

# Techevolution Ltd. – Terms & Conditions of Sale

## 1 Interpretation

In these conditions the following expressions have the following meanings:

### 1.1 "these Conditions"

The terms and conditions set out in this document;

### 1.2 "Contract"

The agreement between the Supplier and the Customer for the supply of the Products and the Services;

### 1.3 "Customer"

The person to whom the Supplier is to supply the Products and/or the Services as may be identified as such in the Sales Agreement;

### 1.4 "Customer Equipment"

The Customer's computer hardware other than the Equipment on which the Supplier is to install the Software as may be specified in the Sales Agreement;

### 1.5 "Equipment"

The computer hardware which the Supplier is to supply as may be identified as such in the Sales Agreement;

### 1.6 "Products"

The Equipment and the Software;

### 1.7 "Sales Agreement"

The agreement of which these Conditions form part;

### 1.8 "Services"

The training, installation and other services which the Supplier is to supply as may be specified in the Sales Agreement, whether or not any separate charge is made in respect of their supply;

### 1.9 "Site"

The Customer's premises at which the Products are to be delivered and installed which may be specified in the Sales Agreement;

### 1.10 "Software"

The software which the Supplier is to supply as may be identified as such in the Sales Agreement;

### 1.11 "Supplier"

Techevolution Ltd

## 2 Basis of contract

2.1 These Conditions apply to all contracts for the supply of computer hardware and software, training and related services entered into by the Supplier. By placing an order with the Supplier or accepting the Supplier's quotation, the Customer agrees to deal with the Supplier on these Conditions to the exclusion of all other terms, conditions, warranties or representations with the exception of any terms specified in writing in the Sales Agreement.

2.2 No variation to these Conditions shall be binding unless made in writing specifying both which clause is to be varied and full details of such variation and signed on behalf of each of the Customer and the Supplier.

2.3 The Supplier's employees or agents are not authorised to make any representations concerning the Products or Services unless confirmed by the Supplier in writing. In entering into the Contract the Customer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed.

2.4 The Customer shall not be entitled to cancel in whole or in part any order which the Supplier has accepted or any quotation of the Supplier which the Customer has accepted in either case whether orally or in writing and which in each case will constitute the Contract.

2.5 Any advice or recommendation given by the Supplier or its employees or agents to the Customer or its employees or agents as to the storage, application or use of or otherwise relating to the Products which is not confirmed in writing by the Supplier is followed or acted upon entirely at the Customer's own risk and accordingly the Supplier shall not be liable for any such advice or recommendation which is not so confirmed. The provision of any such advice or recommendation which is so confirmed shall be treated as the provision of a Service.

2.6 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Supplier shall be subject to correction without any liability on the part of the Supplier.

2.7 The Customer is responsible for the accuracy and completeness of any information supplied to the Supplier and shall reimburse to the Supplier any additional costs it incurs as a result of such information not being complete and accurate.

## 3 Sale of the Equipment and supply of the Software

3.1 The Supplier hereby agrees to sell and the Customer agrees to buy the Equipment and such of the Software as is supplied subject to shrink wrap licence agreements.

3.2 The Supplier hereby agrees to supply and the Customer agrees to enter into licence agreements with the licensors of such of the Software as is not supplied subject to shrink wrap licence agreements.

3.3 The Customer recognises that, if the Supplier is to install the Software on the Equipment or on the Customer Equipment, its engineer doing so will in some circumstances have to accept on behalf of the Customer the standard licence terms or terms of use imposed by the manufacturer of the Software. The Customer acknowledges that it is bound by such terms.

3.4 The Supplier reserves the right to make any changes in the specifications of the Products which are required to conform with any applicable safety legislation or other requirements which do not materially affect their quality or performance.

## 4 Delivery of the Products

4.1 The Supplier shall use its reasonable efforts to deliver the Products to the Customer at the Site as soon as reasonably possible after the date of the Sales Agreement if they are in stock and otherwise as soon as reasonably possible after they are received by the Supplier, but in any event delivery shall not be the essence.

4.2 The Supplier shall be entitled to deliver the Products in instalments in which case each instalment shall be treated as an entire separate contract and any default or breach by the Supplier in respect of any such instalment shall not entitle the Customer to cancel any other instalment or treat the Contract as a whole as repudiated.

4.3 The Products are damaged on delivery or less than the correct amount of the Products is delivered, then unless the Customer notifies the Supplier and the carrier (otherwise than by a note on the delivery note) within three days of delivery no claim against the Supplier may be made in respect of such delivery of such Products or damage to them which was visible or otherwise obvious on their delivery.

4.4 If the Products have not been delivered despite receipt by the Customer of the invoice from the Supplier relating to them, then unless the Customer notifies the Supplier within three days after the date of such invoice no claim against the Supplier may be made in respect of non-delivery of those Products.

4.5 The Customer shall be deemed to accept the Products on delivery notwithstanding any late delivery by the Supplier.

4.6 If the Customer fails to take delivery of the Products or fails to give the Supplier adequate delivery instructions in good time before the date when the Supplier is ready to deliver the Products, then, without prejudice to any other right or remedy available to the Supplier, the entire price of the Products shall become due and the Supplier may:

4.6.1 store the Products until actual delivery is made and charge the Customer for the costs (including insurance) of storage; and/or

4.6.2 sell or supply the Products to a third party at the best price readily obtainable and (after deducting all storage and selling expenses) set off such amount against amounts due to it under the Contract or refund such amount to the Customer.

