



AMS IT Support Ltd

**Standard Terms
& Conditions**

January 2022

Contents

1.	Definitions	3
2.	Commencement	5
3.	Service Delivery And Communication	5
4.	The Company's Obligations.....	6
5.	Client's Obligations	8
6.	Confidentiality	9
7.	Data Protection	10
8.	Charges And Review	10
9.	Limitation Of Liability.....	11
10.	Termination.....	12
11.	Advertising.....	13
12.	Non-Solicitation Of Staff	13
13.	Governing Law.....	13
14.	Headings.....	13
15.	Language.....	13
16.	Dispute Resolution	13
17.	Force Majeure.....	14
18.	Assignment	14
19.	Waiver.....	14
20.	Severability	14
21.	Notices.....	14
22.	Variation.....	14
23.	Entire Agreement.....	14

1. DEFINITIONS

- 1.1 'Company' means AMS IT Support Ltd Registered in England: 13477082, including its employees, agents and sub-contractors.
- 1.2 'Client' or 'Customer' means the organisation / individual requesting / receiving the Service.
- 1.3 'Client Locations' are the sites at which the Client receives the Service.
- 1.4 'Agreement' means these Terms and Conditions taken with a signed Service Contract and Schedules, where such exist. Note additional terms and conditions may apply where imposed as a condition of service by 3rd parties (such as software vendors) or specialised services (such as mobile call plans).
- 1.5 'Support Services' or 'Support' means the support assistance to be performed by the Company.
- 1.6 'Supported Software' means the computer programs for which Support Services will be provided by the Company under the terms of this Agreement.
- 1.7 'Software' means computer programs running on the Computer Equipment.
- 1.8 'Firmware' means software which is required for the operation of certain Computer Equipment (including, but not limited to printers, switches and routers) and which is regarded as being an integral part of such Computer Equipment.
- 1.9 'Supported Equipment' means the equipment (including but not limited to Servers, PCs, printers, switches and routers) for which Support Services will be provided by the Company under the terms of this Agreement.
- 1.10 'Computer Equipment' means all or any part of the IT equipment owned by the Client.
- 1.11 'Service' means a product or system that is provided by an alternative platform, i.e. not installed on the Client's Computer Equipment.
- 1.12 'Support Charge' means the charge(s) made by the Company for the provision of the Support Services.
- 1.13 'Additional Support Charge' means the charge(s) made by the Company for works or services outside of the scope of the Service Contract.
- 1.14 'Information' means information, documentation, know-how, data, diagrams, specifications or other materials (written or oral), belonging to the other and concerning the business and affairs of the other.
- 1.15 'Working Day' means 9am to 5pm Monday to Friday, excluding Bank and Public Holidays, unless otherwise stated in the Service Contract.
- 1.16 'Working Hour' means an hour within the Working Day
- 1.17 'Out of Hours' means any time outside of the Working Day.
- 1.18 'Work-through' means the Company shall continue to work to resolve Issues as appropriate beyond the end of the Working Day, under the terms of the Agreement.
- 1.19 'Extended Cover Period' means the additional (to the Working Day) hours, during which the Company shall also provide Support Services.
- 1.20 'Issue' means any event that is not part of the standard operation of the Computer Equipment or Service and that causes, or may cause, an interruption to, or a reduction in the quality of, that operation.
- 1.21 'Support Request' means a properly constituted request for support that is submitted via Helpdesk / Service desk, Telephone or Online chat and which contains sufficient information for the Company to identify the priority, nature of the Issue and the relevant User, Supported Computer Equipment and/or Software and/or Service affected.
- 1.22 'Initial Response' means to notify the Client of the commencement work on an Issue and to identify the course of action to be taken, but not necessarily the action itself.
- 1.23 'Resolution' means action which will resolve an Issue, and which may comprise advice, a fix or a work-around.
- 1.24 'Configuration Change' means any change to the configuration of the Supported Computer Equipment, Software or Services required by a properly constituted request for such change that is submitted via Helpdesk / Service desk, Telephone or

Online chat and which contains sufficient information for the Company to identify the priority, the nature of the required change and the relevant User, Supported Computer Equipment and/or Software and/or Service affected.

