



EAMS™
GROUP

AN  **ARCADIS COMPANY**



HM Government
G-Cloud
Supplier

Trading Terms & Conditions Cloud Software





TRADING TERMS & CONDITIONS

G-Cloud 11

EAMS Group Cloud Software

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EAMS Group Trading Terms & Conditions

1. General Terms

1.1. “We” and “Us” means Enterprise AMS Group Limited (EAMS Group) or its subsidiaries including Rail Asset Management Solutions Limited, Level 33, 25 Canada Square, Canary Wharf, London E14 5LB, UK.

1.2. “You” means you the customer contracting to obtain goods or services from Us.

1.3. Where “You” means more than one person, each one of You is responsible, individually, for each of the obligations of all of You under this agreement.

1.4. We agree to supply You with the software licences or services (as appropriate) set out in the quotation or proposal for the price set out on the quotation or in our proposal and subject to the Terms set out in it, in this Agreement and in the other documents referred to in this Agreement and the quotation or proposal (as appropriate).

2. The Agreement

2.1. These Terms and conditions (including documents specifically referred to in it) are the whole of the Terms and conditions governing the agreement between Us, unless We both agree to any amendments in writing.

2.2. You confirm that You have told Us everything You know or suspect which may make the goods or services significantly more difficult for Us to make or carry out.

2.3. You confirm that You have checked the specifications set out in and attached to the quotation or proposal and that they are correct.



2.4. We cannot be held responsible for any statements We have not confirmed in writing. If the quotation or proposal contains that statement, or explicitly refers to the document containing it, then it becomes part of the contract and We will accept responsibility for it (subject to these Terms and conditions).

3. Definitions

3.1. Any rule of interpretation that is contrary to common sense does not apply to this contract. Any part of the contract in *italics* (like this) is not part of the contract, but is simply a comment.

3.2. The paragraph headings are merely a guide and are not intended to be a part of this Agreement (or any Agreement referred to in it).

4. Not Used

5. Amendments to Specifications and Cancellation

5.1. We may alter the specifications of the Goods, Software or Services from time to time so long as the alteration does not render the Goods, Software or Services any worse or materially different. If You request Us to alter the specification after the order has been placed We may consider doing so (at our discretion) but this may entail an increase in the price and in any case We will advise You within two weeks of Your request. A variation to the specification (including the price) (as opposed to a variation to the contract) is only valid where signed by one of our authorised staff.

5.2. If, after You have placed an order, You wish to cancel it, We may consider doing so (at our discretion) but if We agree, this may be subject to You paying Us our anticipated loss on cancellation (including loss of reasonable profit).

6. Rights of others and Permissions

6.1. If We have agreed that We are to do anything under this agreement on your instructions, and as a result We are in breach of any rights of anyone else (or anyone else threatens Us with proceedings for breach of their rights) You agree to indemnify Us against any loss We may suffer, including legal costs, in defending or resisting the proceedings or claim, or settling the proceedings or claim on legal advice. Your obligations under this clause will remain after the rest of the agreement has terminated whatever the reason for termination.

6.2. If You come across any circumstances which may lead to a claim under clause 6.1 above, You agree to tell Us about them as soon as possible.

6.3. If, as a result of such a claim or threat, We decide that it is no longer commercially sensible to proceed with your order, We may cancel the order in accordance with the provision set out below.

7. Intellectual Property

7.1. You acknowledge that any material of any nature which We provide You with, either under this agreement or otherwise (for example, quotations or other pre-contractual material) may contain intellectual property which is either our property or licensed to Us (including copyright, trade marks, registered and unregistered designs and patents). Nothing in this agreement is intended either

7.1.1. as a licence for You to use such intellectual property

7.1.2. or as a transfer of such intellectual property unless explicitly stated in writing.



9. Third Party Recommendations

9.1. As part of carrying out our obligations under this Agreement We may recommend or suggest that another person or company carries out some work. By making this recommendation or suggestion, We do not guarantee that work. We accept responsibility for that recommendation or suggestion only if, in all of the circumstances surrounding that recommendation or suggestion (and at the time it was made) We could not reasonably have made that recommendation or suggestion.

10. Unusual Circumstances

10.1. If circumstances arise which are largely beyond our control, and which make it no longer commercially sensible for Us to continue your order or project, We may cancel it on the Terms set out below:

10.2. If We decide to cancel it

10.2.1. We shall give You notice, and We shall not be responsible for any loss to You which arises because of that decision (although any other rights which You may have arising before We made that decision will still stand); and

10.2.2. You will pay Us a reasonable sum in relation to the proportion of your order which We have fulfilled.

11. Consequential Loss and Our Liability

11.1. Unless explicitly stated in the quotation in writing, We do not accept liability for consequential loss of any kind. WE HAVE PRICED THIS CONTRACT ON THE BASIS THAT CONSEQUENTIAL LOSS HAS BEEN EXCLUDED: IF YOU WISH US TO BEAR LIABILITY FOR CONSEQUENTIAL LOSS WE MAY CONSIDER DOING SO BUT ON THE BASIS THAT THE CONTRACT PRICE WILL HAVE TO BE INCREASED TO COVER THE INCREASED RISK, WHETHER OR NOT WE CHOOSE TO BEAR IT THROUGH OUR INSURANCE.

11.2 If We have not accepted a different level of liability as referred to in the quotation or our project documentation, our entire liability under this contract shall be limited to the value of

the goods or services provided under it (or, in the case of a breach of any of the Terms referred to in clause 16 below, the appropriate level of liability contained within those Terms).

11.3. Nothing at all in this agreement (which includes all documentation referred to in it) is designed or intended to reduce or restrict our liability for the death of or personal injury to anyone caused by our negligence or the negligence of anyone for whom We are responsible (which may include, for example, our employees, sub-contractors or agents)

12. Payment of Price

12.1. You must pay Us the price specified in the quotation, including any VAT which may apply in accordance with the Terms and on the dates contained in it (if no Terms or dates are referred to, the price is payable immediately).

12.2. If You fail to pay the whole or part of any sum You owe to Us (whether because of this agreement or not) by the time it comes due for payment, all sums which You owe to Us (whether because of this agreement or not) will become due for payment immediately, and We may issue court proceedings against You to recover them without giving You any further notice.

