place the CLIENT's name on its list of customers. AIS may only cite the CLIENT publicly as a reference with prior written permission.

## **11. Changes to ADLIB Products**

- 11.1 Proposals for changes to specifications of the ADLIB Products may be submitted by the CLIENT or AIS and in such event will be discussed in the regular consultation by AIS or its parent company with the Users Group (which can be convened on an ad hoc basis if necessary). After approval of a change in such a meeting it will be recorded in writing by AIS and may be attached if applicable as an Appendix to the relevant Sub-Agreement after being signed by both parties. The change will then form part of the agreement contained in that Sub-Agreement with effect from the date expressly specified in the amended Appendix. If the commencement date is not specified in the new Appendix, it will not be binding between the parties and does not form part of this Agreement until given a commencement date.
- 11.2 A separate agreement will be concluded for proposals for changes for new releases or new versions of the ADLIB products. The following approach is the norm:
1. Users Group draws up lists of wishes and requirements for the Basic software and for each Application and sends these to AIS prior to the pre-arranged meeting of AIS or its parent company and the Users Group.
  2. AIS or its parent company and a delegation from the Users Group will discuss this list, after which AIS' parent company will respond to the list(s)

in writing at least two weeks prior to the next meeting. It will thereby indicate:

- a. which wishes and requirements will and will not be granted and why;
  - b. estimated timetable for implementation of the wishes which are being granted.
3. AIS is not obliged to comply with a request to publish new releases and versions in the sense of this article.
  4. At the meeting AIS' or its parent company's response will be explained and agreements will be made as to which changes will be tested by which members of the Users Group.
  5. The Users Group will report on this in writing to its members.
  6. The production and delivery by AIS or its parent company of the test version of the change to the basic software and applications in accordance with the recorded agreements.
  7. Testing of the application by the designated members of the Users Group and response within an agreed timescale.
  8. Possible modification by AIS or its parent company.
  9. Delivery and release of the changes.
  10. The intellectual property rights, including copyright, to the new release, version etc. supplied by AIS on request will always be held by AIS and/or its licensors.

## **12. Term, Termination and Non-compliance**

12.1 This Agreement is entered into for the same term as the licence granted on ADLIB products as set out in the Licensing Agreement Sub-Agreement and the Appendices thereto.

12.2 Parties can suspend and/or terminate this Agreement in full or in part with immediate effect without judicial intervention and without being obliged to pay (any) compensation if:

- the other party is in default of a material obligation under this Agreement and it fails to comply with its obligations within 14 working days of receiving a written demand from the other party to comply with the obligation, insofar as the breach can be rectified.
- the CLIENT fails to comply with its financial obligations under this Agreement and fails to comply with its obligations within 14 working days of receiving a written demand to comply to this end from AIS or finds itself in a situation which gives AIS good grounds for fearing that the CLIENT will not comply with its obligations and fails to provide sufficient sureties within 5 working days of being asked to do so.

12.3 Parties can suspend and/or terminate this Agreement in full or in part with immediate effect without judicial intervention and without being obliged to pay (any) compensation if:

- the other party has applied for or been granted a (provisional) payment moratorium;
- the other party has applied for bankruptcy or has been declared bankrupt;
- the other party ceases its trading activities or goes into liquidation.



12.4 If AIS terminates this Agreement in a legally valid manner, the CLIENT will pay to AIS all the monies due to AIS under this Agreement within 14 working days without any right of offset.

12.5 If the CLIENT is in default of one or more of its obligations towards AIS under this Agreement, AIS can also retract the right of the CLIENT to use ADLIB Products.

### **13. Assignment**

This Agreement is personal to the CLIENT who shall neither assign nor part with nor sub-let any interest in it nor grant any right under it to any third party, nor seek to exercise any right or licence granted to it hereunder for the benefit of any third party without the prior written consent of ADLIB.

