

## TERMS AND CONDITIONS FOR THE SALE OF HARDWARE

### 1 Definitions and Interpretation

1.1 In this Agreement unless the context or the Quote otherwise requires the following expressions have the following meanings:

"**Accepted**" means acceptance of the Hardware pursuant to clause 8.5 of the Terms.

"**Acceptance**" shall have the corresponding meaning.

"**Acceptance Certificate**" means a certificate signed stating that the Hardware is functioning correctly.

"**Acceptance Date**" means the date on which the Hardware is Accepted by You pursuant to clause 8.5.

"**Agreement**" has the meaning given in clause 2.1.

"**Agreement Date**" means the date on which this Agreement shall become effective which shall be the date that the Sales Order Confirmation is received by the Customer.

"**Ancillary Services**" means (to the extent applicable) any Enhanced Warranty, Installation Services and/or Training Services to be provided by Us to You, as specified in the Quote.

"**Business Day**" means a day other than a Saturday, Sunday or a public holiday in the UK.

"**Charges**" means the charges for the Hardware and any Ancillary Services, as specified in the Quote.

"**Confidential Information**" means all information obtained by one party from the other pursuant to this Agreement which is expressly marked as confidential or which is manifestly of a confidential nature or which is confirmed in writing to be confidential within 7 days of its disclosure.

"**Delivery Date**" means the delivery date specified in the Quote or such other date agreed by Us and You (acting reasonably) in writing.

"**Enhanced Warranty**" means any period of enhanced warranty protection to be provided by Us to You, as specified in the quote and described in the schedule to this Agreement.

"**Hardware**" means the equipment specified in the Quote and any replacement equipment and/or parts provided by Us from time to time.

"**Installation Services**" means the installation of some or all of the Hardware by Us, as specified in the Quote.

"**Integral Software**" means any computer software embedded in or forming an integral part of any element of the Hardware.

"**Licence Agreement**" has the meaning given in clause 6.1(a).

"**Location**" means Your premises (or such other location as the parties shall agree) at which the Hardware is to be delivered and (where applicable) installed, as specified in the Sales Order Confirmation (or as otherwise agreed in writing between the parties from time to time).

"**Manufacturer Warranties / Guarantees**" means warranties and/or guarantees provided by a manufacturer of Hardware sold under this Agreement and subject to such manufacturer's terms of supply.

"**Normal Working Hours**" means 08:00 – 17:00 Monday to Friday (excluding UK bank holidays).

"**Order**" means Your confirmation to Us that you would like to purchase the Hardware and, if applicable, engage Us to provide the Ancillary Services, on the basis of the Quote.

"**Quote**" means the Quote We provided to You, and which You have accepted, setting out details of the Hardware, Ancillary Services (if applicable) and the associated Charges.

"**Sales Order Confirmation**" means written confirmation (which may be by email) from Us that We accept Your Order on the basis of the Quote.

"**Software Owner**" has the meaning given in clause 6.1.

"Terms" means these terms and conditions for the sale of Hardware.

"Third Party Supplies" means any supplies, equipment or other materials to be provided by a third party to this Agreement in conjunction with the Hardware.

"Training Services" means any training provided by Us to You in the use and operation of the Hardware, as specified in the Quote.

"We", "Us" or "Our" or "Supplier" means Computeam Limited (company number 3683744), whose registered office is at Suite 443, Broadstone Mill, Broadstone Road, Stockport, Cheshire, SK5 7DL.

"You" or "Your" or "Customer" means the person, organisation or entity purchasing the Hardware from Us, as specified in the Quote.

1.2 In this Agreement:

- (a) reference to any statute or statutory provision includes a reference to that statute or statutory provision as from time to time amended extended or re-enacted;
- (b) words importing the singular include the plural; words importing any gender include every gender; and words importing persons include bodies corporate and unincorporate; and (in each case) vice versa;
- (c) any reference to a party to this Agreement includes a reference to his successors in title and permitted assigns;
- (d) the headings to the clauses are for ease of reference only and shall not affect the interpretation or construction of this Agreement; and
- (e) the schedules to any set of terms forming part of this Agreement shall form part of those terms.

1.3 In these Terms, unless otherwise indicated, references to clauses or schedules shall be to the clauses or schedules of these Terms.

## 2 Basis of this Agreement

2.1 These Terms and the Quote (together, this "Agreement") set out the terms and conditions on which You purchase the Hardware and where applicable, any Ancillary Services from Us.

2.2 The person signing this Agreement warrants that he/she has the authority to bind the Customer.

2.3 By placing Your Order you are making an offer to purchase the Hardware and, where applicable, Ancillary Services in accordance with these Terms. You are responsible for ensuring that the terms of the Quote are complete and accurate before placing Your Order.

2.4 We may issue an automatic acknowledgement that Your Order has been received, but this will not constitute acceptance of Your Order. Your Order shall only be deemed to be accepted when You receive Our Sales Order Confirmation at which point this Agreement shall come into existence.

2.5 If any of these Terms conflict with any term of the Quote, the Quote will take precedence.

## 3 Products and services to be provided

3.1 We hereby agree to:

- (a) sell the Hardware to You free from any encumbrances; deliver the Hardware to the Location on or around the Delivery Date;
- (b) provide the Ancillary Services (where and to the extent applicable);
- (c) provide or procure a licence for the Customer to use the Integral Software; and
- (d) provide the other services described in this Agreement to You,

upon the terms and conditions contained in this Agreement.

3.2 We reserve the right prior to delivery of the Hardware to substitute an alternative item of hardware for any item of hardware agreed to be supplied hereunder provided that such substitution will not materially affect the performance of such hardware and will not result in any increase in the Charges.

## 4 Charges and payment

4.1 Unless otherwise specified in the Quote, the Charges shall be paid by You in full and in cleared funds prior to the Delivery Date.

4.2 We shall be entitled at any time before the period of thirty (30) days immediately preceding the Delivery Date to vary the Charges and any additional charges payable under this Agreement to accord with any changes in Our standard scale of charges

and/or any change in the price of the Hardware and to give written notice of such variation to You. This Agreement shall be deemed to be varied accordingly by such notice of variation unless You shall within fourteen (14) days of the receipt of such notice terminate this Agreement by giving notice in writing to Us in which event neither party shall have any liability to the other in respect of such termination and We shall promptly refund any payments previously received from You in respect of the Hardware to which the proposed increase in Charges relates.

4.3 The Charges are exclusive of Value Added Tax and any other taxes or levies for which You are legally liable which shall be paid by You at the rate and in the manner for the time being prescribed by law.