12.3. You must pay Us the whole of the amount due, and may not set off or deduct anything from this amount without our written permission.

12.4. Any sums which remain unpaid after they became due are subject to interest at a rate of 4% over the base rate of HSBC Bank plc from time to time, compounded monthly, both before and after judgement.



12.5. We may assign the benefit of any debt owed to Us by You to any third party at any time.

13. Guideline Definitions of Payment Terms

13.1. No Terms specified: payment is due in full on acceptance of the order;

13.2. "14 days": payment is due on the 14th day following the date an invoice is issued to You;

13.3. "On installation": payment is due in full immediately upon practical completion (as defined below) of installation or availability of the Service

13.4. "lease": means that

13.4.1. (in the case of hardware) title to hardware does not pass to You (unless explicitly stated in, and subject to the Terms of, the order);

13.4.2. (in the case of software) the licence is a periodic licence and periodic fees are payable under the provisions of the licence agreement.

13.5. If We have undercharged You the VAT that should have been due on an order, You agree to pay Us the outstanding VAT immediately. If We have overcharged You VAT, We shall refund You the amount that You have overpaid.

13.6. "Practical completion" means that software or installation has been completed to the extent that it is reasonably possible to use it for normal contemplated use, save only for any minor snagging items (which will usually be dealt with under the Terms of our warranty).



14. Time for Performance

14.1. Whenever We agree to do anything by or on a particular time, We will try to do it on or at that time, but We shall not be liable for late performance:

14.1.1. if late performance is reasonably beyond our control (it is due, for example, to the failure of our own suppliers to perform); or unless You have given Us a notice allowing Us a reasonable time to perform and We have failed to do so (in any event, clause 10 above applies)

15. Indemnity

15.1. Where We do anything for You on your premises or premises under your control, You agree to indemnify Us and keep Us indemnified against any loss, damage claim or expense arising out of the physical injury of or death of any of our staff arising in any way from our performance of this Agreement and arising by reason of the provision of defective equipment, your failure to provide a safe system of work or otherwise by reason of any negligent act or default on your part or on the part of your servants or agents or other person on your premises.

16. Incorporation of Other Terms

16.1. Where software (other than bespoke software) is supplied under this Agreement, our "Standard Terms for the Supply and Licensing of Software" in force at the time of this Agreement apply in addition to these Terms and condition);

16.2. Where bespoke software is supplied under this Agreement, our "Standard Terms for the Development of Software" in force at the time of this Agreement apply in addition to these Terms and conditions;



16.3. Where hardware is supplied under this Agreement, our “Standard Terms for the Supply of Hardware” in force at the time of this Agreement apply in addition to these Terms and conditions;

16.4. Where maintenance services are supplied under this Agreement, our “Standard Terms for Hardware and Software Maintenance” in force at the time of this Agreement apply in addition to these Terms and conditions;

16.5. Where Consultancy, training or other services are supplied under this Agreement, our “Standard Terms for the Supply of Consultancy” in force at the time of this Agreement apply

in addition to these Terms and conditions (and subject to the entries in the standard cover sheet);

16.6. And in each case above those Terms and conditions Are varied and interpreted in accordance with the quotation

17. Assignment

17.1. Except as is specifically referred to in this Agreement, neither of Us may assign the benefit or the obligations of any part of this Agreement without the written consent of the other.

18. Notices

18.1. Where any notice is required to be given under this Agreement (where the word “notify” is used it means “to give notice”), it shall be considered to have been validly given if in writing and sent by fax, email or prepaid first-class or airmail post to the correct fax number, email address or postal address of the relevant party as contained on the quotation or prior correspondence, or subsequently notified to the other party. Where sent by fax, the notice is deemed to have arrived immediately upon sending. If sent by email, the notice is deemed to

have arrived 24 hours after it was sent (unless within those 24 hours the sender has been sent an email saying that the notice has not been delivered). If sent by post, the notice is deemed to have arrived on the third working day after the day on which it was sent (if sent to an address within the UK), the fifth working day (if sent to an address within the EEA) or on the seventh working day (anywhere else in the world) (unless in each case within that period it was returned as undelivered).

19. Confidentiality and Poaching

19.1. We may have given You, and may give You in the future, confidential information (which includes but is not limited to information relating to our products, planned products and details of our marketing, support and internal structures and similar information relating to our suppliers or related products). You agree that You will use confidential information solely for the purposes of this Agreement and for evaluating future products or services which are or may be supplied by Us, and that You shall not disclose, whether directly or indirectly, to any third party confidential information other than as required to carry out the purposes of this Agreement. Before You make any such disclosure to a third party, You must obtain from them a duly binding agreement to maintain in confidence the information to be disclosed which is at least as effective as this obligation is on You.

19.2. The clause above shall not prevent the disclosure or use by You of any information:

19.2.1. which is or hereafter, through no fault of your own or of those to whom You have entrusted it, becomes public knowledge;

19.2.2. or to the extent permitted by law.

19.3 We agree to be bound by the obligations contained in the above clauses 19.1 and 19.2 likewise in relation to any confidential information which You may give Us.



19.4 You agree not to approach or engage any of our staff (with whom You have had contact) directly or indirectly within six months the termination of any contract between You and Us.

19.5 You agree not to introduce any member of our staff to any other person with a view to them engaging that person within the time scale set out above

20. Termination on Insolvency

20.1. If, in our reasonable opinion, it appears that You will be unable to meet the payment Terms We have agreed We may terminate this agreement without notice immediately, in which case We shall no longer be under any obligation to do any work for You under it, and You shall immediately become liable to pay Us all sums which You owe Us (whether or not under this Agreement and whether or not they have become due). In addition, You will be liable to pay Us a reasonable sum representing the work We have done up to the date of termination, which shall be calculated to include the loss of anticipated profit for the whole of the contract.

20.2. For the avoidance of doubt, each of the following is a reasonable reason for termination under clause 20.1 above:

20.2.1. the presentation of a bankruptcy or winding-up petition against You;

20.2.2. the appointment of a manager, receiver or administrator over all or any part of your assets

20.2.3. the commencement of any winding-up process (other than for the purposes of reconstruction or amalgamation)

20.2.4. the entry into or proposal of any form of arrangement or composition with your creditors



20.2.5. anything analogous to the above sub-sub-clauses in any jurisdiction.

