

TERMS AND CONDITIONS

1. Definitions and Interpretation

In this Agreement:

- i. **“Active Resources”** means a record that has been created in the Software against which time can be recorded and/or processed using the Software and/or any record that the Software reasonably requires to exist to allow administrative functions to be undertaken.
- ii. **“Additional Software”** means any software additional to that specified in Schedule A which is from time to time brought within the scope of this Agreement in writing between the parties.
- iii. **“Additional Services”** means any Services additional to those specified in Schedule A which are from time to time brought within the scope of this Agreement in writing between the parties.
- iv. **“Ancillary Documentation”** means any user manuals and user technical documentation provided by the Supplier of the Software.
- v. **“Affiliate”** means any entity that is controlled by Customer and any new entity as agreed mutually from time to time.
- vi. **“Commencement Date”** means the date on which Installation of Software under this Agreement takes place or where the Customer is responsible for installation - the date of Delivery of the Software to the Customer.
- vii. **“Concurrent Users”** means the maximum number of users allowed to access the Software at the same time.
- viii. **“Confidential Information”** - information of a confidential nature relating to a party’s technology, technical processes, business affairs, credit or finances and customer lists and information derived from any such information or relating to any associated body, subordinate organisation, employees, suppliers or customers of that party.
- ix. **“Daily Rate(s)”** means the charge for the provision of the relevant Service for a Working Day.
- x. **“Delivery”** means, subject as provided in clause 3(b), the delivery of Software to the Installation Location or other delivery address specified. In case of part or instalment deliveries, **“Delivery”** means the separate delivery of each part or instalment of Software.
- xi. **“Expenses”** means charges for travel, accommodation, subsistence and any other directly incurred costs, to enable the provision of Services.
- xii. **“Fault”** means a failure of or defect or malfunction in the Software.
- xiii. **“Hardware”** means the computer equipment itemised to be supplied by the Company to the Customer.
- xiv. **“Hardware Maintenance Service”** means the standard hardware maintenance service to be provided.
- xv. **“Hardware Specification”** means the specification for Hardware as published by the Supplier thereof.
- xvi. **“Implementation”** means the deployment of software, maintenance and services.
- xvii. **“Installation Location(s)”** means the location(s) specified in the support agreement at which Hardware and/or Software is to be installed and used.
- xviii. **“Installation”** means the installation and configuration of Hardware and/or the loading of Software to provide a Virgin Operational System.
- xix. **“Licensed Database”** means the database specified in Schedule A whether or not supplied by the Company with which the Software will be operated.
- xx. **“Licensed Hardware”** means the computer equipment whether or not supplied by the Company upon which the Software is to be installed and used.
- xxi. **“Licensed Operating System”** means the operating system specified in Schedule A whether or not supplied by the Company upon which the Software is to be operated.
- xxii. **“Licence Terms”** means the terms on which the Customer is licensed to use the Software or any Additional Software specified or referred to in clause 7 or, where applicable, appended or referred to in Schedule F to this Agreement
- xxiii. **“Maintenance Service”** means any Standard Software Maintenance Service or other software maintenance services provided by the Company to the Customer under the terms of this Agreement.
- xxiv. **“Named Seat Users”** means the software is licensed for use to specific named users only up to the number licensed.
- xxv. **“Prices”** means the stated prices for Software, Maintenance and Services.

xxvi. **“Service Level”** means the category of Maintenance Service to be provided as specified in the support agreement.

xxvii. **“Services”** means any or all of the stated services in the support agreement, including Maintenance and any Additional Services to be provided by the Company to the Customer on the terms of this Agreement

xxviii. **“Software”** means the software and/or any individual item of software, listed in the support agreement and any Additional Software to be supplied in object code by the Company to the Customer on and subject to the terms of this Agreement including the Licence Terms.

xxix. **“Software Specification”** means the specification for Software as published by the Supplier thereof or such other specification as has been agreed in writing between the parties.

xxx. **“Standard Maintenance Fee”** means the annual charge for Standard Software Maintenance Service specified in the support agreement/or in any agreement bringing Additional Software within the scope of this Agreement or such revised annual charges therefore as shall apply pursuant to clause 2 below.

xxxi. **“Standard Software Maintenance Service”** means the software maintenance service specified in clause 10.

xxxii. **“Standard Software”** means Software (or parts or modules of Software) that has not been subject to any code modification specifically for the Customer. For the avoidance of doubt any use of parameters contained within the Software, the use of toolkits provided with the Software or toolkits or add on products provided to enhance the functionality of the Software are not modifications to code.