- 1.25 'New Setup' means any new Computer Equipment, Software or Service that is added or configured.
- 1.26 'Scope' means the extent of coverage of the services to be provided by the Company, whether by equipment, Service, Software, location, time, or other limitation, included in the Agreement.
- 1.27 'Standard Rate' means the scale of charges levied by the Company in their normal operations unless otherwise given in the Schedule to a Service Contract between the parties.
- 1.28 'Device Types':
- 1.28.1 'Desktop' – Traditional style device that comprises of a computer, monitor, keyboard and mouse. This style of computer also includes computers known as AIO or "All-In-One" where the computer base contents are located in the back of the monitor.
- 1.28.2 'Laptop' – A laptop is a portable version of desktop generally with a built-in keyboard and mouse.
- 1.28.3 'Handheld' – A tablet/slate/mobile phone/similar device which is generally held in the hand while being operated.
- 1.28.4 'Physical Server' – A server is a specially designated computer to run server versions of operating systems and applications which provides services to other computers and Users. And runs on physical hardware.
- 1.28.5 'Hypervisor' – A Physical Server hosting Virtual Servers and/or Virtual Machine.
- 1.28.6 'Virtual Server' - A virtual server is an emulated Physical Server running on a Hypervisor.
- 1.28.7 'Virtual Machine' - A virtual machine is non-server emulated hardware running on a Hypervisor such as a virtual desktop.
- 1.29 'User' means a person that uses or an account that accesses Computer Equipment, Service or Data.
- 1.30 'Commencement Date' – See Clause 2.

2. COMMENCEMENT

- 2.1 The Commencement Date of this agreement is the date given in the Service Contract or, in the absence of a Service Contract, the date the Client requests the services.
- 2.2 When signing the Service Contract or requesting services, the Client is agreeing to the immediate provision of the service and cannot cancel it under the Consumer Protection (Distance Selling) Regulations 2000.
- 2.3 Where not party to a Service Contract, the Client will be provided with a quote for the requested service based on the information provided and recorded within the Company's Helpdesk system. Such quote will be based on the Company's best efforts to be as accurate as possible. However, additional charges may be levied should the scope of the work be greater than that quoted. No works or services will be provided until payment for the quote is received.

3. SERVICE DELIVERY AND COMMUNICATION

3.1 Support Service Routes:

- Site visit: attendance by a suitably qualified engineer at one of the Client locations to assist in the investigation, diagnosis and Resolution of Issues or to implement Configuration Changes. When a site visit is deemed necessary, the Company shall agree with the Client a suitable time to attend site.
- Telephone: liaison with the Client's staff by telephone, providing assistance in the investigation, diagnosis and Resolution of Issues or to undertake Configuration Changes.
- Off-site / Techbench: service related to a Client's Issue or Configuration Change delivered away from the Client's locations:

The Company may require Client's Computer Equipment to be serviced on the Company's Techbench if it cannot be fixed on-site, requires upgrade and/or replacement components, or is not safe to work on within its current environment. (Collection / delivery charges may apply.)

- Remote access: remote access from computer to computer or network to network via secure connection to the Client's Computer Equipment to assist in the investigation, diagnosis and Resolution of Issues or to implement Configuration Changes. Requires a suitable working internet connection.
- Hosted service / control panel: service delivered by control panel located (hosted) away from Client's locations.

3.2 Hardware Faults:

- 3.2.1 If Computer Equipment requires repair, the Company will provide a quotation to carry out this repair, assuming replacement parts are available.
- 3.2.2 Hard drive replacement will include a quote for re-installing the operating system and restoring from the latest backup provided that the Client can supply the relevant software license key(s).
- 3.2.3 If the faulty Computer Equipment is under warranty, the Company will endeavour to liaise with the equipment manufacturer on the Client's behalf where appropriate.

3.3 Service communications shall be by:

- Helpdesk / Service desk
- Telephone
- Online chat
- Email notices from the Company to the Client

3.4 Types of Support:

- Reactive: means in response to a specific Support Request to address a specific failure observed by the Client or to implement a Configuration Change.
- Maintenance: means planned in advance to ensure continued operation of the systems, including routine operating system patches, security patches and service pack installation.
- Proactive: means work undertaken in the best interests of the Client based on a combination of information from the Client, maintenance findings, best practice, and familiarity with the Client's operations and future plans. Such work need not be at the direct request of the Client.

3.5 Priority Levels:

- Low Priority: Operational performance of an item of Supported Computer Equipment, Software or Service is impaired but has minimal impact on the Client's business operations.

- Normal Priority: Operational performance of an item of Supported Computer Equipment, Software or service is impaired and whilst there is a small impact on the Client's business operations, the Issue concerns a relatively small number of items of Computer Equipment or Users.
- High Priority: An item of Supported Computer Equipment, Software or Service has failed, or the operation thereof is severely degraded and there is significant impact on the Client's business operations or on a relatively high number of items of Computer Equipment, Software, Services or Users.
- Emergency: The security of the Supported Computer Equipment, a Service or Data has been, or is believed to have been, compromised.