## 5 Installation and operation of the Products

5.1 The Customer shall undertake any preparation of the Site notified to it by the Supplier on or before the date of the Contract or reasonably required by the Supplier before the delivery of the Equipment and in particular shall comply with the Supplier's then standard System Administration Manual. The Supplier shall not be responsible for any problems which arise and the Customer shall compensate the Supplier for any additional costs which the Supplier incurs by reason of the Customer's failure properly to undertake any such preparatory work.

5.2 The Supplier shall install the Equipment at the Site and shall install the Software on the Equipment or on the Customer's Equipment as appropriate at the Site as soon as reasonably practicable after the date of the Contract. The Supplier shall be deemed to accept the Products when the Supplier confirms that it has satisfactorily installed them at the Site.

5.3 The Customer shall give full access to the Site to the Supplier for the purpose of installing the Products and shall ensure that the environmental conditions at the Site are suitable for operating the Equipment and the Customer's Equipment.

5.4 The Supplier shall procure that its employees who install the Products comply with all reasonable safety, security and other regulations which are in force or apply at the Site and the Customer shall indemnify the Supplier against any loss which the Supplier may suffer or incur as a result of any injury to its employees or damage to or loss of its property whilst at the Site resulting from anything other than the negligence of the Supplier or its employees or any non-compliance by the Products with the warranty set out in clause 8 below.

5.5 The Customer shall operate the Products at all times in accordance with the Supplier's then current System Administration Manual. The Supplier shall not be responsible for any problems which arise and the Customer shall compensate the Supplier for any additional costs which the Supplier incurs by reason of the Customer's failure properly to do so.

5.6 The Customer shall comply with all laws and regulations relating to the ownership and use of the Products including health and safety requirements.

## 6 Provision of the Services

6.1 The Supplier shall use its reasonable efforts to provide the Services to the Customer at the Site or, if so specified in the Sales Agreement, at the Supplier's premises when agreed or as soon thereafter as is possible (and if no date is agreed within three months after the date of the Sales Agreement at a time convenient to the Supplier on giving at least 7 days' notice to the Customer) but time of their provision shall not be of the essence.

6.2 If the Customer declines to accept the provision of the Services at the time arranged, the Customer shall, unless the Supplier in its discretion agrees otherwise, be obliged to pay for them as if they had been supplied and the Supplier shall not be obliged to provide them at any other time. If the Customer requires the Supplier to supply such Services at a later date the Supplier shall be entitled additionally to charge for them at its then standard rate. If the Supplier agrees in its discretion to supply the Services at a later date without charging for the Services when they were declined, the Supplier shall be entitled to increase its charge for the Services to its then standard charge.

6.3 If the Customer declines to accept the provision of the Services at the time when they are provided by the Supplier, the Customer shall be obliged to pay for them and the Supplier shall not be obliged to provide them at any other time. If the Supplier nevertheless agrees to do so more than six months after the Delivery Date the Supplier shall be entitled to increase its charge for the Services to its then standard charge.

6.4 To the extent that the Services comprise training, the Customer shall confirm at the conclusion of such training that it has been provided and whether it was satisfactory. Any confirmation that it was provided and was satisfactory shall be binding on the Customer. If such confirmation is not provided the Customer shall raise any issues it may have as to provision and quality of training within seven days after provision of the training, failing which such training shall be deemed to have been provided satisfactorily.

## 7 Prices and payment

7.1 The price of the Products and Services shall be the price set out in the Sales Agreement plus any applicable value added tax.

7.2 The Supplier reserves the right, by giving notice to the Customer at any time before delivery, to increase the price of the Products to reflect any increase in the cost to the Supplier which is due to any factor beyond its control, any change in delivery dates, quantities or specifications for the Products which is requested by the Customer or any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate information or instructions.

7.3 Unless specified in the Sales Agreement, the price of the Products does not include their delivery or installation.

7.4 Unless specified in the Sales Agreement, the Supplier shall be entitled to invoice the Customer for all amounts under the Contract in respect of the Products on or at any time after their delivery or (if the Supplier is to install them) their installation unless the Customer fails to permit the Supplier to

install them, in which case the Supplier shall be entitled to invoice the Customer at any time after the Supplier has made staff available to install them or otherwise when their price becomes due.

7.5 Unless specified in the Sales Agreement, the Supplier shall be entitled to invoice the Customer for all amounts due under the Contract in respect of the Services on or at any time after their provision unless the Customer declines to accept their performance when offered by the Supplier in which case the Supplier shall be entitled to invoice the Customer at any time after it has tendered performance of them.

7.6 Unless otherwise specified in the Sales Agreement the Customer shall make payment to the Supplier in respect of all invoices in full and without any deduction or set off (whether in relation to such invoice or otherwise) within 7 days of the date of the invoice except to the extent that there is a genuine dispute between the parties in respect of the item or items in question. Time of payment shall be of the essence.

7.7 All payments shall be applied to invoices and to Products and Services listed in such invoices in the order determined in its discretion by the Supplier.

