

# HALCYON Terms and Conditions

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## 0 Initiation Information

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This document serves to outline the terms of conditions applicable to the provision of products and services available from Halcyon Solutions Group Ltd.

# 1 Terms and Conditions

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## 1.1 INTRODUCTION

These terms apply to the supply by Halcyon Solutions Group Ltd of equipment and / or services.

## 1.2 DEFINITIONS

"contract" means a contract for the supply of equipment and/or services documented by an order which has been accepted by Halcyon, subject to and governed by these terms;

"consultancy services" means the appointment of Halcyon to provide services to the customer on a consultancy basis as set out in any statement of works or terms of reference which may refer either to a specific project or a specific period of time for which Halcyon has agreed to provide consultancy services;

"consultant" means the individual(s) provided by Halcyon for the performance of the consultancy services;

"customer" means the party purchasing equipment and/or services from Halcyon under a contract and whose name appears on the order;

"delivery" occurs when equipment is unloaded at a site;

"equipment" means an item or items of telecommunications and computing equipment and / or software either supplied by Halcyon to the customer under a contract or covered by support;

"Halcyon" means Halcyon Solutions Group Ltd;

"Intellectual Property Rights" (IPR) means any copyright, patent, design patent, registered design and design rights, utility models, trademarks, service marks, an application for any of these or the right to supply for the same, trade secrets, know-how, database rights, moral rights, confidential information, trade or business name and any other industrial and proprietary and other similar protected rights in any country and any licences under or in respect of such rights;

"order" means an order from the customer for equipment and/or services including any statement of works or proposal;

"PCI" means Payment Card Industry;

"Proposal" means the proposal for the consultancy services provided by Halcyon to the customer detailing the scope of work all or some of which may be accepted by the customer in their purchase order;

"Security Testing" means the process of testing the System as described in the Proposal made by Halcyon to the customer;

"site" means any premises or site where equipment is to be delivered and/or services are to be performed (which, for the avoidance of doubt, may include Halcyon's premises);

"services" means any or all of the services to be performed by Halcyon under a contract (including, without limitation any consultancy services);

"statement of works" the document (if any) setting out the scope of any services to be performed by Halcyon;

"support" or "support services" mean services to repair equipment faults reported by the customer, the provision of software updates and where agreed providing telephone support for the purpose of fault analysis and investigation and "supported equipment" means equipment which is covered by the support services;

"support plan" means a support services plan offered by Halcyon for purchase by customers from time to time, details of which will be contained in the customer's service agreement;

"System" means the systems and networks owned by the customer and form the basis of interoperation between the equipment and/or services provided by Halcyon;

"terms" means these Halcyon terms and conditions of sale;

"terms of reference" the document (if any) outlining the process, deliverables, expectations, timescales and assumptions in relation to Security Testing to be performed to be signed by the customer and submitted to Halcyon when ordering the services and acting as the customer's authorisation for Halcyon to perform the Security Testing;

"Test Report" means the report produced by Halcyon detailing the results of the Security Testing;

### 1.3 PROVISION OF EQUIPMENT AND SERVICES

- 1.3.1 Halcyon agrees to provide to the customer and the customer agrees to purchase equipment and / or services as agreed in the contract and the statement of works (or if no statement of works has been issued (or received) by Halcyon the proposal (if any)).
- 1.3.2 Before a contract is formed, the customer shall send to Halcyon a copy of the statement of works or terms of reference or proposal produced by Halcyon and signed by the customer. The parties acknowledge and agree that the signed statement of works or terms of reference or proposal received by Halcyon shall be an offer by the customer to contract with Halcyon on the terms of the statement of works or terms of reference or proposal which shall be open for acceptance or rejection by Halcyon in its absolute discretion. No legally binding contract shall be formed until Halcyon has accepted the offer either by issuing a notice of acceptance or, if earlier, upon commencement of the supply of the equipment and/or services by Halcyon to the customer. These terms shall apply to the exclusion of any other terms, conditions, and statements attached to or enclosed with the signed statement of works or terms of reference or proposal or otherwise supplied by the customer, such other terms, conditions and statements being expressly excluded from forming part of the contract, unless otherwise expressly agreed in writing by Halcyon.
- 1.3.3 Halcyon may accept or reject an offer from the customer at its discretion. If Halcyon accepts the offer the resulting contract shall incorporate these terms.
- 1.3.4 Each contract shall be governed solely by these terms and by any special terms and conditions which appear on the face of an order and which have been separately negotiated and agreed in writing between the parties; if there is any conflict between them, the terms separately negotiated (provided that the same are agreed in writing and signed by an authorised representative of each party) will prevail. All standard terms and conditions of the customer are excluded. The parties agree that any Halcyon statement of works which is referred to in a contract is the definitive statement of any services to be supplied under the contract and supersedes any previous understanding between the parties on this point. The parties agree that any equipment stated on an order accepted by Halcyon is the definitive statement of any equipment to be supplied under a contract and supersedes any previous understanding between the parties on this point. As regards the delivery of equipment and/or services as outlined in the statement of work or terms of reference or proposal, in the event of any conflict between any of the terms of these documents the following order shall prevail:
- the terms of reference;
  - these terms and conditions; and the Proposal.