4. THE COMPANY'S OBLIGATIONS

During the execution of this Agreement, and within its scope, the Company shall:

- 4.1 Provide services on the terms and conditions of this Agreement.
- 4.2 Respond to properly constituted Support Requests according to the response times set out in the Service Contract and Schedules if existent, else as follows:

Item	Target Timescale (SLAs)
Initial response within	2 Working Hours
Remote support within – Low priority	2 Working Days
Remote support within – Normal priority	6 Working Hours
Remote support within – High priority	4 Working Hours
Remote support within – Emergency priority	2 Working Hours
Site visit within – Low priority	4 Working Days
Site visit within – Normal priority	3 Working Days
Site visit within – High priority	2 Working Days
Site visit within – Emergency priority	1 Working Day

- 4.3 The Company will use reasonable endeavours to handle the Support Request within the applicable Service Level and Priority Level-dependent target times ("SLA") set out in this Agreement for Supported Computer Equipment, Software or Service, as follows:
- 4.3.1 After receipt of the Support Request the Company will make an Initial Response within the Initial Response SLA and assign an appropriate priority SLA.
- 4.3.2 After the Initial Response, the Company will commence work to resolve the Support Request within the assigned priority SLA.
- 4.3.3 If at this, or any subsequent time during the Resolution process, it is agreed that the most effective manner to expedite Resolution is for an engineer to attend the Client's site, the SLA shall be updated as appropriate, and the Company will despatch an engineer to attend site within the assigned Site visit SLA.
- 4.3.4 The Company will aim to provide a Resolution to resolve or fulfil a Support Request within an appropriate SLA. At all times, the Company shall determine the method of response to Support Requests.
- 4.4 The Company will make reasonable endeavours to fulfil Support Requests outside of the Working Day subject to reasonable notice. The Company shall be entitled to charge the Client for this at its Standard Rate(s).
- 4.5 Conduct its business with the Client, its employees, agents and subcontractors in a courteous and professional manner.
- 4.6 Propose and initiate backup and security procedures as appropriate.
- 4.7 On behalf of the Client, the Company will liaise with the third-party suppliers as appropriate to assist in the Resolution of particular Issue or Configuration Change, subject to the following limitations:
- 4.7.1 Both parties to this Agreement acknowledge that the third party is an agent of the Client, and not an employee, agent or subcontractor of the Company.
- 4.7.2 The Client will not hold the Company responsible for the performance of the third party and/or its service(s).
- 4.7.3 The Company shall only have access to third party services that are subject to the contract between the Client and the said third party.
- 4.8 Carry out remote and/or on-site routine inspection(s) of the Supported Software in accordance with the manufacturers and the Company's usual practices.

- 4.9 Warrant that work shall be performed by competent staff, exercising a reasonable level of skill appropriate to their responsibilities.
- 4.10 Undertake to make good any failure arising from a failure of the Company, its employees, subcontractors or agents to exercise a reasonable level of skill, at no charge to the Client.
- 4.11 Without prejudice to its other obligations or responsibilities, the Company shall ensure that when any of its obligations are performed on the Client's premises all rules and instructions in force and published thereat are complied with, subject to HM Government legislation and guidelines (e.g. COVID-19 restrictions and recommendations).
- 4.12 Use reasonable endeavours to fulfil properly made requests to make Configuration Changes.
- 4.13 Provide the Client with the information necessary for the Client to gain full administrative access to the Software on termination of this Agreement, howsoever occasioned.

4.14 Exclusions

The Support Services provided by the Company are intended to rectify any material non-conformance of the Computer Equipment to its specification when under normal use. The Company's obligations under the terms of this Agreement do not include:

- 4.14.1 Provision or installation of any user-changeable consumables.
- 4.14.2 Provision or set up of additional equipment, software or services. Once set up, any such would be subject to this agreement if appropriate.
- 4.14.3 Set up and configuration of equipment not supplied by the Company (including hardware supplied and/or supported by a third party). Once set up any such equipment would be subject to this agreement if appropriate.
- 4.14.4 Repairing, maintaining, monitoring or supporting any equipment other than the Computer Equipment as set out in the schedules or otherwise agreed and engrossed into this Agreement.
- 4.14.5 Repairing any defects that arise from fair wear and tear.
- 4.14.6 Repairing any damage to equipment, software or data that results from infection with a computer virus.
- 4.14.7 Repairing any damage to equipment, software or data that results from malicious activities (including, but not limited to, User misuse, security breaches or criminal damage otherwise sustained).
- 4.14.8 Any reconfiguration required or resulting from the addition of or change to third-party software that is not covered by this Agreement.
- 4.14.9 Any reconfiguration resulting from modifications or attempted modifications that is not carried out by or under the direction of the Company.
- 4.14.10 Modifications to accommodate:
 - Changes to the Client's requirements involving additions to or alteration, relocation, re installation, modification or reconfiguration.
 - Upgrades or modifications that may be recommended or required by the manufacturer or relevant third party.
 - Upgrades in the event that upgraded or modified software is no longer compatible.
- 4.14.11 Repairing any defects that arise due to accidental damage, misuse, negligence or failure to observe the Company's or manufacturer's recommendations.
- 4.14.12 Repairing any defects caused by faults external to the system including, but not limited to flooding, electricity supply failure or fluctuation or air-conditioning failure.
- 4.14.13 Provision of Support outside of the Working Day unless such is set out in the Service Contract or Schedules.