21. Law

21.1. This agreement is subject in all respects to English Law

22. Waiver

22.1. If We fail to rely on our strict legal rights under this Agreement, that shall not prevent Us from relying on those rights at any time in the future.

23. Disputes

23.1. If any dispute or grievance arises between Us out of this Agreement, before taking any further action, We each agree that it will be discussed by staff members of each of Us who are most closely involved with the running of the contract. If that does not produce a resolution, the problem will be escalated to the respective superiors of each staff member respectively, until the problem is dealt with. Only if the respective CEOs or similar of each party cannot reach agreement on the dispute will the matter be taken to the next stage as set out below.

23.2. Should the escalation mechanism set out in 23.1 above fail to be effective, before taking any other action We each agree to submit in good faith to a mediation procedure administered by ADR Group of London, or, failing that, such other similar organisation as the President for the time being of the Law Society of England and Wales shall nominate. Unless We agree otherwise, the costs of the mediation shall be borne equally by each of Us.



2. Standard Terms for the Supply and Licencing of Software

These Terms are supplemental to the General Terms and Conditions of Software, Hardware and Consultancy Supply (the "General Terms")

1. Agreement to Supply

1.1. We agree to supply the Software referred to in the quotation subject to the General Terms and these Terms and conditions at the price set out in it ("supply" in this Agreement means "license and (if appropriate) provide with media").

1.2. Nothing in this Agreement is intended to pass the title in any copyright or other intellectual property to You, and any right which You gain to use intellectual property is obtained solely under licence as more particularly set out in the rest of this Agreement).

2. Payment of Licence Fee

2.1. You agree to pay the licence fee as set out in the quotation in accordance with the payment Terms set out on the quotation.

2.2. If the licence fee is a periodic licence fee, You agree to pay each periodic fee promptly in accordance with the Terms of payment set out on the Contract Quotation Sheet. If it states in the quotation sheet that You are to pay by direct debit, You authorise Us to deduct relevant payments from the appropriate bank account.

2.3. If You fail to pay any periodic fee due, You are warned that your licence to use the software is terminated and that there may be disabling devices in the software which prevent its further use while You remain unlicensed.

3. Specification

3.1. Unless it states on the quotation that We specified the software We shall not be liable for the software's fitness for any purpose or satisfactory quality. We warrant only that it complies with its description as set out in the Quotation.

3.2. Where it states on the quotation that We specified the software We shall not be liable for any failure of the software except as otherwise set out in this Agreement, or to the extent that no reasonable computer professional in our position, and based on what You have told Us, and in the circumstances could have specified that software at the time We specified it.

4. Left intentionally blank

5. Software Licensed By Us

5.1. "Our Software" means software of which We own the copyright, or to which We have been granted a licence to sublicense.

5.2. Where We supply You with Our Software, it is on the following Terms:

5.2.1. We supply it to You under the Terms of our standard software licence, (a copy of which is available on request) and which is incorporated in this Agreement. We warrant that it complies substantially with its description and functions substantially in accordance with the documentation supplied with it.

5.3. Where We supply Our Software You confirm that You have received adequate demonstration of the Software prior to entering into this Agreement.

6. Software Licensed by Third Parties

6.1. Where We supply software that is not our software, We have taken reasonable steps to ensure that it does not infringe the rights of third parties. We cannot be held responsible for any such infringement, save that if the infringement relates to the whole (as opposed to the part) of any software supplied under this agreement, We shall (at our option):

6.1.1. replace that software with non-infringing software;



6.1.2. obtain at no cost to You a valid licence to continue to use the software; or

6.1.3. refund the licence fee applicable to that software.

6.2. In any of those cases, We shall be under no further liability to You in respect of that software.

6.3. If We decide that it is not practical to obtain replacement software or a valid licence, this constitutes the “unusual circumstances” referred to in clause 10 of the General Terms.

7. Configuration of Software

7.1. You acknowledge that the configurations or arrangements of software or data which We have installed may be subject to copyright (and in the absence of our written permission) You are granted no licence to copy that configuration or arrangement onto any system other than the one on which We installed the software.

8. Compliance with Instructions

8.1. You agree to comply with all reasonable instructions regarding the use of the software, and to provide adequate training to all operators of it.

8.2. You will ensure that the system on which the software is running

8.2.1. is and continues to be well and adequately maintained;

8.2.2. is and continues to be contained in the hardware compatibility lists of all suppliers of software intended to be running on that system and in respect of that software;

8.2.3. is and continues to be within the hardware and performance specifications required by the suppliers of all software running on the system,

8.2.4. does not contain any extraneous programs, data or hardware which are not reasonably necessary for the use of the system for its intended purpose.

8.3. You agree to install patches and upgrades to all software supplied under this agreement (or reasonably necessary for the functioning of software supplied under this agreement) as and when We notify You to do so. You are warned that there may be charges for these patches or upgrades.

8.4. You agree to maintain a comprehensive log of all faults or problems encountered in running the software and agree to allow Us to see it on request.

3. Standard Terms for the Supply of Consultancy

These Terms are supplemental to the General Terms and Conditions of Software, Hardware, IT Support and Consultancy Supply (the “General Terms”)

1. Agreement to Supply

1.1. We agree to provide You with the Consultancy (“Consultancy”) services detailed in the quotation at the price set out in it. The quotation will have appended to it a set out Terms of reference which define the scope of the Consultancy.

1.2. Where this Agreement refers to “our staff” that includes our employees and sub-contractors engaged to perform the Consultancy.

2. Standard of Care

We agree to perform the Consultancy with the care and skill to be expected of a competent consultant carry out work of a nature similar to the Consultancy, and in all the circumstances surrounding it.



2.2. Unless it explicitly states in the Terms of reference that We are providing independent Consultancy services, Consultancy may involve advising on solutions provided by suppliers with whom We have a relationship. However, even where We are not providing

independent Consultancy services, our advice will take into account your needs and requirements (as You have told them to Us).