## 1.4 ACCEPTANCE AND RISK

- 1.4.1 If Halcyon installs equipment as part of the contract it will test the equipment in accordance with the manufacturer's diagnostic and readiness test specifications. Acceptance of such equipment is deemed to occur (on the earlier of):
- when the equipment has been connected to the network, activated and operated to provide its main functions except for minor variances in performance that do not materially affect those main functions; or
  - if the customer puts the equipment into commercial use.
- 1.4.2 If equipment is installed in phases, Halcyon may carry out acceptance testing for each phase.
- 1.4.3 Acceptance of consultancy services shall take place on completion of the works outlined in the statement of works.
- 1.4.4 If Halcyon agrees to delay delivery or installation of equipment or works set out in the statement of works at the request of the customer or if delivery or installation is delayed because of a breach of these terms by the customer, acceptance shall be deemed to have occurred 14 days after Halcyon notifies the customer that the equipment or works are ready for delivery.
- 1.4.5 If equipment is sold but not installed by Halcyon, acceptance is deemed to occur upon delivery.
- 1.4.6 If during acceptance testing any item of equipment is found to be defective, then provided that either (i) the acceptance testing is taking place during the manufacturer's warranty period for that equipment or (ii) the customer has taken out a support contract with Halcyon then Halcyon shall at its discretion and within a reasonable time either rectify the defect or replace the item with a new item and the equipment shall be re-tested. For the avoidance of doubt Halcyon shall have no liability to rectify or replace any item found to be defective during testing if the manufacturer's warranty period has expired and the customer has not taken out any support contract with Halcyon.
- 1.4.7 Halcyon will not accept responsibility for any claims for shortages, discrepancies or damage to equipment unless the customer notifies Halcyon in writing as soon as the problem should have been apparent and at the latest within 48 hours of delivery.
- 1.4.8 The customer assumes the risk of loss or damage to equipment from the time of delivery. With effect from delivery, the customer shall maintain insurance for the full insurable value of equipment until title passes to the customer in accordance with clause 1.4.9.
- 1.4.9 Title shall pass to the customer upon full payment of all sums due for equipment and any associated installation.

## 1.5 CONSULTANCY SERVICES

- 1.5.1 The customer will have the right to interview any consultant used by Halcyon in order to verify the suitability of the consultant to the contract to which such consultant has been assigned. The allocation of work to a consultant will under normal circumstances be managed and communicated to the consultant by Halcyon and the customer may only allocate work directly where the statement of works specifically stipulates this to be the case.
- 1.5.2 Halcyon uses reasonable endeavours to maintain continuity of personnel over the course of an engagement. Should it be necessary for any reason whatsoever to substitute a consultant then Halcyon shall endeavour to procure that, so far as reasonably practicable any such substitute has broadly similar qualifications and experience. Halcyon shall notify the customer when substituting any consultant.
- 1.5.3 The customer shall have the right to require that Halcyon removes from any engagement for the customer any specific consultant in the event that such consultant commits any act for which that consultant could be summarily dismissed by the customer if the consultant had been employed by the customer under a contract of employment. The customer shall provide Halcyon with written notice of any such event setting out full details of the action of the consultant which results in the required removal and shall provide Halcyon with all assistance reasonably requested by Halcyon in respect of any disciplinary action taken by Halcyon against the consultant in respect of any such event.
- 1.5.4 The consultant may be assigned to the customer at the site specified in the statement of works and any change in site must be agreed in writing by Halcyon. If no such site is specified the site of the work will be as appropriate for the specific project or job as agreed between the customer and Halcyon.
- 1.5.5 In addition to any charge referred to in clause 1.6 below Halcyon shall be entitled to recover all reasonable expenses incurred by the consultant on the customer's business.
- 1.5.6 The customer shall not be liable to pay to Halcyon in respect of any absence of the consultant due to annual or sick leave
- 1.5.7 The customer undertakes that it shall not in the period of 12 months from the date from which that consultant last undertook any work or engagement for that customer approach, solicit any approach to or procure that any other party shall approach or solicit any approach to any consultant provided by Halcyon with a view to employment or engagement (whether on a temporary or permanent basis) with the customer or any other individual, partnership company or corporation connected in any way with the customer unless Halcyon shall have given it prior written consent. In the event of any breach of this clause the customer undertakes to pay to Halcyon such sum as shall represent a fee equal to the weekly rate at which such consultant was charged out by Halcyon (being the hourly rate charged by Halcyon for that consultant multiplied by forty) multiplied by thirteen weeks. The customer acknowledges that such sum is a genuine pre-estimate of the level of losses which would be suffered by Halcyon in such circumstances.



## 1.6 PRICE AND PAYMENT TERMS

- 1.6.1 Unless the contract states otherwise, prices quoted by Halcyon are in pounds sterling and are exclusive of VAT and any other sales taxes, which the customer shall be responsible for paying. Where Halcyon has quoted a price based on an exchange rate which has altered to the detriment of Halcyon by more than 2% by the time an order is received, Halcyon reserves the right to re-quote.
- 1.6.2 The customer acknowledges its responsibility to disclose all relevant information to enable Halcyon to calculate its charges accurately. The customer agrees to pay for additional work required which Halcyon could not reasonably have foreseen on the basis of the information provided to it by the customer.
- 1.6.3 Unless the contract states otherwise, invoicing will be as follows for existing customers:
- For the sale of equipment, the price will be invoiced 100% on delivery of the equipment either at customer site or at Halcyon's site for pre-configuration work.
  - For the provision of support services, the price will be invoiced 100% on order.
  - For upfront consultancy services being provided from a pre-paid pool of time credit (including for the avoidance of doubt consultancy services in respect of both PCI and non-PCI engagements) the price will be invoiced 100% on order.
  - For the provision of PCI consultancy services (for the avoidance of doubt PCI services in respect of planned project based engagements) the price will be invoiced 40% on order and 60% on completion where the project falls due within one month elapsed, otherwise 10% monthly in arrears commencing one month after initial order or the total outstanding invoice balance where the project falls due sooner.
  - For all other services (including for the avoidance of doubt consultancy services in respect of project based engagements) the price will be invoiced 50% on order and 50% on completion where the project falls due within one month elapsed, otherwise monthly in arrears as the services are performed.
  - For consultancy services being provided on an ad hoc basis at the hourly/daily/weekly rate set out in the statement of works in respect of the amount of time actually worked by the consultant. If the customer requests that the consultant works overtime and the consultant consents to do so then overtime will be charged at the rate set out in the statement of works.
  - All services will be performed according to the terms of the order placed by the customer which will be agreed prior to the commencement of the work.
  - Payment terms may be altered on a per job basis with the written agreement of both parties.
- 1.6.4 Existing customers are those customers defined by Halcyon as having a stable trading relationship & good credit history with Halcyon. If a customer has a trading history with Halcyon, that customer will be informed if their status with Halcyon is anything other than as an "existing customer" following order receipt and prior to any works being carried out or equipment being ordered.
- 1.6.5 Payment terms for all customers other than existing customers (defined as "new customers") and payment for upfront professional services will be 100% in advance of work or equipment order unless otherwise agreed.