### **14. Severability**

In the event of any part of this Agreement being declared by any court of competent jurisdiction to be invalid, void or otherwise unenforceable, such part shall be deemed either to be interpreted in a way which is nearest to its original intent and is enforceable or, where such is not possible, to be severed from this Agreement such that it shall in no way impair or affect the remainder of this Agreement, which the parties agree shall continue in full force and effect.

### **15. Waiver**

The failure of either party at any time during the term of this Agreement to enforce any provision of this Agreement shall in no way affect its right to require complete performance by the other party, nor shall waiver of any breach of any provision be taken or held to be a waiver of any subsequent breach of that or any other provision. Any waiver to be effective must be in writing.

### **16. Headings**

The headings used in this Agreement are provided for convenience only and shall not contribute to or affect the meaning or construction of any provision hereof.

### **17. Force Majeure**

If either party's performance of this Agreement is affected in whole or in part by reason of any event, delay or failure beyond that party's reasonable control (which event, save as provided below, shall be deemed a 'force majeure' event) it shall promptly inform the other by written notice but shall be under no liability for any loss, damage, injury or expense of any kind, howsoever caused, suffered by the other party as a result thereof. However, the party whose performance is affected by the force majeure event shall use all reasonable endeavours to avoid or overcome the force majeure event as soon as it becomes practical to do so. For the avoidance of doubt the parties hereby agree that non-payment of any sum properly due under this Agreement, any intellectual property infringement of the other party's intellectual property or that of its licensors, and any non-performance by a subcontractor of a party hereto which affects that party's own performance

shall not be considered a force majeure event unless otherwise specifically agreed in writing between the parties.

## **18. Whole Agreement**

This Agreement is the entire agreement between the parties hereto as to the subject matter hereof and supersedes all prior communications, representations and agreements relating to the subject matter hereof, whether written or oral, and the parties hereby acknowledge that no reliance is placed on any communication, representation or agreement made but not embodied in this Agreement and waive any right they may have in respect of any misrepresentation not contained in this Agreement unless such misrepresentation was made fraudulently and/or to rescind this Agreement.

The application of the Contracts (Rights of Third Parties) Act 1999 under English law is expressly excluded from this Agreement.

This Agreement may only be amended in writing, referenced hereto and signed by the duly authorised representatives of both parties.

## **19. Disputes and applicable law**

19.1 The construction, validity and performance of this agreement shall be governed by English law and, save as provided 19.2, the parties hereby agree to the exclusive jurisdiction of the English courts.

19.2 However, in entering into this Agreement the parties declare it to be their intention that this Agreement shall operate between them with fairness, and before resorting to the courts both parties shall first endeavour to reach an amicable settlement of any dispute, save where reference is made to a court for injunctive relief. Either party may give the other written notice of any dispute not resolved in the normal course of business, and within 10 working days after delivery of such notice representatives of both parties will meet at a mutually acceptable time and place, and thereafter as often as they deem reasonably necessary, to exchange relevant information and to attempt to resolve the dispute through agreement by their respective representatives, escalated as/if required by the following timeframes where the base date is the receipt of notice from the other party of the dispute:

	CLIENT	ADLIB
Within 10 working days:	Account Manager	Account Manager
Within 20 working days:	Commercial Director	General Manager

Except in the case of injunctive relief, reference to the courts shall only be made after the exhaustion of 10 working days from the final escalation (or such longer period as the parties may agree).

**20. Commencement date**

The commencement date of this Agreement is the Effective Date.

IN WITNESS WHEREOF this Agreement is entered into by the parties in two original copies signed by their duly authorised representatives.

Signed for and on behalf of  
ADLIB Information Systems Limited

Signed for and on behalf of  
**[CLIENT name]**

By: .....

By: .....

Name: .....

Name: .....

Date: .....

Date: .....

## **Appendix 1: Contact persons, addresses and contactability**

The following information concerning contact persons, addresses and contactability applies to the CLIENT:

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The following information concerning contact persons, addresses and contactability applies to AIS:

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