

Terms and conditions (Supplier Terms)

Safety: Private Cloud

These Supplier Terms contain two sections:

- Section 1 - Licence Terms
- Section 2 - Support & Maintenance Terms

Section 1 – Licence Terms

Structure of these Supplier Terms

These Supplier Terms contain provisions that are specific to the provision of software licences.

At the end of these Supplier Terms is a Glossary. Any capitalised terms within these Supplier Terms which are not defined in the Glossary shall have the meaning set out elsewhere in this Agreement.

General Provisions

Software Licence Grant

Subject always to the Third Party Software section below, the Termination section below and the termination provisions elsewhere in this Agreement and following delivery, the Supplier grants the Buyer a personal non-exclusive non-transferable revocable licence to Use the machine readable portion of the Software (and where appropriate the Documentation) for the applicable Licence Term, for the Buyer's own internal data processing purposes and to copy the same solely for back-up purposes to the extent permitted by law, and to possess and refer to the Documentation, provided always that the Buyer adheres to the following licence terms:

- The Buyer uses only one copy of the Software for live operations;
- The Buyer pays the Licence Charges in accordance with this Agreement;
- The Buyer does not delete, amend or otherwise alter any copyright or other ownership notices or legends displayed, contained in or attached to the Software and Documentation;
- The Buyer does not decompile or reverse engineer the Software, save where the necessary information has not been made available by the Supplier and save as expressly permitted by the EU Software Directive – Council Directive no. 2009/24/EC as enshrined into UK Legislation by EUWA as amended from time to time;
- Save as provided above, the Buyer may not assign, transfer, sell, trade or otherwise deal in, lease, encumber, market, rent, disclose, publish technical details of (including the results of benchmark or other tests), copy, modify, enhance, convert or translate the Software or Documentation;
- The Buyer does not store, distribute or transmit any viruses, or any material through the Software that is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; facilitates illegal activity; depicts sexually explicit images; or promotes unlawful violence, discrimination based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activities;
- The paragraph above shall not apply to the extent only that the Software is specifically designed for such purposes and is being used for lawfully including for the prevention and/or detection of criminal activity;

- ➔ The Buyer does not exceed any of the restrictions set out within this Agreement (including as set out in the Particulars) such as the number of Authorised Users, number of concurrent or named users, number of Council Tax Properties;
- ➔ Subject to the APIs section and End User Rights section below, the Buyer does not permit any third party to Use the Software or Documentation;
- ➔ Subject to the End User Rights section below, the Buyer does not Use the Software or Documentation on behalf of or for the benefit of or to provide services to any third party;
- ➔ The Buyer does not access all or any part of the Software in order to build a product or service which competes with the Software and/or the Services, or attempt to obtain, or assist third parties in obtaining, access to the Software, other than as provided under these Supplier Terms;
- ➔ The Buyer shall use reasonable endeavours to prevent any unauthorised access to, or use of, the Software and it shall notify the Supplier promptly of any such unauthorised access or use.

Implementation and Testing

- The Supplier will deliver one copy of the Software which the Buyer will be responsible for installing and implementing (except to the extent that the Supplier has agreed to provide Services to assist with the installation and implementation), together with one copy of the Documentation.
- Except where expressly agreed otherwise in writing, all Software shall be tested in accordance with the Supplier's standard test policies. Any additional testing activities that the Buyer requires the Supplier to carry out must be agreed in writing between the parties and may be chargeable. Regardless of any other provision in this Agreement, the Buyer shall be deemed to accept the Software, and such acceptance shall be irrevocable, if the Software is used by the Buyer in a live environment and/or for any live operations.

Audit Rights

- At the Supplier's written request, which shall not be more frequently than annually, the Buyer will furnish the Supplier with a signed statement verifying that the Software and Documentation are being used pursuant to the provisions of this Agreement and any restrictions set out in this Agreement. The Buyer agrees to grant the Supplier access, upon reasonable prior notice, to the Buyer's site in order to audit the use of the Software and Documentation. If such audit establishes that the Buyer has unauthorised copies of the Software or Documentation, the Supplier reserves the right to charge the Buyer for the costs of performing the audit, in addition to recovering the charges which would have been due to the Supplier had the Supplier licensed such copies for use.
- Should an audit conducted pursuant to the paragraph above reveal that passwords have been provided to individuals who are not Authorised Users then, without prejudice to the Supplier's other rights, the Buyer shall promptly disable such passwords and shall not issue any new passwords to such individuals (unless or until the appropriate charges due in respect of any additional concurrent or named users have been paid).