4.4 You shall pay all Charges which are not subject to a *bona fide* dispute. If any sum payable under this Agreement which is not subject to a *bona fide* dispute is not paid within fourteen (14) days after the due date then (without prejudice to Our other rights and remedies) We reserve the right to charge interest on such sum on a day to day basis (as well after as before any judgment) from the date or last date for payment thereof to the date of actual payment (both dates inclusive) at the rate of ten per cent (10%) above the base rate of the Bank of England from time to time in force compounded quarterly. Such interest shall be paid by You on demand by Us. In addition or in the alternative (at Our option), We may, by not less than seven (7) days' written notice of Our intention to do so, suspend the delivery of the Hardware and/or the provision of the Ancillary Services until such time as the overdue payment is made.

4.5 We may at any time set off any liability of You to Us against any liability of Us to You, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this Agreement. Any exercise by Us of Our rights under this clause shall not limit or affect any other rights or remedies available to Us under this Agreement or otherwise.

## 5 Title and risk

5.1 The legal and beneficial ownership of the Hardware shall pass to You on payment in full and in cleared funds of the Charges and any other sums which may then be due under this Agreement.

5.2 Risk in the Hardware shall pass to You on delivery of the Hardware to the Location and accordingly You shall be responsible for insuring the Hardware against all normal risks with effect from the time risk passes.

## 6 Integral Software

6.1 You hereby acknowledge that the copyright, patent rights, design right and/or any other intellectual property rights in each item of Integral Software are owned by Us or a third party (as applicable) (the "**Software Owner**"). Accordingly:

- (a) Our performance of Our obligations under this Agreement is in all respects conditional upon You entering on the date of this Agreement into an end-user licence agreement with the Software Owner or (as the case may be) a sub-licence agreement with Us (in either case, a "**Licence Agreement**") governing the use by You of that item of Integral Software as may be required by the Software Owner ; and
- (b) You agree with Us as a term of this Agreement to be bound and abide by the terms and conditions of each such Licence Agreement.

6.2 Unless otherwise stated in the Quote, the Charges include the right for the Customer to use the Integral Software.

6.3 You shall defend, indemnify and hold Us harmless against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with Your use of any Integral Software and/or Your breach of any Licence Agreement or other third party software licence terms.

## 7 Location preparation and access

7.1 Where We are providing Installation Services, We may visit the Location prior to delivery of the Hardware to assess where the Hardware will be installed and what existing hardware may need to be removed or moved prior to delivery (if applicable). Following this visit, if We deem it necessary, We shall provide You with a list of instructions relating to the preparation of the Location prior to delivery that must be complied with prior to the delivery and installation of the Hardware. You shall be responsible for following these instructions at Your own expense. We may, at Our sole discretion, and where specified in the Quote (or otherwise agreed in writing), agree to remove or dispose of any existing hardware specified by You (provided that You have clearly identified any such hardware by reference to the manufacturer, model and serial number) in writing in advance. You acknowledge and agree that We shall not be

liable to You for any removal or destruction of any such hardware.

7.2 You shall, for the purposes of this Agreement, give Our staff reasonable access to the Location during Normal Working Hours and where We have agreed to provide Installation Services You shall provide adequate free working space and such other facilities as may be reasonably necessary for the installation of the Hardware. Our staff shall comply with all health and safety procedures in effect at the Location and notified by You to Us or Our staff.

## 8 Delivery, Installation and Acceptance

8.1 We will deliver the Hardware to the Location on or around the Delivery Date. Delivery of the Hardware shall be completed on the Hardware's arrival at the Location. The time and/or date of delivery shall not be of the essence, but We will use reasonable endeavours to effect delivery by the date and time agreed and specified in the Quote.

8.2 You may not cancel Your Order (in whole or in part) once We have issued the Sales Order Confirmation except with Our written agreement and provided that You indemnify Us in full against all loss, costs (including without limitation the cost of all labour and materials used), damages, charges and expenses incurred by Us as a result of such cancellation. Where such cancellation occurs following delivery, Our agreement may (at Our sole discretion) be subject to payment by You of a reasonable restocking charge.

8.3 The quantity and description of the Hardware shall be as set out in the Quote.

8.4 Where We have agreed to provide Installation Services, We shall install the Hardware at the Location on or around the Delivery Date.

8.5 Where We are providing Installation Services, once we have installed the Hardware, Our staff will test that the Hardware and any Integral Software is functioning correctly and require You to sign a report to confirm that the Hardware has been tested and is operational. You shall be deemed to have Accepted the Hardware on the earlier of:

(a) signing the Acceptance Certificate; or

(b) Your use of the Hardware for any purposes other than testing it.

8.6 If the Hardware or any part of the Hardware fails to function correctly during these tests, then if requested by You the tests for the Hardware or for such part or parts of the

Hardware as have failed such tests shall be repeated within a reasonable time thereafter up to a maximum of 3 such repeated tests for the Hardware as a whole or for any one part of the Hardware as may be substituted by Us pursuant to clauses 3 or 13 hereof.

8.7 Where You install the Hardware (or engage a third party to do so on your behalf), We accept no responsibility for the performance of the Hardware following such installation, unless you can demonstrate to Our reasonable satisfaction that any non-performance of the Hardware was not caused by or during the course of its installation. You shall be deemed to have Accepted the Hardware on the commencement of its installation.

8.8 Where We have agreed to provide Installation Services, if, in Our reasonable opinion, it is necessary to remove or otherwise disconnect any of Your existing equipment at the Location to carry out the installation of the Hardware then You shall permit and obtain all necessary consents for such removal and/or disconnection and shall give Us all necessary assistance to enable such work to be carried out.

8.9 The Enhanced Warranty (where applicable) shall commence on the Delivery Date.

## 9 Electromagnetic compatibility and Telecommunications

9.1 In this clause the expression "**Electromagnetic Hardware**" means any part or parts of the Hardware which are electric or electronic and covered by the Electromagnetic Compatibility Regulations 2006 as amended, and "**Relevant Hardware**" means any part of the Hardware which is intended to be connected to any telecommunication system which is or is to be connected to a public telecommunication system.

9.2 We warrant to You that at the date hereof all the Electromagnetic Hardware complies fully with the Electromagnetic Compatibility Regulations 2006 as amended, and the Radio Equipment and Telecommunications Terminal Equipment Regulations 2000, as appropriate.

9.3 You undertake to Us that You will not make any modification to the Electromagnetic Hardware without Our prior written consent.

9.4 We warrant to You that at the date hereof the Relevant Hardware is approved by the Secretary of State for Trade and Industry for connection to the telecommunication systems specified in the instructions for use of the Relevant Hardware subject to the conditions set out therein but do not warrant the continuance of any such approval.

9.5 If after the date hereof the Secretary of State for Trade and Industry or any person to whom he has delegated his powers requires the Relevant Hardware or any part thereof to be modified as a condition of the continuance of any such approval We reserve the right to make such modification at Your expense.

9.6 We warrant that at the date hereof all the Relevant Hardware complies fully with the Radio and Telecommunications Terminal Hardware Regulations 2000, as amended, and the Radio Hardware and Telecommunications Terminal Hardware Regulations 2000, as appropriate.