3. Charges

3.1. Unless otherwise stated, our charges do not include hotel accommodation or travel costs for staff which We supply to You which will be charged to You (with the addition of VAT, if appropriate) at cost. We will supply invoices in support of such costs. Our Daily Rate charges are for a standard 7 hour working day. A schedule of our Daily Rate charges per role or consultant (Daily Rate Card) is attached to this Terms and Conditions Agreement. Our Daily Rate charges are subject to an annual increase which as a minimum incorporates an increase for CPI or inflation. Any hours incurred above these 7 hours in a day will be charged on an hourly basis equivalent to 1/7th of the daily rate per hour. Weekend work incurs a 20% uplift on our Daily Rate charge.

3.2. Where the Consultancy includes training, that training is subject to our Standard Terms and Conditions for the Supply of Training as amended by the quotation.

4. Additional Services

4.1. We may be prepared to carry out additional Consultancy services to You but these will be charged at our usual Daily Rate.

5. Intellectual Property

5.1. Where We create any intellectual property at your request or pursuant to the provisions of this agreement, You are permitted a limited licence to use that intellectual property for your own internal purposes.

5.2. This agreement is not intended to transfer the title to any intellectual property to You and your licence to use any intellectual property as referred to in clause 5.1 above is:

5.2.1. Dependent upon You having paid all outstanding sums due under this Agreement or otherwise;

5.2.2. Dependent upon You accepting an obligation to reproduce faithfully our copyright symbol or legend on all copies of the intellectual property which You make;

5.2.3. Not sole or exclusive.

6. Provision of Assistance

6.1. You agree to provide Us with all reasonable assistance and facilities to enable Us to carry out the Consultancy, including:

6.1.1. (if the Consultancy is to take place on site) providing our staff with suitable office space and facilities;

6.1.2. (if the Consultancy includes presentation), providing Us with a suitable room to perform the Consultancy, together with appropriate AV equipment and refreshments.

6.1.3. providing Us with access to the hardware, software and data necessary for Us to carry out the services;

6.1.4. carrying out our reasonable instructions relating to the installation, running and testing of any software on your computer equipment. (note: it may be that the Consultancy work requires down-time on your equipment. If this is the case, unless We have priced for out-of-hours Consultancy, We shall expect You to schedule for reasonable amount s of down-time during working hours);

6.1.5. providing Us with information and access to your staff which We may reasonably require to carry out the services.

6.2. You agree not to change the location where the Consultancy is carried out without our written consent.



7. Staff

7.1. We do not guarantee that We can supply specific, named, staff to perform the Consultancy work

8. Non-poaching

8.1. You agree not to engage any of our staff directly within six months of them having worked for You under contract to Us.

8.2. You agree not to introduce any member of our staff to any other person with a view to them engaging that person within six months of them having worked for You under contract to Us.

9. Copyrights

9.1. You confirm that You have, and will throughout the subsistence of this Agreement continue to, maintain valid copyright and other intellectual property licences in relation to all third party computer programs which are the subject of this Agreement such that anyone working for You under this Agreement will infringe no third party copyright or other intellectual property right in carrying out the Consultancy.

10. Termination

10.1. This Agreement may be terminated by Us in the following circumstances:

10.1.1. Should any sums due to Us remain outstanding after they became due; or

10.1.2. in the event that the You fail to provide the staff supplied to You under this agreement and working on your premises (or premises specified by You) with a safe system of work or require that that member of staff works in conditions or with equipment which are in any way unsafe or hazardous or if You otherwise act unreasonably so as to delay for a significant period of time our completion of the services.

10.2. This agreement may be terminated by You in the following circumstances:

10.2.1. In the event of non-attendance by our staff when for a period of not less than four (4) consecutive working days unless such absence is authorised in advance by You or is due to sickness or injury; or

10.2.2. in the event of any of our staff committing any act of gross misconduct as defined in your reasonable site rules; or

10.2.3. if any staff to be supplied pursuant to this Agreement prove in your reasonable opinion to be unsuitable to carry out work required under this Agreement and We have been unable to provide a suitable replacement within 10 working days after You have notified Us of their lack of suitability

10.2.4. PROVIDED THAT in the case of each of the cases referred to in clauses 10.2 above You may not terminate this Agreement unless and until the matter has been referred to the Grievance Procedure referred to in the General Terms and Conditions and You have not found the outcome satisfactory.



11. Liability

11.1. Unless specifically stated otherwise in the quotation, We shall not be liable for any physical loss or damage to your hardware or software or other equipment nor for any loss (including loss of business profits), damages, claims or expenses of whatever nature whether direct or consequential arising directly or indirectly as a result of such physical loss or damage or of programming or other error by Us in carrying out the Consultancy or for any claim whether by You or your employees, agents or customers arising out of any of our acts or omissions or those of any of our staff caused by reason of negligence or breach of duty.

4. Standard terms for the supply of hardware maintenance

These Terms are supplement al to the General Terms and Conditions of Software, Hardware and Consultancy Supply (the "General Terms")

1. Agreement to Maintain

1.1. We agree to maintain the Hardware referred to in our quotation as subject to a maintenance agreement subject to the General Terms and these Standard Terms.

2. Assignment

2.1. We may by notice assign the whole of this maintenance agreement to any other person who in our reasonable opinion is capable of carrying out its Terms.

2.2. Any assignment under this clause is without prejudice to any other contractual arrangement between Us.

3. Maintenance Provided under this Agreement shall Include

3.1. Maintenance provided includes hardware hotline support. We will respond to problems telephoned or faxed to our hotline which is available during our normal working hours (which exclude public holidays and weekends). The level of support to which You are entitled is graded as specified in the quotation, and the grading refers to our "Hardware Maintenance: Levels of Support Document" in force from time to time.

3.2. We prioritise support into urgent and non-urgent problems. An urgent problem is

3.2.1. significant degradation or failure of the System,

3.2.2. hardware failure rendering any major subsystem of the System inoperable or significantly degraded. Any other problem is classified as a non-urgent problem.

3.3. This agreement does not cover software support which may be available at extra cost and subject to our Standard Terms for the Supply of Software Support.

3.4. This Agreement does not oblige Us to install, configure, reinstall or reconfigure any software or to reinstate or reload any data and our obligation under it is limited to placing the System in an operable condition ready for the reloading or reconfiguration of backed-up software or data. You acknowledge that diagnosis and maintenance may result in the corruption or erasure of software or data and You must therefore ensure that You keep careful, up-to-date verified backups of software and data using a rotation system and regularly replaced media.