- 1.6.6 Invoices shall be paid by the customer within 30 days from the date of the invoice. If Halcyon does not receive payment within 30 days it shall be entitled to charge daily interest (compounded quarterly) upon the outstanding amount at the rate of 3% over the Bank of England base rate from the due date until Halcyon receives payment in full after as well as before judgment.
- 1.6.7 All payments shall be made by the customer in pounds sterling by transfer to such bank account as Halcyon may from time to time notify.
- 1.6.8 Halcyon shall be entitled to charge the customer for all costs incurred and for any loss of anticipated profit if the customer cancels or purports to cancel its order in whole or in part after the order has been accepted by Halcyon or Halcyon terminates following a breach by the customer or if the customer prevents performance of a contract or if the customer terminates or purports to terminate a contract in breach of these terms or any other terms of the contract. The customer acknowledges these costs and losses may amount to the full purchase price for equipment or services, as Halcyon may be unable to cancel its order or sell the equipment. The customer further acknowledges these costs and losses may be very considerable for cancelled services, as Halcyon may have already employed or engaged people to perform the services and/ or purchased all spares or equipment for the duration of the contract.
- 1.6.9 Upon confirmation by Halcyon to the Customer of the date services are scheduled to commence, Halcyon will immediately start to allocate resources and facilities and commit to third party expenditure to fulfil its contractual commitment. Halcyon may at its absolute discretion allow services to be re-scheduled or cancelled, but if it does so allow, the Customer agrees that it will be committed to paying Halcyon a proportion of the agreed fees as genuinely pre-estimated liquidated damages to reflect the losses which it will incur as a result of such cancellation or re-scheduling. Without prejudice to Halcyon's rights under clause 1.6.8 in the event that the customer notifies Halcyon that it needs to cancel or reschedule any services timetabled to commence less than 8 days before the notification of such cancellation then Halcyon shall be entitled as a minimum to charge the customer 100% of the fees and where less than 30 days 50% of the fees.
- 1.6.10 Halcyon may increase its charges annually by giving notice to the customer.
- 1.6.11 If the equipment is delivered to Halcyon (by arrangement with the customer) for any pre-staging works then in addition to all manufacturers delivery costs the customer shall also be responsible for all delivery costs in transporting the equipment from Halcyon's premises to the customer's site.

## 1.7 CUSTOMER RESPONSIBILITIES

- 1.7.1 The customer shall provide Halcyon with all information relevant to delivering the equipment or performing the services, including but not limited to floor plans and utility diagrams, details of equipment, wiring or conditions that might affect or be affected by the services, and details of any hazardous or potentially hazardous conditions.
- 1.7.2 The customer shall prepare the site for the storage and final installation of equipment, for example removing existing equipment or cables as necessary, and making available secure storage space for equipment, spare parts and tools as reasonably required by Halcyon. The customer agrees to allow Halcyon to deliver and / or install the equipment as soon as Halcyon is ready to do so.
- 1.7.3 The customer shall provide facilities as reasonably required by Halcyon to provide the services, including but not limited to ducting, conduit, structural borings for cable and conductors, and electrical service with suitable terminals and power surge protection devices and shall designate refuse deposit points close to any equipment and remove any waste placed there.
- 1.7.4 The customer shall arrange access to any site as reasonably required by Halcyon and provide safe and suitable conditions to allow Halcyon to perform the services. The customer agrees to ensure that all sites comply with all relevant laws and regulations.
- 1.7.5 The customer shall procure as required any permission or services of third parties in respect of interfacing equipment or software and allow Halcyon, at the customer's expense, to make reasonable service requests on third parties for equipment interconnection, including obtaining telephone service for testing where necessary.
- 1.7.6 The customer shall co-operate with and assist Halcyon as reasonably required in connection with the services, including but not limited to making available at all reasonable times either in person or by telephone somebody with appropriate knowledge of the equipment and site with authority to act on behalf of the customer, replying to any request for any information, approval or decision without delay.
- 1.7.7 The customer shall maintain the equipment and its environment in accordance with any manufacturer specifications and tolerances.
- 1.7.8 The customer shall select, implement and maintain security features for defence against unauthorised equipment use and pay all telecommunications charges incurred through use or misuse of the equipment.
- 1.7.9 The customer shall be responsible for the allocation of work to the consultant and for the supervision, direction and control of the consultant for the duration of the consultancy services.
- 1.7.10 The customer shall immediately notify Halcyon of any inability or anticipated delay in meeting any customer responsibilities or obligations set out in this clause.
- 1.7.11 The customer agrees to ensure performance of its obligations in this clause 1.7 at its own cost and without delay. If the customer fails to ensure that any of its obligations under this clause 1.7 or any other of these terms is met without delay, it shall indemnify and keep indemnified, defend and hold harmless Halcyon from any associated claims, damages or liabilities and shall pay, at Halcyon's current rates, any costs and expenses incurred by Halcyon.

