

Arriga CRM is flexible in reaching an agreement on a contract and is willing to use the client contract as the basis for that agreement. Below is a contract we have used with a public sector client for the provision of support services.

## Software support agreement

### DATE

Xx/yy/zzzz

### PARTIES

1. Arriga CRM Limited, a company incorporated in England and Wales (registration number 10004706) having its registered office at Highdown House, 11 Highdown Road, Leamington Spa, Warwickshire CV31 1XT (the "**Provider**"); and
2. xxxxx, (the "**Customer**").

### AGREEMENT

#### 1. Definitions

- 1.1 Except to the extent expressly provided otherwise, in this Agreement:

"**Affiliate**" means an entity that Controls, is Controlled by, or is under common Control with the relevant entity;

"**Agreement**" means this agreement including any Schedules, and any amendments to this Agreement from time to time;

"**Business Day**" means any weekday other than a bank or public holiday in England;

"**Business Hours**" means the hours of 09:00 to 17:00 GMT/BST on a Business Day;

"**Charges**" means the following amounts:

- (a) the amounts specified in Paragraph 2 of Schedule 1 (Software Particulars);
- (b) such amounts as may be agreed in writing by the parties from time to time; and

"**Control**" means the legal power to control (directly or indirectly) the management of an entity (and "**Controlled**" should be construed accordingly);

"**Customer Confidential Information**" means:

- (a) any information disclosed by the Customer to the Provider during the Term (whether disclosed in writing, orally or otherwise) that at the time of disclosure was marked or described as "confidential" or should have been understood by the Provider (acting reasonably) to be confidential.

"**Customer Indemnity Event**" has the meaning given to it in Clause 12.3;

"**Effective Date**" means the date of execution of this Agreement;

**"Force Majeure Event"** means an event, or a series of related events, that is outside the reasonable control of the party affected (including failures of the internet or any public telecommunications network, hacker attacks, denial of service attacks, virus or other malicious software attacks or infections, power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars);

**"Intellectual Property Rights"** means all intellectual property rights wherever in the world, whether registrable or unregistrable, registered or unregistered, including any application or right of application for such rights (and these "intellectual property rights" include copyright and related rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trade marks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs);

**"Minimum Term"** means, in respect of this Agreement, the period of 12 months beginning on the Effective Date;

**"Provider Confidential Information"** means any information disclosed by the Provider to the Customer during the Term (whether disclosed in writing, orally or otherwise) that at the time of disclosure was marked or described as "confidential" or should have been understood by the Customer (acting reasonably) to be confidential;

**"Provider Indemnity Event"** has the meaning given to it in Clause 12.1;

**"Schedule"** means any schedule attached to the main body of this Agreement;

**"Services"** means any services that the Provider provides to the Customer, or has an obligation to provide to the Customer, under this Agreement;

**"Software"** means the software identified in Paragraph 1 of Schedule 1 (Software Particulars);

**"Support Services"** means support in relation to the use of the Software and the identification and resolution of errors in the Software, but shall not include the provision of training services whether in relation to the Software or otherwise;

**"Term"** means the term of this Agreement, commencing in accordance with Clause 2.1 and ending in accordance with Clause 2.2.

## **2. Term**

2.1 This Agreement shall come into force upon the Effective Date.

2.2 This Agreement shall continue in force for a period of 12 months from the effective date at the end of which the Agreement shall terminate automatically subject to termination in accordance with Clause 15 or any other provision of this Agreement.

## **3. Support Services**

3.1 The Provider shall provide the Support Services to the Customer during the Term.

3.2 The Provider shall provide the Support Services with reasonable skill and care.

3.3 The Provider shall provide the Support Services in accordance with Schedules 2 and 3.

3.4 The Provider may suspend the provision of the Support Services if any amount due to be paid by the Customer to the Provider under this Agreement is overdue, and the Provider has given to the

Customer at least 30 days' written notice, following the amount becoming overdue, of its intention to suspend the Support Services on this basis.