4. Your obligations

4.1. You must submit sufficient material and information and assistance throughout the time that the problem subsists to enable our maintenance staff to duplicate the problem.

4.2. You agree to provide Us with basic assistance in the installation of user-installable items of hardware and in user reconfiguration.



4.3. Where the hardware covered by this agreement is dependent upon other hardware not covered by the agreement (“supplementary hardware”) You must ensure that the supplementary hardware is included within this agreement (for which We may levy an additional charge) or by another maintenance agreement where the Terms and supplier of which are approved by Us, failing which We may decline to provide maintenance for the hardware in question.

4.4. We may provide You with support or diagnostic software (the “Support Software”), in which case You agree:

4.4.1. To install the Support Software at our direction and make it available for our maintenance staff to use;

4.4.2. not to copy the Support Software, other than for the purposes of back-up, nor otherwise to reproduce it;

4.4.3. not to translate, adapt, vary or modify the Support Software without our written consent;

4.4.4. to maintain accurate and up-to-date records of the number and location of all copies of the Support Software;

4.4.5. to supervise and control use of the Support Software in accordance with the Terms of this Agreement and of the Software in accordance with the Software Licence;

4.4.6. to replace the current version of Support Software with the upgraded version forthwith upon receipt;

4.4.7. to reproduce and include the copyright notice contained in or on the Support Software on all and any copies made, whether in whole or in part, in any form, including partial copies or modifications of any software;

4.4.8. not to provide or otherwise make available the Support Software in whole or in part (including but not limited to program listings, object code, source program listings and source code), in any form to any person other than your employees or authorised contractors without our written consent.

4.4.9. within 14 days after the date of expiry or termination of this Agreement for whatever reason give Us a certificate, certifying that the main copy and all backup or other copies of all Support Software and related documentation (in whole and in part), in any form including partial copies or modifications of such software received from Us or made in connection with

this Agreement, have been destroyed, (unless We give You prior written authorisation to retain one copy of it and upon whatever conditions We may think fit).

5. Remote Support.

5.1. You will, where specified in the quotation, make available a modem or ISDN terminal adapter (and relevant telephone or ISDN connections) for on-line problem resolution. The modem will be of a specification and type We approve.

5.2. We may amend the specification of the modem or ISDN adapter from time to time (but no more than once every two years).

6. Correction of Hardware Defects

6.1. We shall generally replace defective hardware on a “like-for like” basis. However, so long as the functionality and compatibility of the replacement hardware is no less than the original hardware (which includes its entry on a relevant software providers’ hardware compatibility lists) We may replace defective hardware with quality second-user or remanufactured hardware.



6.2. A “software provider’s compatibility list” referred to in clause 6.1. above is relevant only where it applies to systems software supplied with the machine as an OEM product when You bought it; software supplied by Us or software which is covered by a software support agreement with Us.

6.3. We may replace hardware under this clause as part of a preventive maintenance programme irrespective of whether the hardware in question is proven defective at the time of replacement.

6.4. Where it does not materially impact on the performance or operation of the System, we may specify software patches or workarounds to deal with hardware problems.

7. Maintenance not Included and which shall be charged for

7.1. Support of other software, accessories, attachments, machines, systems or other devices not supplied by Us or listed in the quotation as being covered by this maintenance agreement (or otherwise covered by agreement).

7.2. Rectification of lost or corrupted data arising for any reason other than our own negligence.

7.3. Support made more difficult because of any changes, alterations, additions, modifications or variations to the hardware covered by this agreement, the System or operating environment and made without our written consent or at our instructions.

7.4. Attendance to faults caused by using or storing the software or hardware outside design or other specifications or outside the provisions laid down in any instructions documentation or manual relating to the software or hardware.

7.5. Diagnosis and/or rectification of problems not associated with the hardware covered by this agreement.

7.6. Loss of or damage to the hardware covered by standard “all risks” insurance.

7.7. Unless explicitly stated in the quotation, this agreement does not cover the maintenance or replacement of consumables. The term “consumables” includes, but is not limited to, paper, toner, ink, ribbons, media, drive belts, print heads, filters, print drums and any other items which it is reasonable to expect would be replaced from time to time during the life of the item in question.

8. Duration

8.1. This maintenance agreement shall subsist for one year from its date and from year to year thereafter provided that either of Us may notify the other that it wishes to terminate on any anniversary of this maintenance agreement on 90 days’ notice before the anniversary.

9. Maintenance Charges

9.1. The maintenance charges are as specified in the quotation and as notified to You from time to time under this Agreement (“Maintenance Charges”).

9.2. Maintenance Charges are payable annually in advance upon receipt of our invoice unless We agree otherwise in writing (or it says otherwise in the quotation). No support will be provided until We have received payment. The quotation may specify that You are required to pay by direct debit in which case We shall debit your account near to the date of this agreement and each renewal date with the Maintenance Charges which are in force at the time the debit is made.

9.3. Maintenance Charges are subject to review no more than once in each 12 month period (excluding agreed additions and alterations to hardware covered by this agreement). We will give You at least 90 days’ notice before the new Maintenance Charges take effect.

9.4. Within 30 days after You have been notified of amended Maintenance Charges in accordance with clause 9.3 above You may, if the charges have been increased, notify Us of your intention to terminate the Agreement in which case the agreement will terminate (and all maintenance services will cease) on the day immediately before the increased charges were due to take effect.



9.5. If You alter your hardware configuration from that contemplated in the quotation (or as accepted by Us from time to time) or there is any other significant change in the hardware to be maintained (for example, a change in its location) You must notify Us immediately in which case:

9.5.1. We will notify You what the amended Maintenance Charges will be and You have 30 days in which to reject by notice the new charges, failing which You are considered to have accepted them.

9.5.2. If You reject the new charges notified to You in accordance with the preceding clause, You will be deemed to have served notice terminating the agreement in accordance with clause 8.1 above and the old maintenance charges will remain in effect. However, in this case We shall not be required, for the remainder of the contractual period, to provide maintenance services in excess of those We were required to provide before We were notified of the changes. For the avoidance of doubt, the 90 day notice period still applies. In other words, if You reject new charges within 90 days of an anniversary of this agreement, the agreement will not terminate on that anniversary, but the next one following it.

