

Network Maintenance & IT Support Terms and Conditions

1. Definitions

The following terms shall have the meaning set out below:

“Acceptable Use Policy” means an acceptable use policy prepared in accordance with good industry practice (i.e., being a policy suitable for the provision of a Network to the sorts of users envisaged to use the Network, properly and suitably addressing all of the risks and issues typically addressed by such a policy).

“The Company” refers to Estates IT Limited, whose registered office is situated at 8 Mulberry Place, Pinnell Road, Eltham, London, SE9 6AR.

“Contract Holder” means the person, Company or body with which The Company holds its contract to provide Services in accordance with these Terms and Conditions.

“Network” means any network in relation to which The Company provides the Services.

“Remote Software Repair Service” means the act of The Company monitoring and analysing key measures on supported devices securely from our offices. A company registered in England and Wales and whose registered office is situated at 8 Mulberry Place, Pinnell Road, Eltham, London, SE9 6AR. The Company Head Office is situated at 8 Mulberry Place, Pinnell Road, Eltham, London, SE9 6AR

“Services” means support services provided by The Company as further described either (a) on www.EstatesITLtd.com/support or (b) in writing by The Company. For the avoidance of doubt, the specific Services to be provided to the Contract Holder shall be those ordered by the Contract Holder as set out in the relevant quote from The Company.

“Support Contract” means the agreement between The Company and the Contract Holder to provide the Services.

“Virus” means any virus, back door, worm, Trojan horse, trap door or any other similar form of code intended, or having that effect, to cause harm, damage or to prevent or restrict the use of any computer system, data or software.

2. Application of these Terms and Conditions

These Terms and Conditions apply to all of the Services (as defined above) provided by The Company. If you do not wish to be bound by these Terms and Conditions, the Contract Holder should not order or accept performance of the Services. These Terms and Conditions apply to the exclusion of all other Terms and Conditions that may be provided by the Contract Holder.

3. Responsibilities of the Contract Holder.

The provision of the Services by The Company is subject to the Contract Holder performing or complying with all of its responsibilities that have been set out in these Terms and Conditions. For the avoidance of doubt, The Company may without notice suspend or terminate the Services in the event that:

- (a) Any of the Contract Holder’s responsibilities as set out in these Terms and Conditions is not performed;
- Or
- (b) Any Virus is transmitted onto any of The Company’s systems.

3.1 Anti-Virus Protection

The Contract Holder must ensure that the Network is protected against the threat of virus infection by ensuring that the Anti-Virus Protection installed is not disabled or circumnavigated for any reason. The Company may at any given time provide alternative Anti-Virus software to that which may have been previously provided.

3.2 Acceptable Use Policies

The Contract Holder must, at all times, implement and enforce an Acceptable Use Policy for the Network. The Contract Holder shall be responsible for ensuring that all users of the Network comply with the Acceptable Use Policy. Further, where there is a breach of the Acceptable Use Policy, the Contract Holder shall take such steps as are appropriate in all the circumstances (which may, for the avoidance of doubt, include disciplinary action and/or ceasing to permit further use of the Network by the relevant individual(s)).

3.3 Internet Access

The Contract Holder shall be responsible for procuring all required internet connections and, for the avoidance of doubt, all internet costs shall be entirely the responsibility of the Contract Holder.

3.4 Licensing

The Contract Holder must have in force current software licenses for all software on the Network that is not provided by The Company. In the event of The Company provided software (subject to a separate agreement and charging regime), The Company will hold the licences for all current software on behalf of the Contract Holder.

3.5 Network maintenance and Configuration

The Contract Holder must maintain the configuration, hardware and cabling relating to the Network(s) in good working order and within any specifications provided by The Company.

3.6 Network access

The Contract Holder must permit The Company personnel connected with the provision of the Services access to the Contract Holder's premises to work on the Network where reasonably required.

3.7 Remote diagnostic services

Where required to provide any of the Services, the Contract Holder shall ensure the provision of an installed data link through which The Company can access the Network using The Company's chosen remote access software and technology. The Contract Holder must also provide access to those areas of the Network as required by The Company for The Company to deliver the Services.