APIs

Where the Supplier Software includes an API, the following licence terms shall apply in addition to those set out in the paragraphs above:

- The Buyer must hold sufficient, current licences of any the Supplier Software accessed via the APIs and must have a support agreement in place in respect of such the Supplier Software; and
- The Buyer will only Use the API to interface IT applications, solutions or components which are utilised by the Buyer with the Supplier Software to achieve an "Interfaced Solution"; and
- The Interfaced Solution will not be Used by any party other than the Buyer; and
- The Buyer will use all reasonable precautions to prevent viruses or other malicious software from being introduced onto or into the Supplier Software and/or the Supplier's IT facilities and systems; and
- If the Supplier provides a hosted or cloud service to the Buyer, the Supplier reserves the right to (i) use metering technology to monitor use of the Supplier platform (including but not limited to disk space, networks, servers and support); and (ii) levy additional reasonable charges upon the Buyer if and to the extent use by the Buyer of the APIs places additional burden on the Supplier platform causing the Buyer to exceed its contracted usage; and
- The Supplier shall not be liable for any unavailability, incidents or other failure of the Software to operate or perform in accordance with the Service Levels or any other aspect of the Agreement as a result of any act or omission of the Buyer; and
- The Buyer may grant a sub-licence to the API to a named API User subject to:
 - ➔ The Buyer obtaining the Supplier's prior written consent; and
 - ➔ The Buyer entering into a written sub-licence agreement with the API User on the same licence terms as those which apply to the Buyer subject to express provisions which: (i) preclude the API User from any further right to sub-license; and (ii) confer a right on the Supplier to enforce the sub-licence terms under the Contracts (Rights of Third Parties) Act 1999; and
 - ➔ The Buyer hereby indemnifies the Supplier against any costs, claims, liabilities and expenses (including reasonable legal expenses) incurred by the Supplier in connection with or as a result of any act or omission of the API User, irrespective of any other provisions in this Agreement.

End User Rights

If there is an End User named in the Particulars or other relevant part of this Agreement, the Supplier grants the Buyer:

- The right to Use the Software for the benefit of such End User; and
- The right to grant a sub-licence to the End User for its internal use only on the same licence terms as those which apply to the Buyer but with no further right to sub-license, other than as set out in the APIs section above.

Termination

If the Software has been licensed on a perpetual basis, this is subject to the Buyer continuing to pay the applicable charges for Support and Maintenance Services. If Support and Maintenance Services expire or are terminated, the perpetual licence shall be terminated and continued Use of the Software by the Buyer shall be subject to the payment of an additional licence fee.

The following licences shall be terminated on the date of termination of this Agreement:

- Fixed term licences, if the Agreement is terminated for any reason; and
- Perpetual licences, if the Agreement is terminated for the Buyer's material breach.
- If the licence granted under this Agreement is terminated, the Buyer will immediately cease using the Software and Documentation in its possession or control and return to the Supplier or destroy (as requested by the Supplier) the originals and all copies of the Software and Documentation in its possession or control. Upon request by the Supplier, the Buyer's duly authorised officer will certify in writing that it has complied with this paragraph.
- Where the Supplier, in accordance with the terms of this Agreement, terminates the licences granted above, the corresponding Support and Maintenance Services and any other related Professional Services shall also terminate.

Software Warranty

- The Supplier warrants that:
 - ➔ The Supplier Software will operate in material compliance with the relevant parts of the Documentation for a period of six months from delivery;
 - ➔ The Third Party Software will operate in material compliance with the relevant parts of the Documentation for a period of 30 days from delivery;
 - ➔ The media on which the Software and the Documentation are delivered to the Buyer will be free from defects in materials and workmanship under normal use for a period of 30 days from delivery.
- If the Buyer notifies the Supplier within any time periods specified in the paragraph above that the Software or the media on which the Software and the Documentation are delivered does not conform with the provisions of that paragraph, then the Supplier will repair or replace, at its discretion, the non-conforming portion of the Software or, where applicable, the media free of charge.
- The Supplier does not warrant that the Software is free from minor errors or defects; that it operates without interruption or is designed to meet the Buyer's specific requirements.

Third Party Software

- If the Buyer is taking delivery of any Third Party Software the following additional terms shall apply regardless of any other provision in this Agreement:
 - ➔ Third Party Software is licensed pursuant to the relevant licence terms supplied to the Buyer, receipt of which is hereby acknowledged and such terms shall apply as if incorporated in this Agreement; and

- The Supplier accepts no liability for infringement of third party Intellectual Property Rights in respect of the Use or possession by the Buyer of the Third Party Software.

Buyer Responsibilities

- Except where the Supplier has specifically agreed to provide such services, the Buyer will:
 - Promptly agree with the Supplier a specification for and make available hardware, operating system and communications/networking facilities to enable the Supplier to meet its obligations under this Agreement without delay;
 - Be responsible for the selection, installation, management, operation and use of the Software and any associated documentation and the results obtained from these; and
 - Be responsible for, take and validate, regular back-up copies of its data used in connection with the Software and keep the back-up copies and media safe.
- Where the Supplier has agreed to provide any Professional Services to assist with the installation and/or integration of the Software, the Buyer will accept the Software upon completion by the Supplier of such Professional Services. Where the Buyer has not requested any Professional Services to assist with the installation and/or integration of the Software, acceptance shall occur automatically if the Buyer has failed to advise the Supplier within 14 days of delivery of the Software by the Supplier of any non-trivial or non-compliance with the Documentation affecting the Software. Where the Buyer has advised the Supplier of any defect and/or non-compliance within the 14 day period specified above, the Supplier shall either replace the Software or rectify the relevant defect and/ or non-compliance, using reasonable endeavours to meet any previously agreed delivery or lead times;
- Where the Software includes the document production facility (NEC Document Services), the Buyer shall be granted access to NEC Document Services for the production of documents and will support the technical requirements as set out in the technical configuration documentation.