10. Our Liability

10.1. We shall not be liable to You for any loss or damage whatsoever or howsoever caused arising directly or indirectly in connection with this Agreement, the Software, any Support Software, modem or other hardware, its use, the System or other equipment, property or otherwise except to the extent that such liability may not be lawfully excluded unless We have explicitly agreed to accept that liability in our quotation.

4.4.8. not to provide or otherwise make available the Support Software in whole or in part (including but not limited to program listings, object code, source program listings and source code), in any form to any person other than your employees or authorised contractors without our written consent.

10.2. Notwithstanding the generality of 10.1 above, We expressly exclude liability for consequential loss or damage which may arise in respect of the Software, any Support Software, any modem or other hardware, its use, the System or other equipment or property or for loss of profit, business, revenue, goodwill or anticipated savings unless We have explicitly agreed to accept that liability in the quotation.

10.3. In the event that any exclusion or other provision contained in this Agreement is held to be invalid for any reason and We become liable for loss or damage that could otherwise have been limited, that liability shall be limited to the amount You were required to pay Us for hardware maintenance services over the last year before termination.

11. Termination

11.1. In addition to provisions for termination contained elsewhere in this agreement, We may, by notice to You, terminate this Agreement if You are in breach of any term, condition or provision of this Agreement or required by the applicable law and fail to remedy it (if it is capable of remedy) within 30 days of having received notice of the breach from Us.

11.2. Upon termination, You will pay Us all costs and expenses, including legal and other fees incurred and all arrears of charges or other payments arising in respect of the hardware, any Support Software or hardware, its support, this Agreement or otherwise and shall comply with your obligation undertaking specified in clause 4.4.9 (which requires You to certify You have destroyed the support software) above.

11.3. Any remedies or rights which We have against You shall continue after termination for any reason.



5. Standard terms for the supply of hardware

These Terms are supplemental to the General Terms and Conditions of Software, Hardware and Consultancy Supply (the "General Terms")

1. Agreement to Supply

1.1. We agree to supply the hardware set out in the quotation for the price set out in it and subject to the General Terms and these Terms and conditions.

2. Conformity with Description and Warranties

2.1. Where You have purchased goods that are sold by a specific description, or where it states in the quotation that We have not specified the goods, We warrant that the goods conform with that description, but We do not warrant that they are fit for any particular purpose.

2.2. Where it states in the quotation that We have specified the goods, We accept liability in respect of that specification (including, but not limited to, our warranty that they are fit for any particular purpose) only to the extent that, in the circumstances and in view of everything which You had told Us by the time We accepted the order, no reasonable professional organisation in our position could have specified those goods.

3. Retention of Title

3.1. Title to any goods does not pass until all sums owed by You to Us (whether under this Agreement or otherwise) are paid.

3.2. Until title to any goods passes, You agree to keep them separately from your other goods and marked to indicate that We still possess title to them.

3.3. You grant Us an irrevocable licence to enter any of your premises where such goods are stored to repossess such goods should You be in breach of any payment Terms of this Agreement.

3.4. Should We repossess any goods pursuant to clause 3.3 above We may make arrangements to re-sell them in any reasonable way (including public auction) or take them back into stock in which case We will credit You with the resale We achieve (less any costs of re-sale and repossession) or a deemed value of such resale should We decide to take them back into stock (the deemed value will be calculated on the basis that the goods would be sold as second hand, and will deduct any costs of repossession).

4. Delivery

4.1. The Price given in quotation is, unless written otherwise, for supply of the goods from our premises, and does not include delivery.

4.2. If You collect the goods or arrange for a carrier to collect the goods on your behalf You will become responsible for the goods (whether or not You have become the legal owner under Clause 3 above) when they are collected from our premises.

4.3. If We have agreed in writing to deliver the goods, You will become responsible for the goods (whether or not You have become the legal owner under clause 3 above) as soon as We have delivered them to You. If We use a third party carrier to deliver them, We shall be liable for damage or shortfall up to the point of delivery to You provided that:

4.3.1. the damage or shortfall is notified to Us and to the carrier (in writing) within three days of the delivery AND the goods have been signed for as not examined AND You have handled them in accordance with the carrier's conditions; OR

4.3.2. (if the goods have not been delivered at all) You notify Us and the carrier (in writing) within three days after the scheduled delivery date.

4.4. Unless You inform Us otherwise within three days of receipt of the goods, You will be taken to have accepted all the goods received in that consignment.



5. Installation and On Site Repair

5.1. The price given on the quotation does not, unless written otherwise, include installation and servicing.

5.2. If We agree to install or service or repair any goods at a place where You specify ("the Area"), the following will apply (unless obviously irrelevant):

5.2.1. You are responsible for ensuring that surfaces to which the goods may be affixed are in a sound condition

5.2.2. You must provide Us with a safe suitable electrical supply at the Area.

5.2.3. You must give our workers unhindered access to the Area.

5.2.4. You must make sure that the Area is safe.

5.2.5. You must provide Us with suitable services (e.g. cooling water) at the Area

5.2.6. You will (or You will arrange that someone will) be available to let Us in at the time We have arranged.

5.3. If We cannot carry out the installation, servicing or repair, or if it takes longer than usual because You have not done any of the above, We may charge You for any lost time or additional expense We incur as a result.

6. Warranty

6.1. This warranty only applies to goods manufactured by Us (if We have supplied another manufacturer's goods You may be covered by a warranty from that other manufacturer). This warranty is only between You and Us and the benefit of it may not be transferred to any other person. All warranty claims must be made by You directly to Us. We agree (at our discretion) to replace, repair or issue a credit note in respect of any of the goods manufactured by Us or remedy any services which We supply and which are found to be defective in materials or manufacture, provided that You let Us know the full details in writing within 7 days of discovering the defect. For items other than consumables, this warranty lasts for twelve months from the date of invoice. This warranty does not cover consumables. Where We make replacements or repairs under this warranty, the warranty which applies to such replacements or repairs extends only to the unexpired balance of warranty at the time of such replacement or repair.