3.8 Appointed Network Manager

The Contract Holder must nominate a "Network Manager" and a maximum of two additional contacts who will act as the liaison between the Contract Holder's establishment and The Company. If there are any changes to nominated personnel the Contract Holder must inform The Company immediately. For the avoidance of doubt, one of the nominees must be a Company Director who is contactable at all times.

3.9 Strategic Change

The Contract Holder must notify The Company before strategic changes are made to the Network. Advance knowledge of planned changes will ensure that The Company engineers have current information on the status of the Network, helping The Company to resolve issues affecting the Network more efficiently. The Company considers strategic changes to be changes that significantly alter the Network including, but not limited to:

- (a) Adding a new workstation to the Network;
- (b) Changing the configuration of a server or workstation connected to the Network;
- (c) Changes to the topology and/or infrastructure of the Network; and/or
- (d) Change of internet provision (including change of Internet Service Provider).

4. Service Limitations

4.1 The provision of the Services relates only to the Network(s) as set out on the original network support quotation or subsequent network support renewal forms. No quotation or renewal form will be accepted for part of a Network.

4.2 The Services do not include:

- (a) Assistance with relocation of the Network(s) or part of the Network;
 - (b) Any provision of the Services required as a result of any accident, neglect, alterations, improper use or misuse (including in breach of the Acceptable Use Policy) of the Network or any part of the Network;
 - (c) Any provision of Services necessitated by repairs to the Contract Holder's premises, hardware or software attempted by personnel not employed or authorised by The Company;
 - (d) Assistance with writing or rewriting any software;
 - (e) Project management;
 - (f) Support for software on the network (other than the network software itself or when provided by The Company – contract terms apply);
 - (g) Advice given in connection with the removal or treatment of any Virus (please see also Condition 14 below);
- And
- (h) Support in respect of products and/or services made available by The Company to Contract Holders and that are categorised by The Company as subject to a separate agreement and charging regime.

4.3 Where the Contract Holder has employed the services of a third party commissioning agent to install, commission or relocate part of the Network, The Company may request at its discretion that a chargeable network survey is conducted prior to continuing to offer support and advice.

5. Provision of software for remote diagnostic

5.1 No software licence of any sort is granted to the Contract Holder on software provided as part of any remote diagnostic service to the Contract Holder and the Contract Holder is not permitted to use in anyway any software resident on the Network which may be provided as part of any such service.

5.2 The Company may at its discretion at any time remove any software referred to in Condition 5.1 (above) from the Contract Holder's Network. This provision shall override any conflicting provision in any software licence agreement provided to the Contract Holder in connection with the service.

6. Term

6.1 The term for each Support Contract shall be as agreed between the parties but, for the avoidance of doubt, shall not be deemed to have commenced until The Company accepts the relevant order.

6.2 The Services shall commence on the date referred to in Condition 6.1 (above) and shall continue initially for twelve (12) months (unless otherwise agreed in writing by the parties). Unless at least one month's written notice to terminate a Network Contract is given by either party to the other party prior to the expiry of the initial or any subsequent twelve (12) month term, then the Support Contract period shall be renewed for a further twelve (12) month

7. Service availability

7.1 The Services will be carried out by The Company during the hours of Monday to Friday 9:00 am to 5:30 pm The Company retain the right to amend these hours without notice. Estates IT Ltd may agree to carry out the Services outside these hours by agreement with the Contract Holder, at a mutually agreed time, date and location.

7.2 On-site services, work on the Contract Holder's site will be carried out during the following set hours: For on-site services, work on the Contract Holder's site will be carried out during the hours of 9.30 am and 4.30pm.

8. Price

Unless a written quotation has been given (whereupon the price quoted will be fixed for a period of thirty (30) days or such other period as is specified therein) the price for the Services is subject to alteration without notice and the price charged to the Contract Holder will be that applicable at the date of The Company's acceptance of the order or (at The Company's option) the start date of the Services. All prices are exclusive of Value Added Tax (and any similar tax) which will be added as separate items on The Company's invoice.