- 1.7.12 That, where the delivery of equipment and/or services as defined in the statement of work or terms of reference or proposal is to take place on the Customer's premises, the Customer shall ensure that suitable accommodation is provided for the Consultant which shall include network access and, where necessary, access to data centres, server rooms and/or switch rooms.
- 1.7.13 That, should the Customer require a laptop or PDA (Personal Digital Assistant) to be security tested, they will deliver the laptop and/or PDA to the relevant Halcyon premises and collect it from those premises or authorise other means of delivery and return at the Customer's own risk. Halcyon shall not be liable for the laptop or PDA during transit to or from its offices.
- 1.7.14 To assume all liability and keep indemnified Halcyon, its officers, employees, agents, contractors and sub-contractors from and against all and any claims, proceedings, loss and/or damages, demands, costs, expenses (including all court and legal fees) and other liabilities of whatever nature suffered, incurred or sustained by Halcyon as a result of or in connection with any claims of alleged/actual infringement of Intellectual Property Rights arising out of or in connection with all dealings by Halcyon with the System as contemplated under this Contract.
- 1.7.15 To provide Halcyon with at least one employee who shall have substantial computer systems, network and project management experience of the Customer's Systems to act as liaison between the Customer and Halcyon.
- 1.7.16 To co-operate with Halcyon and to provide it promptly with such information about its Systems, network, premises, equipment, data structures, protocols, software, hardware and firmware as are reasonably required by Halcyon.
- 1.7.17 To ensure that, where the delivery of equipment and/or service as outlined in the statement of works or terms of reference or proposal is taking place on its premises, the premises are safe and shall indemnify Halcyon against all claims for death and/or personal injury arising out of the Customer's breach of such obligation of safety.
- 1.7.18 That, by signing the terms of reference, the Customer consents, for itself and on behalf of all group companies, to Halcyon performing the delivery of equipment and/or service as outlined in the statement of works or terms of reference or proposal and that it has procured, where necessary, the consent of all its (and its group companies) employees, agents and subcontractors that Halcyon shall be permitted to carry out the delivery of equipment and/or service as outlined in the statement of works or terms of reference or proposal. Halcyon will be carrying out the delivery of equipment and/or service as outlined in the statement of works or terms of reference or proposal in the belief that it has all appropriate consents, permits and permissions from the Customer and its subcontractors, agents, group companies (and their employees, agent and subcontractors.)
- 1.7.19 That, whilst Halcyon will conduct all the delivery of equipment and/or service as outlined in the statement of works or terms of reference or proposal in line with accepted best practice and make all reasonable efforts to avoid disruption of the Customer's network, the tools and techniques used may cause disruption to the Customer's Systems and/or possible loss of or corruption to data, and the Customer agrees to take such backups and provide such redundant systems as are prudent in the circumstances.
- 1.7.20 To notify Halcyon if there are any periods during the delivery of equipment and/or service as outlined in the statement of works or terms of reference or proposal when Halcyon should stop work due to critical business processes (such as batch runs) or if any part of the System is business critical so that Halcyon can, if needs be and with the Customer's consent, modify its delivery approach.

## 1.8 SAFETY, SECURITY AND PERSONAL CONDUCT

- 1.8.1 The customer agrees to ensure that Halcyon's employees, consultants, agents and sub-contractors are not exposed to anything which might have a detrimental effect on their health, safety or welfare. If any potential hazards exist at any site which could have such an effect, the customer shall immediately advise Halcyon, confirmed in writing afterwards, and offer appropriate training and safeguards to ensure safe working conditions. Any breach of this clause 1.8.1 shall be a material breach of these terms.
- 1.8.2 Halcyon agrees to ensure that its employees, consultants, agents and sub-contractors attending a site comply with all reasonable customer policies and instructions on health and safety, security and personal conduct of which the customer notifies Halcyon.
- 1.8.3 Should there be a breach of clause 1.8.2, the customer shall be entitled to ban the relevant person from the site and if this occurs, Halcyon agrees to provide a suitable replacement as soon as reasonably practicable.

## 1.9 SUPPORT SERVICES: GENERAL

- 1.9.1 The objective of the support services is to maintain supported equipment in good operating condition in accordance with the manufacturer's specifications, based on normal use by the customer. The customer agrees to pay Halcyon at its then current time and material rates for work it requests Halcyon to perform which did not result from normal use of the equipment.
- 1.9.2 Any support services provided shall be in accordance with the support plan chosen by the customer.
- 1.9.3 Where Halcyon is installing equipment which is to be covered by support, Halcyon shall provide and the customer agrees to pay for the support plan with effect from the date of delivery (or the date that delivery would have occurred if delivery has been delayed by or at the request of the customer) until the date defined as the termination date for support services as specified in the statement of work or terms of reference or proposal. After this date, any protracted requirements for support services are the responsibility of the customer to source and pay for.
- 1.9.4 Where Halcyon either did not deliver, or did not install or did not support any equipment immediately before the support services begin, it reserves the right to undertake a pre-maintenance inspection to determine whether any work is required to bring the equipment up to the manufacturer's specification. Halcyon reserves the right to charge the customer at its the current time and material rates for the inspection and any necessary work.
- 1.9.5 Halcyon has no obligation to provide support for software releases which are not supported by the manufacturer/software publisher.
- 1.9.6 Halcyon shall have the right to inspect all equipment and software which is connected to supported equipment as reasonably required for the purpose of checking the causes of faults in supported equipment.
- 1.9.7 Any parts fitted to the equipment under the support service shall upon fitting become the property of the customer.