IPR Indemnity

The Supplier shall defend the Buyer against any claim and indemnify the Buyer against any award of damages or costs or any settlement negotiated by the Supplier arising from or incurred by reason of any infringement of any third party Intellectual Property Rights by the Buyer's normal operation, possession or Use of the Supplier Software, within the UK and/or European Union, provided that the Buyer:

- Notifies the Supplier promptly in writing of any alleged infringement and makes no admissions in respect thereof; and
- Gives the Supplier information, assistance and sole control of the defence and all related settlement negotiations. Reasonable out-of-pocket expenses incurred by the Buyer in providing such assistance will be reimbursed by the Supplier.

The indemnity set out in the paragraph above shall not apply where the infringement or alleged infringement arises from, or is incurred by reason of:

- The Buyer's use of a modified version of the Supplier Software, where such modifications were not approved or undertaken by the Supplier; or

- ➔ The Buyer's use of a de-supported version of the Supplier Software without the consent of the Supplier; or
- ➔ The combination, or use, of the Supplier Software and any equipment or software not supplied or approved in writing by the Supplier; or
- ➔ The Buyer's use of the Supplier Software other than as authorised under this Agreement.

In the event that the Supplier Software is held, or is believed by the Supplier, to infringe the Intellectual Property Rights of another, the Supplier shall have the option, at its expense to:

- ➔ Modify the Supplier Software (without materially detracting from its functionality) so as to avoid the infringement; or
- ➔ Obtain for the Buyer a licence to continue to use the Supplier Software; or
- ➔ Replace the Supplier Software with non-infringing substitutes provided that such substitutes do not entail a material reduction in functionality; or
- ➔ Terminate the licence for the infringing the Supplier Software (or part thereof) and refund the Software Licence Charges paid for such the Supplier Software, pro-rated over the Licence Term or, if no term is specified or the term is perpetual, over a five year period from delivery.

This IPR Indemnity section states the Supplier's entire liability and the Buyer's sole remedy with regard to infringement of any Intellectual Property Rights by the Use or possession of the Supplier Software.

Miscellaneous

If this Agreement contains the Buyer's service description, requirements and/or specification (together the "Specification") and if any provision of that Specification conflicts with these Supplier Terms, then regardless of any other provision in this Agreement, these Supplier Terms will take precedence.

Regardless of any other provision in this Agreement, except to the extent not permitted by law:

1. The Buyer assumes sole responsibility for results obtained from its use of the Deliverables and for any conclusions drawn from such use; and
2. The Supplier shall have no liability for any damage caused by errors or omissions in any information, data, instructions or scripts provided to the Supplier by the Buyer in connection with this Agreement, or any actions taken by the Supplier at the Buyer's direction.

Glossary

In addition to the terms defined elsewhere in this Agreement, in these Supplier Terms the following terms shall (regardless of any other provision in this Agreement) have the meaning set out below:

"Agreement"	means the Call-Off Contract.
"API"	means the Supplier's (or applicable third party licensor's) proprietary application programming interface which is licensed by the Supplier under the terms of this Agreement.
"API User"	means any third party acting in a technical capacity on the Buyer's or End User's behalf (as applicable) to use an API to create an Interfaced Solution.
"Authorised User"	Means those employees and independent contractors of the Buyer who are entitled to Use the Software under this Agreement.
"Documentation"	means the written and/or online descriptions of the Software's features, functions and methods of operation and the instructions provided for its Use.
"End User"	means any third party identified as such in the Agreement for whose benefit the Supplier and the Buyer enter into this Agreement.
"Intellectual Property Rights" or "IPR"	means any intellectual property rights including any patents, trademarks, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, know-how, trade or business names and other similar rights or obligations whether registrable or not, in any country including but not limited to the UK.
"Interfaced Solution"	has the meaning set out in the APIs section above.
"Licence Charges"	means the applicable charges for the Software licence(s) granted under this Agreement, as specified in the Particulars.
"Licence Term"	means the applicable duration of the Software licence granted under this Agreement, as specified in the Particulars or other relevant part of this Agreement.
"Particulars"	means the Order Form.

"Partner Organisation"	means any third party nominated by the Buyer which is collaborating with the Buyer in the delivery of the Buyer's services.
"Software"	means the software itemised in the Particulars or other relevant part of this Agreement (together with any modifications and enhancements thereto plus any other computer programs supplied by the Supplier from time to time under this Agreement) which is licensed in accordance with these Supplier Terms.
"Supplier Software"	means Software which is proprietary to the Supplier.
"Third Party Software"	means Software which is proprietary to a third party.
"Use" or "Used"	means in relation to the machine readable portion of the Software, reproduction through any act of loading, displaying, running, transmitting or storage, in whole or in part for the purposes of processing the instructions contained in the Software and any data belonging to the Buyer.