#### **4. Customer obligations**

4.1 Save to the extent that the parties have agreed otherwise in writing, the Customer must provide to the Provider, or procure for the Provider, such:

- (a) co-operation, support and advice;
- (b) information and documentation; and
- (c) governmental, legal and regulatory licences, consents and permits,

as are reasonably necessary to enable the Provider to perform its obligations under this Agreement.

4.2 The Customer must provide to the Provider, or procure for the Provider, such access to the Customer's computer hardware, software, networks and systems as may be reasonably required by the Provider to enable the Provider to perform its obligations under this Agreement.

#### **5. No assignment of Intellectual Property Rights**

5.1 Nothing in this Agreement shall operate to assign or transfer any Intellectual Property Rights from the Provider to the Customer, or from the Customer to the Provider.

#### **6. Charges**

6.1 The Customer shall pay the Charges to the Provider in accordance with this Agreement.

6.2 If the Charges are based in whole or part upon the time spent by the Provider performing the Services, the Provider must obtain the Customer's written consent before performing Services that result in any estimate of time-based Charges given to the Customer being exceeded or any budget for time-based Charges agreed by the parties being exceeded; and unless the Customer agrees otherwise in writing, the Customer shall not be liable to pay to the Provider any Charges in respect of Services performed in breach of this Clause 6.2.

6.3 All amounts stated in or in relation to this Agreement are, unless the context requires otherwise, stated exclusive of any applicable value added taxes, which will be added to those amounts and payable by the Customer to the Provider.

6.4 The Provider may elect to vary any element of the Charges by giving to the Customer not less than 30 days' written notice of the variation, providing that no such variation shall result in an aggregate percentage increase in the relevant element of the Charges during the Term that exceeds 2% over the percentage increase, during the same period, in the Retail Prices Index (all items) published by the UK Office for National Statistics.

#### **7. Payments**

7.1 The Provider shall issue invoices for the Charges to the Customer on or after the invoicing dates set out in Paragraph 2 of Schedule 1 (Software Particulars).

7.2 The Customer must pay the Charges to the Provider within the period of 30 days following the issue of an invoice in accordance with this Clause 8.

- 7.3 The Customer must pay the Charges by bank transfer (using such payment details as are notified by the Provider to the Customer from time to time).
- 7.4 If the Customer does not pay any amount properly due to the Provider under this Agreement, the Provider may:
- (a) charge the Customer interest on the overdue amount at the rate of 8% per annum above the Bank of England base rate from time to time (which interest will accrue daily until the date of actual payment and be compounded at the end of each calendar month); or
  - (b) claim interest and statutory compensation from the Customer pursuant to the Late Payment of Commercial Debts (Interest) Act 1998.

## **8. Provider's confidentiality obligations**

- 8.1 The Provider must:
- (a) keep the Customer Confidential Information strictly confidential;
  - (b) not disclose the Customer Confidential Information to any person without the Customer's prior written consent.;
  - (c) use the same degree of care to protect the confidentiality of the Customer Confidential Information as the Provider uses to protect the Provider's own confidential information of a similar nature, being at least a reasonable degree of care;
  - (d) act in good faith at all times in relation to the Customer Confidential Information.
- 8.2 Notwithstanding Clause 8.1, the Provider may disclose the Customer Confidential Information to the Provider's officers, employees, professional advisers, insurers, agents and subcontractors who have a need to access the Customer Confidential Information for the performance of their work with respect to the Permitted Purpose and who are bound by a written agreement or professional obligation to protect the confidentiality of the Customer Confidential Information.
- 8.3 This Clause 8 imposes no obligations upon the Provider with respect to Customer Confidential Information that:
- (a) is known to the Provider before disclosure under this Agreement and is not subject to any other obligation of confidentiality;
  - (b) is or becomes publicly known through no act or default of the Provider; or
  - (c) is obtained by the Provider from a third party in circumstances where the Provider has no reason to believe that there has been a breach of an obligation of confidentiality.
- 8.4 The restrictions in this Clause 8 do not apply to the extent that any Customer Confidential Information is required to be disclosed by any law or regulation, by any judicial or governmental order or request, or pursuant to disclosure requirements relating to the listing of the stock of the Provider on any recognised stock exchange.
- 8.5 Upon the termination of this Agreement, the Provider must immediately cease to use the Customer Confidential Information.
- 8.6 The provisions of this Clause 9 shall continue in force for a period of 2 years following the termination of this Agreement, at the end of which period they will cease to have effect.