- 1.9.8 Any parts that have been replaced by Halcyon shall upon replacement become the property of Halcyon. The parties warrant that they have good title to pass on. If the equipment is leased or charged, the customer warrants that it has obtained all necessary consents to part with the possession of, and give good title to, the replaced parts.

## 1.10 SUPPORT SERVICES: HALCYON OBLIGATIONS

- 1.10.1 Halcyon shall use reasonable endeavours to ensure that it complies with any Halcyon obligations set out in these terms and the relevant support plan details.
- 1.10.2 Halcyon may, depending on the support plan purchased attempt to repair, by remote technical support, faults reported by the customer or diagnosed remotely; if this does not resolve the problem, Halcyon may (if the same is included in the support plan purchased by that customer) dispatch an engineer to fix the faulty item and if an item needs replacing, de-install the faulty item and install a replacement such replacement parts may be new or re-conditioned to be the functional equivalent of the original.
- 1.10.3 Any target response times start from the time at which Halcyon (having identified the parts which require replacement) sanction that the parts need replacement.
- 1.10.4 Any software support included in the services to be provided by Halcyon shall, unless agreed otherwise between the parties in writing, only relate to the current release of such software and the immediately preceding release pending adoption of the latest release by the customer.

## 1.11 SUPPORT SERVICES: CUSTOMER OBLIGATIONS

- 1.11.1 The customer shall use reasonable endeavours to ensure that it complies with any customer obligations set out in these terms and the relevant support plan details.
- 1.11.2 If the customer is required to report faults in supported equipment to Halcyon, it shall make reasonable attempts to identify the cause of the fault (not involving any disassembly of the equipment) and if no obvious cause is identified it shall ensure that the fault is reported to the manufacturer or Halcyon technical services centre as soon as possible (depending upon the support plan which that customer has in place). It shall also ensure that a suitably competent person is available either in person or by telephone to demonstrate the fault and verify its satisfactory resolution. Where agreed with Halcyon, the customer shall provide and configure the relevant network and equipment to allow remote diagnostics.
- 1.11.3 Where Halcyon is maintaining software on the customer's server as part of the support service, the customer agrees to maintain the hardware and operating system software at its expense within the specifications and tolerances specified by the relevant manufacturer. The customer shall promptly forward to Halcyon all information regarding updates, patches or hot fixes to hardware and/or software operating systems prior to implementation and anytime thereafter, for review and determination of compatibility with the application software for server-based products.
- 1.11.4 The customer agrees to ensure adequate back-up of data, configuration files and software and restoration of data which might otherwise be lost, for example when equipment is repaired or replaced.

- 1.11.5 The customer shall not modify, enhance, repair, disassemble, add new equipment to or move any supported equipment without Halcyon's prior written consent which will not be unreasonably refused: if Halcyon grants consent, the customer agrees to pay Halcyon's reasonable extra charges to reflect any resulting additional work for Halcyon.
- 1.11.6 The customer agrees to maintain and supply to Halcyon a database of supported equipment showing the type of equipment, the model number, the serial number, the location, and any changes.
- 1.11.7 Where Halcyon is installing and / or maintaining equipment that relies on communication over the customer's network, the customer shall ensure that the infrastructure is maintained to provide acceptable access and communication levels.

## 1.12 WARRANTY AND SUPPORT SERVICE EXCLUSIONS

- 1.12.1 The scope of services performed under any warranty or under the support service does not include any repairs or any work made necessary by any of the following:
- events beyond the reasonable control of the parties of the type referred to in clause 1.13;
  - failure to follow operational, maintenance or environmental requirements described in the manufacturer's manuals or product bulletins, or in Halcyon manuals and other documentation provided to the customer;
  - failure resulting from or attributable to the customers network or third party software or other equipment used in conjunction with the equipment or from the use of any software used by the customer other than software supplied by Halcyon as part of the equipment;
  - failure of consumable items such as but not limited to batteries;
  - modifications, enhancements or repairs to, disassembly of or moving equipment other than by Halcyon;
  - abnormal use of the equipment, such as but not limited to mishandling, abuse or accidental damage;
  - changes required by any telephone company, utility company or other transmission provider;
  - electrical work external to the equipment;
  - service which is impractical for Halcyon to render because of equipment alterations or its connection to other devices, or because of alterations to operating systems;
  - systems engineering services, programming, reconfiguration or reprogramming of equipment, or operational procedures of any sort; or service calls where either no problem is found or any problem is unrelated to the equipment.
- 1.12.2 Halcyon shall have no obligation to undertake any repairs or work made necessary by any of the events set out in Clause 1.12.1 but may at the customer's request, perform the work or repairs at Halcyon's then current time and materials rates.

- 1.12.3 Halcyon reserves the right to cancel any or all of its support obligations by serving three months' notice on the customer if it determines that it is unable on commercially reasonable terms either to continue to provide the support service, or to obtain replacement parts for the supported equipment or to maintain any relevant software. If Halcyon does cancel all or part of the support service, it shall reimburse the customer a refund of sums paid pro-rated on a time basis.
- 1.12.4 Halcyon shall have the right to suspend the provision of support services if the customer shall make any change, modification or alteration to the equipment (irrespective of whether such change, modification or alteration has resulted in a claim under the support services) until such time as the customer has engaged and paid Halcyon to rectify or ratify such change, modification or alteration. Any such suspension shall be without prejudice to the obligations of the customer to pay all sums due to Halcyon in respect of services which shall fall due or which shall relate to the period of such suspension.



