

## Contract - Terms and Conditions

### General Terms

- \* Client shall ensure that any log on details or passwords issued to or used by Client in relation to the Services are not disclosed to unauthorised users or third parties.
- \* Client shall permit Coffee Cup Solutions Personnel remote access to the Supported System for the purpose of performing the Services.
- \* Where Coffee Cup Solutions is providing internet access as part of the Services, provision of the Services shall be contingent on Client providing continuous internet access to the Supported System and Client shall use all reasonable endeavors to ensure that such access is uninterrupted and error-free. Client acknowledges that Coffee Cup Solutions is not responsible for any failure to provide Services resulting from any interruption to the internet access.
- \* Where Coffee Cup Solutions is responsible for data back up as part of the Services, Client agrees to be responsible for maintaining a valid readable backup of any Client data, and shall make the same available to Coffee Cup Solutions in the event of any data loss.
- \* Client shall provide Coffee Cup Solutions and its Personnel with such access to the Client Site (or other premises, records and materials) sufficient to enable Coffee Cup Solutions to fulfill its obligations under this Agreement. Client shall advise Coffee Cup Solutions of any policies and security rules in force for the conduct of Personnel at the Client Site.
- \* Client shall make available personnel with suitable knowledge of the proper functioning of the Client and due authorisation to liaise with Coffee Cup Solutions to enable Coffee Cup Solutions to provide the Services and to co-operate fully with Personnel.
- \* Client shall at Coffee Cup Solution's request, make available to Coffee Cup Solutions, free of charge, a complete copy of the latest issue of all and any manuals, software disks and documentation relating to the Supported System.
- \* Client shall obtain at its own expense all necessary third party permissions which are outside the control of Coffee Cup Solutions that may be required to allow Coffee Cup Solutions to provide the Services.
- \* Client shall keep all Designated Devices in a suitable environment (as may be recommended by Coffee Cup Solutions) and replace any Designated Device which is beyond economic repair, subject to mutual agreement. Applicable Service Levels shall not apply to any item of Designated Devices not so replaced but Coffee Cup Solutions shall make reasonable commercial endeavours by providing Additional Engineering Services to remedy any Faults in such Designated Devices at Client's cost and expense.
- \* Client agrees that it shall not unreasonably or without due cause interrupt or interfere with Coffee Cup Solution's provision of the Services, notwithstanding Clients other rights and remedies.
- \* Client shall permit Coffee Cup Solutions to install such third party released service software packs as Coffee Cup Solutions may require from time to time and no additional costs shall be incurred by the Client for such third party released software packs, and Client agrees that where it refuses to do so Coffee Cup Solutions shall not be obliged to meet any applicable

Service Level. Where software is not provided by Coffee Cup Solutions, Client shall retain all original software operating and application system discs.

\* Client shall insure all Coffee Cup Solutions owned items detailed in the Order Form installed on the Client site for loss, damage, misuse and for reinstatement of no less than the value designated in the Order Form.

\* The foregoing obligations of the Client shall be subject to Coffee Cup Solution's performance of any of the same as part of the Services.

#### Payment Terms

\* In consideration of the provision of the Services Client shall pay Coffee Cup Solution's invoices for the Fees at the times stated in the Order Form without any set-off or deduction. Coffee Cup Solutions' invoices for any additional services are due and payable no later than thirty days from their applicable date.

\* Coffee Cup Solutions may withdraw or suspend the Services in the event that any payment is not settled by its due date, provided that Coffee Cup Solutions has given no less than 14 days notice of such non-payment to Client.

\* Overdue amounts shall bear interest in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 (as amended) such interest shall be calculated on a daily basis from the date on which payment was due to the date of actual payment, both dates inclusive.

#### Dispute Resolution

\* If a dispute arises between the parties any dispute which cannot be resolved within 7 days of first arising shall be escalated to the authorised representative of the parties (or person of equivalent status with authority given by a party to negotiate) in writing, and if it is not resolved within a further seven days, shall be escalated by notice in writing to the parties' senior management, without recourse to legal proceedings. Each party's authorised representatives will be nominated in writing from time to time.

\* The parties' senior management shall meet promptly to discuss the dispute and shall make all reasonable endeavours to resolve the dispute in good faith to their mutual satisfaction.

#### Term and Termination

\* This Agreement is effective from the Effective Date for the term listed on the Order Form ("the Initial Term") and shall then subsist for a further period or periods of one year (a "Subsequent Term") unless terminated by either party giving to the other 90 days' prior written notice expiring on the last day of the Initial Term or any Subsequent Term. No earlier than 90 days from the end date of the Initial Term (or any Subsequent Term), Coffee Cup Solutions may give Client notice of its proposed Fees for the Subsequent Term. Where these are accepted by Client, or in the absence of any notice to the contrary, these new Fees shall apply from the commencement of the Subsequent Term. Where Client notifies Coffee Cup Solutions that it does not accept the proposed Fees, Coffee Cup Solutions may at its option

give Client no less than 14 days notice of termination to expire on the last day of the Initial Term (or any Subsequent Term as applicable). In the event that Coffee Cup Solutions does not give notice of termination as aforesaid, the Agreement shall continue for the Subsequent Term on the basis of the then current Fees.