7.8 If full payment is not received by the Supplier by the due date then without prejudice to its rights the Supplier shall be entitled:

7.8.1 to sue for the entire price; and/or

7.8.2 to charge interest (both before and after any judgment) at the rate of 4% over the base rate from time to time of Santander UK plc on the outstanding balance; and/or

7.8.3 to require the immediate return to the Supplier of all goods agreed to be sold by the Supplier to the Customer in which the property has not passed to the Customer in accordance with the provisions of clause 9 below and the Customer hereby agrees to reimburse to the Supplier upon demand the Supplier's costs or expenses in recovering such goods; and/or

7.8.4 to suspend the supply of any Products or Services not then delivered until full payment is made; and/or

7.8.5 to suspend the supply of any other goods, software or services (including support and maintenance) which the Supplier is due to supply under any other agreement until full payment is made.

## 8 Warranty and liability

8.1 The Supplier itself gives no warranties or guarantees in respect of the Products and the Customer agrees that it shall rely upon any warranty or guarantee given by the manufacturer or any other person, whether or not free of charge and whether or not the Customer takes up such warranty or guarantee. The Supplier's only liability in respect of such warranty or guarantee shall be to liaise with such manufacturer or other person and to use its reasonable endeavours to ensure that the manufacturer or such other person complies with the terms of such guarantee or warranty.

8.2 The Supplier warrants that the Services will be provided with reasonable care and skill.

8.3 In the event of any valid claim under clause 8.2 above being made against the Supplier by the Customer, the Supplier shall be entitled to repeat the provision of the Services free of charge or, at the Supplier's sole discretion, refund to the Customer the price of the Services (or a proportionate part of the price as appropriate) but the Supplier shall have no further liability to the Customer.

8.4 There are no warranties, conditions, guarantees or representations as to quality or fitness for a particular purpose of the Products or Services or other warranties, conditions, guarantees or representations whether express or implied, oral or in writing, except as stated in the Contract.

8.5 The Supplier does not seek to limit or exclude its liability for death or personal injury arising from negligence, in respect of implied terms as to title to the Products, for fraud or fraudulent misrepresentation or under Part I of the Consumer Protection Act 1987 or which it otherwise is not entitled to limit or exclude as a matter of law.

8.6 The Supplier shall be liable to the Customer for any direct physical damage to the Customer's property other than the Products to the extent that it results from the negligence of the Supplier or its employees up to a maximum of £500,000 in respect of any one event or series of related events.

8.7 Except as specified in sub-clause 8.5 above, the Supplier shall not in any event be liable for any loss of anticipated profits, savings or reductions in overheads or for any indirect, special or consequential damages, howsoever arising, in connection with or arising out of the furnishing, functioning or use of the Products or the Services, and shall not be liable for any other damages except as provided in the Contract.

8.8 Except as specified in sub-clauses 8.5 and 8.6 above in no event shall the Supplier's liability in respect of any of the Products or the Services or representations made in respect of them exceed the price paid for those Products or Services.

8.9 Except as specified in sub-clause 8.5 above, no action, regardless of form, arising out of the transactions under the Contract may be brought by the Customer more than two years after the cause of action has accrued.

## 9 Risk and title

9.1 Risk of loss of or damage to the Products shall pass to the Customer on delivery and the Customer shall insure the Products from that time until ownership of title to them passes to the Customer.

9.2 Notwithstanding delivery and the passing or risk in the Products to the Customer, or any other provisions of the Contract, ownership of title to the Products shall not pass to the Customer and shall be retained by the Supplier until the Supplier has received in cash or cleared funds payment in full of the price of the Products and of the price of any other goods and services supplied to the Customer by the Supplier at any time whether or not the price has become due.

9.3 For the avoidance of doubt, the Products, all other goods supplied to the Customer by the Supplier and all goods into which the Products or such other goods have been incorporated which are in the Customer's possession shall be presumed to belong to the Supplier unless the Buyer can prove otherwise.

9.4 Until ownership of title to all goods owned by the Supplier passes to the Customer the Customer shall hold the goods in the Customer's possession or control as the Supplier's fiduciary agent and bailee and shall keep them properly stored, protected and insured and identified as the Supplier's property. The Customer shall account to the Supplier for any insurance proceeds in respect of the Products, and shall keep all such amounts separate from all other monies of the Customer and third parties.

9.5 Until ownership of title to any goods owned by the Supplier passes to the Customer, the Supplier shall be entitled at any time to require the Customer to deliver up such goods to the Supplier and, if the Customer fails to do so forthwith, to enter upon any premises of the Customer or any third party where such goods are stored and repossess them. The Customer shall procure that any third party which holds such goods shall permit the Supplier to take possession of them and shall indemnify the Supplier against any liability which it may incur to such third party in connection with taking or attempting to take possession of them. The Supplier shall be entitled to use or dispose of such goods as it wishes and the Customer shall not be entitled to object to delivery up of goods by virtue of them holding its title or otherwise being vital to its business. Unless the Supplier expressly elects otherwise any contract between it and the Customer for the supply of the Products shall remain in existence notwithstanding any exercise by the Supplier of any of its rights under this clause.

9.6 The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any goods which remain the property of the Supplier, but if the Customer does so, all monies owing by the Customer to the Supplier shall (without prejudice to any other right or remedy of the Supplier) forthwith become due and payable.