Section 2 – Support & Maintenance Terms

Structure of these Supplier Terms

These Supplier Terms contain provisions that are specific to the provision of Safety Support and Maintenance. At the end of these Supplier Terms there are also a number of Annexes, which set out additional product/service specific provisions (which also override the General Provisions if there is any conflict). Only the Annexes which relate to the products/services purchased by the Buyer (as set out in the Particulars) shall apply. There is an Annex for:

- Cortex and Aspire

At the end of these Supplier Terms is a Glossary. Any capitalised terms within these Supplier Terms which are not defined in the Glossary shall have the meaning set out elsewhere in this Agreement.

General Provisions

Introduction

The provision of Support and Maintenance Services is conditional upon the Buyer holding a valid licence to use the relevant Supplier Software.

Support Services

The Buyer's Support Team shall provide the following services:

- Infrastructure support
- Application of operating system and antivirus updates
- A managed DBA service e.g. DBA, excluding support for the database schema (tables, views and stored procedures only), which is the responsibility of the Supplier
- Maintaining, storing and making accessible licence keys/media as required
- Maintenance of the data stored within the database including database backups.
Receive Calls from Authorised Users
- Apply the Buyer's service management processes
- Request Fulfilment (i.e. respond to Service Requests) comprising:
 - System administration
 - Application configuration including CV lists, creation of users
 - Deal with "how do I?" enquiries
 - Configure additional users
- Incident Management comprising:
 - Address data quality issues
 - Observe and accurately record symptoms of an Incident including any testing and subsequent results

- Carry out appropriate tests and diagnostics on the system to establish potential causes
- Carry out work on-site to assist the Supplier Support Team in further diagnostics
- Replicate and troubleshoot issues on a test system managed by the Buyer to ensure the issue is not environmental
- Stop and restart of the Supplier Software
- Provide suitable remote access to the Supplier. The Buyer will be responsible for any costs associated with implementing and maintaining the remote access solution
- Provision of database and administrative access to the Supplier Software and the infrastructure/environment on which it is installed to the Supplier
- Simple software investigation and resolution using diagnostic tools / log files
- Implement Resolution by switching to a standby system (if applicable) or from backups or implement a temporary work-around and continue work to apply a permanent Resolution
- Notify the Supplier of any Incident which has been resolved and the steps taken to resolve
- Knowledge Management comprising:
 - Application of available knowledge
 - Generation and maintenance of knowledge articles
- Release Management comprising:
 - Implement software fixes, patches and releases using the installer software
 - Configure software at point of implementation
- Change management comprising:
 - Agree applicable downtime in writing as required

Should the Buyer's Support Team be unable to resolve an Incident or fulfil a Service Request, a Call shall be logged with the Supplier. During the Support Term the Supplier shall, provide the Buyer's Support Team access to the Service Desk which operates 24x7x365 for recording details of Calls. The Buyer's Support Team can use the following methods to contact the Service Desk:

- Telephone (Priority Levels P1, P2, P3, P4 and Service Request);
- Supplier's Customer Portal (Priority Level P3, P4 and Service Request); and
- Email (Priority Level P3, P4 and Service Request).

When contacting the Service Desk to report a Call, the Buyer's Support Team shall provide the following information:

- Caller name (and further contact details if required);
- Name and contact details of the Authorised User experiencing the issue (if applicable);
- Priority;

- A description of the issue including the steps to replicate; and
- A description of the urgency and impact of the issue.

Once these details have been entered into the Supplier's IT service management tool, the Supplier will provide the Buyer's Support Team with a Call reference number, which shall be quoted by the Buyer's Support Team in all further communication with the Supplier in connection with the Call.

Once Calls have been logged, they are passed to a software support team for resolution (the "**Supplier Support Team**") during Normal Support Hours.

At any stage during the lifecycle of a Call the Buyer's Support Team can enquire on progress status by contacting the Service Desk and quoting the relevant Call reference number.

Scope of Support Services for the Supplier Software

The Supplier Support Team shall provide the following services in respect of the Supplier Software:

- Remote support services as detailed in these Supplier Terms;
- New Releases, which may be subject to an additional charge;
- Software Patches to resolve incidents/problems;
- Service Packs as they are made generally available, which may be subject to an additional charge if they include new functionality.

The Buyer is responsible for implementing any New Releases, Service Packs and Patches supplied by Supplier as follows unless otherwise advised by the Supplier:

- Patches – within 24 hours of delivery;
- Service Pack – within 60 days of delivery;
- Minor Release - within 3 months of delivery;
- Major Release – within 6 months of delivery.

The provision of the Support Services is subject to the Buyer:

- Providing such information as is reasonably necessary to enable the Supplier to diagnose any Incidents in the Supplier Software;
- Using the current or immediately preceding Version Number of the Supplier Software (n-1); and
- Operating on a compatible version of the relevant operating system software and recommended infrastructure.

Service Levels

Calls logged with the Service Desk will be allocated by the Supplier to the appropriate Supplier Support Team for Resolution during Normal Support Hours. The Particulars shall specify whether 24x7 support for P1 and P2 Incidents shall apply.