9.7 If You connect the Relevant Hardware to any telecommunication system You shall be responsible for obtaining the consent of the owner of that system (if necessary) to such connection and for complying with all conditions relating thereto.

9.8 You undertake to Us that You will not make any modification to the Relevant Hardware without Our prior written consent.

9.9 Where any data transmission speeds are given by the Supplier in relation to the Hardware such speeds are at all times subject to any conditions attached to the use of the relevant modem, cabling or telecommunication equipment at the speeds indicated and to the capability of such modem, cabling or other telecommunication equipment to achieve such speeds.

## 10 Waste Electrical and Electronic Equipment

We warrant that We are not the producer of the Hardware or any part thereof for the purposes of the Waste Electrical and Electronic Equipment Regulations 2006 as amended and bear no responsibility for the disposal of any part of the Hardware under the said regulations.

## 11 Customer's default

If We are prevented or delayed from performing Our obligations under this Agreement by reason of any act or omission of Yours (other than a delay by You for which You are excused under clause 20) then You will pay to Us all reasonable costs charges and losses sustained or incurred by Us as a result (including without limitation the cost of storage and insurance of the Hardware). We shall promptly notify You in writing of any claim which We may have under this clause giving such particulars thereof as We are then able to provide.

## 12 Termination

12.1 This Agreement comes into effect on the Agreement Date and shall continue until:

(a) where We have agreed to provide any Ancillary Services (as set out in the Quote), the date on which the last of the Ancillary Services terminates; or

(b) where:

(i) no Ancillary Services are to be provided by Us under this Agreement; or

(ii) if later than the date described in clause 12.1(a),

the Delivery Date of the last elements Hardware to be supplied by Us to You under the Quote,

at which time it shall automatically expire, unless otherwise agreed by the parties in writing.

12.2 This Agreement may be terminated forthwith by either party on giving notice in writing to the other if the other party shall have a receiver or administrative receiver appointed or shall pass a resolution for winding-up (otherwise than for the purpose of a *bona fide* scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction shall make an order to that effect or if the other party shall become subject to an administration order or shall enter into any voluntary arrangement with its creditors or shall cease or threaten to cease to carry on business.

12.3 This Agreement may also be terminated forthwith by either party on giving notice to the other if the other party is in material breach of the terms of this Agreement and has failed to rectify such breach (in the case of a breach capable of being remedied) within thirty (30) days of receiving a written notice requiring it to do so.

12.4 Any termination shall, subject to the remainder of this clause 12.4 and to clause 12.5, discharge the parties from any liability for further performance of this Agreement and:

(a) We shall be entitled to enter any of Your premises and recover any equipment and materials which are Our property or for which We have not received payment in full and cleared funds (and You hereby irrevocably license Us, Our

employees and agents to enter any such premises for that purpose);

- (b) (in the event of termination by Us pursuant to clause 12.2 or 12.3) We shall be entitled to be paid a reasonable sum for any work carried out by Us prior to such termination;
- (c) You shall immediately pay to Us any sums due to Us under this Agreement; and
- (d) (in the case of a termination by You pursuant to clause 12.2 or 12.3), You shall be entitled to be repaid forthwith any sums previously paid under this Agreement (whether paid by way of a deposit or otherwise) in respect of any Hardware and/or Ancillary Services that You have not received.

12.5 Any termination of this Agreement (howsoever occasioned) shall not affect any accrued rights or liabilities of either party nor shall it affect the coming into force or the continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.

### 13 Warranties

13.1 Where you have not purchased an Enhanced Warranty, You will be solely responsible for taking any steps necessary in order to register and maintain any applicable Manufacturer Warranties / Guarantees applicable to the Hardware.

13.2 We warrant that the Hardware will be free from material defects in materials, workmanship and, if We have provided Installation Services, installation for a period of twelve (12) calendar months after the Acceptance Date (the "**Warranty Period**").

13.3 Where we have agreed to provide any Installation Services, Enhanced Warranty Services and/or Training Services, we warrant that such services will be performed:

- (a) by an appropriate number of suitably qualified and experienced personnel;
- (b) using all reasonable skill and care; and
- (c) in accordance with all applicable laws and regulations in force from time to time.

13.4 Subject to clause 8.7, if We receive written notice from You of any breach of the warranty

in clause 13.2 then We shall at Our own expense and within a reasonable time after receiving such notice repair or at Our option replace the Hardware or such parts of it as are defective or otherwise remedy such defect, provided that We shall have no liability or obligations under such warranty unless We shall have received written notice of the defect in question no later than the expiry of the Warranty Period. The legal and beneficial ownership of the Hardware or any defective parts shall revert to Us upon the replacement of the Hardware or such defective parts (as the case may be) whereupon the legal and beneficial ownership of the replacement Hardware or parts shall vest You.

13.5 We shall have no liability or obligations under the warranties in clauses 13.2 and 13.3 other than to remedy breaches thereof by the provision of materials and services within a reasonable time and without charge to You save that if We shall fail to comply with such obligations within a reasonable time We shall be liable in damages to You provided that Our liability for such failure shall be limited to the total Charges paid or payable under this Agreement. The foregoing states Our entire liability whether in contract or tort in respect of defects in the Hardware notified to Us after the Acceptance Date, or where applicable, in respect of the provision of any Installation Services, Enhanced Warranty Services and/or Training Services other than liability assumed under clause 19.

13.6 The warranty in clause 13.2 is contingent upon the proper use of the Hardware by You (and, where anyone other than Us installs the Hardware, the proper installation of the Hardware) and does not cover any part of the Hardware which has been modified without Our prior written consent or which has been subjected to unusual physical or electrical stress or on which the original identification marks have been removed or altered. Nor will such warranty apply if repair or parts replacement is required as a result of causes other than ordinary use including without limitation accident, hazard, misuse or failure or fluctuation of electric power, air conditioning, humidity control or other environmental conditions.

13.7 We warrant to You that the Hardware complies fully as to noise heat radiation and all other characteristics with the requirements in the Health and Safety (Display Screen Hardware) Regulations 1992 and in particular that the display screens and keyboards comply fully with the said Regulations.

13.8 We do not give any warranty that the Hardware is fit for any particular purpose.

13.9 We do not warrant that the Hardware will achieve any particular performance criteria unless We have specifically guaranteed such criteria in writing subject to specified tolerances.

13.10 The express terms of this Agreement are in lieu of all warranties, conditions, terms, undertakings and obligations implied by statute, common law, custom, trade usage, course of dealing or otherwise, all of which are hereby excluded to the fullest extent permitted by law.

#### 14 Your warranty

You hereby warrant to Us that You have not been induced to enter into this Agreement by any prior representations or warranties whether oral or in writing except as specifically contained in this Agreement and You hereby irrevocably and unconditionally waive any right You may have to claim damages for any misrepresentation not contained in this Agreement or for breach of any warranty not contained herein (unless such misrepresentation or warranty was made fraudulently and was relied upon by You) and/or to rescind this Agreement.

