

Mason Information Technologies Limited

Support Terms and Conditions

1. Definitions

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

"The Charges" means the Technical Support Fee, the Price of the Equipment and all charges for additional services agreed to be performed by the Company for the Client;

"The Client" means []

"Commencement Date" means the date set out in section B on the first page of this Agreement;

"The Company" means Mason Information Technologies Limited;

"Confidential Information" Means any and all information acquired by either Party about the other Party's business and/or given by one Party to the other Party and/or generated by either Party from the other Party's Confidential Information;

"Equipment" means any equipment, products, software proprietary to third parties and/or goods ordered from the Company by the Client or to be supplied by the Company to the Client and listed at section C at the beginning of this Agreement;

"Fault" means any failure of the Supported Infrastructure or part of the Supported Infrastructure which causes it to fail to meet the features and functionality of its relevant accompanying written materials;

"Force Majeure Event" means any occurrence which delays or prevents any Party in performing any of its obligations under this Agreement which is beyond the control of, and without the fault or negligence of, such Party and which by the exercise of reasonable diligence it is unable to prevent or provide against including but not limited to war, civil war, act of God, fire, strikes, lockouts, insurrection riots, embargoes, unavailability of equipment or materials, wrecks or delays in transportation, requirements of regulations or any govern mental authority;

"Hours of Support" means the level of cover agreed between the Parties as set out in section B at the beginning of this Agreement;

"The Initial Period" means the period set out in section B at the start of this Agreement;

"Party" means either the Company or the Client and Parties means the Company and the Client;

"The Renewal Date" means each anniversary of the Commencement Date of this Agreement during the continuance of this Agreement;

"The Renewal Invoice" means the Invoice to be presented to the Client not less than 30 days prior to each Renewal Date;

"The Services" means the Services and/or work to be performed by the Company for the Client identified in section C at the beginning of this Agreement;

"Site" means the location and/or premises at which the Company is to deliver and/or install the Equipment and/or perform the Services as set out on the first page of this Agreement

"Supported Infrastructure" means the Client's internal data and communications infrastructure as defined by the Company in a specification agreed by the Client and signed by both Parties and annexed to this Agreement following a survey of the Client's network by the Company.

"The Technical Support Fee" means for the 12 months from the Commencement Date until the first Renewal Date the sum referred to as the initial support charge on the first page of this Agreement and after the Renewal Date for each subsequent 12 month period the sum referred to in the Renewal Invoice presented immediately before such 12 month period.

1.2 Interpretation

1.2.1 Reference to any gender shall include all genders. Words indicating a person shall include bodies of persons whether corporate or incorporate.

1.2.2 Reference to any statute or statutory provision includes a reference to the same as from time to time amended, extended, re-enacted or consolidated and all subordinate legislation made pursuant to it provided that either Party's liability is not increased and/or its rights under this Agreement are materially altered by such amendment, extension, re-enactment or consolidation.

1.2.3 Any reference in this Agreement to a clause or schedule is to a clause or schedule of this Agreement and any reference to a paragraph is to the paragraph of the schedule in which the reference is made unless otherwise stated.

1.2.4 The headings and table of contents of this Agreement shall not effect its construction or interpretation.

2. Basis of Contract and Term

2.1 This Agreement shall govern the arrangement between the Client and the Company to the exclusion of all other terms and/or conditions.

2.2 Orders placed by the Client leading to a Contract with the Company which is not expressly subject to this Agreement shall be subject to it.

2.3 Apart from any network services agreement between the Parties, this Agreement supersedes all previous terms and conditions and shall replace any terms and conditions previously notified to the Client.

2.4 This Agreement shall take effect from the Commencement Date and shall subject to clause 9 remain in force for the Initial Period and then continue in force unless terminated earlier in accordance with this Agreement or by either Party serving at least 90 (ninety) days prior written notice on the other Party to expire after the end of the Initial Period and on a Renewal Date.

3. The Services

3.1 The Client appoints the Company to supply the Equipment and to perform the Services and in consideration of payment of the Charges to the Company the Company shall perform the Services at the Site from the Commencement Date and supply the Equipment to the Site on the terms and conditions of this Agreement.