The Company shall at its sole discretion carry out any of the work relating to the items in this Clause 4.14 and shall be entitled to charge the Client for the provision of these services at the appropriate Standard Rate(s).

5. CLIENT'S OBLIGATIONS

During the execution of this Agreement, the Client shall:

- 5.1 If subject to a Service Contract, pay the first instalment of the Support Charge forthwith and the remainder in equal payments (in addition to any other charges arising out of the execution of this Agreement) as set out in the Service Contract and Schedules.
- 5.2 Where not subject to a Service Contract, pay all charges levied by the Company for works undertaken on behalf of the Client in accordance with any accepted quotation or as otherwise provided by the Agreement.
- 5.3 Where a quotation has been provided, no service will be provisioned until the quote has been accepted and funds have been received in accordance with the terms of the quotation.
- 5.4 Services may be provided without upfront payment at the sole discretion of the Company.
- 5.5 Pay all additional charges levied by the Company, including but not limited to those arising from Configuration Change requests made by the Client, charges levied on the Company by third parties for the provision of support or services during the Resolution of Issue(s) or the provision by the Company of Support Services Out of Hours.
- 5.6 Pay all charges levied by the Company in respect of charges levied on the Company by third parties for the provision of services provided as part of this Agreement.
- 5.7 Provide facilities to enable remote access to the Computer Equipment by the Company, including suitable internet connection and access to the Client's network via any firewall. On such occasions that on-site support is necessitated because remote access has not been made available to the Company and the Issue(s) could reasonably have been corrected remotely, the Company shall be entitled to charge the Client at its Standard Rate(s) for such on-site support.
- 5.8 Requests:
 - 5.8.1 Initiate requests for Support Services by using one of the methods designated in 3.3, providing sufficient information to properly complete a Support Request as defined in Clause 1.21.
 - 5.8.2 Initiate requests for Configuration Changes by using one of the methods designated in 3.3, providing sufficient information to properly complete a request for change, as defined in Clause 1.24
 - 5.8.3 The Client is responsible for initiating such Requests in a timely manner as appropriate to the nature of the Request. For example, a Request relating to the creation of a new User account on existing hardware should be submitted no later than 2 working days before the new User account will be required.
 - 5.8.4 Requests for new User account creation, or the suspension/removal of a User account, shall also include details of any affected services, subscriptions, groups, data, email, delegated access permissions or such other information as may be required for the Company to action the Request in an efficient manner and minimise any impact on the operation of the Client's business.
- 5.9 Conduct its business with the Company, its employees, agents and subcontractors in a courteous and professional manner.
- 5.10 Preserve, protect and secure data and software residing on the Computer Equipment by proper back-up procedures and ensure that it has adequate restoring functions and facilities to rebuild its computer operating system, software and data following any irregular shutdown.
- 5.11 Take appropriate steps to maintain and safeguard computer systems and data by utilizing up-to-date protection software, application and operating system updates and patches that is within manufacturers' or service providers' standard product life cycle.
- 5.12 To follow NCSC recommended practices, including but not limited to: invoking and following the principle of least privilege access for Computer Equipment, Services and Data; using standard accounts with no admin privileges for non-Administrator-designated Users; and by using unique, non-generic non-shared credentials.
- 5.13 Replace any worn media before failure.
- 5.14 Operate the Software and Computer Equipment in a prudent and proper manner and avoid any activity that knowingly could be prejudicial to its correct functioning.
- 5.15 Make training available to the Users and appropriate clear written instructions, or instructions as supplied, for the proper use and care of the Software and Computer Equipment.