#### 15 Training Services and operating manuals

15.1 Where We have agreed to provide Training Services, We shall provide such services as specified in the Quote. Any additional training required by the Customer shall be provided by the Supplier in accordance with its standard scale of charges from time to time in force (or as otherwise agreed in writing between the parties) and at such times and to such extent as may be agreed between the parties.

15.2 Any operating manuals We provide to You and any materials, documents and any other property which We provide in connection with the supply of Training Services (and in each case the copyright, patents, design right and/or any other intellectual property rights contained therein) shall remain Our exclusive property or that of Our licensors.

#### 16 Removal of labels

You shall not change remove or obscure any labels, plates, insignia, lettering or other markings which are on any item of the Hardware at the time of its installation.

#### 17 Export control

17.1 You warrant that You will not re-export the Hardware or any part of it in contravention of the Export Control Order 2008 or any subordinate legislation under the Export Control Act 2002.

17.2 Hardware which originates from the United States or which contains components or know-how of United States origin be subject to Export Control imposed by the Department of Commerce of the United States of America and resale of such Hardware may be restricted or prohibited. You warrant that You will not re-sell or re-export any such Hardware in contravention of any such restrictions or prohibitions. You shall defend, indemnify and hold Us harmless against any claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with any breach of the warranty set out in this clause 17.2.

#### 18 Change in school status

if You are a school, in the event of any change in Your legal status which would result in Your activities being carried on by a different entity (including without limitation where you are to convert to academy status), You shall use best endeavours to procure the novation of this Agreement from You to Your successor entity, and shall indemnify Us for any liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs) that We suffer as a result of any failure to procure and/ or delay in procuring such novation.

#### 19 Liability

19.1 We do not exclude or limit Our liability for: death or personal injury caused by Our negligence; fraud or fraudulent misrepresentation; or any breach of any implied terms which cannot be excluded or limited at law.

19.2 We shall not be liable for any delay or failure to perform Our obligations or for any cost increase under this Agreement caused by Your delay or failure to perform Your obligations, or due to any failure or delay of any third party to supply or deliver Third Party Supplies.

19.3 Subject to clause 19.1 We are under no circumstances liable to You, whether in contract, tort (including negligence), breach of statutory duty or otherwise arising under, or in connection with this Agreement for:

- (a) any loss of profit, business, revenue or sales;
- (b) loss of business opportunity;
- (c) any loss, corruption or degradation of data;

- (d) loss of goodwill; or
- (e) any indirect or consequential losses.

other party all materials relating to such confidential information in its or its personnel's, agents' or representatives' possession.

- 19.4 We shall not be liable to You for any loss arising out of any failure by You to keep full and up-to-date security copies of the computer programs and data You use in accordance with best computing practice.
- 19.5 We shall not be liable to You for any loss, damage or other liability (including cost increases) arising as a result of or in connection with any hardware, equipment and/or software not supplied to You by Us.
- 19.6 Subject to clauses 19.1, Our total liability to You in respect of all other losses arising under or in connection with this Agreement whether in contract, tort (including negligence) breach of statutory duty or otherwise shall in no circumstances exceed the total Charges payable during the 12 month period immediately before the date on which the cause of action first arose or, if the cause of action arose during any period before 12 months had elapsed from the Agreement Date, during that shorter period.
- 19.7 You shall indemnify Us and keep Us fully and effectively indemnified on demand against any loss of or damage to any property or injury to or death of any person caused by any negligent act or omission or wilful misconduct of You, Your employees, agents or sub-contractors.

**22 Miscellaneous**

- 22.1 We may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of Our rights or obligations under this Agreement. You may not assign, transfer, charge, subcontract or deal in any other manner with all or any of Your rights or obligations under this Agreement without Our prior written consent.
- 22.2 You agree to comply (or procure compliance of Your employees, subcontractors and representatives where appropriate) with the Data Protection Act 1998, and You shall indemnify Us against all costs, claims, damages and expenses incurred by Us which are caused by Your breach of this clause 22.2.
- 22.3 All notices given under this Agreement shall be in writing and sent by first class prepaid post or delivered by hand to the other party at its address stated in the Quote (or at such other address as that party has previously notified to the other in writing as its address for service). Any such notice will be deemed to have been served immediately if delivered by hand or in the case of delivery by post, two (2) Business Days after posting.
- 22.4 Nothing in the Agreement is intended to, or shall operate to, create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name of/on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).
- 22.5 A person who is not a party to the Agreement shall not have any rights in connection with it.
- 22.6 No variation of this Agreement shall be valid unless it is in writing and signed by, or on behalf of, each of the parties.
- 22.7 Failure to exercise, or any delay in exercising, any right or remedy provided under the Agreement or by law shall not constitute a waiver of that right or remedy, nor shall it restrict further exercise of that (or any other) right or remedy.
- 22.8 If any provision of this Agreement is found by any court or other authority of competent jurisdiction to be illegal, invalid or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of this Agreement, but that shall not

**20 Force Majeure**

Neither party shall be liable for any failure or delay in performing its obligations under this Agreement to the extent that such failure or delay is caused by events, circumstances or causes beyond its reasonable control, and in such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed, provided that if the period of delay or non-performance continues for six (6) weeks, the party not affected may terminate this agreement by giving ten (10) Business Days' written notice to other party.

**21 Confidentiality**

- 21.1 Neither party shall, during or a period of five (5) years after termination of this Agreement, without the prior written consent of the other party, use or disclose to any other person any information of the other party which is identified as confidential or which is confidential by its nature.
- 21.2 Each party shall on demand and on termination of this Agreement surrender to the



affect the legality, validity or enforceability of any other provision of this Agreement.

22.9 This Agreement constitutes the entire agreement between Us and You. You acknowledge that you have not relied on any statement, promise or representation made or given by Us or on Our behalf which is not set out in this Agreement.

22.10 This Agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one Agreement. Transmission of an executed counterpart of this Agreement (but for the avoidance of doubt not just a signature page) by (a) fax or (b) email (in PDF,

JPEG or other agreed format) shall take effect as delivery of an executed counterpart of this Agreement. If either method of delivery is adopted, without prejudice to the validity of the Agreement thus made, each party shall provide the others with the original of such counterpart as soon as reasonably possible thereafter.

22.11 This Agreement and any non-contractual obligations in connection with it shall be governed by and construed in accordance with English law and the parties submit to the exclusive jurisdiction of the English courts.