xxxiii. **“Supplier”** means in relation to Software the author or ultimate licensor of the Software.

xxxiv. **“Training Courses”** means a structured classroom course of generic nature and consequently not client specific and usually attended by more than one Customer.

xxxv. **“Travelling Time”** means the elapsed time from a person leaving home to arriving at the Customer’s location where the Service is to be provided.

xxxvi. **“User License – Level”** – as shown in the support agreement, means the number of users licensed to use the Software as defined by **“User License Type”**.

xxxvii. **“User License Type”** - these are defined as follows:

“AR” means Active Resources

“C” means Concurrent Users

“S” means Named Seat Users.

xxxviii. **“Virgin Operational System”** means the Hardware and/or Software being substantially operational allowing Implementation to proceed.

xxxix. **“Working Day”** means 9:30 a.m. to 5:30 p.m. each day with the exception of Saturdays Sundays and United Kingdom designated public holidays.

2. **Prices and Payment**

a) Prices and all other charges are exclusive of Value Added Tax and any other sales tax or levies payable by the Customer.

b) All sums payable to the Company under this Agreement will be paid in full on the due date without deduction or set off. Interest shall be payable on overdue accounts at 2% per month or part month from the due date until payment in full.

c) Prices and other charges will be paid strictly in accordance with the applicable payment terms specified or calculated or determined in accordance with this Agreement.

d) The Company will be bound by the fixed prices in the support agreement for a period of 90 days from the date of this Agreement. Where Delivery of Software or the provision of the fixed price Services is not completed within such 60 day period such prices are subject to review by the Company to take into account increased costs. Any changes to fixed prices will be advised in writing to the Customer.

e) Services for which estimated prices are stated will be charged at a standard daily rate of £1,200.00 per day. If the Daily Rates for any such Services are increased from those shown in the support agreement, the revised prices will be notified to the Customer prior to the provision of the relevant Service.

f) The Company may adjust Standard Maintenance Fees annually in the case of Software on the anniversary of the Commencement Date unless the Service Level in the support agreement for a specific item of Software expressly provides otherwise. Annual price reviews of the Standard Maintenance Fees will be capped to a maximum of 10%.

g) The Standard Software Maintenance Fee shall be payable by the Customer throughout the period during which the Standard Software Maintenance Service is provided. Where it is agreed in writing that the Standard Software Maintenance Service is to be provided for part only of a year one twelfth of the annual Standard Software Maintenance Fee shall be payable for each month or part of a month during which the relevant Service is provided.

h)

- i) The Company may adjust the charges for Expenses in Schedule B from time to time.

3. Delivery and Installation

- a) The Company will use reasonable endeavours to adhere to any date or dates indicated by the Company and specified in this Agreement for Delivery, Installation or the provision of Services. However, these dates are for general guidance only and not of contractual effect. The Company will not have any liability to the Customer by reason of delay.
- b) If the Customer refuses or fails to take Delivery of any item of Software tendered in accordance with this Agreement, Delivery will be deemed to have taken place at the time when the relevant item of Software was tendered. The Company will render its invoice for payment as though Delivery of the item had taken place and the Company will be entitled to store the undelivered items of Software at the Customer's risk and expense. Any additional costs and charges in re-tendering such Software will be for the Customer's account.
- c) The Company will deliver to the Customer one copy of the Software per Installation Location in object code in machine-readable form on magnetic storage media compatible with the Licensed Hardware.
- d) The Customer will be responsible for providing a suitable installation environment (including all sources of power, computer cabling, telephone connections and transmission equipment and other facilities and accommodation necessary) at the Installation Location(s) before the date scheduled for Delivery. Additional costs incurred by the Company as a result of failure by the Customer to meet this obligation will be for the Customer's account.
- e) When Installation is carried out by the Company the Installation will be complete when the Company notifies the Customer that the Company's standard test procedures have been successfully completed. Where Software is to be installed by the Customer then Installation will be deemed to be complete on the date of Delivery.
- f) Save as provided in clause 3(b) risk in the physical medium on which Software is recorded will pass to the Customer on Delivery. It will be the responsibility of the Customer to maintain all appropriate insurance cover in respect of Software from the date of Delivery.
- g) Unless otherwise stated in the attached Schedules Prices are inclusive of carriage and packaging costs to the Installation Location or if different the address for Delivery.