-
- 5.16 Ensure that the Software and Computer Equipment is operated in accordance with installation guidelines and / or the manufacturer's operating instructions and / or in accordance with any Site Policy agreed with the Company. In the event that the cause of an Issue is determined to be a result of the Client not following the above or owing to User error or negligence, the Company shall be entitled to charge the Client for any work related to the Issue at its Standard Rate(s).
 - 5.17 Use only supplies or consumables recommended by the Company, manufacturer or service provider.
 - 5.18 Promptly allow the Company to make alterations or modifications to the Supported Software, Computer Equipment or Services that are recommended by the Company, manufacturer or relevant third party.
 - 5.19 In the case of Service Contracts, not to access the configuration or make any alterations or modifications to the Supported Software, Computer Equipment or Services without the prior written consent of the Company through the Helpdesk system, such consent not to be unreasonably delayed or withheld.
 - 5.20 Allow the Company proper and safe access to the Software and Computer Equipment, adequate storage, working space and other facilities as may be reasonably requested by the Company. Failure to provide the same for agreed visits may result in a charge for the abortive visit.
 - 5.21 Allow the Company to install software on Client's Computer Equipment and/or link it to external monitors and control panels. The Company may also install additional equipment at Client's locations for the purpose of delivering the Service(s).
 - 5.22 Provide suitably knowledgeable / experienced personnel for such times as may be reasonably required by the Company, to:
 - 5.22.1 give the Company information and assistance in identifying and correcting any malfunctions.
 - 5.22.2 receive and execute the appropriate corrective measures (or other instructions in relation to this Agreement) given by the Company.
 - 5.22.3 carry out diagnostic tests on Software, Service or Computer Equipment as requested by the Company.
 - 5.22.4 test any corrections supplied by the Company.
 - 5.23 In the event that it is impossible for the Company to perform the Support Services at the relevant premises of the Client to give consent for the Company to take the Computer Equipment out of service for so long as it is required, provided always that the Company shall take all reasonable precautions to prevent any unnecessary disruption to the Client's business. Such consent not to be unreasonably delayed or withheld.
 - 5.24 Have at all times a valid right to use the Software and Services that are consumed by the Client.

6. CONFIDENTIALITY

- 6.1 Each of the parties to this Agreement shall, and procure that its staff, agents and subcontractors shall, keep confidential all Information that it shall have obtained as a result of the discussions leading up to or entering into or performance of this Agreement except:
 - 6.1.1 To the extent that it can be shown that the Information is publicly available other than through a breach of this Agreement.
 - 6.1.2 To the extent that it can be shown that the Information was lawfully in its possession prior to the date of its disclosure by any other party.
 - 6.1.3 To the extent that the receiving party may have received the Information from a third party without (bona fide) restriction as to disclosure.
 - 6.1.4 Where the receiving party receives or has received written consent to such disclosure from the party entitled to such Information.
 - 6.1.5 To the extent that the receiving party may be required by law to make such disclosure.
- 6.2 Each party will, prior to disclosing any confidential Information to the other party, ensure that the receiving party understands that it owes a duty of confidence to the other party.
- 6.3 Upon written request from the other Party, either party will either destroy or return to the other all copies of the Information obtained during the performance of the Agreement within thirty days of such request.
- 6.4 Both Parties warrant that the Information received from the other in connection with this Agreement shall be used only for the purposes of this Agreement.
- 6.5 Nothing in this Clause 6 shall prohibit the Company from supplying the same or similar equipment, software or services to other persons.

6.6 This Clause 6 in its entirety shall survive in perpetuity the termination of this Agreement, howsoever occasioned.

7. DATA PROTECTION

7.1 The Company acknowledges that it will have access to and may be entrusted with Personal Data (as defined in the Data Protection Act 2018) and the EU General Data Protection Regulations (GDPR) in the provision of the Services and agrees that it will not at any time whether during or after termination for whatever reason of this Agreement (except as a necessary part of the performance of its obligations in connection with the provision of the Services).

7.2 Full details of the Company's data protection policy as revised from time to time and published on the Company's website are deemed to form part of this Agreement.

7.3 The provisions of this Clause 7 shall survive in perpetuity the termination of this Agreement, howsoever occasioned.

7.4 Helpdesk and Support Records

7.4.1 To provide relevant support, information is recorded about the Client, related Computer Equipment, Services and Users within the Company's Helpdesk system. This information is used in the following ways:

7.4.1.1 Help the Company track a history of Issues to aid Resolution of similar cases.

7.4.1.2 Provide insight into technical aspects of the Client's business, helping the Company to learn and better support the Client's environment.

7.4.1.3 Enable the Company to identify trends and generate KBA's and FAQ's.

7.5 Call Recording

7.5.1 Any calls to and from the Company may be recorded for training and quality purposes, this assists the Company in:

7.5.1.1 Providing staff with appropriate training.

7.5.1.2 Monitoring quality of support.

7.5.1.3 Resolving disputes.

8. CHARGES AND REVIEW

8.1 Where applicable, the Support Charge for the Initial Term of this Agreement shall be as set out in the Service Contract, otherwise charges will be in accordance with any agreed quotation, in the absence of which charges shall be levied at the rates published on the Company's web site at the time the support service is provided, plus out-of-pocket expenses.