9. Payment Terms

9.1 Unless otherwise notified to the Contract Holder in writing by The Company, the Contract Holder shall pay all invoices within thirty (30) days of the date thereof (time being of the essence). The Company reserves the right to charge interest at a rate of 5% per annum above the Bank of England base rate ruling from time to time on any payment or any part payment overdue calculated from the date due and to recover its expenses including legal fees and costs of collection and to suspend delivery, performance of any warranty, or license, or (at The Company's option) forthwith to determine the same.

9.2 All payments will be made without set off or counterclaim or any other withholding whatsoever.

10. Passing of risk

Risk of loss and damage shall pass from The Company to the Contract Holder upon delivery of any products (including loan items) to the Contract Holder or its employees.

11. Confidential information

The Contract Holder agrees (unless agreed otherwise in writing by The Company) to maintain in confidence and not disclose, reproduce or copy any materials, documentation, specification or software in any form whatsoever provided to the Contract Holder in connection with the Services. The Contract Holder shall take all reasonable steps to ensure that its employees are bound by the same obligations and that such obligations endure beyond any termination of employment with the Contract Holder.

12. Warranty and The Company's liability

12.1 The Company warrants to the Contract Holder that it will use all reasonable skill and care in carrying out the Services. There are no warranties, conditions, guarantees or representations whether express implied by statute or otherwise, oral or in writing except as provided in these Terms and Conditions.

12.2 Notwithstanding Condition 12.1 (above) all rights which the Contract Holder may have under the Consumer Protection Act 1987 and the Unfair Contract Terms Act 1977 are in addition to those set out in these Terms and Conditions.

12.3 In the event of a breach of the warranty in Condition 12.1 (above), The Company's sole liability shall be to re-perform at its expense any of the Services which do not conform to the said warranty.

12.4 The Contract Holder agrees that The Company will not be liable for any loss caused by the Contract Holder's failure to perform its obligations as set out or referred to in these Terms and Conditions or for any act of the Contract Holder which is in contravention of these Terms and Conditions. The Contract Holder also agrees that The Company will not be liable for the effects of any further Virus attack occasioned during an attempt by The Company to clean the Network from a previous Virus attack.

12.5 The Company shall not in any event be liable for any indirect, special or consequential loss whether statutory or otherwise, howsoever arising (including but not limited to loss of anticipated profits or of data) in connection with or arising out of the Services, even if The Company shall have been advised of the possibility of such potential loss and shall not be liable for any loss except as provided for in these Terms and Conditions.

13. General Advice

The Contract Holder accepts that when providing any oral advice or suggestions during the Services, The Company is relying upon information given to it by the Contract Holder about the Contract Holder's Network, its configuration and usage, and any future improvement or strategic direction. Whilst it is given in good faith, it is for the Contract Holder to verify whether any such advice or suggestions are suitable for its purposes and The Company shall not be liable in contract, tort or otherwise for any direct, indirect or consequential loss or damage arising out of or in connection with any such advice or suggestions. Any oral suggestions or advice tendered by The Company must be confirmed in writing before The Company will accept any liability for any such advice, which shall, in any event be limited to a refund of the charges paid for the relevant Services. In no event will The Company be liable for any indirect or consequential loss or damage arising out of or in connection with any such written confirmation. The provisions of this Condition 13 shall be without prejudice to the provisions of Condition 14 (below).

14. Advice Concerning Viruses

Should the Contract Holder wish to receive advice from The Company concerning the treatment of any of the effects of a Virus, The Company shall be entitled (but not obliged) to provide such advice but the Contract Holder accepts that, as The Company does not have specialist knowledge concerning Viruses, such information is given on a reasonable endeavours basis and the Contract Holder shall not be entitled to rely on such advice. Should the Contract Holder wish to receive specialist advice concerning any Virus, the Contract Holder agrees to obtain such advice directly from a manufacturer of virus-checking software or another specialist in that field of expertise.