Incidents and Service Requests are processed on a Priority Level basis. The Supplier will verify the Priority Level assigned by the Buyer's Support Team on the Call, by reference

to the applicable Annex, and the parties will agree a revised Priority Level if appropriate. The final decision on the Priority Level will remain with the Supplier.

In order to perform Incident investigation and Service Request fulfilment, the Supplier may require access to the Authorised User experiencing the issue, and/or the infrastructure on which the Supplier Software runs. The Buyer shall promptly provide the Supplier with remote access as and when reasonably required. If remote access is unavailable the Service Levels in the applicable Annex shall not apply. The Supplier shall use reasonable endeavours only to provide the Support & Maintenance services.

As Calls are progressed, the Supplier will record details of all its contact with the Buyer's Support Team and/or Authorised User.

Once a Call has been resolved, the Supplier Support Team or Service Desk will contact the Buyer's Support Team and the Call will only be closed if both parties are in agreement. Closed Calls cannot be reopened except with the consent of both parties. Should the Supplier not receive confirmation of closure after seven calendar days of requesting the same from the Buyer's Support Team, then the Supplier will automatically close the Incident.

When a Problem is identified which requires a software change, a Problem will be recorded and a reference number supplied to the Buyer's Support Team; this needs to be quoted in all correspondence with the Supplier relating to that Problem. The corresponding Incident is then closed if a workaround is provided.

Measurement of the Response time begins at the earliest point in time during Normal Support Hours at which the Call is reported to the Service Desk, and will continue during Normal Support Hours. If a Call is reported outside of Normal Support Hours, the Response time will start to be measured at the beginning of the next Normal Support Hours period. Measurement of the Response time ends when the Supplier has contacted or attempted to contact, via any means, the Buyer's Support Team to acknowledge receipt of or further discuss a reported Call.

Measurement of the Resolution time begins at the earliest point in time during Normal Support Hours at which the Call is reported to the Service Desk, and will continue during Normal Support Hours. If a Call is reported outside of Normal Support Hours, the Resolution time will start to be measured at the beginning of the next Normal Support Hours period. Measurement of the Resolution time ends when the Incident has been resolved and the workaround or permanent fix provided to the Buyer, or the Service Request has been fulfilled (as applicable).

The Supplier SLA clock is paused, in the following circumstances, including:

- While the Call is outside the scope or control of Supplier.
- Outside Normal Support Hours
- While the Supplier is awaiting information from the Buyer's Support Team or Authorised User
- Awaiting remote access.

If the Buyer fails to provide such access, or the access is unavailable, incident resolution activities would need to be undertaken without remote access and therefore such incidents shall be exempt from the response, resolution and permanent fix targets until such time as the Authorised User or remote access becomes available. In addition,

should Supplier personnel be required to attend site, this will be charged for on a time and materials basis in accordance with the rate card set out in the contract (or if none included in accordance with the Supplier's prevailing rates) plus expenses.

The Supplier will not be liable for any service failure:

- For which the Supplier is not responsible; or
- Which relates to an Additional Service; or
- Which arises as a result of Incidents arising due to factors beyond the Supplier's reasonable control.

The Supplier shall use commercially reasonable endeavours to make the Supplier Software available to be accessed and used by the Buyer, excluding the following periods:

- Planned maintenance (which shall be carried out at such times as are notified to the Buyer, by giving a reasonable period of advance notice); and
- Unscheduled emergency maintenance carried out where there is an identified and demonstrable immediate risk to the solution.

Service credits shall not apply in the event of breach of the Service Levels.

Service reporting is not provided.

Additional Services

Additional Services shall be provided at the Supplier's sole discretion and may be subject to additional charges accruing on a time and materials basis based on the Supplier's then prevailing day rates, unless otherwise agreed. Such Additional Services include:

- The support of any environment other than a single production environment.
- The provision of health checks either monthly, quarterly or annually
- The provision of service reporting
- Engagement with respect to a business continuity or disaster recovery testing.
- Attendance on Buyer's site to investigate and resolve an incident or problem
- Deployment of releases
- Assistance or advice in relation to Buyer supplied hardware or software
- Investigation and resolution of an Incident reported by the Buyer if such reported Incident is not reproducible by the Supplier in the Supplier Software
- Investigation and resolution of an error reported by the Buyer if such reported error is not reproducible by the Supplier.
- Investigate and resolve any Priority 4 Incidents or Problems where costs are likely to be excessive or the commercial benefits to the Buyer are likely to be negligible

The Support Services shall not include the diagnosis or rectification of any Incident which is not attributable to a Problem in the Supplier Software or which results from any of the following, the diagnosis or rectification of which shall all be considered Additional Services:

- Improper use, operation or neglect of either the Supplier Software or the equipment and environment on which the Supplier Software is licensed for use; or
- Modification of the Supplier Software or its merger (in whole or in part) with any other software, without the Supplier's prior written consent; or
- Use of the Supplier Software on equipment other than the equipment supplied by the Supplier for use with the Supplier Software or on equipment which does not meet the minimum specification for hardware, operating system and/or Third Party Software published by the Supplier in accordance with the Supplier Software release information document; or
- Failure by the Buyer to implement recommendations in respect of or solutions to Incidents or Problems previously advised by the Supplier; or
- Any repair, adjustment, alteration or modification of the Supplier Software by any person other than the Supplier without the Supplier's prior written consent; or
- Use of the Supplier Software for a technical purpose for which it was not designed; or
- A consequence of infrastructure components or network factors which the Supplier is not responsible for supporting; or
- A failure caused by any other factors outside the reasonable control of the Supplier; or
- Any situation where a reasonably skilled and competent Authorised User would consider assistance from the Supplier to be unnecessary; or
- A consequence of any programming error, virus or disabling code set out in the Third Party Software.