9.7 For the avoidance of doubt, "ownership of title to" any goods which comprise computer software means "ownership of title to" the physical copy of the software in question and not title to the copyright in the software which is retained by the manufacturer or licensor.

## 10 Termination

10.1 The Supplier shall be entitled to terminate the Contract forthwith by notice in writing to the Customer if the Customer:

10.1.1 commits an irremediable breach of the Contract, persistently repeats a remediable breach or commits any remediable breach and fails to remedy it within 30 days of receipt of notice of the breach requiring remedy of the same; or

10.1.2 (being a company) is unable to pay its debts within the meaning of s.123 of the Insolvency Act 1986 or such a meeting of its creditors or if a proposal shall be made for a voluntary arrangement within Part I of the Insolvency Act 1986 or a proposal for any other composition, scheme or arrangement with (or assignment for the benefit of) its creditors or a receiver, administrative receiver or similar officer is appointed over all or a substantial part of the undertaking or assets of the Customer or if a petition is presented or a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding up of the Customer (whether by the presentation of a winding up petition or otherwise); or for the making of an administration order (other than for the purposes of reconstruction or amalgamation); or

10.1.3 (being an individual) is unable to pay his debts within the meaning of s.268 of the Insolvency Act 1986 or a petition is presented for his bankruptcy or an administration order is made in respect of the Customer or the Customer makes an arrangement or compromise for the benefit of his creditors whether pursuant to the provisions of Part VIII Insolvency Act 1986 or otherwise; or

10.1.4 (being a partnership) is unable to pay its debts or a petition is presented for the winding up of the Customer under the provisions of the Insolvent Partnerships Order 1984 whether or not involving individual insolvency proceedings against the Customer's partners and presented by creditors or by the partners themselves or such a petition is presented in conjunction with bankruptcy or individual insolvency or petitions against any partner or if an administration order is made in respect of any partner or if the Customer enters into any composition, scheme of arrangement or voluntary arrangement including the business and assets of the Customer or the shares of any partner or in the event of any action for a partnership account and/or a winding up or a dissolution of the Customer under the Partnership Act 1890 or any of the states of affairs or events described in clause 10.1.3 above or occur to or in relation to any of the partners or if the Customer is dissolved.

10.2 In the event of termination by the Supplier pursuant to clause 10.1 above then, without prejudice to any other right or remedy available to the Supplier, the Supplier shall be entitled to cancel the Contract or suspend any further deliveries under it without any liability to the Customer and, if any of the Products or Services have already been delivered but not paid for, the price shall become immediately due and payable notwithstanding any previous agreement or arrangement.

## 11 Transfer of Undertakings (Protection of Employment) Regulations 2006

11.1 The Customer shall indemnify the Supplier in full for and against all claims, costs, expenses or liabilities whatsoever and howsoever arising incurred or suffered by the Supplier including without limitation all legal expenses and other professional fees (with any VAT thereon) in relation to:

11.1.1 the termination by the Customer of the employment of any of those employees identified by the Customer and notified to the Supplier whose contracts of employment transfer to the Supplier from the Customer ("the Employees");

11.1.2 anything done or omitted to be done in respect of any of the Employees which is deemed to have been done by the Supplier by virtue of the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE");

11.1.3 any claim made at any time by any employee(s) of the Customer other than the Employees who claim(s) to have become an employee of or have rights acquired by the Supplier by virtue of TUPE; and

11.1.4 any act of the Supplier (which, by virtue of TUPE, is a breach of a legal obligation in respect of the Employees provided that in relation to sub-clauses 11.1.1 – 11.1.3 above such costs, claims, expenses and liabilities are not payable as a result of any act or omission of the Supplier).

## 12 General

12.1 The remedies available to the Supplier under the Contract shall be without prejudice to any other rights, either at common law or under statute, which it may have against the Customer.

12.2 The failure or delay of the Supplier to enforce or to exercise, at any time or for any period of time, any term or of any right, power or privilege arising pursuant to the Contract does not constitute and shall not be construed as a waiver of such term or right and shall in no way affect either party's right later to enforce or exercise it nor shall any single or partial exercise of any remedy, right, power or privilege preclude any further exercise of the same or the exercise of any other remedy, right, power or privilege.

12.3 The invalidity or unenforceability of any term of, or any right arising pursuant to the Contract shall not in any way affect the remaining terms or rights which shall be construed as if such invalid or unenforceable term or right did not exist.

12.4 Any notice or written communication required or permitted to be served on or given to either party under the Contract shall be delivered by hand or sent by recorded delivery mail to the other party at the address which it has previously notified to the sending party and shall be deemed to have been given when actually received or, if sent by recorded delivery mail and returned marked "gone away" or to the like effect, on return of such recorded delivery mail.

12.5 The Contract is personal to the Customer and the Customer may not assign, transfer, sub-contract or otherwise part with the Contract or any right or obligation under it without the prior written consent of the Supplier.

12.6 Neither party shall be liable to the other if its performance of its obligations under the Contract (other than an obligation to pay money) is prevented or hindered due to any circumstances outside its control.

12.7 Clause headings are purely for ease of reference and do not form part of or affect the interpretation of the Contract.