4. Hardware Specification (If supplied by The Company)

- a) The Company reserves the right to make changes to the Hardware Specification where such changes are required for safety reasons or made or required by the Supplier provided such changes do not materially affect the physical or functional inter-changeability or performance of the item concerned.
- b) The Company will use reasonable endeavours to supply the Hardware as specified. However due to Hardware manufacturers changing specifications and withdrawing models without prior notification, this may not always be possible. In the event that Hardware cannot be supplied as specified notice will be given to the Customer the obligation to supply the Hardware affected will terminate and the parties shall seek to agree revised Hardware and such changes to the Hardware Specification and Price as shall be necessary as a result. A contract amendment order may then be issued to reflect the agreed revisions to the Hardware Specification and Price and any other terms of this Agreement.

5. Acceptance

Without prejudice to the rights of the Customer under any warranty in clause 18, in the absence of any agreed criteria as detailed in Schedule G, acceptance of each item of Software will take place on Delivery of such item.

6. Title

- a) Title to each item of physical medium on which Software is recorded will only pass to the Customer when the full price of that item has been paid. Until such time the Customer will have possession of the physical medium in a fiduciary capacity and as bailee for the Company.
- b) In addition to the Company's other remedies, if the Customer is in breach of its obligations to pay for any item of Software the Company will have the right to repossess and thereafter resell the same, to terminate any right of the Customer to use such Software, to suspend or terminate the provision of Services and to repossess all copies of such Software and Ancillary Documentation relating thereto. The Customer shall afford the Company all necessary access to its premises for such purposes.

7. Services

- a) Where Services are provided and charged for on a daily basis the Company will render invoices periodically and generally no later than the month following the date of provision of the Service.

- b) Daily Rates represent the charge for a minimum of 4 hours and a maximum of 7 hours spent in the provision of Services (excluding travelling time) on a Working Day.
- c) If Services are provided for less than 4 hours on any Working Day a pro rata charge of 50% of the Daily Rate will be made.
- d) Additional charges will be made where Services are provided for in excess of 7 hours on a Working Day at 1 ½ times the Company's prevailing current Daily Rate for the Service provided on a pro rata basis for each hour of Service provided beyond 7 hours. Incomplete hours will be rounded up to the next complete hour on a daily basis.
- e) Additional charges will be made where Services are provided on days which are not Working Days at 1.5 times the Company's prevailing current Daily Rate for the Service provided on a pro rata basis for each hour of Service provided, subject to a minimum charge being the equivalent of 2 hours work. Incomplete hours will be rounded up to the next complete hour on a daily basis.
- f) When specific Service days or Training Courses have been booked and confirmed in writing by the Customer their subsequent cancellation by the Customer will incur a cancellation fee. The cancellation fee will be calculated according to the number of Working Days notice provided to the Company by the Customer prior to the scheduled date of the Service delivery or Training Course as a percentage of the contracted fee for the Service or Training Course as follows:
 - More than 10 Working days notice – no charge
 - 6 – 10 Working Days notice – 50%
 - Less than 6 Working Days – 100%.
- g) The Customer undertakes that the number of days itemised as Estimated Price Services in Schedule A can be fully utilised in the implementation of the Software. The call off of these days is under the Customers control but is subject to any other relevant items in this Agreement.
- h) For the avoidance of doubt, where Estimated Price Services are specified in the support agreement this is indicative only in terms of both the number of days likely to be required to provide the Service and the applicable Daily Rates.
- i) Where the Customer requires services in excess of those itemised in the support/service agreement, a separate written agreement between the parties will be required to bring the Additional Services within the scope of this Agreement.
- j) In the event Customer requires services to provide custom programming of the Software, such services shall be covered under separate terms and conditions, to be executed by the parties in addition to this Agreement.

8. Expenses

Expenses incurred by the Company will be charged in accordance with the attached Schedule B.

9. Standard Software Maintenance - Service

- a) Unless otherwise specified in the support agreement any Standard Software Maintenance Service to be provided by the Company pursuant to the Agreement shall comprise the provision upon request by the Customer of the following:
 - i) advice on Faults notified by the Customer in accordance with paragraph (c) of this clause and the use of reasonable endeavours to diagnose and provide corrections for such Faults;
 - ii) advice on normal operation of the Software;
 - iii) replacement copies in current release form of any Software which has been damaged or erased by virtue of defects in the media on which it is recorded;
 - iv) all error corrections, enhancements, updates, releases and new or supplemental documentation supplied free of charge to the Company by the Supplier of the relevant Software for free issue to users of the Software.
- b) The services referred to in clause 10(a) above shall be available during Working Hours. Advisory and diagnostic services will normally be provided by telephone and within a reasonable time of the request for service being made by the Customer taking into account availability of personnel and of data resources and support required from the Supplier. If the Company and the Customer agree that an on-site visit is essential the Company reserves the right to charge for time spent on site, Travelling Time and Expenses.
- c) Where the Customer suspects a Fault the Customer shall notify this by telephone, e-mail, letter or facsimile transmission to the Company. Prior to notifying a suspected Fault the Customer shall take all reasonable steps to diagnose the nature of the Fault and carry out all check and diagnostic procedures notified by the Company or the Supplier in the documentation relating to the Software affected in order to verify whether or not a Fault exists.
- d) Upon a Fault being notified under this clause the Customer shall carry out all further verification and diagnostic procedures, which the Company or the Supplier specifies to assist in establishing the existence and nature of the Fault.
- e) Standard Software Maintenance Service shall not extend to the provision of maintenance service in the