## TERMS AND CONDITIONS FOR THE SUPPLY OF SUPPORT SERVICES

### 1 Definitions and Interpretation

1.1 In this Agreement unless the context otherwise requires the following expressions have the following meanings:

**"Additional Supported Hardware"** has the meaning given in clause **Error! Reference source not found.**

**"Audio Visual Support Service"** means the Services described as such in the Services Overview.

**"Basic Service Desk"** means the Services described as such in the Services Overview.

**"Business Day"** means a day other than a Saturday, Sunday or a public holiday in the UK.

**"Commencement Date"** means the earlier of:

- (a) the date of counter-signature of this Agreement;
- (b) the date on which We issue a written acceptance of Your Order (which may be by email);
- (c) the date on which You agree Our Final Quote (which We may issue following any Quote Verification Audit); or
- (d) the date on which We take steps to commence the provision of the Support Services.

**"Confidential Information"** means all information obtained by one party from the other pursuant to this Agreement which is expressly marked as confidential or which is manifestly of a confidential nature or which is confirmed in writing to be confidential within 7 days of its disclosure.

**"Control"** has the meaning given in section 1124 of the Corporation Tax Act 2010.

**"Due Date"** has the meaning given in clause 6.2.

**"Final Quote"** has the meaning given in clause 4.5.

**"Hardware Support Service"** means the Services described as such in the Service Overview.

**"Initial Support Period"** means the initial period of this Agreement as specified in the Order.

**"Location"** means Your premises (or such other location as the parties shall agree) in which the Supported Hardware is installed as specified in the Order.

**"Network Support Service"** means the Services described as such in the Services Overview.

**"Quote Verification Audit"** has the meaning given in clause 4.1.

**"Service Levels"** means the service levels corresponding to the Support Services, as set out in the Services Overview and/or otherwise specified in the Order.

**"Services Overview"** means the services overview document at Part 3 of this Agreement.

**"Support Charge"** means the periodic charge for the Support Services specified in the Order as varied from time to time pursuant to clause 6 or as shall from time to time be agreed in writing between the parties.

**"Supported Hardware"** means the computer equipment specified in the Order (or as otherwise agreed between the parties in writing from time to time) and the Additional Supported Hardware and such additions and changes thereto as shall from time to time be agreed in writing between the parties.

**"Support Hours"** means the hours specified as such in the Order.

**"Support Period"** means the duration of Our obligation to provide Support Services to You under this Agreement.

**"Support Services"** means the Support Services to be provided under this Agreement as set out in the Order, which may include (but shall not be limited to) some or all aspects of the Basic Service Desk, Technical Support Onsite, Hardware Support Service, Network Support Service, Wireless Support Service, Audio Visual Support Service and/or Tablet Technical Support Service (each as more particularly described in the Services Overview) (as the case may be).

**"Third Party Supplies"** means any supplies, equipment or other materials to be provided by a third party to this Agreement in

conjunction with the Hardware, as stated in the Order.

**"Wireless Support Service"** means the Services described as such in the Services Overview.

1.2 In this Agreement:

- (a) reference to any statute or statutory provision includes a reference to that statute or statutory provision as from time to time amended extended or re-enacted;
- (b) words importing the singular include the plural words importing any gender include every gender and words importing persons include bodies corporate and unincorporate; and (in each case) vice versa;
- (c) any reference to a party to this Agreement includes a reference to his successors in title and permitted assigns;
- (d) the headings to the clauses are for ease of reference only and shall not affect the interpretation or construction of this Agreement; and
- (e) any schedules to these Support Services Terms form part of these Support Services Terms.

## 2 Basis of this Agreement

2.1 These Support Services Terms, the Order and the applicable sections of the Services Overview and Service Levels, (together, this **"Agreement"**) set out the terms and conditions on which We will supply the Support Services to You.

2.2 The person signing this Agreement warrants that he/she has the authority to bind the Customer.

2.3 The Order constitutes an offer by You to purchase the Support Services in accordance with these Support Services Terms. You are responsible for ensuring that the terms of the Order are complete and accurate.

2.4 In the event of any conflict between any of the Order, these Support Services Terms and the Services Description and Service Levels, the following order of precedence shall apply:

- (a) the Order;
- (b) these Support Services Terms;
- (c) the Services Description and Service Levels.

## 3 Commencement and duration

This Agreement shall commence on the Commencement Date. This Agreement shall continue for the Initial Support Period and shall remain in force thereafter unless or until:

- (a) renewed for a further fixed term by agreement between the parties; or
- (b) terminated by either party giving to the other not less than one hundred and twenty (120) days' written notice of termination expiring on the last day of the Initial Support Period or at any time thereafter,

but shall be subject to earlier termination as provided elsewhere in this Agreement.

## 4 Verification of Quotes

4.1 Unless we have already done so by the date of this Agreement, we may (at our sole discretion), before commencing the supply of the Support Services, carry out an audit (which may include an inspection of the Supported Hardware) in order to:

- (a) verify the information that You supplied in the Order;
- (b) verify that the Support Services that You have requested are feasible and/or appropriate; and
- (c) identify any factors that might adversely affect Our ability to provide, and/or increase Our costs of providing, the Support Services to You; and/or
- (d) satisfy Ourselves of the condition of the Supported Hardware,

("Quote Verification Audit").

4.2 You shall provide or procure the provision to Us of all necessary assistance and access to premises as We may reasonably require in order to carry out such Quote Verification Audit.

4.3 Following any Quote Verification Audit, We may (at Our sole discretion):

- (a) decline to provide some or all of the Support Services;
- (b) recommend changes to the Support Services;
- (c) adjust the Charges for some or all of the Support Services;

- (d) require You to take reasonable steps (at Your own expense) to remedy any defects, faults and/or damage to the Supported Hardware to Our satisfaction before we will agree to provide the Support Services in respect of such item(s) of Supported Hardware;
- (e) take reasonable steps Ourselves to remedy any such defects, faults and/or damage to the Supported Hardware to Our satisfaction before we will agree to provide the Support Services in respect of such item(s) of Supported Hardware (and We shall be entitled to charge for such steps in accordance with Our standard rates in force from time to time or as otherwise agreed between the parties ); or
- (f) agree to provide the Support Services in respect of any Supported Hardware affected by defects, faults and/or damage on the basis that such Support Services will not cover resolution or management of the identified defects, faults and/or damage.
- 4.4 If following completion of, or during the course of, any steps taken pursuant to clause 4.3(d) or 4.3(e) We reasonably determine that such steps have been or will be insufficient to remedy the relevant defects, faults and/or damage, We may proceed on the basis of any of the other options set out in clause 4.3.
- 4.5 If, following the Quote Verification Audit, any changes to the Support Services and/or the Charges are required, or the Support Services will become subject to any additional conditions, We will promptly send you a revised quote reflecting the same ("**Final Quote**"). If:
- (a) You are happy to proceed with the Support Services on the basis of the Final Quote, You must sign and return the Final Quote and return it to Us, at which point the Final Quote shall be deemed to replace the Order (and references to the Order in this Agreement shall be deemed to refer to the agreed Final Quote).
- (b) You do not wish to proceed with the Support Services on the basis of the Final Quote, you may terminate this Agreement with immediate effect, and without any liability to Us, by giving Us written notice.
- 5 Support Services**
- 5.1 During the continuance of this Agreement we shall provide the Support Services as set out in the Order.
- 5.2 We shall provide the Support Services in conjunction with any applicable Service Levels set out in the Service Overview and/ or the Order.
- 5.3 Where We become aware of hardware at the Location which is not included in the Supported Hardware and in respect of which You request any maintenance services ("**Additional Supported Hardware**") We will, subject to clause 4, provide the Support Services in respect of the Additional Supported Hardware in the same way as in respect of the Supported Hardware and charge for it in accordance with any quote agreed with You. Such additional charges shall become payable from the date on which the Support Services commence in respect of such Additional Supported Hardware. Thereafter such Additional Supported Hardware shall form and for all purposes be considered part of the Supported Hardware, and such additional charges shall form and for all purposes be considered part of the Support Charge.
- 5.4 Where we provide Technical Support Onsite, any schedule of visits shall be subject to change on reasonable notice from Us to You at any time, and We reserve the right to change any named engineer at our sole discretion.
- 6 Charges**
- 6.1 In consideration of the Support Services You shall (unless otherwise provided in the Order) pay the Support Charge:
- (a) annually in advance in respect of the Initial Support Period and/or any subsequent fixed term agreed in accordance with clause 3(a), or
- (b) monthly in advance in the event that the Agreement automatically continues beyond the Initial Support Period or any subsequent fixed term (other than through renewal for a further fixed term) in accordance with clause 3.
- No payment shall be considered made until it is received by Us in cleared funds. All payments shall be made in the manner specified in the relevant invoice.
- 6.2 Any charges payable by You hereunder in addition to the Support Charge shall be paid (unless otherwise provided elsewhere in this