12.8 The Supplier acknowledges that it may, in connection with the provision of the Products and the Services, have access to the Customer's data which comprises "personal data" under the terms of the Data Protection Act 1988. The Supplier undertakes that it will:

12.8.1 Use any such personal data solely for the purpose of providing the Products and the Services;

12.8.2 Process such personal data only in accordance with the Customer's instructions; and

12.8.3 Take appropriate technical and organisational measures to prevent accidental damage to or loss or destruction of such personal data and to prevent unauthorised or unlawful processing of such personal data.

12.9 The Contract contains all the terms agreed by the parties relating to the subject matter of the Contract and supercedes any prior agreements, understandings or arrangements between them, whether oral or in writing, and no representation, undertaking or promise shall be taken to have been given or been implied from anything said or written in negotiations between the parties prior to the Contract except as set out in the Contract.

12.10 No variation or amendment to the Contract shall be effective unless in writing signed by authorised representatives of the parties.

12.11 The construction, validity and performance of the Contract are governed by the law of England and the parties accept the jurisdiction of the English Courts.

# Techevolution Ltd – Support Terms & Conditions

## 1 Interpretation

In these Conditions the following expressions have the following meanings:

### 1.1 "Associated Company"

As defined in section 416 Income and Corporation Taxes Act 1988;

### 1.2 "these Conditions"

The terms and conditions set out in this document;

### 1.3 "Customer"

The person to whom the Supplier is to supply the Support Service as may be identified as such in the Support Agreement;

### 1.4 "Commencement Date"

The earlier of the date on which the System is certified by the Supplier as being substantially ready for use and the Customer's first commercial use of the System or, if the System is already used by the Customer, the date on which the Supplier begins to supply the Support Service in respect of it;

### 1.5 "Equipment"

The Customer's computer hardware which the Supplier is to support and maintain as may be identified as such in the Support Agreement;

### 1.6 "Fee"

The amount payable by the Customer in respect of the Support Service as may be specified in the Support Agreement;

### 1.7 "Renewal Date"

The anniversary of the first day of the month in which the Commencement Date falls;

### 1.8 "Service Period"

The period following the reporting of a request for Curative Maintenance within which the Supplier will provide it as specified in the Support Agreement or one Working Day if no such period is specified;

### 1.9 "Site"

The Customer's premises at which the System is located as specified in the Support Agreement;

### 1.10 "Software"

The software which the Supplier is to support and maintain as may be identified as such in the Support Agreement;

### 1.11 "Supplier"

Techevolution Limited.

### 1.12 "Support Agreement"

The agreement between the Customer and the Supplier for the support and maintenance of the System;

### 1.13 "Support Service"

The support and maintenance of the System as specified in these Conditions;

### 1.14 "System"

The Equipment and the Software;

### 1.15 "Working Day"

Monday to Friday inclusive except public holidays;

### 1.16 "Working Hours"

9.00 am to 5.30 pm on Working Days;

### 1.17 "Year"

The period from the Commencement Date to the first Renewal Date and the period of 12 months commencing on each subsequent Renewal Date.

## 2 Basis of contract

2.1 These Conditions apply to all contracts for the support and/or maintenance of computer hardware and software entered into by the Supplier. By placing an order with the Supplier or accepting the Supplier's quotation, the Customer agrees to deal with the Supplier on these Conditions to the exclusion of all other terms, conditions, warranties or representations with the exception of any terms specified in writing in the Support Agreement.

2.2 No variation to these Conditions shall be binding unless made in writing specifying both which clause is to be varied and full details of such variation and signed on behalf of each of the Customer and the Supplier.

2.3 The Supplier's employees or agents are not authorised to make any representations concerning the Support Service unless confirmed by the Supplier in writing. In entering into this Support Agreement the Customer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed.

2.4 Any typographical, clerical or other error or omission in any document or information issued by the Supplier shall be subject to correction without any liability on the part of the Supplier.

2.5 The Customer is responsible for the accuracy and completeness of any information supplied to the Supplier and shall reimburse to the Supplier any additional costs it incurs as a result of such information not being complete and accurate.

## 3 Term

The Support Agreement shall commence on the Commencement Date for a period of one Year and shall then be automatically renewed for consecutive periods of one Year from each Renewal Date until terminated in accordance with its terms.

## 4 The Support Service

The Support Service shall consist of **Curative Maintenance** in respect of the Equipment, **Support** in respect of the System and **Mandatory Changes** in respect of the System, all as defined in this clause.

### 4.1 Curative Maintenance

shall comprise:

4.1.1 upon receipt of a request from the Customer, the provision of telephone advice and, if the Supplier determines that the problem cannot be resolved over the telephone, the inspection, testing and diagnosing by attendance at the Site by the Supplier of any fault reported in the Equipment; and

4.1.2 the carrying out by the Supplier of such repairs, replacement of parts, cleaning, lubrication or adjustment as the Supplier shall judge necessary in order to remedy such fault.

### 4.2 Support

shall comprise:

4.2.1 telephone advice relating to problems with and use of the System or the Customer's data held on the System;

4.2.2 liaison with suppliers in relation to problems which the Supplier cannot resolve;

4.2.3 where reasonably practical and considered appropriate in the absolute discretion of the Supplier, restoration of data and Software on repaired Equipment and repair of corrupted data.