## 1.13 EVENTS BEYOND THE CONTROL OF THE PARTIES

- 1.13.1 Neither party shall be responsible for a delay or failure to perform an obligation under a contract, other than a delay in making a due payment, if caused by an event beyond the reasonable control of that party, provided that the other party is notified as soon as practicable. Events beyond a party's reasonable control include but are not limited to fire, flood, weather conditions, civil and industrial disturbances, power surges or failure and delays or failures by suppliers, subcontractors, utility companies, telephone companies, internet carriers, telecommunications or other service providers.
- 1.13.2 The affected party shall use reasonable endeavours to fulfil its obligations as far as reasonably possible.
- 1.13.3 If the customer or Halcyon suffers delay or failure due to an event beyond its reasonable control in accordance with clause 1.13.1 for a period in excess 30 days then both Halcyon and the Customer shall be entitled to terminate the contract forthwith on giving written notice to the other party.

## 1.14 SOFTWARE LICENCE

- 1.14.1 The customer acknowledges any software supplied by Halcyon is owned by the relevant software publisher or equipment manufacturer and not by Halcyon: in no circumstances shall title to any software pass to the customer. The customer agrees to be bound by the terms of the relevant licence agreement, which may be shown on the web site [www.halcyon.solutions](http://www.halcyon.solutions), or the relevant manufacturer's or publisher's web site or which may accompany any equipment or software. Any such license agreement shall exclusively and independently govern the licensing of the software.
- 1.14.2 The parties agree that any failure to comply with the terms of this clause 1.14 or any software licence relating to any software supplied by Halcyon as part do the equipment shall be deemed a material breach of the Contract for which injunctive and other equitable relief may be sought and the customer shall indemnify and keep indemnified, defend and hold harmless Halcyon from any associated claims, damages or liabilities and shall pay, at Halcyon's current rates, any costs and expenses incurred by Halcyon in respect of any breach of this clause by the customer.

## 1.15 TERM TERMINATION AND SUSPENSION

- 1.15.1 Each order agreed subject to these terms shall form a separate contract between the parties which shall continue in effect until its expiry or termination. Support and other ongoing services are provided on an annual basis and, provided that any minimum or initial term agreed with the customer has elapsed, may be terminated on an anniversary of the commencement of the services by either party serving not less than three months' prior written notice on the other party.
- 1.15.2 Contracts under which Halcyon supplies consultancy services for an agreed period of pre-purchased time shall run from the date of that agreement until the customer has utilised the pre-purchased period specified in the statement of works or if earlier the long stop date specified in the statement of works occurs before all such hours have been utilised by the customer. For the avoidance of doubt Halcyon shall be entitled to refuse to extend the availability of any consultant after expiry of the original pre-paid period or the completion of the specified project and/or may re-negotiate the fee charged for that consultant's services.
- 1.15.3 Either party may by serving notice to terminate a contract if the other party commits a material breach of the contract which is incapable of remedy or ceases doing business or commences dissolution, insolvency or liquidation or receivership or any analogous proceedings except for amalgamation or reconstruction.
- 1.15.4 Either party may by serving notice to terminate a contract if the other party either fails to remedy a material breach of the contract which is capable of remedy within twenty eight days of written notice giving appropriate details or fails to make a due payment within fourteen days of written notice giving appropriate details. Either party with a right to terminate under this clause shall have the additional right to suspend all or any of its obligations under the contract until the breach is remedied.
- 1.15.5 If any circumstances exist at any site which Halcyon reasonably believes could have a detrimental effect on the health, safety or welfare of Halcyon's employees, agents or sub-contractors, Halcyon shall have the additional right to suspend the delivery of all or any equipment or the performance of all or any services at any time while those circumstances prevail.
- 1.15.6 If a suspension should occur under clause 1.15.4 or 1.15.5, the party at fault agrees to pay any reasonable extra costs incurred and the time allowed to the suspending party to perform its obligations shall be equitably adjusted.
- 1.15.7 Either party terminating a contract or suspending its obligations under this clause 1.15 does so without any further liability on its part under the contract, other than (i) a liability to pay for equipment delivered or services performed up to that date (ii) in respect of contracts under which Halcyon supplies consultancy services for an agreed period of pre-purchased time the customer shall not be entitled to any refund of pre-purchased time not utilised at the date of such termination and (iii) to continue to comply with clause 1.19 and any other obligations which are of a continuing nature, and without prejudice to any other of its rights or remedies, except as otherwise limited by the contract.

- 1.15.8 Halcyon reserves the right to withdraw from the delivery of equipment and/or services outlined in the statement of work or terms of reference or proposal without notice if, in its opinion, information required for satisfactory completion of the delivery of equipment and/or services outlined in the statement of work or terms of reference or proposal and requested by Halcyon is either not provided or, if provided, is inaccurate or inadequate. The Customer shall be liable for any fee and expenses incurred up to and including the date of withdrawal.