circumstances set out in clause 14 nor to the provision of services in connection with lost or corrupted data where such loss or corruption results from an incorrect operation of the Software by the Customer or a failure by the Customer to carry out appropriate back up procedures.

- f) For the avoidance of doubt, the Standard Software Maintenance Service does not include Training, Consultancy, or installation services required to implement error corrections, enhancements or updates to or new versions of the Software provided within the Standard Software Maintenance Service.

10. Standard Software Maintenance –Customers Obligations

It shall be a condition of the provision of the Standard Software Maintenance Service that the Customer:

- a) co-operates fully should the need arise in the resolution of any problems;
- b) ensures that the Software is operated by all users in accordance with the Software's operating instructions and documentation provided with the Software and guidelines issued by the Company from time to time;
- c) ensures that all personnel requesting or receiving service under clause 10 are appropriately qualified and have been trained in the use of the Software and any Licensed Hardware, Licensed Operating System and Licensed Database;
- d) maintains a complete copy of all written operating instructions relating to the Software and its use provided by the Supplier in good condition and accessible to operators of the Software and ensures that the Software is operated in accordance therewith by appropriately skilled employees;
- e) maintains security copies of the Software in machine readable form;
- f) maintains current and comprehensive back-up copies of all data in machine readable form in accordance with good practice and any recommendations made by the Company or contained in any documentation relating to the Software;
- g) provides all information and assistance required by the Company to identify and correct any malfunction of the Software and to test any correction to the Software;
- h) routes all requests to the Company for maintenance through a maximum of three designated and suitably experienced employees; and
- i) provides communication equipment and remote access software (as recommended by the Company) as

appropriate to enable the Company to provide the Customer with a remote diagnostic and support service.

- j) ensures written communication to the Company of any termination of maintenance for any modules giving one month's notice in advance of renewal date. Re-instatement of maintenance will incur the amount of fees that would have been payable had the company been providing support between cancellation and re-instatement.

11. Standard Software Maintenance - Media

Enhancements, updates and corrections of the Software provided as part of the Standard Software Maintenance Service will be delivered on the storage/recording media designated for the Software.

12. Standard Software Maintenance - Commencement

- a) The obligation of the Company to provide the Standard Software Maintenance Service shall, in respect of the Software specified in the support agreement as maintained, commence on the Delivery of each item of Software, and in the case of Additional Software brought within the scope of this Agreement from the date of Delivery of the Additional Software.
- b) The obligation of the Company to provide the Standard Software Maintenance Service shall be conditional upon the Standard Software Maintenance Fee for the relevant Software having been fully paid.

13. Standard Software Maintenance – Additional Charges

The Company shall be entitled in addition to the Standard Software Maintenance Fee to charge for Maintenance Service provided at the Company's prevailing Daily Rates if the Customer requests provision of Maintenance Service and the Company provides Maintenance Service where:

- a) the Customer has not complied with the provisions of Clause 11 above or is otherwise in breach of this Agreement or the Licence Terms; or
- b) the Fault is caused by the act neglect or default of the Customer or of a third party or by some event or occurrence beyond the control of the Company including without limitation, Act of God, lightning, power fluctuation or loss of power, fire, flood or unfavourable environmental conditions; or
- c) the Customer has had the Software maintained otherwise by the Company or a third party approved by the Company or where the Software has been tampered with or modified by the Customer or any third party; or

- d) the Customer is no longer operating the Software on the Licensed Hardware and/or Licensed Operating System and/or Licensed Database or any upgrades thereof (or a system replacement configuration supplied or approved in writing by the Company); or
- e) the Customer fails to provide suitable and fully operational equipment to enable the Standard Software Maintenance Service to be provided in accordance with clause 11; or
- f) the failure of the Software to operate or the Fault is caused by:
 - a. a defect or breakdown in hardware or software supplied by a third party to or developed by the Customer save only where such defect or breakdown is covered by any other maintenance agreement between the Customer and the Company; or
 - b. failure by the Customer to implement any error correction, enhancement, update or release provided as part of the Standard Software Maintenance Service.