8.2 Additional Support Charges shall be levied at the Standard Rate(s), plus out-of-pocket expenses unless otherwise agreed in writing or included in the Service Contract.

8.3 All elements of the Support Charge will be reviewed by the Company from time to time.

8.3.1 Changes to Standard Rates will be published on the Company's website.

8.3.2 Changes to Service Contract support and service rates will be notified to Clients with a suitable notice period.

8.3.3 Changes in charges from third parties that relate to services provided to the Client will be notified to the Client as appropriate.

8.4 Quotations will expire after 7 days of issue unless otherwise stated on the quotation. However, quotations related to hardware and software are subject to actual price and stock availability at time of order outside of the Company's control.

8.5 Payment terms for the Support Charge shall be as set out in the Service Contract, otherwise payments will be collected on the due date via Direct Debit where such a mandate exists, else payment will be due on the date specified on the invoice provided. Generally, the Company's standard payment terms are 30 days for labour / services and 7 days for hardware.

8.6 Where the Company supplies goods to the Client, full title to and ownership of the goods remain with the Company until charges for the same have been settled in full (including any late fees). If the charges remain unpaid for more than 60 days, the Company reserve the right to take back possession of the goods.

8.7 Payment methods are listed at the bottom of all invoices.

8.8 All Service Contracts and rolling contract services require payment to be collected automatically via Direct Debit using the provider "GoCardless". If a Direct Debit is not setup in time or is cancelled for any reason, the Company shall be entitled to

stop / pause providing services to the Client forthwith (and the charges will remain due) until the Direct Debit is re-instated unless the agreement is terminated in accordance with Clause 10.

- 8.9 Any amount disputed by the Client must be notified in writing within 7 days of the invoice receipt or such invoice will be deemed to be accepted by the Client in full.
- 8.10 Minimum times for charge calculations without a Service Contract shall be 30 minutes for Remote/Off-Site work and 60 minutes for On-Site work. Otherwise, where a Service Contract exists but such work is outside the scope of the agreement, they will be 15 minutes for Remote/Off-Site work and 60 minutes for On-Site work. Additional time outside of these minima will be charged in 15 minute increments. On-Site work lasting more than 5 hours shall be charged at the full day rate.
- 8.11 Unless otherwise agreed in writing or included in the Service Contract, Out-of-Hours and Work-through works shall carry a premium of 50% in addition to the Standard Rate for those works and 100% on Sundays and Public Holidays.
- 8.12 Travelling time, mileage (at HMRC MAPs rates) and travelling expenses (at cost) may be applied for visits to sites more than 20 miles away from the geographically nearest Company office unless otherwise agreed.
- 8.13 In the event that the Company carries out a Configuration Change in response to a specific request by the Client, the Company shall be entitled to levy charges in accordance with its applicable Standard Rate(s), in addition to those stated in this Agreement.
- 8.14 The Company shall be entitled to levy charges in addition to those stated in this Agreement, in the event that charges are levied on it by third parties during the Resolution of Issues or Configuration Changes.
- 8.15 The company shall be entitled to levy charges in accordance with its applicable Standard Rate(s), in addition to those stated in this Agreement in the event of an Issue resulting from the failure of the Client to comply with his responsibilities under the terms of this Agreement.
- 8.16 In the event that the Client requests the Company to provide support or services for additional Software, Computer Equipment or Services, such will be subject to charge at the rate prevailing at the time of purchase.
- 8.17 New Setups will be subject to Clause 8.16 unless otherwise quoted.
- 8.18 In the event that the Client fails to settle any amounts due in accordance with this agreement by the due date, the Company shall be entitled to take one or more of the following actions:
- 8.18.1 Suspend the provision of services to the Client until such time as the outstanding invoice(s) is/are paid.
- 8.18.2 Charge the Client interest at the rate of 8% plus the Bank of England base rate on any amount outstanding from the due date to the date of actual payment. Interest shall be applied on a daily basis.
- 8.18.3 Terminate this Agreement and recover from the Client damages for any loss suffered by the Company as a result of such termination.
- 8.19 If any equipment, materials, hardware, software or data supplied and/or third-party services engaged by the Client fail to perform in the expected manner, the Company shall be entitled to levy a charge related to any increased or additional cost of working and/or reasonably incurred expenses.
- 8.20 All prices or charges stated or referred to in this Agreement are exclusive of sales tax or duties which shall be charged in addition at the rate ruling at the tax point.