## 1.16 WARRANTY

- 1.16.1 Halcyon warrants that the services will be performed by it or on its behalf using reasonable skill and care, unless otherwise expressly provided.
- 1.16.2 Any end-user warranties for equipment from an equipment manufacturer shall, so far as reasonably possible, be passed on to the customer by Halcyon. The customer acknowledges and accepts that the period for inspection and commencement of manufacturer's warranty of any equipment will run from the earlier of delivery of the equipment to Halcyon or the customer. If an item of equipment supplied by Halcyon develops a fault during the manufacturer's warranty period, Halcyon shall at its option and expense either return the item to the manufacturer and replace it or repair the item. Replacement parts may be new or reconditioned to be the functional equivalent of the original. The customer acknowledges that any work on equipment by non-manufacturer certified technicians may invalidate the manufacturer's warranty.
- 1.16.3 Unless otherwise stated in these terms, the warranties in this clause 1.16 are in place of all other warranties from Halcyon. All other warranties, whether express or implied by statute or common law or otherwise, are excluded to the fullest extent permitted by law, including but not limited to warranties of satisfactory quality or fitness for a particular purpose (whether that purpose has been brought to the attention of Halcyon or not) or any warranty that any equipment will function uninterrupted or error-free.
- 1.16.4 Unless expressly incorporated into these terms, no statement or representation, whether written, oral or otherwise, shall be relied on by the customer to the effect that any equipment or services will be of satisfactory quality or fit for a particular purpose, whether that purpose has brought to the attention of Halcyon or not.
- 1.16.5 Halcyon makes no warranty for use of any equipment as a component in life support devices.

## 1.17 INDEMNITY

Subject to clause 1.18, each party shall defend, indemnify, keep indemnified and hold harmless the other party, and its respective directors, employees, agents and subcontractors from and against any third party claim, suit, action or proceeding alleging bodily injury, death or damage to tangible property to the extent such injury, death or damage is caused by the negligence or wilful misconduct of the indemnifying party, its directors, employees, agents or subcontractors in connection with the performance of services or the unauthorised disclosure or use of any confidential information under these terms, provided that such claim is promptly reported to the indemnifying party in writing.

## 1.18 LIMITATION OF LIABILITY

- 1.18.1 This clause sets out the entire financial liability of Halcyon (including any liability for the acts or omissions of its employees, agents, consultants and subcontractors) to the customer, its ISP or any third party supplier to the customer in respect of:
- any breach of this agreement;
  - any use made by the customer of the services or any equipment supplied by Halcyon or any part of them;
  - any services (including consultancy services) provided by Halcyon;
  - any representation, statement or tortuous act or omission (including negligence) arising under or in connection with this agreement or the provision of the service and/or equipment by Halcyon.
- 1.18.2 In recognition of the relative risks and rewards of the parties agree that, subject to clause 1.18.5, Halcyon total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with this agreement and any contract performed by Halcyon in connection with this agreement shall be limited to the value of the relevant contract (or the annual value of the relevant contract for ongoing services) or one million pounds sterling, whichever is less.
- 1.18.3 Subject to clause 1.18.5 Halcyon shall not be liable for any, loss of profits, loss of business, depletion of goodwill and/or similar losses or loss of anticipated savings, loss of equipment, loss of contract, loss of use, loss or corruption of data or information or any special, indirect, consequential, or pure economic loss, costs, damage, charges or expenses.
- 1.18.4 Halcyon shall be liable for any physical damage it causes to an item of equipment due to its negligence or wilful misconduct if this occurs, the customer's sole remedy shall be limited to either Halcyon's repair of the item of equipment, or, if Halcyon reasonably determines that this is impossible or uneconomic, replacement with comparable equipment or a pro-rated refund based on depreciation over 5 years.
- 1.18.5 Nothing in these terms or a contract shall be construed to limit the liability of Halcyon for death or personal injury caused by its own negligence or for any damage or liability incurred by the customer as a result of fraud or fraudulent misrepresentation by Halcyon.
- 1.18.6 By entering into a contract based on these terms, the parties acknowledge that this limitation of liability clause has been reviewed and understood and is a material part of these terms, and that each party has had the opportunity to seek legal advice regarding this clause.
- 1.18.7 Halcyon shall not be liable for any loss, damage, costs, expenses or other claims for compensation arising from any material or instruction supplied by the Customer which are incomplete, incorrect, inaccurate, illegible or defective in any other way.
- 1.18.8 Halcyon shall not be liable to the Customer, its other third party supplier of the System for any indirect or consequential loss or damage whether for loss of profit, loss of business, depletion of goodwill or otherwise whatsoever or howsoever caused which arise out of or in connection with this Contract even if such loss was reasonably foreseeable or Halcyon had been advised of the possibility of incurring the same by the Customer, its ISP or any third party.

## 1.19 CONFIDENTIALITY

- 1.19.1 For the purpose of this clause 1.19, confidential information means all tangible and intangible information or data in any form or medium, including but not limited to written, documentary, oral or electronic information, details of the customer's Systems, procedures, network configuration and topology, passwords, private encryption keys and details of Halcyon's methodologies which is marked confidential or which by its nature or the circumstances surrounding its disclosure should reasonably be regarded as confidential, including but not limited to the terms of any contract.
- 1.19.2 Both parties agree to take reasonable care to ensure that any confidential information remains confidential. Both parties agree not to disclose any confidential information during or subsequent to the term of any contract to any third party, other than where the disclosure is reasonable in the context of general legal requirements or the provision of any services or equipment, such as but not limited to disclosure as necessary to any employee or sub-contractor. Confidential information may be disclosed if:
- it is in the public domain without breach of these terms;
  - it was already known by the party receiving it;
  - it was, so far as the receiving party is aware, legitimately disclosed to it on a non-confidential basis without any restriction on its further disclosure; or
  - disclosure is required by any court, legislative or regulatory body, provided that, if permitted, the party who made the original disclosure is notified as soon as possible.
- 1.19.3 Both parties agree to ensure any third party to whom disclosure is made in accordance with these terms will comply with the obligations in this clause 1.19.