Agreement) within fourteen (14) days after receipt of Our invoice therefor (the end of such period being the "**Due Date**").

6.3 We shall be entitled at any time after the expiry of the Initial Support Period (or any subsequent fixed term agreed in accordance with clause 3(a)) to increase the Support Charge by giving You not less than ninety (90) days' prior written notice. Where and whenever such notice is given You shall have the right to terminate this Agreement as from the date on which such notice expires by giving Us written notice of termination not less than thirty (30) days before such date.

6.4 The Support Charge and any additional charges payable under this Agreement are exclusive of Value Added Tax which shall be paid by You at the rate and in the manner for the time being prescribed by law.

6.5 If any sum properly due and payable under this Agreement is not paid within fourteen (14) days after the Due Date then (without prejudice to Our other rights and remedies) We reserve the right to charge interest on such sum on a day to day basis (as well after as before any judgment) from the Due Date to the date of actual payment (both dates inclusive) at the rate of six per cent (6%) above the base rate of the Bank of England (or such other London Clearing Bank as We may nominate) from time to time in force compounded quarterly. Such interest shall be paid on demand by Us. In addition or in the alternative (at Our option), We may, by not less than seven (7) days' written notice of its intention to do so, suspend the provision the Support Services until such time as the overdue payment is made.

6.6 We may at any time set off any liability of You to Us against any liability of Us to You, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this Agreement. Any exercise by Us of Our rights under this clause shall not limit or affect any other rights or remedies available to Us under this Agreement or otherwise.

## 7 Exceptions

7.1 The Support Services exclude any maintenance of the Supported Hardware which is necessitated as a result of any cause other than fair wear and tear (or necessitated as a result of Our neglect or fault). In particular, the Support Services exclude maintenance of the Supported Hardware which is necessitated as a result of (but without limitation):

(a) failure or fluctuation of electric power air conditioning humidity

control or other environmental conditions; or

(b) accident transportation neglect misuse or default of You or Your employees or sub-contractors, or any third party; or

(c) any fault in any attachments or associated equipment (whether or not supplied by Us) which do not form part of the Supported Hardware; or

(d) act of God, fire, flood, war, act of violence or any other similar occurrence; or

(e) any attempt by any person other than Our personnel or authorised sub-contractors to adjust, repair or maintain the Supported Hardware; or

(f) any head crash or failure of fixed or removable storage media.

7.2 We reserve the right to withhold Tablet Technical Support Services where the requirement for the Customer to use protectors as set out in clause 10.1(r) has not been followed.

7.3 We will (if We are reasonably able to do so) at Your request and expense repair or replace any part of the Supported Hardware which has failed due to a cause other than fair wear and tear or due to Our neglect or fault subject to You accepting Our corresponding written quotation prior to the commencement of work.

7.4 The Support Services also exclude:

(a) the provision of services other than at the Location (or such other location as We shall have approved in writing);

(b) repair or renewal of disk packs print cartridges or other consumable supplies;

(c) (unless otherwise set out in the Order) maintenance or support of the operating system or any other software operating on the Supported Hardware;

(d) electrical or other environmental work external to the Supported Hardware;

(e) maintenance of any attachments or associated equipment not supplied by Us and which do not

form part of the Supported Hardware; or

- (f) recovery or reconstruction of any data or programs lost or spoiled as a result of any breakdown of or fault in the Supported Hardware.

## 8 Additional Services

8.1 We reserve the right to make an additional charge in accordance with Our standard scale of charges in force from time to time (or, if different, any quote agreed with You) for service visits:

- (a) made at Your request by reason of any fault in the Supported Hardware due to causes not covered by the Support Services; or
- (b) made at Your request but which We find are frivolous or not necessary in order to enable Us to comply with Our obligations under this Agreement.

## 9 Warranties

9.1 We warrant that the Support Services will be performed:

- (a) by an appropriate number of suitably qualified and experienced personnel;
- (b) using all reasonable skill and care; and
- (c) in accordance with all applicable laws and regulations in force in the UK from time to time.

## 10 Customer's obligations

10.1 During the continuance of this Agreement You shall:

### Use and care of the Supported Hardware

- (a) ensure that proper environmental conditions are maintained for the Supported Hardware in accordance with the manufacturer's relevant specifications and shall maintain in good condition the accommodation of the Supported Hardware, the cables and fittings associated therewith and the electricity supply thereto;
- (b) not make any modification to the Supported Hardware without Our prior written consent save for the installation of Additional Supported Hardware in accordance with clause

**Error! Reference source not found.;**

- (c) keep and operate the Supported Hardware in a proper and prudent manner in accordance with the manufacturer's operating instructions and ensure that only competent trained employees (or persons under their supervision) are allowed to operate the Supported Hardware;

- (d) ensure that the external surfaces of the Supported Hardware are kept clean and in good condition and shall carry out any minor maintenance recommended by Us and/or the manufacturer from time to time;

- (e) save as aforesaid, not Yourself attempt to adjust, repair or maintain the Supported Hardware and shall not request, permit or authorise anyone other than Us to carry out any adjustments, repairs or maintenance of the Supported Hardware;

- (f) use on the Supported Hardware only such operating supplies as We and/or the manufacturer shall recommend in writing;