Variations

If a third party supplier to the Supplier increases the fees charged, the Supplier reserves the right at any time to pass these increases onto the Buyer.

The Supplier will use all reasonable commercial endeavours to accommodate the introduction of substantive legislative changes. The Supplier expressly reserves the right to charge for the provision of any such substantive legislation updates where: (a) the development of the update is in the reasonable opinion of the Supplier technically complex; and (b) the costs of developing the update are in the reasonable opinion of the Supplier sufficient to warrant a charge for the provision of the update to the Supplier's customers at large

The Supplier may, upon six months prior written notice to the Buyer, modify the Support Services or any part thereof provided that there is no material degradation of the service.

Termination and consequences of Termination

In the event the Supplier elects to withdraw Support and Maintenance Services for a particular item of Software, it may do so without liability provided it has given the Buyer not less than six months' prior written notice.

The Supplier may from time to time develop New Releases of the Supplier Software which will be made available to the Buyer. The Supplier reserves the right to charge for such New Releases.

Support and Maintenance for the Supplier Software should be continuous. In the event of any break in the provision of Support and Maintenance of any module of the Supplier Software for any reason, if the Buyer subsequently elects to reinstate the same, the Supplier shall be entitled to levy charges for: (a) such amount as would have been payable for Support and Maintenance during the period of lapse and; (b) a recommencement fee.

Configuration Management (Patches and Version Changes) For On-Premise Software

All New Releases, Service Packs and Patches are sequential and cumulative and should be applied in the order issued unless advised otherwise by the Supplier. Patches provide emergency fixes and are generally only supplied in response to high priority Incidents raised by the Buyer. New Releases, Service Packs and Patches must be installed by the Buyer when so advised by the Supplier.

Any given release of the Supplier Software will only be supported when running on hardware, operating systems and Third Party Software platforms which meet the specification stated in the Supplier Software release information document.

The release documentation for each New Release shall specify the particular requirements for the New Release. Where necessary this will include information about the minimum specification for hardware, operating systems and other software and any other changes which need to be made to the environment to support the New Release.

Miscellaneous

- If this Agreement contains the Buyer's service description, requirements or specification ("**Specification**") and if any provision of that Specification conflicts with these Supplier Terms, then regardless of any other provision in this Agreement, these Supplier Terms will take precedence.
- Regardless of any other provision in this Agreement, except to the extent not permitted by law:
 1. The Buyer assumes sole responsibility for results obtained from its use of the Supplier's deliverables and for any conclusions drawn from such use; and
 2. The Supplier shall have no liability for any damage caused by errors or omissions in any information, data, instructions or scripts provided to the Supplier by the Buyer in connection with this Agreement, or any actions taken by the Supplier at the Buyer's direction.
- Except where the Supplier has specifically agreed to provide such services, the Buyer will promptly:
 1. Supply the Supplier with any information and assistance reasonably necessary for the Supplier to perform its obligations under this Agreement; and
 2. Provide the Supplier's personnel with full free and safe access to its site when required, to enable the Supplier to perform its obligations under this Agreement.
- The Buyer warrants, represents and undertakes to the Supplier that there will be no relevant transfer for the purposes of the Transfer of Undertakings (Protection of

Employment) Regulations 2006 (SI 2006/246) ("**TUPE**") of employees from the Buyer (or any supplier, contractor or other service provider to the Buyer) to the Supplier. Regardless of any other provision of this Agreement, the Buyer agrees to indemnify the Supplier against all costs, claims, liabilities and expenses (including reasonable legal expenses) incurred by the Supplier in connection with or as a result of:

1. A claim by any person who transfers or alleges that they have transferred to the Supplier as a result of entering into this Agreement; and/or
2. Any failure by the Buyer to comply with its obligations under regulations 13 and 14 of TUPE, or any award of compensation under regulation 15 of TUPE.

Annex: Cortex and Aspire

Where Cortex and/or Aspire is to be provided the provisions set out in this Annex shall apply. If there is any conflict between the provisions set out in this Annex and the General Provisions above, this Annex shall apply.

Scope of Support Services for Hardware

If the Buyer has purchased hardware from the Supplier, and has opted for hardware support within the Particulars, and subject to the payment of the Support Charges, the Supplier shall provide the following services in respect of such hardware:

- Provision of infrastructure support
- Application of operating system and antivirus updates
- Provision of a managed DBA service. E.g. DBA

Scope of Support Services for the Supplier Peripherals

If the Buyer has purchased peripherals (e.g. footswitches, USB speakers) in the Particulars, and subject to the payment of the Support Charges, the Supplier shall provide the following services in respect of such peripherals.