6.2. "Consumables" includes laser printer drums, toner, ink, ribbons, paper, print heads and any other items for which it would be reasonable to expect replacement during the lifetime of the goods in question.

6.3. This warranty only applies where You are not in breach of this Agreement.

6.4. This warranty only applies where the defect has not arisen because of neglect, abuse or failure to follow instructions, and where the Goods have either been repaired or tampered with by a third party not authorised by Us.



6.5. If We opt to replace defective goods or services, but an exact replacement is not readily available, We agree to make the replacement with goods or services of similar or better quality. In any case, the replacement or repair may be with quality reconditioned or remanufactured parts.

6.6. Unless You are eligible for an on-site warranty visit as described below, You are responsible for ensuring that the goods reach Us safely (at your cost). YOU MUST ONLY RETURN GOODS AFTER HAVING CONTACTED US AND RECEIVED AUTHORISATION. WE MAY QUOTE YOU A "RETURNS AUTHORISATION" NUMBER IN WHICH CASE IT MUST BE CLEARLY DISPLAYED ON THE OUTSIDE OF THE PACKAGING. CLEARLY DISPLAYED ON THE OUTSIDE OF THE PACKAGING.

6.7. If We installed the goods or performed the services at a site within the UK and You are the end-user and purchased the goods or services directly from Us, We will visit that site to fulfil our obligations under this warranty. IF WE VISIT THE SITE AND WE FIND THAT THE DEFECT IS NOT COVERED BY THIS WARRANTY, OR IS SIMPLY A FAILURE TO FOLLOW INSTRUCTIONS WE MAY CHARGE YOU FOR ANY TIME WASTED. We suggest that You contact Us before asking Us to make an on-site warranty visit and give Us the full details of the problem so that We are not involved in a wasted journey. If a customer has not bought the goods directly from Us our warranty does not extend to making on-site visits and the customer should approach the person from whom they obtained the goods. THIS WARRANTY IS IN ADDITION TO YOUR STATUTORY RIGHTS. This Warranty does not extend to configuration or installation of software or recovery of lost or corrupted data. (Configuration and installation services may be available under our Maintenance Terms).

You are advised to take regular, verified backups of all software and data and to store them off-site.

6. Standard terms for the supply of software support

These Terms are supplemental to the General Terms and Conditions of Software, Hardware and Consultancy Supply (the "General Terms")

1. Agreement to Support

We agree to support the Software specified in the quotation as subject to a support agreement subject to the General Terms and these Standard Terms

2. Assignment

2.1. We may by notice assign the whole of the benefit and burden of this support agreement (or all or any of the components referred to in clause 2.2 below) to any other person who in our reasonable opinion is capable of carrying out its Terms.

2.2. We may sever the parts of this agreement which refer to:

2.2.1. Systems software

2.2.2. Application Software

2.2.3. Bespoke software

2.2.4. Software licensed or sub-licensed by Us

2.3. Any assignment under this clause is without prejudice to any other contractual arrangement between Us.

3. Support Provided under this Agreement shall Include

3.1. Support provided includes hotline/Zendesk support. We will respond to problems telephoned or faxed or emailed to our Hotline/Zendesk which is available during our normal working hours (which exclude public holidays and weekends). The level of support to which You are entitled is graded as specified in the quotation and the grading refers to our "Software Levels of Support" document in force from time to time.

3.2. We prioritise support into urgent and non-urgent problems. An urgent problem is:



3.2.1. significant degradation or failure of the System,

3.2.2. defective Software distribution media, or

3.2.3. software performance significantly inconsistent with documentation. Any other problem is classified as a non-urgent problem.

3.3. Out of Hours Support. We shall, if specified in the quotation, provide out-of-hours support.

3.4. Our support staff will attempt to solve a problem immediately, or in any rate as quickly as reasonably possible, taking into account that urgent problems have priority over non-urgent problems. When appropriate, We will try to give an estimate of how long a problem may take to resolve. We will keep You informed of the progress of problem resolution.

3.5. In the course of solving a problem We may issue You with a workaround which will enable You to continue working (albeit with possibly reduced functionality) which may cause your problem to be reclassified as a non-urgent problem.

3.6. Our ability to provide support for third party software is dependent upon the assistance of the supplier of that software. We will use all reasonable efforts to deal with software problems which are caused by third party software (provided that that software is covered by this agreement) but cannot guarantee to solve problems arising from third party software.

3.7. On-site support will only be provided if specified in the quotation and where appropriate in the event telephone support does not resolve the problem.

3.8. We shall charge at our usual applicable hourly rates for any support other than support provided under this agreement.

3.9. This Agreement does not cover hardware maintenance which may be available at extra cost and subject to our Standard Terms for the Supply of Hardware Maintenance.

3.10. This Agreement does not oblige Us to install, configure, reinstall or reconfigure any software or to reinstate or reload any data except to the extent that We shall load your last non-corrupt complete backup ("the last backup") and ensure that any subsequent software fixes which We have implemented pursuant to this agreement are implemented. It is your responsibility to re-key or re-enter any data entered since the last backup was taken.

3.11. You acknowledge that diagnosis and support may result in the corruption or erasure of software or data and You must therefore ensure that You keep careful, up-to-date verified backups of software and data using a rotation system and regularly replaced media.

3.12. We specifically do not provide a data recovery service under this agreement. We may be able to provide data recovery services (or subcontract them to third parties) under a separate agreement, but You are warned that data recovery costs are significantly more than You may have anticipated. **YOU MUST KEEP GOOD BACKUPS OF DATA AND SOFTWARE AND KEEP THEM OFFSITE.**

4. Your obligations

4.1. You must submit sufficient material, information and assistance to enable our support staff to duplicate the problem. This includes providing sample data (including the data on the system when the problem was encountered).

4.2. Where the software is dependent for its operation on other software, or on specific hardware, We may decline to provide software support unless



4.2.1. You have a maintenance or support agreement with Us in respect of that software or hardware (for which charges additional to those under this agreement may be levied); or

4.2.2. You have a maintenance or support agreement with a third party in respect of that software or hardware the Terms and provider of which We have approved.