## 1.20 GENERAL

- 1.20.1 Governing law. These terms and all contracts subject to them shall be governed by English law and both parties agree to be bound by the exclusive jurisdiction of the English courts.
- 1.20.2 Assignment. Neither party may assign or transfer any of its rights or obligations under a contract without the prior written consent of the other party, which consent shall not be unreasonably withheld, provided that nothing in this clause or in any contract shall prevent Halcyon from using subcontractors to perform any of its obligations.
- 1.20.3 Binding effect. All contracts subject to these terms shall be binding upon and shall inure to the benefit of the parties and their respective successors and permitted assigns.
- 1.20.4 Third party rights. Nothing in these terms, expressed or implied, shall confer any right or remedy on any person other than the parties. No party other than Halcyon and the customer shall have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of these terms.
- 1.20.5 Counterparts. A contract may be executed in one or more counterparts, each of which shall be deemed an original, but which together shall constitute a single agreement. Either party may rely on a faxed authorised signature from the other party to bind that other party.
- 1.20.6 Amendment and waiver. These terms or any other provision of a contract may be modified or supplemented only by a written document (excluding electronic mail and instant messaging) executed by both parties. A waiver by either party of a breach of these terms or any other provision of a contract shall not be construed as a waiver of any subsequent or different breach. The fact that a party has not sought a remedy for non-compliance or breach by the other party shall not be construed as a waiver of any right or remedy.
- 1.20.7 Invalid clauses. If any court finds any provision of these terms or any other provision of a contract to be invalid or unenforceable, the remainder of these terms and the contract shall continue in full force and effect as if the provision had not existed.
- 1.20.8 Preparation of these terms. The parties acknowledge and agree that these terms and any other terms of a contract have been fully and carefully reviewed and negotiated by the parties.
- 1.20.9 Entire agreement. Each contract constitutes the entire agreement and understanding between the parties about its subject matter and supersedes all prior agreements and understandings about that subject matter. No usage of trade or course of dealing by or between the parties shall be deemed to constitute any variation or amendment of any contract or these terms. Each party acknowledges that in entering into a contract, it does not do so on the basis of, and does not rely on, any representation, warranty or other provision except as provided in writing in the contract.
- 1.20.10 Headings. The headings appearing in these terms have been inserted as a matter of convenience and shall not affect their meaning or interpretation.
- 1.20.11 Independent parties. Nothing in these terms shall be construed to establish or create an agency, partnership or joint venture relationship between the parties.
- 1.20.12 Non-solicitation. Both parties agree not to directly or indirectly solicit, employ or contract with any employee of the other party who has been associated with a contract between the parties during its term and for one year after its termination or expiry.

- 1.20.13 Notices. Notices required by these terms shall be in writing and shall either be delivered in person or by a postal or courier service which requires the signature of the receiving party. The notice will become effective on delivery. Notices shall be served in the case of Halcyon at 21 Derwent Road, Harpenden AL5 3PA marked for the attention of the Service Contracts Manager and in the case of the customer at the registered office address of the customer.
- 1.20.14 Data Protection. In the course of providing services, Halcyon may obtain personal data from the Customer. The Customer confirms that it has obtained all consents required from data subjects to enable such personal data to be disclosed to Halcyon and to enable Halcyon to carry out its services.

## 1.21 PCI SECURITY STANDARDS COUNCIL DISCLOSURE REQUIREMENTS

This clause applies only where the works being undertaken by Halcyon are in connection with a PCI DSS security assessment.

The customer authorises Halcyon to release, directly to the PCI Security Standards Council LLC ("PCI SSC"), without any additional consent, approval or permission of the customer:

- (i) any Report on Compliance and related results generated in connection with Halcyon's annual on-site PCI Data Security Assessment, including but not necessarily limited to, working papers and other notes, and
- (ii) any and all additional agreements or other materials necessary to enable Halcyon to comply with the disclosure compliance requirements mandated by the PCI SSC for all Qualified Security Assessors.

## 1.22 C.E.S.G (THE COMMUNICATIONS-ELECTRONICS SECURITY GROUP) A GROUP WITHIN THE GOVERNMENT COMMUNICATIONS HEADQUARTERS DISCLOSURE REQUIREMENTS

This clause applies only where the delivery of equipment and/or services as outlined in the statement or work or terms of reference or proposal is to be performed under the CHECK Scheme. Where the delivery of equipment and/or services as outlined in the statement or work or terms of reference or proposal is performed under the CHECK Scheme, Halcyon will seek authorisation from CESG prior to commencement of delivery.

The customer authorises Halcyon to release, directly to the CESG CHECK review panel, without any additional consent, approval or permission of the customer:

- (i) any Test Report and related results generated in line with the requirements of the Protective Marking Scheme, including but not necessarily limited to, working papers and other notes, and
- (ii) any and all additional agreements or other materials necessary to enable Halcyon to comply with the Protective Marking Scheme requirements mandated by CESG under the CHECK Scheme.

## 1.23 INTELLECTUAL PROPERTY

- 1.23.1 Ownership of all Intellectual Property Rights in the System remains at all times with the Customer and/or its ISP or other third party supplier. For the avoidance of doubt, all Intellectual Property Rights in the materials used by Halcyon to carry out the delivery of equipment and/or services as outlined in the statement or work or terms of reference or proposal remain vested in Halcyon or any relevant third party owners.



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