15. Termination of Contract

15.1 The Company shall have the right, without prejudice to any other remedies it may have at any time by giving notice in writing to the Contract Holder to terminate forthwith any Support Contract, in any of the following events:

- (a) If the Contract Holder fails to pay any sums to The Company on the due date of payment; or
- (b) If the Contract Holder commits any other breach of any of these Terms and Conditions provided that if the breach in question is one which the Contract Holder can effectively remedy then the said notice of termination shall not be effective to terminate the Support Contract unless the Contract Holder fails within thirty (30) days of the date of such notice effectively to remedy the breach complained of; or
- (c) If the Contract Holder ceases to carry on business or a substantial part thereof, commits an act of bankruptcy or is adjudicated bankrupt or enters into amalgamation reconstruction or compounds with its creditors generally or has a receiver or manager appointed over all or any part of its assets or suffers execution or distress or takes or suffers any similar actions in consequence of debt or becomes unable to pay its debts as they fall due.

15.2 On expiry or termination of a Support Contract, the Contract Holder grants to The Company the irrevocable right to enter Contract Holder's premises during the hours 9.00am to 5.00pm (Monday to Friday excluding national bank holidays) to remove any equipment (including software) provided in connection with the Services.

16. Data Protection

16.1 In these Terms and Conditions, the terms data controller, data processor, personal data, sensitive personal data and processing shall be as defined in the European Data Protection Directive 95/46/EC and "Data" shall mean the personal data and sensitive personal data provided to The Company in connection with the Services. "Data Protection Law" means applicable data protection legislation implementing the European Data Protection Directive 95/46/EC and any amendments, revisions, re-enactments or consolidations thereof.

16.2 The parties acknowledge that the Contract Holder is a data controller and that The Company is a data processor.

16.3 The Company shall:

- (a) use the Data only on the instructions of the Contract Holder as set out or referred to in these Terms and Conditions to perform the Services;

(b) provide appropriate technical and organisational measures to protect the security of the Data, in particular against unauthorised or unlawful access or processing, alteration, accidental loss or destruction of or damage to the Data; and

(c) take all reasonable steps to ensure the reliability of any of its staff who have access to Data processed in connection with the Services.

16.4 The parties acknowledge that The Company's provision of the Services may require the transfer of Data to The Company's sub-contractors (including The Company group entities) ("Recipients") outside the European Economic Area in countries which have not been approved by the European Commission as having adequate protections in place for the purpose of the transfer of personal data. The Company will be permitted to transfer Data to such Recipients provided that The Company shall have entered into an agreement with the relevant Recipient based upon standard contractual clauses approved by the European Commission for transfers of personal data to processors outside of the European Economic Area and which agreement shall include security obligations on the Recipient which are no less onerous than those contained in these Terms and Conditions.

16.5 The parties also acknowledge that The Company may also use services and/or products from other third parties in order to provide the Services and that, in doing so The Company may transfer Data to such third parties. This may include (by way of example only) third parties that provide online storage and other facilities. If The Company becomes aware of any such third party wishing to transfer Data outside the European Economic Area, The Company shall request that the third party enters into an agreement of the sort noted in clause 16.4 above.

16.6 The Contract Holder agrees to comply with its obligations under Data Protection Law in relation to its collection, processing and provision of Data to The Company in connection with the Services.

16.7 The Contract Holder shall indemnify and keep The Company indemnified against all costs, claims, losses, damages and expenses (including legal expenses) arising out of, or in connection with, any breach of this Condition 16 by the Contract Holder, its employees, agents and/or sub-contractors.

16.8 The Contract Holder acknowledges that The Company is reliant on the Contract Holder for direction as to the extent to which The Company is entitled to use and process the Data. Consequently, The Company will not be liable for any claim brought by the Contract Holder or any data subject arising from any action or omission by The Company to the extent that such action or omission resulted from the Contract Holder's instructions.