3.2 The Services shall be provided with reasonable care and skill and where applicable in accordance with a standard which as a minimum achieves compliance with the service levels set out in section D at the beginning of this Agreement. The support provided by the Company shall be to maintain the Supported Infrastructure at the operational level currently existing at the Commencement Date. The Services shall not include the Excluded Services although these may be performed by the Company by prior agreement at charges to be agreed.

3.3 The Excluded Services shall include (and the Services shall not include)

3.3.1 the support of non-Fault related calls to the Company (except for the five calls per calendar month of this Agreement allowed pursuant to the Technical Support standard cover)

3.3.2 support and/or assistance with the installation of new hardware and/or software or changes, modifications or updates to the existing functionality of the Supported Infrastructure and/or the addition of new functionality to the Supported Infrastructure

3.3.3 support outside the Hours of Cover and/or support on Site

3.3.4 support of faults with the Supported Infrastructure caused or resulting from wilful damage by the Client or a third party or the negligence of the client or a third party or use of equipment or software which is incompatible with the Supported Infrastructure

3.4 The Client acknowledges that the Company's success in achieving the service levels set out in this Agreement is dependent on the Client complying with its obligations under this Agreement.

4. The Equipment

4.1 Upon payment of the Price of the Equipment by the Client to the Company, the Equipment shall be supplied in accordance with the terms and conditions set out in Part 1 of Schedule A.

4.2 If the Services include support of the Equipment or support of any of the Supported Infrastructure such support shall be performed in accordance with the terms and conditions set out in Part 2 of Schedule A.

5. Charges and Payment

5.1 The Client shall pay the Technical Support Fee at the rate and at the manner set out in sections B and C at the beginning of this Agreement. The Company may vary the Technical Support Fee by up to 10% of the Technical Support Fee with effect from the first Renewal Date. The Company shall advise the Client prior to the presentation of the Renewal Invoice of any such variation.

5.2 The Client shall pay the Price of the Equipment in accordance with section A at the beginning of this Agreement in accordance with the terms in Part 1 of Schedule A.

5.3 All Charges for services additional to the Services shall be on a time and materials basis and are due 30 days from the date of the Company's Invoice. The charges for such additional services as at the date of this Agreement are set out in section G at the beginning of this Agreement but are subject to annual review at each Renewal Date.

5.4 All Charges payable hereunder are exclusive of Value Added Tax and any other sales tax and duties which may be chargeable, which shall be paid by the Client at the rate and in the manner for the time being prescribed by law.

5.5 Time for payment of all Charges shall be of the essence and no payment shall be deemed received by the Company until the Company in each case has received payment in full and cleared funds. All payments payable by the Client shall become due immediately on termination of this Agreement despite any other provisions.

5.6 If the Client fails to make payment of any Charges by the due date the Company may, without prejudice to any other rights or remedies it may have:-

5.6.1 charge interest (both before and after judgement) on the amount unpaid and which ever is the greater of the rate of 4% above the base rate from time to time of the Company's bank compounded with monthly rests, or the rate of interest prescribed by law and/or

5.6.2 withhold or suspend any and/or all of the services and/or delivery or installation of any and/or all of the Equipment.

5.7 All payments by the Client under this Agreement shall be made be without any deduction, counterclaim, set off and/or any other withholding of monies.

5.8 The Company shall be entitled but not obliged to set off any liability of the Client to the Company against any liability of the Company to the Client.

5.9 Except as otherwise expressly stated the Charges shall be deemed to be inclusive of all telephone, transport, postage, courier, storage, copying and printing charges and accommodation and subsistence, travel and other costs and expenses associated with the provision of the Services.

5.10 In respect of on-Site consultancy or support the Company may charge for travel time to the Site. The Client shall reimburse the reasonable travel and subsistence expenses incurred by the Company up to limits agreed between the Parties in advance from time to time.

6. The Client's Obligations

6.1 The Client undertakes to promptly comply with any reasonable request by the Company for information including information concerning the Client's operations and activities as may be necessary for the Company to perform the Services. The Company shall give reasonable notice of any information it requires.