## **9. Customer's confidentiality obligations**

9.1 The Customer must:

- (a) keep the Provider Confidential Information strictly confidential;
- (b) not disclose the Provider Confidential Information to any person without the Provider's prior written consent;
- (c) use the same degree of care to protect the confidentiality of the Provider Confidential Information as the Customer uses to protect the Customer's own confidential information of a similar nature, being at least a reasonable degree of care;
- (d) act in good faith at all times in relation to the Provider Confidential Information; and

9.2 Notwithstanding Clause 9.1, the Customer may disclose the Provider Confidential Information to the Customer's officers, employees, professional advisers, insurers, agents and subcontractors who have a need to access the Provider Confidential Information for the performance of their work with respect to the Permitted Purpose and who are bound by a written agreement or professional obligation to protect the confidentiality of the Provider Confidential Information.

9.3 This Clause 9 imposes no obligations upon the Customer with respect to Provider Confidential Information that:

- (a) is known to the Customer before disclosure under this Agreement and is not subject to any other obligation of confidentiality;
- (b) is or becomes publicly known through no act or default of the Customer; or
- (c) is obtained by the Customer from a third party in circumstances where the Customer has no reason to believe that there has been a breach of an obligation of confidentiality.

9.4 The restrictions in this Clause 9 do not apply to the extent that any Provider Confidential Information is required to be disclosed by any law or regulation, by any judicial or governmental order or request, or pursuant to disclosure requirements relating to the listing of the stock of the Customer on any recognised stock exchange.

9.5 Upon the termination of this Agreement, the Customer must immediately cease to use the Provider Confidential Information.

9.6 The provisions of this Clause 9 shall continue in force for a period of 2 years following the termination of this Agreement, at the end of which period they will cease to have effect.

## **10. Warranties**

10.1 The Provider warrants to the Customer that:

- (a) the Provider has the legal right and authority to enter into this Agreement and to perform its obligations under this Agreement;
- (b) the Provider will comply with all applicable legal and regulatory requirements applying to the exercise of the Provider's rights and the fulfilment of the Provider's obligations under this Agreement; and
- (c) the Provider has or has access to all necessary know-how, expertise and experience to perform its obligations under this Agreement.

10.2 The Customer warrants to the Provider that it has the legal right and authority to enter into this Agreement and to perform its obligations under this Agreement.

10.3 All of the parties' warranties and representations in respect of the subject matter of this Agreement are expressly set out in this Agreement. To the maximum extent permitted by applicable law, no other warranties or representations concerning the subject matter of this Agreement will be implied into this Agreement or any related contract.

## **11. Indemnities**

11.1 The Provider shall indemnify and shall keep indemnified the Customer against any and all liabilities, damages, losses, costs and expenses (including legal expenses and amounts reasonably paid in settlement of legal claims) suffered or incurred by the Customer and arising directly or indirectly as a result of any breach by the Provider of this Agreement.

11.2 The Customer must:

- (a) upon becoming aware of an actual or potential Provider Indemnity Event, notify the Provider;
- (b) provide to the Provider all such assistance as may be reasonably requested by the Provider in relation to the Provider Indemnity Event;
- (c) allow the Provider the exclusive conduct of all disputes, proceedings, negotiations and settlements with third parties relating to the Provider Indemnity Event; and
- (d) not admit liability to any third party in connection with the Provider Indemnity Event or settle any disputes or proceedings involving a third party and relating to the Provider Indemnity Event without the prior written consent of the Provider,

without prejudice to the Provider's obligations under Clause 11.1

11.3 The Customer shall indemnify and shall keep indemnified the Provider against any and all liabilities, damages, losses, costs and expenses (including legal expenses and amounts reasonably paid in settlement of legal claims) suffered or incurred by the Provider and arising directly or indirectly as a result of any breach by the Customer of this Agreement.