A stock of spares (x5) as listed in the Particulars will be provided for the Buyer to manage and utilise. The Supplier shall replenish stock within 10 days once the faulty unit has been returned to the Supplier (the Buyer to cover shipping costs in both directions including any import duties or taxes that are due).

Service Levels

All target times specified in the table below are measured within the Normal Support Hours.

Cortex and Aspire

Call Priority Level	Definition	Target Response Time	Target Resolution Time
1	Business Critical. Comprising: Incidents that cause significant operational failures, namely:- <ul style="list-style-type: none"> • Total System failure • Individual server hardware or software failure • Where any Incident affects the continued operational use of 4 or more of the workstations within one control room • Any APD supplied radio interface that results in a total loss of radio functionality for 4 or more workstations within one control room • Any APD supplied telephony interface that results in a significant loss of telephony functionality 	15 minutes	5 hours

	<ul style="list-style-type: none"> Any interface failure that significantly impacts the PCR operators 		
2	<p>High. Comprising:</p> <p>Incidents that are not classified as being Priority 1 but are such that the Customer is unable to use the System to carry out its normal business activities until the Incident has been resolved, namely:-</p> <ul style="list-style-type: none"> Where any Incident affects the continued operational use of 3 or more of the operational workstations within one control room Badly distorted audio across an operationally significant number of workstations (i.e. 3 in one control room) 	15 minutes	8 hours
3	<p>Medium. Comprising:</p> <p>Incidents that cause a loss of service but with limited impact, such that the Customer can continue with its business functions with no loss of business efficiency; for example:-</p> <ul style="list-style-type: none"> A minor CMS functionality failure Speaker or other CME failure call audio recording Poor quality audio reception attributable to the CME at any workstation in either control room, provided that the audio is still intelligible Programming or configuration errors 	2 hours	2 days
4	<p>Low.</p> <p>Incidents where the majority of users are able to use the solution to fulfil the core business process; for example:-</p> <ul style="list-style-type: none"> cosmetic issue an activity that is not routinely used such as account management an issue impacting a single user a single workstation failure 	2 hours	5 days
Service Request	<p>Pre-approved low risk change, the nature of which has been agreed by the parties prior to go-live or via the change process.</p> <p>For example: advice and guidance.</p>	None	None

Glossary

In addition to the terms defined elsewhere in this Agreement, in these Supplier Terms the following terms shall (regardless of any other provision in this Agreement) have the meaning set out below:

“Additional Services”	means any support, maintenance and other services which are outside the scope of the Support Services and which Supplier has agreed to provide;
“Agreement”	means the Call-Off Contract;
“Authorised User(s)”	means those employees, agents and independent contractors of the Buyer who are authorised by the Supplier to use the Supplier Software and the Documentation;
“Buyer’s Support Team”	means those employees, agents and independent contractors of the Buyer who are authorised by the Supplier to use the Supplier’s support service;
“Call”	means notification of an Incident or Service Request by an Buyer’s Support Team to the Service Desk in accordance with these Supplier Terms;
“Incident”	means any event which is not part of the standard operation of the Supplier Software and which causes, or may cause an interruption to, or a reduction in, the quality of that software or service;
“Major Release”	means a new version of the Supplier Software containing major functional enhancements, normally designated by an increase in the first digit of the Version Number (e.g. V1.3 to V2.0). Major Releases will consolidate all previous versions of the Supplier Software;
“Minor Release”	means a new version of the Supplier Software containing significant functional or operational enhancements, normally designated by an increase in the second digit of the Version Number (e.g. V1.1 to

V1.2). Minor Releases will consolidate all previous versions of the Supplier Software;

“New Release”

means any new Major Release or Minor Release provided by the Supplier;

“Normal Support Hours”

means

- (i) Monday to Friday 09:00 – 17:00 (eight hours) UK Time excluding bank and public holidays in England and Wales; or
- (ii) For Aspire, Cortex, NEC Connect and NEC Forensics where the Buyer has purchased 24x7 support in the Particulars, means 24x7x365/6 for P1 and P2 Incidents only and Monday to Friday 09:00 – 17:00 (eight hours) excluding Bank and Public Holidays in England and Wales for all other Incident Priority and Service Request calls;

“Particulars”

means the Order Form;

“Patch”

means software provided by the Supplier to resolve a specific reported Incident in the Supplier Software;

“Priority”

means the priority level of the Call reasonably specified by the Buyer’s Support Team, and agreed by the Supplier, according to the criteria set out in the applicable Annex;

“Problem”

means the unknown underlying root cause of one or more Incidents;

“Resolution”

means action which will resolve an Incident which may be a Workaround;

“Response”

means contact via any means made by the Supplier to the Buyer’s Support Team or Authorised User in response to a Call reported via the Service Desk;