14. Additional Services

- a) In addition to the Standard Software Maintenance Service and Services specified in the support agreement the Company may, on request of the Customer, make available the following additional services to the Customer:-
 - i) assistance in dealing with problems and faults not covered by the Standard Software Maintenance Service.
 - ii) instruction and training of the Customer's employees in the use of the Software;
 - iii) consultancy and assistance on all aspects of the Software;
 - iv) provisions of error corrections, enhancements, updates, releases and new documentation for which a charge is made by the Supplier, except for items provided under Standard Software Maintenance
- b) Services referred to in sub-clause (a) above will be provided:-
 - i) at such time as the parties shall agree;
 - ii) at the Company's prevailing rates for items listed in paragraph (i)-(iii) inclusive and at cost for items listed in paragraph (iv).

15. Rights

Unless otherwise stated by the Company in writing the Customer shall have the same rights to use enhancements, updates, corrections and new releases of the Software provided under this Agreement as are granted in respect of the original Software under the Licence Terms and for all purposes such enhancements, updates, corrections and new releases shall be deemed to be comprised within the definition of Software for the purpose of the Licence Terms.

16. Leasing

- a) If the Customer enters into an arrangement to finance the acquisition of any Software and/or Services under which the title is to pass to a third party, the Customer will remain liable under the provisions of this Agreement with the exception only of those provisions as to payment to the extent that such payment is discharged by the third party.
- b) In the event that any finance arrangements referred to in clause a) above – are for any reason not implemented – then clause a) above will not apply and all provisions of this Agreement shall remain in full force and effect.

17. Warranty (Only for Hardware supplied by The Company)

- a) The Company will so far as it is able extend to the Customer the benefit of any warranty provided by the Supplier of the Hardware (a "Manufacturer's Warranty"). The Company warrants subject to clause 18(e) that in any case where there is not a more extensive warranty available to the Customer under the Manufacturer's Warranty the Hardware will be free from defects or faults for a period of 90 days following acceptance. Any claim that any item of Hardware is defective or faulty must be notified in writing, identifying the alleged defect or fault, promptly by the Customer and in any event within 90 days of the date of acceptance. If any claim under this sub-clause is shown to be valid the Company will at its option either repair, replace or rectify the defective or faulty item of Hardware or accept the return of the defective or faulty item of Hardware and refund the Customer the price paid for that item but subject thereto the Company will have no further liability by reason of the defect or default.
- b) The Company warrants subject to clause 18(e) that Hardware will comply in all material respects with the Hardware Specification. Any claim that any item of Hardware is not in accordance with this warranty must be notified in writing, identifying the alleged non-compliance, promptly by the Customer and in any event within 90 days of the date of Installation. If any claim under this sub-clause is shown to be valid the Company will at its option either rectify the non-compliance or accept the return of the non-compliant item(s) and refund the Customer the price paid for that item but subject

thereto the Company will have no further liability by reason of such non-compliance.

- c) The Company warrants subject to clause 18(e) that delivered Software including Standard Software will comply in all material respects with the Software Author's Specification. Any claim that any item of Software is not in accordance with this warranty must be notified in writing, identifying the alleged non-compliance, promptly by the Customer and in any event within 90 days of the date of Installation. If any claim under this sub-clause is shown to be valid the Company will at its option either rectify the non-compliance or accept the return of the non-compliant item(s) and refund the Customer the price paid for that item but subject thereto the Company will have no further liability by reason of such non-compliance.

- d) The Company warrants subject to clause 18(e) that Services will be supplied by competent personnel and to appropriate standards of workmanship. Any claim that any Services have not been supplied in this manner must be notified to the Company within 7 days of provision of the relevant Service. If any claim under this sub-clause is shown to be valid the Company will re-perform the relevant Service without charge but subject thereto the Company will have no further liability by reason of the defect.