11.4 The Provider must:

- (a) upon becoming aware of an actual or potential Customer Indemnity Event, notify the Customer;
- (b) provide to the Customer all such assistance as may be reasonably requested by the Customer in relation to the Customer Indemnity Event;
- (c) allow the Customer the exclusive conduct of all disputes, proceedings, negotiations and settlements with third parties relating to the Customer Indemnity Event; and
- (d) not admit liability to any third party in connection with the Customer Indemnity Event or settle any disputes or proceedings involving a third party and relating to the Customer Indemnity Event without the prior written consent of the Customer,

without prejudice to the Customer's obligations under Clause 11.3.

11.5 The indemnity protection set out in this Clause 12 shall be subject to the limitations and exclusions of liability set out in this Agreement.

## **12. Limitations and exclusions of liability**

12.1 Nothing in this Agreement will:

- (a) limit or exclude any liability for death or personal injury resulting from negligence;
- (b) limit or exclude any liability for fraud or fraudulent misrepresentation;
- (c) limit any liabilities in any way that is not permitted under applicable law; or
- (d) exclude any liabilities that may not be excluded under applicable law.

12.2 The limitations and exclusions of liability set out in this Clause 13 and elsewhere in this Agreement:

- (a) are subject to Clause 12.1; and
- (b) govern all liabilities arising under this Agreement or relating to the subject matter of this Agreement, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty, except to the extent expressly provided otherwise in this Agreement.

12.3 Neither party shall be liable to the other party in respect of any losses arising out of a Force Majeure Event.

12.4 Neither party shall be liable to the other party in respect of any loss of profits or anticipated savings.

12.5 Neither party shall be liable to the other party in respect of any loss of revenue or income.

12.6 Neither party shall be liable to the other party in respect of any loss of use or production.

12.7 Neither party shall be liable to the other party in respect of any loss of business, contracts or opportunities.

12.8 Neither party shall be liable to the other party in respect of any loss or corruption of any data, database or software.

12.9 Neither party shall be liable to the other party in respect of any special, indirect or consequential loss or damage.

12.10 The liability of each party to the other party under this Agreement in respect of any event or series of related events shall not exceed the total amount paid and payable by the Customer to the Provider under this Agreement in the 12 month period preceding the commencement of the event or events.

## **13. Force Majeure Event**

13.1 If a Force Majeure Event gives rise to a failure or delay in either party performing any obligation under this Agreement (other than any obligation to make a payment), that obligation will be suspended for the duration of the Force Majeure Event.

13.2 A party that becomes aware of a Force Majeure Event which gives rise to, or which is likely to give rise to, any failure or delay in that party performing any obligation under this Agreement, must:

- (a) promptly notify the other; and

- (b) inform the other of the period for which it is estimated that such failure or delay will continue.

13.3 A party whose performance of its obligations under this Agreement is affected by a Force Majeure Event must take reasonable steps to mitigate the effects of the Force Majeure Event.

#### **14. Termination**

14.1 The Provider may terminate this Agreement by giving to the Customer not less than 90 days' written notice of termination. The Customer may terminate this Agreement by giving to the Provider not less than 120 days' written notice of termination.

14.2 Either party may terminate this Agreement immediately by giving written notice of termination to the other party if:

- (a) the other party commits any material breach of this Agreement, and the breach is not remediable;
- (b) the other party commits a material breach of this Agreement, and the breach is remediable but the other party fails to remedy the breach within the period of 30 days following the giving of a written notice to the other party requiring the breach to be remedied; or
- (c) the other party persistently breaches this Agreement (irrespective of whether such breaches collectively constitute a material breach).