4.3 **Mandatory Changes** shall comprise the implementation of such alterations, adjustments, additions or modifications to the System as the Supplier shall from time to time prescribe including the provision of all new releases of the Software intended solely for bug fixing as soon as the Supplier considers them sufficiently stable to install.

## 5 Provision of Services

5.1 Curative Maintenance shall be provided upon request by the Customer during Working Hours. The Supplier shall respond to a request for Curative Maintenance as soon as possible and if the problem cannot be resolved over the telephone and it is reasonably necessary to do so the Supplier shall endeavour to ensure that an engineer is at the Site carrying out such Curative Maintenance within the Working Period.

5.2 Software Support shall be provided upon request by the Customer as soon as possible during Working Hours.

5.3 Mandatory Changes and any modification or alteration of or attachment to the System requested by the Customer shall be provided at such times during Working Hours as are agreed between the parties.

5.4 The Customer declines to accept the provision of the Support Service at the time when it is proffered by the Supplier, the Supplier shall not be obliged to provide it at any other time and shall be entitled to make an additional charge if it agrees to do so.

## 6 Excepted Services

6.1 The fixed charge under the Support Agreement does not cover:

6.1.1 the correction of any fault in or caused by any item not comprised in the System;

6.1.2 the correction of any fault due to the Customer's neglect or misuse of the System or its failure to operate the System in accordance with any instruction manuals including in particular its failure to ensure that environmental conditions at the Site such as maximum ambient temperatures are suitable for operating the Equipment and its failure to clean the Equipment on a regular basis and as advised by the Supplier;

6.1.3 the Customer's failure to operate the System in accordance with and otherwise to comply with the Supplier's current System Administration Manual;

6.1.4 the correction of any fault due to malicious or willful action of the Customer or its employees or third party interference with the System including the introduction of computer viruses;

6.1.5 the correction of any fault due to the alteration, modification, movement or maintenance of the System by any person other than the Supplier;

6.1.6 any reconditioning or refurbishing of the System or the replacement or repair of decorative parts;

6.1.7 the correction of any fault in any item comprised in the System which is beyond the design life of that item as specified by its manufacturer;

6.1.8 the correction of any fault due to any accident or disaster affecting the System including failures or fluctuations in the public electricity supply and electrical storms;

6.1.9 the correction of any fault which would not have occurred if the Customer had accepted provision of Mandatory Changes when agreed between the parties or, if not agreed, within a reasonable time after the Supplier offered to make them;

6.1.10 the correction of any fault in cabling, wireless networking and connectivity to public telephony systems unless expressly included in the Support Agreement and the correction of any fault in wireless networking caused by environmental changes;

6.1.11 any work necessary due to the Customer's failure adequately to take and keep back-up copies of its data and the Software;

6.1.12 with the exception of Mandatory Changes, any modification or alteration of or addition or attachment to the System or movement of the System including in particular the supply and installation of updates to the Software which are not merely for the purpose of correcting bugs and the modification of any bespoke software whether or not written by the Supplier;

6.2 The Supplier shall, subject to availability, provide all the services set out in clause 6.1 above upon request by the Customer but shall be entitled to charge the Customer for the provision of such services at its standard rates then in effect;

6.3 Whilst it is not the Supplier's normal practice to do so, the Supplier reserves the right to charge for the installation of new releases of the Software intended for bug fixing where they are not required to fix any bug reported by the Customer.

## 7 Customer's Obligations

7.1 The Customer agrees throughout the term of the Support Agreement:

7.1.1 to notify the Supplier of all material problems it experiences with the System as soon as it becomes aware of them;

7.1.2 to grant the Supplier such access to the Site as the Supplier shall reasonably require in order to discharge its obligations under the Support Agreement;

7.1.3 to make available at the Site such facilities as the Supplier shall reasonably require in order to discharge its obligations under the Support Agreement;

7.1.4 to take all reasonable precautions to protect the health and safety of the Supplier's employees while at the Site;

7.1.5 to indemnify the Supplier against any loss which the Supplier may suffer or incur as a result of any injury to its employees or damage to or loss of its property whilst at the Site resulting from anything other than the negligence of the Supplier or its employees;

7.1.6 if the System is multi-user or networked, to install at its own expense a suitable modem or telephone connection so that the Supplier can obtain remote access to the System;

7.1.7 to make available the System and supply all documentation and other information necessary for the Supplier to diagnose any fault in the System;

7.1.8 to make available direct physical access to the System and to remove any security products preventing or restricting access to the System prior to the arrival of the Supplier's staff at the Site;

7.1.9 to co-operate with the Supplier in resolving any faults with the System;

7.1.10 to comply with all laws and regulations relating to the ownership and use of the System including health and safety requirements; and

7.1.11 to check all telephony call charges relating to use of the system on a regular basis and as advised by the Supplier.

7.2 The Customer acknowledges that the Supplier has no liability in respect of any loss the Customer suffers or additional expense it incurs as a result of its failure to comply with its obligations under this Support Agreement.

## 8 Spare Parts

8.1 In providing the Support Service the Supplier shall be entitled to use any spare parts which it considers appropriate which may not be identical to or manufactured by the same manufacturer as the defective parts being replaced.