9. LIMITATION OF LIABILITY

- 9.1 The Client acknowledges that the Company's obligations and liabilities are exhaustively defined in this Agreement.
- 9.2 The Client agrees and accepts that the express obligations and warranties made by the Company in this Agreement are in lieu of and to the exclusion of any other warranty, condition, term, undertaking or representation of any kind, (excluding fraudulent misrepresentations) express or implied, statutory or otherwise relating to the goods and services provided under or in connection with this Agreement, including (but not limited to) those as to the quality and performance.

9.3 Computer Equipment warranties:

- 9.3.1 The original manufacturer's, or in the case of refurbished hardware the refurbisher's, warranty shall be the limit and extent of the warranty on any Computer Equipment or component thereof supplied by the Company. No other warranty terms, express or implied, shall be construed or inferred.
- 9.3.2 The manufacturer's, or refurbisher's, decision as to whether repair or replacement of an item is within the terms of the warranty shall be final.
- 9.3.3 The Company reserves the right to charge for any additional work relating to the repair or replacement of warranted hardware supplied by the Company.

9.4 The Company provides software "as is" and does not provide any additional warranties for software. All warranties are provided by the manufacturer publisher or vendor and that information can be found in the EULA of the software.

9.5 The Company will not be liable for any indirect or consequential loss, damage, cost 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 Company has been advised of their possibility.

9.6 The Company accepts liability for:

- 9.6.1 Death or injury caused by the negligence of the Company, its employees, agents or sub-contractors in the course of their engagement under this Agreement up to an amount of £2 million in respect of each incident or series of connected incidents.
- 9.6.2 Physical damage to or loss of the Client's tangible property to the extent it results from the negligence of the Company, its employees, agents or sub-contractors within the course of their engagement under this Agreement up to an amount of £2 million in respect of each incident or series of connected incidents.

9.7 In all other cases not falling within Clause 9.6, the Company' 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, in any one year, the paid invoiced amount of related services provided to the Client in the 12 months preceding such claim, provided always that before any such claim is made the Company is given reasonable opportunity to make good the breach giving rise to such claim.

9.8 In the event that the Client requests the Company to engage the services of an agent or supplier, the Company will not be liable for any claim (whether in contract, tort, including negligence, or otherwise) resulting from the performance, non-performance or act of the agent or supplier.

9.9 The Client acknowledges and agrees:

- 9.9.1 That the allocation of risk contained in this Clause 9 is reflected in the price charged for the services.
- 9.9.2 That the Company shall not be liable to the Client for any losses, costs or damages whatsoever under this Agreement, where proceedings for such losses, costs or damages are begun one year or more after the occurrence of the breach giving rise to the claim.

10. TERMINATION

10.1 Agreements with Service Contracts may be terminated:

- 10.1.1 By the either party giving the other not less than ninety days' written notice to terminate at the end of the Initial Term set out in the Service Contract or at any subsequent Anniversary thereafter ('Termination at Convenience').

10.2 Agreements not forming part of a Service Contract may be terminated:

- 10.2.1 By thirty days' written notice to terminate by either party in the case of regular and repeating Clients.
- 10.2.2 Immediately upon the completion of the requested service and receipt of payment therefor in the case of one-off or infrequent Clients.

10.3 Termination Costs

- 10.3.1 In the event that an Agreement is terminated while a Client is in credit for pre-paid goods or services, the Company will refund the amount in credit less any direct costs and/or re-stocking fees that may be incurred.
- 10.3.2 Where it is not possible to return goods then the Company shall supply the goods to the Client as originally contracted and receive payment for the same.
- 10.3.3 Where it is not possible to cancel third party services then the Company shall endeavour to transfer such services to the Client or another provider designated by the Client. Where such transfer is not possible then the Client will be

given the option to continue with the services through the Company or pay to the Company any costs relating to unexpended periods subscriptions and/or cancellation fees levied by the provider.

10.4 This Agreement may also be terminated:

10.4.1 Forthwith by either party if the other commits any material breach of any terms of this Agreement and which (in the case of a breach capable of being remedied) shall not have been remedied within thirty days of a written request to remedy the same.

10.4.2 Forthwith by either party if the other convenes a meeting of its creditors or if a proposal shall be made for a voluntary arrangement within Part 1 of the Insolvency Act of 1986 or a proposal for any other composition, scheme or arrangement with (or assignment for the benefit of) its creditors or if the other is unable to pay its debts within the meaning of the Section 123 of the Insolvency Act 1986, or if a trustee receiver, administrative receiver or similar officer is appointed in respect of all or any part of the business or assets of the other or if a petition is presented or if a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding up of the other or the making of an administration order (otherwise than for the purpose of an amalgamation or reconstruction).

10.5 Any termination of this Agreement (however occasioned) shall not affect any accrued rights or liabilities of either party. Nor shall it affect the continuance in force of any provision of this Agreement that is expressly or by implication intended to continue in force after such termination.