14.3 Either party may terminate this Agreement immediately by giving written notice of termination to the other party if:

- (a) the other party:
  - (i) is dissolved;
  - (ii) ceases to conduct all (or substantially all) of its business;
  - (iii) is or becomes unable to pay its debts as they fall due;
  - (iv) is or becomes insolvent or is declared insolvent; or
  - (v) convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;
- (b) an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party;
- (c) an order is made for the winding up of the other party, or the other party passes a resolution for its winding up (other than for the purpose of a solvent company reorganisation where the resulting entity will assume all the obligations of the other party under this Agreement);

14.4 The Provider may terminate this Agreement immediately by giving written notice to the Customer if:

- (a) any amount due to be paid by the Customer to the Provider under this Agreement is unpaid by the due date and remains unpaid upon the date that that written notice of termination is given; and



- (b) the Provider has given to the Customer at least 30 days' written notice, following the failure to pay, of its intention to terminate this Agreement in accordance with this Clause 14.4.

## **15. Effects of termination**

- 15.1 Upon the termination of this Agreement, all of the provisions of this Agreement shall cease to have effect.
- 15.2 Except to the extent that this Agreement expressly provides otherwise, the termination of this Agreement shall not affect the accrued rights of either party.
- 15.3 Within 30 days following the termination of this Agreement for any reason:
  - (a) the Customer must pay to the Provider any Charges in respect of Services provided to the Customer before the termination of this Agreement; and
  - (b) the Provider must refund to the Customer any Charges paid by the Customer to the Provider in respect of Services that were to be provided to the Customer after the termination of this Agreement,

without prejudice to the parties' other legal rights.

## **16. Notices**

- 16.1 Any notice given under this Agreement must be in writing, whether or not described as "written notice" in this Agreement.
- 16.2 Any notice given by the Customer to the Provider under this Agreement must be sent by email using the relevant contact details set out in Clause 16.4.
- 16.3 Any notice given by the Provider to the Customer under this Agreement must be sent by email using the relevant contact details set out in Clause 16.4.
- 16.4 The parties' contact details for notices under this Clause 17 are as follows:

Iain Kingsley, Arriga CRM Limited, [Iain.Kingsley@ArrigaCRM.co.uk](mailto:Iain.Kingsley@ArrigaCRM.co.uk)
- 16.5 The addressee and contact details set out in Clause 16.4 may be updated from time to time by a party giving written notice of the update to the other party in accordance with this Clause 16.
- 16.6 A party receiving from the other party a notice by email must acknowledge receipt by email promptly, and in any event within 2 Business Days following receipt of the notice.
- 16.7 A notice will be deemed to have been received at the relevant time set out below or, where such time is not within Business Hours, when Business Hours next begin after the relevant time set out below: in the case of notices sent by email, at the time of the sending of the email (providing that the sending party retains written evidence that the email has been sent)

## **17. Subcontracting**

- 17.1 The Provider may subcontract any of its obligations under this Agreement, providing that the Provider must give to the Customer, promptly following the appointment of a subcontractor, a

written notice specifying the subcontracted obligations and identifying the subcontractor in question.

- 17.2 The Provider shall remain responsible to the Customer for the performance of any subcontracted obligations.

## **18. Assignment**

- 18.1 The Customer hereby agrees that the Provider may assign, transfer or otherwise deal with the Provider's contractual rights and obligations under this Agreement.

- 18.2 The Provider hereby agrees that the Customer may assign, transfer or otherwise deal with the Customer's contractual rights and obligations under this Agreement.

## **19. No waivers**

- 19.1 No breach of any provision of this Agreement will be waived except with the express written consent of the party not in breach.
- 19.2 No waiver of any breach of any provision of this Agreement shall be construed as a further or continuing waiver of any other breach of that provision or any breach of any other provision of this Agreement.

## **20. Severability**

- 20.1 If a provision of this Agreement is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions will continue in effect.
- 20.2 If any unlawful and/or unenforceable provision of this Agreement would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect.