6.2 During the term of this Agreement the Client shall

6.2.1 ensure the Supported Infrastructure and Equipment are used in accordance with the Company's and/or the original supplier's instructions terms and conditions

6.2.2 to keep in full force and effect all telecommunications providers consents, licences and/or authorisations necessary for the use and operation of the Supported Infrastructure

6.2.3 not alter or modify the Supported Infrastructure or any of the Equipment unless permitted in advance by the Company

6.2.4 co-operate in so far as is reasonable with the Company's personnel in the diagnosis of any Fault in the Supported Infrastructure

6.2.5 make available to the Company all information, facilities and services reasonably required by the Company to enable it to perform the Services

6.2.6 have a suitably experienced employee present during the provision of the Services and such other personnel as the Company may reasonably require to carry out the Services, such employee and personnel to be familiar with the operation of the Supported Infrastructure and be empowered to make decisions on behalf of the Client

6.2.7 maintain a secure copy of all essential data files and software to enable the satisfactory and timely reinstatement of the same in the event that any or all of them are corrupted or lost for any reason whatsoever.

6.2.8 ensure that all Company personnel required to visit the Site are informed before any visit of all relevant health and safety procedures and practices referable to the Site.

6.2.9 ensure that the Supported Infrastructure is kept in an appropriate environment, reasonably accessible for the Company and is supported by appropriate power and light supplies.

7. Liability

7.1 The Company shall have no liability for defective Equipment and/or Services where the defect has been caused or contributed to by the Client or a third party to the extent so contributed.

7.2 The Company shall have no liability to the Client if the Charges have not been paid in full by the due date for payment.

7.3 The Company shall have no liability for damage, loss, liability, claims, costs or expenses caused or contributed to by the Clients continued use of defective Equipment and/or Services after the defect has become apparent or suspected or should reasonably have become apparent to the Client.

7.4 The Client shall give the Company a reasonable opportunity to remedy any matter for which the Company is liable before the Client incurs any costs and/or expenses in remedying the matter itself. If the Client does not do so, the Company shall have no liability to the Client in relation to such matters.

7.5 The Company shall have no Liability to the Client for any:-

7.5.1 loss of profits and/or damage to goodwill.

7.5.2 pure economic and/or other similar losses.

7.5.3 special damages.

7.5.4 aggravated, punitive or exemplary damages.

7.5.5 consequential losses and/or indirect losses.

7.5.6 lose and/or corruption of data; and/or

7.5.7 business interruption, loss of business, loss of contracts, loss of opportunity and/or production.

7.6 The Client shall be under a duty to mitigate any loss, damage, costs or expenses that it may suffer.

7.7 The Company's total Liability to the Client in relation to any claim or series of linked claims shall not exceed 100 percentage of the Charges for Equipment and/or Services supplied by the Company to the Client during the 12 month period. For the purposes of this clause the 12 month period means the 12 month period prior to the date the Client notifies the Company in writing that they have a claim against the Company in relation to the Liability.

7.8 Each of the limitations and/or exclusions in this Agreement shall be deemed to be repeated and apply as a separate provision for each of ;

7.8.1 Liability in contract (including fundamental breach);

7.8.2 Liability in tort (including negligence);

7.8.3 Liability for breach of statutory duty; and

7.8.4 Liability for breach of common law and/or any other legal basis.

except that the clauses above placing financial caps on the Company's Liability shall apply once in respect of all the said types of Liability.

7.9 Nothing in this Agreement shall exclude or limit any Party's Liability for death or personal injury due to its negligence or any Liability which is due to its fraud or any other Liability which is not permitted to exclude or limit as a matter of law.

7.10 Save as expressly provided in this Agreement all warranties, terms, conditions and duties implied by law relating to fitness, quality or adequacy are excluded to the fullest extent permitted by law.

7.11 Nothing in this Agreement shall exclude or limit any statutory rights which cannot be excluded or limited due to the Client acting as a consumer. Any provision which would be void under any consumer protection legislation or other legislation shall to that extent have no force or effect.