- e) The Company will not have any liability for any defects, faults, non-compliance or non-performance of any Hardware or Software or for defects or other shortcomings in Services which are not notified within the time periods specified in sub-clauses (a), (b), (c) and (d) of this clause or which are caused by:
 - i. any act, neglect or default of the Customer or any third party; or
 - ii. use of Hardware with accessories or equipment which do not conform to the manufacturer's technical specifications; or
 - iii. use of Hardware or Software other than in accordance with the recommendations or instructions of the Supplier or in conjunction with any applicable Licensed Operating System, Licensed Hardware or Licensed Database; or
 - iv. any amendment or modification of the Software which has not been made by or with the written approval of the Company; or
 - v. use of Software other than in accordance with the Licence Terms applicable thereto; or
 - vi. use in conjunction with Hardware or Software not supplied or approved in writing by the Company; or

- f) Subject to the provisions of clauses 18(a) through (e) and the provisions of clause 19 all conditions, warranties

and representations expressed or implied by statute, common law or otherwise are excluded and the Company will not be liable to the Customer for any loss, damage or injury, direct or indirect, resulting from faulty workmanship or materials or otherwise whether or not caused by the negligence of the Company, its sub-contractors or their respective employees. The Customer acknowledges that it has not relied upon any representations or warranties not expressly incorporated in this Agreement.

- g) In the event of breach or alleged breach of the warranties in this clause 18 the parties shall cooperate to establish whether a breach exists and the Customer shall cooperate with all reasonable proposals of the Company to remedy or mitigate the effects of the breach.

18. Limitations of Liability

- a) The Company accepts liability to the Customer for:
 - i) personal injury or death caused by the negligence of the Company or its employees or sub-contractors (acting within the course of their employment or duties and the scope of their authority);
 - ii) direct damage to physical assets or other tangible property caused solely by the negligence of the Company or its employees or sub-contractors (acting within the course of their employment or duties and the scope of their authority) provided that the total liability of the Company under this sub-clause will be limited to £5,000,000 for any one event or series of connected events.

- b) Other than as stated in clause 19(a) the aggregate liability of the Company whether for negligence, breach of contract, misrepresentation or otherwise will not in any event exceed the price paid for the item of Software or Services which gives rise to the claim or in relation to which the claim is made. Where the claim arises from Standard Software Maintenance Service liability will be limited to the most recent annual fee paid for the relevant Service.

- c) The Company will not in any circumstances have any liability for loss of profits, loss of data, loss of production, business or goodwill, economic loss or consequential loss, whether direct or indirect, howsoever arising or incurred by the Customer.

- d) Prices and other charges are determined on the basis of the limits of liability set out in this Agreement. The Customer may by written notice to the Company request a higher limit of liability and the Company will seek to effect insurance up to that limit and the Customer will pay upon demand the amount of all additional premiums. The Customer agrees to disclose all information as the insurers may require. Increases in liability limits are dependant upon availability of insurance.

- e) Neither the Company or the Customer will be liable for any loss or damage of whatsoever nature or be regarded as being in breach of this Agreement where performance of its obligations is prevented, hindered or delayed by circumstances or events beyond its reasonable control including but not limited to – Act of God, inclement weather, flood, lightening, fire, industrial action, lock-outs, act or omission of Government or other competent authority, war, military operations, riot, difficulty in securing access to relevant source codes or other technical information, difficulty in securing supplies through its normal source of supply or the act or omission of any party for whom the Company or the Customer (as appropriate) is not responsible.
- f) The Company shall not have any liability in respect of any Standard Software Maintenance Services provided where the circumstances or events referred to in clause 14 have occurred or arisen or the requirement for service derives there from.
- g) IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION LOSS OF PROFITS, REVENUE, DATA OR GOODWILL, ARISING FROM ANY CAUSE OF ACTION WHATSOEVER, INCLUDING WITHOUT LIMITATION CONTRACT, WARRANTY, STRICT LIABILITY, OR NEGLIGENCE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES.

19. Intellectual Property Rights and Copyright Indemnity

- a) Copyright and all other intellectual property rights of whatever nature in Software will remain the property of the Company and/or the Supplier.
- b) The Company will defend or settle at its option and expense any claim or action brought against the Customer in the United Kingdom alleging that any Software infringes any United Kingdom patent or any copyright or other intellectual property rights subsisting in the United Kingdom (a “**Claim**”). The Company will pay any costs or damages finally awarded against the Customer that are attributable to any such Claim provided that the Customer:
 - i) notifies the Company promptly in writing of the Claim;
 - ii) provides the Company with all reasonable information and assistance to settle or defend the Claim; and
 - iii) grants the Company sole authority and control of the defence or settlement of the Claim.