## **21. Third party rights**

- 21.1 This Agreement is for the benefit of the parties, and is not intended to benefit or be enforceable by any third party.
- 21.2 The exercise of the parties' rights under this Agreement is not subject to the consent of any third party.

## **22. Variation**

- 22.1 This Agreement may not be varied except by means of a written document signed by or on behalf of each party.

## **23. Entire agreement**

- 23.1 The main body of this Agreement and the Schedules shall constitute the entire agreement between the parties in relation to the subject matter of this Agreement, and shall supersede all previous agreements, arrangements and understandings between the parties in respect of that subject matter.
- 23.2 Neither party will have any remedy in respect of any misrepresentation (whether written or oral) made to it upon which it relied in entering into this Agreement.

## **24. Law and jurisdiction**

- 24.1 This Agreement shall be governed by and construed in accordance with English law.
- 24.2 Any disputes relating to this Agreement shall be subject to the exclusive jurisdiction of the courts of England.

## **25. Interpretation**

- 25.1 In this Agreement, a reference to a statute or statutory provision includes a reference to:
- (a) that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and
  - (b) any subordinate legislation made under that statute or statutory provision.
- 25.2 The Clause headings do not affect the interpretation of this Agreement.
- 25.3 References in this Agreement to "calendar months" are to the 12 named periods (January, February and so on) into which a year is divided.
- 25.4 In this Agreement, general words shall not be given a restrictive interpretation by reason of being preceded or followed by words indicating a particular class of acts, matters or things.

## **EXECUTION**

The parties have indicated their acceptance of this Agreement by executing it below.

SIGNED BY Iain Kingsley on ....., the Provider

.....

SIGNED BY *individual name* on ....., the Customer

.....

## **SCHEDULE 1 (SOFTWARE PARTICULARS)**

### **1. Identification of Software**

### **2. Financial provisions**

*The price of the service is £ per annum payable annually in advance.*

## **SCHEDULE 2 - SUPPORT TERMS**

These Support Terms relate to the provision by the Provider to the Customer of Support Services. They apply in addition to the General Terms.

### **1. The Software covered by the Support Services**

1.1 The Software being supported and maintained under this Agreement is the Supported Software.

### **2. What Support Services are being provided by the Provider**

2.1 The Provider will provide the following as part of the Support Services:

- (a) an Error correction service as described in more detail in clause 3.3 of the Support Terms;
- (b) an Update service as described in more detail in clause 3.4 of the Support Terms.

The Support Services are only those described in detail in clause 3 of the Support Terms and are subject to the exclusions in clause 4 of the Support Terms.

### **3. Description of Support Services**

3.1 The Support Services will only be provided during the Support Hours. The Provider does not have to provide any Support Services outside Support Hours unless it agrees otherwise in writing. Support Services supplied outside Support Hours may be charged for on a time and materials basis. Use of the helpdesk, and reports of suspected or actual Errors may only be made to the Provider by the Customer Representative.

3.2 The helpdesk service shall be provided as follows:

- (a) The service may be accessed during Support Hours by emailing the address referred to in the Support Schedule.
- (b) The Provider will make sure that suitably qualified staff are available on the helpdesk during the hours referred to.
- (c) The Provider's staff will use their reasonable efforts to resolve any reasonable query relating to the Supported Software or its use or operation referred to them by the Customer's staff.

3.3 The Error correction service shall be provided as follows:

- (a) An "Error" for these purposes is:
  - (i) any failure by the Supported Software to operate in all material respects in accordance with the User Manuals that apply to it; or
  - (ii) any other material defect in the Supported Software which has an adverse effect on its use or operation. Problems arising from the causes listed in clause 4 of the Support Terms will not be treated as Errors for the purpose of this Agreement.
- (b) If an apparent Error in the Supported Software occurs, the Customer must notify the Provider as soon as it is reasonably possible to do so. Notification will be by e-mail (via e-mail address referred to in the Support Schedule).
- (c) Once it has received notification of an Error, the Provider will allocate the Error a reference number and will log the Error.