4.3. You agree to comply with the provisions of any software licence agreements applicable to the software covered by this agreement (the "Software Licence");

4.4. We may provide You with diagnostic or support software (the "Support Software") in which case You agree:

4.4.1. To install and use the Support software on our instructions;

4.4.2. not to copy the Support Software, other than for the purposes of back-up, nor otherwise to reproduce it;

4.4.3. not to translate, adapt, vary or modify the Support Software without our written consent;

4.4.4. to maintain accurate and up-to-date records of the number and location of all copies of the Support Software;

4.4.5. to supervise and control use of the Support Software in accordance with the Terms of this Agreement and of the Software in accordance with the Software Licence;

4.4.6. to replace the current version of Support Software with the upgraded version forthwith upon receipt;

4.4.7. to reproduce and include the copyright notice contained in or on the Support Software on all and any copies made, whether in whole or in part, in any form, including partial copies or modifications of any software;

4.4.8. not to provide or otherwise make available the Support Software in whole or in part (including but not limited to program listings, object code, source program listings and source code), in any form to any person other than your employees or authorised contractors without our written consent;

4.4.9. within 14 days after the date of expiry or termination of this Agreement for whatever reason give Us a certificate, certifying that the main copy and all backup or other copies of all Support Software and related documentation (in whole and in part), in any form including partial copies or modifications of such software received from Us or made in connection with this Agreement, have been destroyed, (unless We give You prior written authorisation to retain one copy of it and upon whatever conditions We may think fit).

4.5. You agree to assist Us in solving problems including following straightforward instructions given to Us over the telephone, and reporting to Us the effects of different tests etc.

5. Remote Support

5.1. You will, where specified in the quotation, make available a modem or ISDN terminal adapter (and relevant telephone or ISDN connections) for on-line problem resolution. The modem will be of a specification and type We approve.

5.2. We may amend the specification of the modem or ISDN adapter from time to time (but no more than once every two years).

6. Correction of Software Errors

6.1. We may, at our sole discretion, correct software errors by "patch" or by new version, or We may replace software with different software of equivalent functionality.

6.2. Where it does not materially impact on the operation of the System, We may specify workarounds as solutions to specific problems.



7. Support not Included and which shall be Charged for

7.1. Support of other software, accessories, attachments, machines, systems or other devices not supplied by Us or listed in the quotation as being subject to support (or otherwise covered by agreement).

7.2. Rectification of lost or corrupted data arising for any reason other than our own negligence.

7.3. Support made more difficult because of any changes, alterations, additions, modifications or variations to the software covered by this agreement, the System or operating environment and made without our written consent or at our instructions.

7.4. Dealing with faults caused by using the software or hardware outside design or other specifications or outside the provisions laid down in any instructions documentation or manual relating to the software or hardware.

7.5. Diagnosis and/or rectification of problems not associated with the software covered by this agreement.

8. Duration

8.1. This maintenance agreement shall subsist for one year from its date and from year to year thereafter provided that either of Us may notify the other that it wishes to terminate to terminate on any anniversary of this maintenance agreement on 90 days' notice before the anniversary.

9. Support Charges

9.1. The support charges are as specified in the quotation or as notified to You from time to time under this Agreement ("Support Charges").

9.2. Support Charges are payable annually in advance upon receipt of our invoice unless otherwise We agree otherwise in writing (or it says otherwise in the quotation). No support will be provided until We have received payment. The quotation may specify that You are to pay by direct debit in which case We shall debit your account near the date of this agreement and each renewal date with the Support Charges which are in force at the time that the debit is made.

9.3. Support Charges are subject to review no more than once in each twelve-month period (excluding alterations and additions to software which are covered by this agreement). We will give You at least 90 days' notice before the new Support Charges take effect.

9.4. Within 30 days after You have been notified of amended Support Charges in accordance with clause 9.3 above You may, if the charges have been increased, notify Us of your intention to terminate the Agreement in which case the agreement will terminate (and all support services will cease) on the day immediately before the increased charges were due to take effect.

9.5. If You alter your hardware or software configuration from that contemplated in the quotation (or as accepted by Us from time to time) or there is any other significant change in the software to be maintained You are required to notify Us immediately in which case:

9.5.1. We will tell You what the amended Support Charges will be and You have 30 days in which to reject by notice the new charges, failing which You are considered to have accepted them.



9.5.2. If You reject the new charges notified to You in accordance with the preceding clause, You will be deemed to have served notice terminating the agreement in accordance with clause 8.1 above and the old support charges will remain in effect. However, in that case We shall not be required, for the remainder of the contractual period, to provide support services in excess of those We were required to supply before the changes. For the avoidance of doubt, the 90 day notice period still applies. In other words, if You reject the new charges within 90 days of an anniversary of this agreement, the agreement will not terminate on that anniversary, but on the next one following it. .

10. Our Liability

10.1. We shall not be liable to You for any loss or damage whatsoever or howsoever caused arising directly or indirectly in connection with this Agreement, the Software, any Support

Software, modem or other hardware, its use, the System or other equipment, property or otherwise except to the extent that such liability may not be lawfully excluded unless We have explicitly agreed to accept increased liability in the quotation.

10.2. Notwithstanding the generality of 10.1 above, We expressly exclude liability for consequential loss or damage which may arise in respect of the Software, any Support Software, any modem or other hardware, its use, the System or other equipment or property

or for loss of profit, business, revenue, goodwill or anticipated savings unless We have explicitly agreed to accept increased liability in the quotation.

10.3. In the event that any exclusion or other provision contained in this Agreement is held to be invalid for any reason and We becomes liable for loss or damage that could otherwise have been limited, that liability shall be limited to the amount You have actually paid Us for hardware and software support services over the last two years.

11. Termination

11.1. In addition to provisions for termination contained elsewhere in this agreement, We may, by notice to You, terminate this Agreement if You are in breach of any term, condition or provision of this Agreement or required by the applicable law and fail to remedy it (if it is capable of remedy) within 30 days of having received notice of the breach from Us.

11.2. Upon termination, You will pay Us all costs and expenses, including legal and other fees incurred and all arrears of charges or other payments arising in respect of the software or hardware, any Support Software or hardware, its support, this Agreement or otherwise and shall comply with your obligation undertaking specified in Clause 4.4.9 (which requires You to certify You have destroyed the support software) above.

11.3. Any remedies or rights which We have against You shall continue after termination for any reason.