- c) The Company will have no liability if the Claim is based upon the Software with any product not supplied or approved by the Company, the modification of Software other than by the Company, the use of Software as part of any infringing process or otherwise than in accordance with the Licence Terms or if the Customer has not complied with its obligations under clause 20(b).
- d) If a Claim is brought against the Customer which precludes the Customer from making effective use of any item of Software the Company will soon as reasonably practicable at its option and expense either replace or modify the Software affected so that it is non-fringing or procure for the Customer the right to continue the use of such Software. If neither of these alternatives is in the opinion of the Company reasonably available the Company will accept the return of the Software affected by the Claim. Without prejudice to any other rights or remedies available to the Customer the Company will repay to the Customer the price paid for the item(s) returned adjusted to take into account the use of the Software enjoyed by the Customer and any obligation of the Company to provide Services related to the Software so returned will cease.
- e) This clause 20 states the entire liability of the Company to the Customer in respect of any infringement or alleged infringement of the intellectual property rights of any third party. In no circumstances will the Company be liable for any costs or expenses incurred by the Customer without the Company’s prior written authorisation or in respect of any claim based upon infringement or alleged intellectual property rights outside the United Kingdom.

20. Confidentiality

- a) The Customer undertakes to treat as confidential all Confidential Information obtained by the Customer regarding the Software or provided in connection with the supply of the Services and will not save as provided in clause 21(c) disclose the same in whole or in part to any third party without the prior written consent of the Company.
- b) The Company will keep confidential all Confidential Information obtained by the Company relating to the Customer and/or other companies within the same group of companies as the Customer.
- c) The provisions of clauses 21(a) and (b) will not apply to information which:
 - i) is in or comes within the public domain other than by reason of a breach of any provision of this clause 21;
 - ii) was already in the possession of the receiving party prior to receipt of the information from the other party;

- iii) is received from a third party who is free from any obligation of confidence with respect thereto; or
 - iv) is required to be disclosed by law.
- d) Each party will effect and maintain reasonable security measures to safeguard the Confidential Information of the other from theft and from access by or disclosure to any person other than those of their employees and sub-contractors who require such access or disclosure in the normal course of their employment or in connection with the performance of obligations under this Agreement.

21. Expertise of Employees

The Customer recognises the investment made by the Company in developing the technical and other expertise of those engaged in the supply of Software and Services under this Agreement and the Company recognises a corresponding investment by the Customer. Accordingly, each party agrees that if it engages or procures the benefit of the services of any employee or sub-contractor of the other party (whether directly or indirectly through the device of interposed legal entity) at any time during the period of the supply or within 12 months after Installation of the Software or if later within 6 months after completion of the supply of Services (other than Maintenance Services)) then it shall pay to the other party a compensatory amount reflecting the cost to the other party of recruiting and training a replacement. In the case of an employee the compensatory amount will be the annual salary paid to the employee and in the case of a sub contractor will be the daily rate paid by the Company to the sub contractor multiplied by 240 (this being the agreed estimate of the number of working days in a year).

22. Cancellation

This Agreement cannot be cancelled in whole or in part except by agreement between the parties. Where the Company agrees to cancellation requested by the Customer the Company will be entitled as a minimum and without prejudice to any additional rights to retain any deposit and other advance payments paid by the Customer it being acknowledged that such payments represent a reasonable pre-estimate of the minimum costs and losses that the Company will incur as a result of such cancellation.

23. Duration and Termination

- a) Subject to sub-clause (b) below, this Agreement shall continue unless and until terminated by either party giving to the other not less than three months notice to expire or any anniversary of the Commencement Date.

- b) This Agreement (and subject to sub-clause 24(d) any licences granted under the Licence Terms):
 - i) may be terminated by either party by notice with immediate effect if the other enters into a deed of arrangement, dies or if a bankruptcy order is made against the other or if an order is made or a resolution is passed for the winding up of the other, or if a receiver or administrator is appointed in respect of any of the other's assets or if the other takes or suffers any similar action in consequence of debt;
 - ii) may be terminated by either party by notice with immediate effect if the other shall be in breach of this Agreement and, if such breach is capable of remedy, shall fail to have remedied the same within 30 days of notice requiring such remedy.
- c) The Company may terminate its obligation to provide Standard Software Maintenance Service with respect to particular item or items comprised in the Software by not less than four months notice to expire or any anniversary of the applicable Commencement Date or Delivery Date. Notice given under this sub-clause shall not affect the continuance of this Agreement in force with respect to those items of Software not designated.
- d) Notwithstanding clause 24(b) where the Company has supplied Software under this Agreement, which the Customer has paid for in full and where the Customer is not in breach of the Licence Terms, termination of this Agreement will not affect the right of the Customer to continue to use the Software in accordance with the Licence Terms.
- e) Termination of this Agreement will not affect the rights and remedies of either party subsisting at the date of termination or the provisions clauses of 21, 22 and all other provisions of this Agreement which are intended to continue to operate following termination.
- f) The supply of each item of Software and Services constitutes a separate and independent Agreement between the parties. Accordingly notices of termination given under this clause will relate only to those items or Services specified in the notice. Where notice of termination is given in relation to some of the items or Services only the contract between the parties in relation to the other items or services will remain in full force and effect.
- g) Where the Customer is in breach and notice requiring remedy of such breach has been given under sub-clause 24(b), the Company shall be entitled without liability to suspend performance of all obligations to the Customer whatsoever whilst such breach remains unremedied.