(d) The Provider will then use its reasonable efforts to correct the Error and provide the Customer with a corrected version of the Supported Software within the time limits set out below. The time limits vary according to the nature and severity of the Error. The Provider will be responsible for determining how severe the Error is (and therefore what time limits apply). If the Customer is unhappy with the severity level assigned to a given Error by the Provider, it may invoke the escalation procedure referred to in the Support Schedule in order to try and reach agreement on whether or not a different severity level should be applied.

(e) The time limits in this clause 3.3 of the Support Terms are not absolute. The Provider's obligation is only to use its reasonable efforts to correct the relevant Error and supply a corrected version of the Supported Software within the applicable time limit. Severity categories and applicable time limits are set out in the table at the end of these Support Terms.

(f) In the course of investigating an Error, the Provider may identify a possible method of using the Supported Software which avoids the Error or minimises its effect and which does not result in substantial extra inconvenience or expense for the Customer (a "Workaround"). If a Workaround is identified and notified to the Customer, then the Customer must implement the Workaround as soon as possible. Once a Workaround has been notified to the Customer, the Provider may reallocate the relevant Error to another severity category as set out in the table below.

(g) Once the Provider has corrected the Error, it will notify the Customer and will log the correction. Where appropriate, the Provider will then supply a corrected version of the Supported Software to the Customer and, if requested by the Customer, will give the Customer instructions on how to install the corrected version of the Supported Software.

(h) The Provider may use any reasonable means to correct Errors. It does not have to attend on site at the Authorised Premises unless it considers that to be the only reasonable means of correcting the Error. If requested by the Provider, the Customer will (provided that it is technically possible to do so) make a copy of the Supported Software in which the Error has been identified and will send that copy to the Provider by the quickest reasonable means.

(i) The Customer and the Provider may agree that the Customer will provide the Provider with remote access to the Customer's system in order to enable the Provider to correct Errors in the Supported Software. If so, then unless agreed otherwise the Customer will be responsible for setting up the remote access (and providing the facilities necessary to enable it to take place) and for paying all charges associated with that access. The Provider must comply with all reasonable requests of the Customer in relation to the remote access and its use. The Customer may stop remote access by the Provider but, in that case, the Provider will not be liable for any failure or delay in providing Support Services arising as a result of remote access being stopped.

#### 3.4 The Update service shall be provided as follows:

(a) An "Update" for these purposes is a corrected or Updated version of the Supported Software other than one:

(i) which includes substantial new functionality as compared to the version already in use by the Customer; or

(ii) which is intended for use with a different operating system or different equipment to that with which the Customer is licensed to use the Supported Software under the relevant licence agreement.

(b) If while these Support Terms are in effect the Provider makes an Update generally available to its licensees, it will supply the Customer with the Update under these Support Terms and without additional charge.

(c) The Customer must install and implement Updates within 28 days of being supplied with them. This obligation will not apply if:

- (i) the Update does not have the same or better functionality to the version it replaces; or
- (ii) the Update contains Errors of severity category 4 or above (as described in the table below).

#### **4. What is not included within the Support Services**

4.1 The Support Services do not include the following services which, if requested by the Customer and agreed to be undertaken by the Provider, will be charged at the Provider's normal daily fee rate for the time being in force:

- (a) Upgrades: being work necessary to install and implement new versions of the Supported Software, or parts thereof.
- (b) Recovery: being work necessary to restore or rebuild the Customer's data files or the Supported Software or any part thereof consequent upon corruption by hardware failure or incorrect use of the Supported Software by employees or agents of the Customer or by any unauthorised person.
- (c) Data problems: being work necessary to restore, rebuild or correct the Customer's data files or the Supported Software or any part thereof consequent upon corruption by loading or addition of data to the Supported Software using interfaces, data load routines not written by the Provider, by direct addition to the data files by employees or agents of the Customer or by any unauthorised person, or by defects in any software not supplied or supported by the Provider.
- (d) Relocation: being any defect caused by any replacement, reconfiguration or relocation of the Authorised Processor without a full audit being conducted by the Provider and all recommendations made by the Provider implemented by the Customer.
- (e) Consultancy: being any work in relation to any extension, enhancement, modification or customisation supplied in addition to the Supported Software, or training, use or operation of the Supported Software.
- (f) General Administration of the system: being any work involving the upkeep and configuration of the system, for instance changing security profiles or adding new users to the system.
- (g) Provision of reports or data analysis; being any work involving creating reports or analyzing or querying data in the system.