8.2 Any parts of the System replaced by the Supplier under the Support Agreement shall become the property of the Customer and the parts which have been replaced shall become the property of the Supplier. The Customer warrants that either it shall have a free and unencumbered title to such replaced parts or (where the System is leased or charged) that it shall have obtained all necessary consents and authorities to part with possession and give title to such replaced parts to the Supplier.

8.3 The Supplier carries what it considers to be a reasonable amount of spare parts and has made arrangements to obtain others at short notice but shall not be responsible for any delays resulting from the unavailability of spare parts or delays in third parties supplying them.

## 9 Fees and payment

9.1 The Customer shall pay the fee specified in the Support Agreement annually in advance on or before the Commencement Date or the Renewal Date as appropriate or in advance at such other intervals as are specified in the Support Agreement or as are otherwise agreed. The Supplier's agreement to accept payment otherwise than annually in advance gives the Customer no additional right to cease payment or otherwise terminate the Support Agreement. The Supplier reserves the right, by giving notice to the Customer at least 30 days prior to any Renewal Date, to increase the price of the Support Service during the following and any subsequent Year and to vary these Conditions.

9.2 The Customer shall pay for any service provided pursuant to clause 6.2 above within 7 days after the date of the Supplier's invoice except to the extent that there is a genuine dispute between the parties in respect of the item or items in question. Time of payment shall be of the essence.

9.3 In addition to the amounts specified in the Support Agreement the Customer shall pay any applicable value added tax.

9.4 If full payment of any amount due under the Support Agreement is not received by the Supplier by the due date then without prejudice to its rights the Supplier shall be entitled:

9.4.1 to sue for the entire amount due; and/or

9.4.2 to charge interest (both before and after any judgment) at the rate of 4% over the base rate from time to time of HSBC Bank PLC on the outstanding balance; and/or

9.4.3 to suspend provision of the Support Service.

9.5 The Supplier also reserves the right to suspend provision of the Support Service if payment of any amount other than those due in respect of the Support Service owed by the Customer or any of its Associated Companies to the Supplier or any of its Associated Companies is overdue.

9.6 In the event that the Customer no longer uses any item comprised in the System the Supplier may in its discretion permit the Customer to transfer the value of any outstanding period of Support cover in respect of that item to new equipment or software supplied by the Supplier but the Customer shall not in any event be entitled to reimbursement of any fee paid or payable under the Support Agreement.

## 10 Warranty and liability

10.1 The Supplier warrants that it shall use its reasonable efforts to keep the System maintained in good working order and fully operational at all times by supplying the Support Service with reasonable care and skill. The Customer recognises, however, that the Supplier cannot guarantee to remedy any specific default in the System, including in particular problems with the Software, either at all or within a specified time. In the event that the Customer is not satisfied with any Support Service which it has received it shall notify the Supplier in writing which shall investigate the complaint and have a further opportunity to remedy any problems which remain outstanding or provide any support which it still requires.

10.2 There are no warranties, conditions, guarantees or representations as to quality or fitness for a particular purpose of the System or the Support Service or other warranties, conditions, guarantees or representations whether express or implied, oral or in writing, except as stated in the Support Agreement.

10.3 The Supplier does not seek to limit or exclude its liability for death or personal injury arising from negligence, in respect of implied terms as to title to the Products or for fraud or fraudulent misrepresentation.

10.4 The Supplier shall be liable to the Customer for any direct physical damage to the System or otherwise to its property to the extent that its results from the negligence of the Supplier or its employees up to a maximum of £500,000 in respect of any one event or series of related events.

10.5 Except as specified in sub-clause 10.3 above, the Supplier shall not in any event be liable for any loss of anticipated profits, savings or reductions in overheads or for any indirect, special or consequential damages, however arising, in connection with or arising out of the furnishing, functioning or use of the System or its provision or failure to provide the Support Service, shall not be liable for any other damages except as provided in the Support Agreement and shall in particular not be liable for damage to or loss of the Customer's data or the cost of re-entering such data if necessary.

10.6 Except as specified in sub-clauses 10.3 and 10.4 above in no event shall the Supplier's liability under the Support Agreement or in respect of the Support Service or representations made in respect of it in any Year exceed the amount paid for the Support Service during that Year.

10.7 Except as specified in sub-clause 10.3 above, no action, regardless of form, arising out of the transactions under the Support Agreement may be brought by the Customer more than two years after the cause of action has accrued.

10.8 The Customer recognises that the Support Agreement is not a contract of insurance and shall obtain such insurance cover for the System as it in its discretion considers reasonably necessary. The Supplier agrees not to do anything which to its knowledge may vitiate such policy of insurance.

10.9 The Supplier shall have no liability for unavoidable damage caused to the Site in carrying out its obligations under the Support Agreement.

## 11 Termination

11.1 Either party may terminate the Support Agreement in its entirety by giving at least 20 days' notice in writing to the other expiring the day before any Renewal Date.

11.2 The Supplier may terminate the Support Agreement in respect of any item comprised in the System by giving notice in writing to the Customer if:

11.2.1 the item can no longer be maintained due to excessive wear and tear or unavailability of spare parts; or

11.2.2 the item, when repaired, would be worth less than the cost of the parts and labour necessary to repair it or would still not function at a commercially acceptable level.