\* Either party shall be entitled to terminate this Agreement at any time without notice if the other party ceases or threatens to cease to carry on business; or the other party is unable to pay its debts

or enters into compulsory or voluntary liquidation (other than for the purpose of effecting a reconstruction or amalgamation in such manner that the company resulting from such reconstruction or amalgamation shall be bound by and assume that party's obligations hereunder) or compounds with or convenes a meeting of its creditors or has a receiver, manager or administrator appointed.

\* Either party may terminate this Agreement by written notice to the other if that other party is in breach of a material term of these

\* Terms and has not remedied such breach within 30 days of the date of a written notice requesting it to do so.

\* On request, and in any event on termination of this Agreement for whatever reason, in the absence of written consent of the other, each party shall deliver up to the other all confidential information of the other in its possession or under its control held in any tangible form and (to the extent not so comprised therein) all other documents and tangible property belonging to the other and, in the case of Coffee Cup Solutions, any document which Coffee Cup Solutions has produced specifically for Client and in the course of performing the Services which may be in Coffee Cup Solutions possession or under its control. Neither party shall thereafter, without the prior written consent of the other, use, make or retain copies of any such items nor use in any way any of the other's confidential information.

\* Coffee Cup Solutions will facilitate and assist in the transfer, removal or back-up of Clients data from Coffee Cup Solutions infrastructure upon expiry of the term of the Agreement, and will carry out such activities at the reasonable request of Client's nominated representative, such assistance to be provided as applicable and at Coffee Cup Solutions then current engineering support rates. In the event of termination of the Agreement by Client, Coffee Cup Solutions will at Clients request ensure that all Client data is removed from Coffee Cup Solutions infrastructure.

#### Force Majeure

\* For the purposes of this Agreement the expression "Force Majeure" shall mean any cause affecting the performance by a party of its obligations arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control including (but without limiting the generality thereof) governmental regulations, fire, flood, or any disaster or an industrial dispute affecting a third party for which a substitute third party is not reasonably available. In the case of either party such cause will only be considered Force Majeure if it is not attributable to the wilful act, neglect or failure to take reasonable precautions of that party, its servants, agents or employees.

\* Neither party shall in any circumstances be liable to the other for any loss of any kind whatsoever whether directly or indirectly caused to or incurred by the other party by reason of any failure or delay in the performance of its obligations hereunder which is due to Force Majeure or (in the case of Coffee Cup Solutions) which is due to a Force Majeure event affecting a third party provider to Coffee Cup Solutions.

#### Confidential Information

\* All information, know-how, drawings, specifications, documentation, software listings or code which Coffee Cup Solutions may have imparted and may from time to time impart to Client including, without limitation, relating to any methodology, diagnostic software or hardware or generally to the Services ("Coffee Cup Solutions Confidential Information") is confidential and Client agrees that it shall use Coffee Cup Solutions Confidential Information solely in accordance with the

provisions of this Agreement and that it shall not at any time during or after expiry or termination of this Agreement disclose the same whether directly or indirectly to any third party without Coffee Cup Solution's prior written consent.

\* Client further agrees that it shall not itself or through any subsidiary, agent or third party modify, vary, enhance, copy, sell, lease, license, sub-license or otherwise deal with any diagnostic software or hardware or variations, modifications, copies, releases, versions or enhancements thereof or, except as permitted by the law relating to this Agreement, have any software or other program written or developed for it based on any confidential information supplied to it by Coffee Cup Solutions.

\* All information relating to Client's business, including (without limitation) all know-how, drawings, specifications, documentation and software which Client may have imparted and may from time to time impart to Coffee Cup Solutions ("Client Confidential Information") is confidential and Coffee Cup Solutions agrees to keep all Client Confidential Information strictly confidential and not to disclose any Client

\* Confidential Information to any third party, save where prior authority in writing from a duly authorised representative of Client has been given to Coffee Cup Solutions. The foregoing provisions shall not prevent the disclosure or use by either party of any such information (i) which is as at the date of this Agreement or through no fault of that party hereafter enters into the public domain; (ii) which that party is required to by a legally competent body to disclose in connection with any court proceeding, arbitration or injunction; (iii) to its legal or other professional advisors from time to time under strict conditions of confidentiality.

#### Warranties

\* Both parties warrant and represent that they have full capacity and authority to enter into and perform this Agreement.

\* Client warrants that the performance by Coffee Cup Solutions of the Services will not cause Coffee Cup Solutions to infringe any third party rights supported System or any third party item supplied directly or indirectly by Client. Except as otherwise stated in this Agreement all terms, warranties and conditions, whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by law.

#### Entire Agreement

\* This Agreement constitutes the entire understanding between the parties relating to its subject matter and supersedes all prior representations, writing, negotiations, or understandings with respect hereto. No party has relied upon any representation or warranty except as expressly set out in this Agreement. Each party unconditionally waives any right it may have to either (i) claim damages against the other or (ii) rescind the Agreement, on the basis of any statement made by the other (whether made carelessly or not) not set out or referred to in this Agreement (or for breach of any warranty given by the other not so set out or referred to) unless such statement or warranty was made or given fraudulently.

#### Governing Law

\* This Agreement shall be governed by and construed in accordance with English law and subject to the exclusive jurisdiction of the English courts.