8. Confidentiality and Data Protection

8.1 Neither Party shall directly and/or indirectly use and/or disclose to any third party the other Party's Confidential Information except in the proper performance of this Agreement.

8.2 The obligations of confidentiality and non-use set out above shall continue indefinitely except they shall not apply to information:

8.2.1 which the receiving Party proves by documentary evidence produced within 28 days of disclosure was already in its possession and at its free disposal prior to disclosure by the disclosing Party;

8.2.2 which the receiving Party proves by documentary evidence produced within 28 days of disclosure was developed by it without reference to any of the other Party's Confidential Information.

8.2.3 which is after the date of this Agreement disclosed to the other Party without any obligations of confidentiality by a third party who is not in breach of any duty of confidentiality in doing so;

8.2.4 which is or becomes generally available to the public through no default and/or omission on the receiving Party's part; or

8.2.5 to the extent it is required to be disclosed by law and/or the rules of any recognised stock exchange and/or regulatory authority on condition that the receiving Party gives the other Party as much advance notice of such disclosure as soon as possible.

8.3 The exceptions in clause 7.2 above shall not apply to any combination of features merely because individual features (but not the combination itself) fall within any one or more of such exceptions.

8.4 At the other Party's request made any time during the course of this Agreement and in any event upon termination of this Agreement for whatever reason each Party will deliver up to the other Party or at the Party's option destroy any and all materials containing the other Party's Confidential Information in whatever medium which is in that Party's possession, power or control except that each Party may retain one complete copy solely for archive purposes.

8.5 Each Party will be liable under this Agreement for the acts and/or omissions of any of its agents, employees or subcontractors as if they were its own acts and/or omissions under this Agreement.

8.6 Both Parties undertake to comply with the Data Protection Act 1998 ("the Act") and shall procure that its employees, agents and subcontractors shall observe the provisions of the Act (as applicable) or any amendments and re-enactments of the same.

8.7 The Company shall not store, copy, disclose or use personal data as defined in the Act ("Personal Data") except as necessary for the performance of its obligations under this Agreement or as otherwise expressly authorised in writing by the Client.

8.8 To the extent that Personal Data is held and/or processed by the Company, it shall perform secure back-ups of the same and store up-to-date back-ups of such Personal Data off-site and supply such Personal Data to the Client as requested by the Client in the format reasonably required by the Client.

8.9 Upon receipt or creation by the Company of any Personal Data and during any collection, processing, storage and transmission by the Company of such Personal Data the Company shall take all precautions reasonably necessary to preserve the integrity of such Personal Data and to prevent any corruption or loss of it.

8.10 The Company shall:

8.10.1 use all reasonable skill and care in relation to its processing of any Personal Data and shall use and process the same only for the purposes or in accordance with the terms of this Agreement and any other instructions received from the Client;

8.10.2 upon written request of the Client and at its cost promptly provide the Client with such copies of any Personal Data held by the Company in order to comply with any subject access request made under the Act;

8.10.3 upon receipt of any updating material from the Client in respect of any Personal Data held by the Company promptly modify the Personal Data in accordance with the updating material;

8.10.4 treat all Personal Data received from the Client in connection with this Agreement as part of the Confidential Information of the Client

8.10.5 take all reasonable steps to prevent any theft, loss or destruction of or unauthorised access to or use of the Personal Data and;

8.10.6 on expiry or termination (for whatever reason) of this Agreement, unless instructed otherwise or required by law to retain it, the Company shall promptly return to the Client all Personal Data held by the Company in connection with this Agreement together with any copies.

9. Termination

9.1 Either Party may immediately terminate this Agreement by written notice to the other Party if the other:-

9.1.1 fails to make any payment when due;

9.1.2 breaches the terms of this Agreement (and if remediable the breach has not been remedied within 14 days of receiving notice requiring it to be remedied);

9.1.3 persistently breaches any one or more terms of this Agreement;

9.1.4 ceases or threatens to cease to carry on business; and/or

9.1.5 is declared or becomes insolvent or bankrupt, a moratorium is declared in respect of any of its indebtedness, it enters into administration, receivership, administrative receivership or liquidation or threatens to do any of these things, takes or suffers any similar action in any jurisdiction or any step is taken including, without limitation, the making of an application or the giving of any notice by it or any person in respect of any of these circumstances;

9.1.6 appears reasonably by the other Party to be about to suffer any of the above events.