24. Additional Items

If at any time the Customer requires and the Company supplies items of Software or Services in addition to those identified in the Schedules such items or Services shall be deemed to be supplied on the terms of this Agreement as Additional Software or Additional Services unless otherwise expressly agreed between the parties in writing.

25. General

- a) The Customer shall have no right to and shall not assign or transfer the benefit of this Agreement or its rights hereunder without the prior written approval of the Company. The Company will be entitled to sub-contract; the performance of its obligations under this Agreement but such sub-contracting will not affect the liability of the Company to the Customer. References in these conditions to the Company will, where applicable, include references to any such sub-contractors.
- b) This Agreement constitutes the entire agreement between the parties as to the matters to which it relates.
- c) Amendments to this Agreement will only be effective if in writing and signed by an authorised representative of each party.
- d) If any provisions in this Agreement are held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired.
- e) Notices under this Agreement shall be given in writing by first class post, personal delivery or facsimile transmission. Notices given by post are deemed to be received 48 hours after the posting, notices given by personal delivery on the date of delivery and notices given by facsimile transmission on the date of transmission.
- f) If disagreements arise between the parties on technical issues (related to the interpretation of or compliance with the Software Specification or the cause of or effectiveness of remedies for defects) and such disagreements cannot be resolved between the parties such matters may at the instance of either party be referred to be determined by an independent expert appointed by agreement between the parties or in default of agreement by the President of the Computing Services Association. Such expert shall determine the issue as an expert and not as an arbitrator and his decision shall be

final and binding. Each party will co-operate to ensure the expert is provided with all relevant information. The costs of the expert will be born as he shall determine.

- g) The Customer consents to provide telephone references and allow prospective Customers of the Company to visit their locations, to review and discuss the Software and Services provided by the Company. On every occasion, this will be with the prior agreement of the Customer.
- h) The Customer consents to and agrees to cooperate in the creation of a case study of the Customer's implementation, the content and artwork of which will be subject to the Customers written approval prior to publication.
- i) The Customer consents to the Company or the Company's PR agents producing a draft press release following the signing of this Agreement by both parties. No information will be issued to the press, without written approval of the copy and/or artwork by the Customer.
- j) A person who is not a party to this Agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement but this does not affect any right or remedy of a third party which exists or is available apart from that Act.
- k) Headings are inserted for convenience only and will not affect the construction of this Agreement.
- l) Technical expressions relating to computers and/or software programs not defined in this Agreement will have the meanings attributed to them in the computer and information technology industries and in the event of disagreement the interpretation of such terms shall be resolved in accordance with sub-clause 26(f).
- m) The contact details shown in the support agreement, are for administration purposes only and do not imply that the named contacts will be available or will not be substituted.
- n) This Agreement will be governed by and construed in all respects in accordance with English Law and save as provided in clause 26(f) the parties hereby submit to the non exclusive jurisdiction of the English Courts.

SCHEDULE B (EXPENSES)

FOR SERVICE TO BE PROVIDED TO ANY CUSTOMER SITE IN UNITED KINGDOM AND NORTHERN IRELAND

Travelling expenses will be charged to the Customer at 50p per mile when driving or at cost for other forms of transport, relating to travel for each Working Day.

Expenses will be charged to the Customer at cost, for accommodation for each Working Day when applicable.

Accommodation will be charged at cost to the Customer when travel to and from the respective customer site in addition to the provision of a Working Day of Service all undertaken in a single day would create an unreasonable burden on the person(s) providing the Service(s).

Expenses for other directly incurred costs will be recharged to the Customer at cost.

FOR SERVICE TO BE PROVIDED TO ANY CUSTOMER SITE OUTSIDE BOTH THE UNITED KINGDOM AND NORTHERN IRELAND

Expenses will be charged to the Customer for flights, accommodation, subsistence and any other reasonably incurred costs involved in facilitating the provision of the Service at cost to the Company.

In addition travel time will be charged to the customer at £150 per hour.

In the event of the Customer cancelling, postponing or rescheduling any services that result in travel arrangements needing to be cancelled by the Company any direct costs incurred by the company as a direct result of the cancellation will be charged to the Customer.