"Service Desk"	means the Supplier's service desk detailed in these Supplier Terms;
"Service Level"	means the service levels (as set out in these Supplier Terms) which apply in respect of the Support and Maintenance Services;
"Service Pack"	means a version of the Supplier Software which consolidates all previous Patches and service packs. Under some circumstances Service Packs may also include minor functional enhancements;
"Service Period"	a service period shall be a calendar month;
"Service Request"	means a Buyer's Support Team request for information or advice and guidance.;
"Software"	means the software itemised in the Particulars or other relevant part of this Agreement (together with any modifications and enhancements thereto plus any other computer programs supplied by the Supplier from time to time under this Agreement) which is licensed in accordance with these Supplier Terms;
"Supplier Software"	means the Supplier's proprietary software specified in the Agreement including any New Release, Service Pack and/or Patch provided pursuant to the Support Services;
"Support Charge"	means the fee specified in the Agreement which is payable by the Buyer for the provision of the Support Services;
"Support Services"	means the support and maintenance services which are provided by the Supplier as detailed in these Supplier Terms;
"Third Party Software"	means software which is proprietary to a party other than the Supplier and licensed to the Buyer by the Supplier;

“Use” or “Used”

means in relation to the machine readable portion of the Software, reproduction through any act of loading, displaying, running, transmitting or storage, in whole or in part for the purposes of processing the instructions contained in the Software and any data belonging to the Buyer’s Support Team

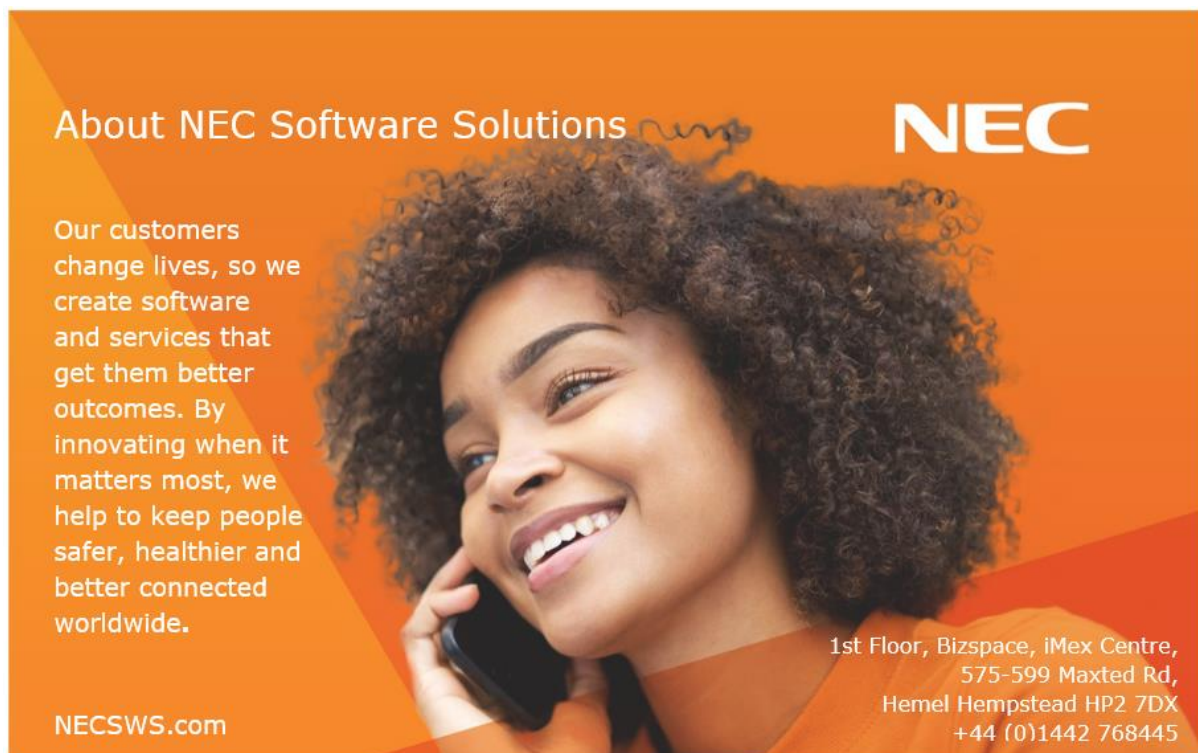
“Version Number”

means a unique identifier associated with each new version of the Supplier Software, conforming to the format A.B.C.D where:

- "A" is the Major Release number;
- "B" is the Minor Release number;
- "C" is the Service Pack number; and
- "D" is the Patch number;

“Workaround”

means a method of avoiding an Incident or Problem either by a temporary fix or by a technique that means the Buyer’s Support Team is not reliant on a particular aspect of the Supplier Software that is known to have an issue.

An advertisement for NEC Software Solutions. It features a woman with dark curly hair, smiling and talking on a black mobile phone. The background is a solid orange color. The text is arranged around the woman's image.

About NEC Software Solutions

Our customers change lives, so we create software and services that get them better outcomes. By innovating when it matters most, we help to keep people safer, healthier and better connected worldwide.

NECSWS.com

NEC

1st Floor, Bizspace, iMex Centre,
575-599 Maxted Rd,
Hemel Hempstead HP2 7DX
+44 (0)1442 768445