9.2 Upon termination of this Agreement the Company may withhold delivery of any undelivered Equipment and stop any Equipment in transit and/or may withhold the performance of any Services or additional services and/or cease Services in progress and all monies owed by the Client to the Company shall immediately become due and payable.

9.3 Upon termination of this Agreement for whatever reason the provisions of clauses [] shall continue in full force and effect in accordance with these terms and shall survive termination.

10. Dispute Resolution

10.1 If a dispute arises between the Parties in relation to the operation or the interpretation of this Agreement the Parties will attempt in good faith to reach settlement as soon as possible:

10.1.1 initially between the Company's support manager and the Client's nominated contact shown at the beginning of this Agreement (who shall be authorised to settle such a dispute);

10.1.2 If agreement has not been reached within 14 days of the meeting held in accordance with clause 10.1.1. either Party may give written notice to the other to request a meeting between the Managing Director of each Party (or equivalent officer) to seek to settle the dispute.

10.2 The Parties acknowledge and agree that the dispute resolution procedures set out in this clause will be followed prior to commencing any legal proceedings except nothing in this clause shall prevent either Party from issuing proceedings in a Court of law for recovery of a debt due to it or interim injunctive relief.

11. General

11.1 Force Majeure

11.1.1 The Company shall not be liable to the Client for any delay or failure in performing its obligations under this Agreement by reason of any Force Majeure Event.

11.1.2 If the Force Majeure Event causing such delay or failure continues for in excess of [] month(s) this Agreement may be terminated by the Client.

11.2 Waiver

11.2.1 no delay or omission of either Party in exercising any rights shall operate to impair or be construed as a waiver of such rights. No single or partial exercise or non-exercise of any rights shall in any circumstances preclude any other or further exercise of such right or the exercise of any other right.

11.2.2 any waiver of a breach or default of the terms of this Agreement shall not constitute a waiver of any subsequent breach or default.

11.3 No Agency

Nothing in this Agreement is intended to or shall operate to create a partnership, agency, employment or joint venture of any kind between the parties.

11.4 Severance and Invalidity

The invalidity, illegality or unenforceability of any of the provisions of this Agreement shall not affect the validity, legality or enforceability of the remaining provisions of this Agreement.

11.5 Variation

No purported variation of this Agreement shall take effect unless made in writing referring to this Agreement and signed by an authorised representative of each Party.

11.6 Assignment and Sub-Contracting

The Client shall not assign, charge, sub-contract, delegate, transfer, place in trust or dispose of this Agreement and/or any of its rights or obligations under it. The Company shall be entitled to sub-contract or delegate the whole or any part of its obligations under this Agreement.

11.7 Third Party Rights

All third party rights are excluded and no third party shall have the right to enforce the terms of this Agreement. The rights of any third party to enforce this Agreement may be varied and/or extinguished by Agreement between the Parties without the consent of any such third party.

11.8 Notices and Service

Any notice under this Agreement shall be in writing and shall be deemed to have been duly given if sent or delivered to the Party concerned at the address set out on the first page of this Agreement or such other address as that Party may from time to time notify in writing and shall be deemed to have been served by registered post 48 hours after posting.

11.9 Law

This Agreement shall be governed by and construed in accordance with English law and the Parties agree to submit to the non-exclusive jurisdiction of the English Courts.

11.10 Covenant

During this Agreement and for a period of 6 months after termination of this Agreement neither Party shall employ or engage on any basis or attempt to do the same any of the other Party's personnel or sub-contractors who have been associated with the Services. Each Party agrees that if it employs or engages any person employed or engaged by the other and who is or has been in the previous 6 months associated with the Services it will pay to the other Party liquidated damages in an amount equal to fifty percent of the relevant person's annual salary or fee at the time of engagement and that this is a fair and reasonable estimate of the loss suffered as a result of the engagement.