- (g) not make any movement of those items of the Supported Hardware specified as not to be moved in the Order nor remove any of the Supported Hardware from the Location without Our prior written consent;

- (h) not use in conjunction with the Supported Hardware any accessory, attachment or additional equipment other than that which has been supplied by or approved by Us in writing;

### Access

- (i) at all times for the Support Services where we require urgent access in order to fulfil Our obligations under this Agreement and for all other services upon reasonable notice provide Us with full and safe access to the Supported Hardware for the purposes of this Agreement;

- (j) provide adequate working space around the Supported Hardware for the use of Our personnel and shall make available such reasonable facilities as may be requested from

time to time by Us for the storage and safekeeping of test equipment and spare parts;

- (k) provide a suitable vehicle parking facility for use by Our personnel which is free from any legal restrictions and immediately close to the Location and the place where spares are held in accordance with clause 10.1(j) above;
- (l) ensure in the interests of health and safety that Our personnel or sub-contractors while on Your premises for the purposes of providing or in connection with the Support Services are at all times accompanied by a member of Your staff familiar with Your premises and safety procedures;

#### Notification and information

- (m) promptly notify Us if the Supported Hardware needs maintenance or is not operating correctly;
- (n) subject to clause 14 make available to Us access to such of Your programs, operating manuals and information as may be reasonably necessary to enable Us to perform Our obligations hereunder and shall if requested by Us provide staff familiar with Your programs and operations which staff shall co-operate fully with Our personnel in the diagnosis of any failure or incorrect operation of the Supported Hardware. In this regard We shall only access such programs and materials to the extent strictly necessary for the provision of the Support Services;
- (o) make available to Us free of charge all facilities and services reasonably required by Us to enable Us to perform the Support Services including without limitation print-outs, data preparation, office accommodation, typing and photocopying;
- (p) in the event that We are requested to supply any Support Services in respect of any Additional Supported Hardware advise Us forthwith of the date of installation of such item of Additional Supported Hardware at the Location;

#### Miscellaneous

- (q) provide such telecommunication facilities as are reasonably required by Us for testing and diagnostic purposes at Your expense;
- (r) in relation to Tablet Technical Support Services, ensure that screen protectors and protective cases approved by Us are used in respect of all Supported Hardware for which the Tablet Technical Support Services are to be provided;
- (s) keep full security copies of Your programs, databases and computer records in accordance with best computing practice; and
- (t) if You are a school, in the event of any change in Your legal status which would result in Your activities being carried on by a different entity (including without limitation where you are to convert to academy status), use best endeavours to procure the novation of this Agreement from You to Your successor entity, and shall indemnify Us for any liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs) that We suffer as a result of any failure to procure and/or delay in procuring such novation.

### **11 Electromagnetic compatibility and Telecommunications**

- 11.1 In this clause the expression "**Electromagnetic Hardware**" means any part or parts of the Supported Hardware which are electric or electronic and covered by the Electromagnetic Compatibility Regulations 2006 as amended, and "**Relevant Hardware**" means any part of the Supported Hardware which is intended to be connected to any telecommunication system which is or is to be connected to a public telecommunication system.
- 11.2 We warrant to You that at the date hereof all the Electromagnetic Hardware supplied to You by Us under this Agreement complies fully with the Electromagnetic Compatibility Regulations 2006 as amended, and the Radio Equipment and Telecommunications Terminal Equipment Regulations 2000, as appropriate.
- 11.3 You undertake to Us that You will not make any modification to the Electromagnetic Hardware without Our prior written consent.

- 11.4 We warrant to You that at the date hereof all the Relevant Hardware supplied to You by Us is approved by the Secretary of State for Trade and Industry for connection to the telecommunication systems specified in the instructions for use of the Relevant Hardware subject to the conditions set out therein but do not warrant the continuance of any such approval.
- 11.5 If after the date hereof the Secretary of State for Trade and Industry or any person to whom he has delegated his powers requires the Relevant Hardware or any part thereof to be modified as a condition of the continuance of any such approval We reserve the right to make such modification at Your expense.
- 11.6 We warrant that at the date hereof all the Relevant Hardware supplied to You by Us complies fully with the Radio and Telecommunications Terminal Hardware Regulations 2000, as amended, and the Radio Hardware and Telecommunications Terminal Hardware Regulations 2000, as appropriate.
- 11.7 If You connect the Relevant Hardware to any telecommunication system You shall be responsible for obtaining the consent of the owner of that system (if necessary) to such connection and for complying with all conditions relating thereto.
- 11.8 You undertake to Us that You will not make any modification to the Relevant Hardware without Our prior written consent.
- 11.9 Where any data transmission speeds are given by the Supplier in relation to the Supported Hardware such speeds are at all times subject to any conditions attached to the use of the relevant modem, cabling or telecommunication equipment at the speeds indicated and to the capability of such modem, cabling or other telecommunication equipment to achieve such speeds.

## 12 Meetings and Advice

- 12.1 Representatives of You and of Us including but not limited to Your Operations Supervisor and Our Services Supervisor shall meet from time to time as set out in the Order (or as otherwise agreed with You from time to time) to assess all aspects of the workings of this Agreement and the reliability of the Supported Hardware.
- 12.2 At such meetings or at other times We may recommend to You ways of improving the reliability of the Supported Hardware.

## 13 Termination

- 13.1 Notwithstanding anything else contained herein, this Agreement may be terminated:
- (a) forthwith by Us on giving notice in writing to You if You fail to pay any undisputed sum due under the terms of this Agreement (otherwise than as a consequence of any default on Our part) and such sum remains unpaid for fourteen (14) days after written notice from Us requiring such sum to be paid and referring to this clause 13.1(a); or
  - (b) by You forthwith on giving notice in writing to Us if the Supported Hardware or a material part thereof is lost, stolen, destroyed or damaged beyond economic repair; or
  - (c) forthwith by either party on giving notice in writing to the other if the other party is in material breach of any term of this Agreement (other than any failure by You to make any payment hereunder in which event the provisions of clause 13.1(a) above shall apply) and (in the case of a breach capable of being remedied) shall have failed to have remedied the same within thirty (30) days of receiving a written notice requiring it to do so; or
  - (d) forthwith by either party on giving notice in writing to the other if the other party shall have a receiver or administrative receiver appointed over it or over any part of its undertaking or assets, or shall pass a resolution for winding-up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction), or a court of competent jurisdiction shall make an order to that effect or if the other party shall become subject to an administration order or shall enter into any voluntary arrangement with its creditors or shall cease or threaten to cease to carry on business.
  - (e) forthwith by Us on giving notice in writing to You in the event of any change of Control of the Customer or if You are a school, in the event of any change in Your legal status which would result in Your activities being carried on by a different entity.



13.2 Any termination of this Agreement howsoever occasioned shall not affect any accrued rights or liabilities of either party nor shall it affect the coming into force or the continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.