11. ADVERTISING

Neither party shall be entitled to use any trademark or trade name of the other, refer to the other, this Agreement or the Services to be rendered hereunder, either directly or indirectly in connection with any promotion or publication without the prior, written consent of the other (such consent not to be unreasonably withheld or delayed).

12. NON-SOLICITATION OF STAFF

Each party agrees not to approach employees of the other in order to entice them to join the other whether as an employee or in any other capacity, during the term of this Agreement or for a period of six months after its termination. If either party breaches the terms of this Clause 12 the party in breach agrees, by way of liquidated damages and not a penalty, to pay the other, 'the Injured Party' a sum equal to the annual salary of the employee concerned.

13. GOVERNING LAW

This Agreement and the rights and obligations of the parties hereto shall be governed by the laws of England and both parties hereby agree to submit to the exclusive jurisdiction of the English courts. The performance of the agreement shall be deemed to take place in England.

14. HEADINGS

Headings to clauses in this Agreement have been inserted for convenience of reference only and should not be construed as forming part of this Agreement.

15. LANGUAGE

This Agreement is prepared in the English language, which shall prevail over any translation in the event of a conflict of interpretation.

16. DISPUTE RESOLUTION

16.1 The parties to this Agreement will attempt in good faith to resolve any dispute or claim arising out of or relating to this Agreement promptly through negotiations between the respective senior executives of the parties who have authority to settle the same.

16.2 If the matter is not resolved through negotiation within thirty days, the parties will attempt in good faith to resolve the dispute through mediation in accordance with the 'Centre for Effective Dispute Resolution' (CEDR) Model Mediation Procedure (the 'Model Procedure').

16.3 If the matter is not resolved by the Model Procedure within ninety days of the initiation of the Model Procedure, the dispute shall be referred to arbitration in London UK under the rules of the London Court of Arbitration.

16.4 Neither party may commence any court proceedings in relation to any dispute arising out of this Agreement until they have attempted to settle said dispute by mediation and that mediation has terminated, except in the case of failure to pay subject to Clause 8.9.

16.5 The fees and the costs of mediation or arbitration shall be borne equally by the parties.

17. FORCE MAJEURE

If either party is unable to perform any part of this Agreement and such failure is caused by circumstances beyond its reasonable control (including but not limited to flood, fire, earthquake, war, tempest, hurricane, industrial action (except by the Company's staff), government restrictions, legislation, act of God or any other occurrence of a like nature), then it shall be excused from performance for a period which is reasonable under the prevailing circumstances, provided always that the party affected by the force majeure notifies the other within a reasonable time.

18. ASSIGNATION

18.1 The Company shall be entitled to subcontract all or any part of the Support Services. Such assignation will not relieve the Company of any of its obligations under this Agreement.

18.2 The Company shall be entitled to assign the benefit of this Agreement, but for the avoidance of doubt, not the burden thereof.

18.3 The Client shall not be entitled to assign the benefit or burden of this Agreement without the prior written consent of the Company (such consent not to be unreasonably withheld or delayed).

19. WAIVER

No forbearance, 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 nor shall any single or any partial exercise of any such powers or rights or remedies preclude any other or further exercise of them. Any waiver to be effected must be in writing. The remedies provided in this Agreement are cumulative and not exclusive of any remedies provided by law.

20. SEVERABILITY

If any part of this Agreement is found by a relevant competent jurisdiction to be invalid, unlawful or unenforceable then such part will be severed from this Agreement. The remainder of this Agreement will continue to be valid and enforceable to the full extent permitted by law.

21. NOTICES

All notices and communication relating to the execution of this Agreement shall be given in writing using one of the following methods:

21.1 Sent by pre-paid registered first-class post to the address of the other party set out in this Agreement and shall be deemed to have been received by the addressee within two working days of posting.

21.2 Delivered by personal service and will be deemed effective on the date it is delivered to the address of other party.

21.3 Sent by email but will not be deemed to have been received nor be effective until confirmed or responded to by a human.

22. VARIATION

These terms and conditions may be revised from time-to-time. The revised terms will apply from the date of the publication of the same. Such variation shall be deemed effective unless objected to in writing within 14 days by the other party.

23. ENTIRE AGREEMENT

Both parties acknowledge that this Agreement constitutes the entire agreement between the parties and supersedes, terminates, or otherwise renders null and void any previous agreement between the parties, including, but not limited to terms and conditions attached to the Client's purchase order(s). Except for fraudulent misrepresentations, the parties shall not be bound by or be liable for any statement, representation, promise, inducement or understanding of any kind or nature not set forth herein.