17. Remote Software Repair Service

17.1 The following Terms and Conditions are applicable in respect of Remote Repair Service:

- (a) The Remote Software Repair Service applies to software elements only.
- (b) The decision whether a remote repair is applicable for a particular issue is entirely at the discretion of The Company.
- (c) The Remote Software Repair Service is available only within support hours operating from 9am till 5:30pm week days only excluding bank holidays.

18. The Company Personnel

18.1 The Company project manager, will be responsible for co-ordinating all activities relating to the works to be carried out by The Company.

18.2 The Company engineer will be responsible for carrying out the works, unless otherwise stated.

18.3 The Company engineer may decide to involve other personnel to assist with the works.

19. Commencement of Work

19.1 The scheduling of works will only take place once an initial inspection is carried out by an engineer employed by The Company.

19.2 The date for the commencement of works will be agreed between The Company and the Contract Holder.

20. Duration

20.1 The Company engineer will decide which of the activities are to be carried out on site and which can be most effectively carried out elsewhere.

20.2 In the event that The Company engineer completes the works before the end of the allotted time, they will not be obliged to perform tasks not covered in the original specification or remain on site. On-site activities are delivered on a time only basis.

21. Non-Functioning Systems

The Company cannot be held responsible where a system cannot be made to function correctly for reasons beyond The Company's reasonable control, e.g. virus infection, misuse or abuse, force majeure, faulty or incompatible hardware (unless supplied as part of this integration work) or corrupt or incompatible software supplied by the Contract Holder.

22. Miscellaneous

23.1 The Company shall be fully entitled to use in any way it deems fit any skills, techniques, concepts or know-how acquired, developed or used in course of performing the Services.

23.2 The Service is provided to Contract Holders in the United Kingdom only.

23.3 Neither party shall be liable to the other for any delay in or failure to perform its obligations hereunder (other than a payment of money) provided that such a failure is due to causes beyond its reasonable control.

23.4 Failure by The Company to exercise or delay exercising any of these Terms and Conditions shall not constitute or be deemed to be a waiver of The Company's rights hereunder nor prejudice The Company's rights to take subsequent action.

23.5 The headings in these Terms and Conditions are inserted for convenience only and are not intended to be part of or to affect the meaning or interpretation of these Terms and Conditions.

23.6 The invalidity or unenforceability for any reason of any part of these Terms and Conditions shall not prejudice the continuation in force of the remainder thereof.

23.7 Neither party shall assign these Terms and Conditions without the prior written consent of the other, provided that The Company shall be entitled to assign both its rights and obligations under this Agreement to any other subsidiary (of any level) of The Company by giving written notice to such effect to the Contract Holder. The Company shall also be entitled to subcontract the performance of its obligations under these Terms and Conditions and, also, The Company may use tools and services provided by third parties to deliver the Services to you.

23.8 These Terms and Conditions shall be deemed to have been made in, and shall be construed pursuant to; the laws of England and the parties agree to submit to the jurisdiction of the English courts.

23.9 Any notice required to be given under these Terms and Conditions shall be in writing and shall be sent to the respective addresses of the Contract Holder or the registered office of The Company (as the case may be). Any change of address of either party shall be notified to the other in writing forthwith.

23.10 Where the Contract Holder comprises two or more persons their liability and obligations to The Company shall be joint and several.

23.11 The Contract Holder acknowledges that he/she/it has read these Terms and Conditions and understands and agrees to be bound by its terms, conditions and charges. The Contract Holder further agrees that these Terms and Conditions and the documents specifically incorporated herein are the complete and exclusive statement of the mutual understanding of the parties which supersedes and cancels all previous oral and written agreements and communications relating to the subject matter hereof.

23.12 Any equipment provided by The Company is provided only for the purposes of The Company providing the Services and no title or ownership in the same shall pass to the Contract Holder whilst observing Condition 10. Passing of risk

23.13 The Company reserves the right to change the Terms and Conditions by giving the Contract Holder no less than thirty (30) days' notice of the change and the date on which the change takes effect.