13.3 On the termination of this Agreement other than by reason of Your own material breach, non-payment or insolvency, You shall be entitled to reimbursement of such aspects of the Support Charges as have been paid in advance and relate to Support Services which will not now be provided, such reimbursement to be calculated on a pro rata basis.

## 14 Force Majeure

Neither party shall be liable for any failure or delay in performing its obligations under this Agreement to the extent that such failure or delay is caused by events, circumstances or causes beyond its reasonable control, and in such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed, provided that if the period of delay or non-performance continues for six (6) weeks, the party not affected may terminate this agreement by giving 10 (ten) Business Days' written notice to other party.

## 15 Confidentiality and Data Protection

15.1 Neither party shall, during or for a period of five (5) years after termination of this Agreement, without the prior written consent of the other party, use or disclose to any other person any information of the other party which is identified as confidential or which is confidential by its nature.

15.2 Each party shall on demand and on termination of this Agreement surrender to the other party all materials relating to such confidential information in its or its personnel's, agents' or representatives' possession.

15.3 In performing the Support Services under this Agreement We may process (albeit for diagnostic or investigative purposes only) personal data belonging to You. We hereby warrant to You that in such circumstances We will in respect of such personal data observe all the obligations pertaining to a data processor under the Data Protection Act 1998 and will indemnify You against all breaches of the said Act by Us in respect of Your data.

15.4 In particular We will:

- (a) act only on Your instructions in processing any of Your data;
- (b) only employ staff to process such data under this Agreement as are committed to the confidentiality of Your data;
- (c) take all required measures to safeguard the data;
- (d) not sub-contract or otherwise bring in non-employees to process Your data under this Agreement without Your prior agreement;
- (e) provide reasonable assistance to You in carrying out Your data security obligations required by the Data Protection Act 1998 as from time to time amended in connection with the Support Services under this Agreement;
- (f) not process the data otherwise than in order to provide the Support Services;
- (g) not keep any of Your data beyond the period necessary to complete Our obligations under this Agreement.

15.5 You agree to comply (or procure compliance of Your employees, subcontractors and representatives where appropriate) with the Data Protection Act 1998, and You shall indemnify Us against all costs, claims, damages and expenses incurred by Us (except to the extent that the same arise as a result of any breach of Our obligations under this clause 14) which are caused by or arise as a result of or in connections with Your breach of this clause 15.5.

## 16 Customer's warranty

You hereby warrant to Us that You have not been induced to enter into this Agreement by any prior representations or warranties whether oral or in writing except as specifically contained in this Agreement and You hereby irrevocably and unconditionally waive any right You may have to claim damages for any misrepresentation not contained in this Agreement or for breach of any warranty not contained herein (unless such misrepresentation or warranty was made fraudulently and was relied upon by You) and/or to rescind this Agreement.

## 17 Liability

17.1 We do not exclude or limit Our liability for: death or personal injury caused by Our negligence; fraud or fraudulent

	misrepresentation; or any breach of any implied terms which cannot be excluded or limited at law.	17.6	Subject to clause 19.1 Our total liability to You in respect of all other losses arising under or in connection with this Agreement whether in contract, tort (including negligence) breach of statutory duty or otherwise shall in no circumstances exceed the total Support Charge paid or payable in the Initial Support Period.
17.2	We shall not be liable for any delay or failure to perform Our obligations for any cost increase under this Agreement caused by Your delay or failure to perform Your obligations, or due to any failure or delay of any third party to supply or deliver Third Party Supplies.	17.7	You shall indemnify Us and keep Us fully and effectively indemnified on demand against any loss of or damage to any property or injury to or death of any person caused by any negligent act or omission or wilful misconduct of You, Your employees, agents or sub-contractors.
17.3	Subject to clause 19.1 We are under no circumstances liable to You, whether in contract, tort (including negligence), breach of statutory duty or otherwise arising under, or in connection with this Agreement for:		
	(a) any loss of profit, business, revenue or sales;		
	(b) loss of business opportunity;		
	(c) any loss, corruption or degradation of data;		
	(d) loss of goodwill; or		
	(e) any indirect or consequential losses.		
17.4	Subject to the provisions of clauses 15.3 and 15.4, We shall not be liable for any loss or damage sustained or incurred by You or any third party (including without limitation any loss of use of the Supported Hardware or loss or corruption of Your programs or data) resulting from:	18	<b>Miscellaneous</b>
	(a) any breakdown of or fault in the Supported Hardware unless such breakdown or fault is caused by the negligence or wilful misconduct of Us, Our employees, agents or sub-contractors, or to the extent that such loss or damage arises from any unreasonable delay by Us in providing the Support Services and then only to the extent not excluded by this Agreement; or	18.1	We may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of Our rights or obligations under this Agreement. You may not assign, transfer, charge, subcontract or deal in any other manner with all or any of Your rights or obligations under this Agreement without Our prior written consent.
	(b) any inherent defect or pre-existing defect in any Supported Hardware which We did not originally supply to You.	18.2	All notices given under this Agreement shall be in writing and sent by first class prepaid post or delivered by hand to the other party at its address stated in the Order (or at such other address as that party has previously notified to the other in writing as its address for service). Any such notice will be deemed to have been served immediately if delivered by hand or in the case of delivery by post, two (2) Business Days after posting.
17.5	We shall not be liable to You for any loss arising out of any failure by You to keep full and up-to-date security copies of the computer programs and data You use in accordance with best computing practice, nor for any loss arising out of Your failure to implement a recommendation We make to You as to increasing the reliability of the Supported Hardware in accordance with clause 12.2 hereof.	18.3	Nothing in the Agreement is intended to, or shall operate to, create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name of/on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).
		18.4	A person who is not a party to the Agreement shall not have any rights in connection with it.
		18.5	No variation of this Agreement shall be valid unless it is in writing and signed by, or on behalf of, each of the parties.
		18.6	Failure to exercise, or any delay in exercising, any right or remedy provided under the Agreement or by law shall not constitute a waiver of that right or remedy, nor shall it restrict further exercise of that (or any other) right or remedy.
		18.7	If any provision of this Agreement is found by any court or other authority of competent jurisdiction to be illegal, invalid or

unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of this Agreement, but that shall not affect the legality, validity or enforceability of any other provision of this Agreement.

18.8 This Agreement constitutes the entire agreement between Us and You. You acknowledge that you have not relied on any statement, promise or representation made or given by Us or on Our behalf which is not set out in this Agreement.

18.9 This Agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one Agreement. Transmission

of an executed counterpart of this Agreement (but for the avoidance of doubt not just a signature page) by (a) fax or (b) email (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of this Agreement. If either method of delivery is adopted, without prejudice to the validity of the Agreement thus made, each party shall provide the others with the original of such counterpart as soon as reasonably possible thereafter.

18.10 This Agreement and any non-contractual obligations in connection with it shall be governed by and construed in accordance with English law and the parties submit to the exclusive jurisdiction of the English courts.