11.3 The Supplier shall be entitled to terminate the Support Agreement forthwith by notice in writing to the Customer if the Customer:

11.3.1 fails to pay any amounts due under the Support Agreement within 30 days after the due date; or

11.3.2 commits an irremediable breach of the Support Agreement, persistently repeats a remediable breach or commits any remediable breach and fails to remedy it within 30 days of receipt of notice of the breach requiring remedy of the same; or

11.3.3 (being a company) is unable to pay its debts within the meaning of s.123 of the Insolvency Act 1986 or shall convene a meeting of its creditors or if a proposal shall be made for a voluntary arrangement within Part I of the Insolvency Act 1986 or a proposal for any other composition, scheme or arrangement with (or assignment for the benefit of) its creditors or a receiver, administrative receiver or similar officer is appointed over all or a substantial part of the undertaking or assets of the Customer or if a petition is presented or a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding up of the Customer (whether by the presentation of a winding up petition or otherwise) or for the making of an administration order (other than for the purposes of reconstruction or amalgamation); or

11.3.4 (being an individual) is unable to pay his debts within the meaning of s.226 of the Insolvency Act 1986 or a petition is presented for his bankruptcy or an administration order is made in respect of the Customer or the Customer makes an arrangement or compromise for the benefit of his creditors whether pursuant to the provisions of Part VIII Insolvency Act 1986 or otherwise; or

11.3.5 (being a partnership) is unable to pay its debts or a petition is presented for the winding up of the Customer under the provisions of the Insolvent Partnerships Order 1994 whether or not involving individual insolvency proceedings against the Customer's partners and presented by creditors or by the partners themselves or such a petition is presented in conjunction with bankruptcy or individual insolvency or petitions against any partner or if an administration order is made in respect of any partner or if the Customer enters into any composition, scheme of arrangement or voluntary arrangement including the business and assets of the Customer or the share of any partner or in the event of any action for a partnership account and/or a winding up of or a dissolution of the Customer under the Partnership Act 1890 or if any of the states of affairs or events described in clause 11.3.4 exist or occur or in relation to any of the partners or if the Customer is dissolved.

## 12 Consequences of Termination

12.1 Termination of the Support Agreement for any reason shall not affect any outstanding rights and obligations between the parties.

12.2 In the event that any property of the Supplier is situated at the Site on termination, the Supplier shall be entitled on demand to remove such property and the Customer shall have no rights over it.

12.3 In the event of termination pursuant to clause 11.2 above, the Supplier shall refund an appropriate proportion of any amounts paid in advance for the Support Service in respect of the relevant items.

## 13 General

13.1 The remedies available to the Supplier under the Support Agreement shall be without prejudice to any other rights, either at common law or under statute, which it may have against the Customer.

13.2 The failure or delay of the Supplier to enforce or to exercise, at any time or for any period of time, any term of or any right, power or privilege arising pursuant to the Support Agreement does not constitute an admission or a waiver of such term and shall in no way affect either party's right later to enforce or exercise it nor shall any single or partial exercise of any remedy, right, power or privilege preclude any further exercise of the same or the exercise of any other remedy, right, power or privilege.

13.3 The invalidity or unenforceability of any term of, or any right arising pursuant to the Support Agreement shall not in any way affect the remaining terms or rights which shall be construed as if such invalid or unenforceable term or right did not exist.

13.4 Any notice or written communication required or permitted to be served on or given to either party under the Support Agreement other than notices given by the Supplier relating to renewal and amounts due under the Support Agreement shall be delivered by hand or sent by recorded delivery mail to the other party at the address which it has previously notified to the sending party and shall be deemed to have been given when actually received or, if sent by recorded delivery mail and returned marked "gone away" or to the like effect, on return of such recorded delivery mail.

13.5 The Support Agreement is personal to the Customer and the Customer may not assign, transfer, sub-contract or otherwise part with the Support Agreement or any right or obligation under it without the prior written consent of the Supplier. The Supplier expressly reserves the right to sub-contract the performance of all or part of its obligations under the Support Agreement.

13.6 Neither party shall be liable to the other if its performance of its obligations under the Support Agreement (other than an obligation to pay money) is prevented or hindered due to any circumstances outside its control.

13.7 Clause headings are purely for ease of reference and do not form part of or affect the interpretation of the Support Agreement.

13.8 The Supplier acknowledges that it may, in connection with the provision of the Support Service, have access to the Customer's data which comprises "personal data" under the terms of the Data Protection Act 1998. The Supplier undertakes that it will:

13.8.1 use any such personal data solely for the purpose of providing the Support Service;

13.8.2 process such personal data only in accordance with the Customer's instructions; and

13.8.3 take appropriate technical and organisational measures to prevent accidental damage to or loss or destruction of such personal data and to prevent unauthorised or unlawful processing of such personal data.

13.9 The Support Agreement contains all the terms agreed by the parties relating to the subject matter of the Support Agreement and supersedes any prior agreements, understandings or arrangements between them, whether oral or in writing, and no representation or undertaking or promise shall be taken to have been given or implied from anything said or written in negotiations between the parties prior to the Support Agreement except as set out in the Support Agreement.

13.10 No variation or amendment to the Support Agreement shall be effective unless in writing signed by authorised representatives of the parties.

13.11 The construction, validity and performance of the Support Agreement are governed by the law of England and the parties accept the jurisdiction of the English Courts.