4.2 The Provider does not have to provide Support Services in relation to queries or Errors arising because of any of the following:

- (a) misuse of or operator error in relation to the Supported Software (which includes any use of the Supported Software that is not in accordance with the relevant Software licence);
- (b) use of the Supported Software with an operating system or on equipment for which it was not intended or designed;
- (c) defects in any hardware, equipment or firmware;

- (d) defects in any software other than the Supported Software to which this Agreement relates;
- (e) the use of the Supported Software with or on any equipment or operating system not expressly approved by the Provider;
- (f) the use of the Supported Software with or in relation to any other software not expressly approved by the Provider;
- (g) use of the Supported Software by anyone who has not been properly trained. Anyone who has been trained by or on behalf of the Provider will be treated for these purposes as having been properly trained;
- (h) any breach of the Customer's obligations under this Agreement. If the Provider provides Support Services in relation to an Error and it is found that the Error arose because of any of the above causes, the Provider may charge for all such Support Services on a time and materials basis at the rates specified in the Support Schedule or (if it does not specify the rates) at the Provider's current standard rates.

4.3 The Provider does not have to provide Support Services if the Customer is not maintaining the Support Software at the Provider's specified release level unless expressly agreed otherwise in advance by the Provider.

4.4 The Provider may cease providing Support Services and terminate these Support Terms if modifications are made to the Support Software of it other than by authorised Provider Staff or with the express written consent of the Provider.

## **5. The Customer's obligations**

The Customer will:

5.1 comply with any reasonable instructions that the Provider gives the Customer relating to the use of the Supported Software or the related User Manuals;

5.2 provide free of charge suitable access to the premises of the Customer or under the control of the Customer, its servants or agents and the Supported Software as installed on the Customer's nominated servers, its terminals and PCs as may be reasonably requested by the Provider Staff during Support Hours or as otherwise agreed;

5.3 ensure that only competent trained employees (or persons under their supervision) are allowed to run the Supported Software;

5.4 maintain a suitable internet link, as agreed by the Provider, to enable the use of on-line fault identification and correction tools by arrangement with the Customer;

5.5 co-ordinate calls to the Provider via an internal help desk Customer Representative or similar arrangement to provide points of contact as specified in the Support Schedule;

5.6 as soon as it is practical to do so:

- (a) inform the Provider of any suspected Error of which it becomes aware; and
- (b) use reasonable endeavours to provide such further information relating to the suspected Error as is available to the Customer and which the Provider may reasonably request in order to perform its obligations under this Agreement;



5.7 commit adequate resources and permit such access to Provider Staff and provide promptly all information and documents, as may be reasonably requested by the Provider to enable the Provider to perform the Services;

5.8 provide suitable media (including spare tapes and disc packs as required), working area and storage space as may be reasonably required by the Provider at no charge to the Provider;

5.9 where reasonably requested provide to the Provider, in a form and on media to be agreed on a case-by-case basis, data to enable the Provider accurately to emulate the Customer's IT environment, for the purpose of providing Support Services; and

5.10 notify in writing at least 10 Working Days in advance of changing any, or all, of the Customer Representatives.

## **6. Communications and communication levels**

6.1 The Provider may monitor and record call, e-mail and other electronic communication content, types and levels in connection with performance monitoring and ensuring compliance with the terms of this Agreement. If the Provider determines that excessive numbers of communications are being made to the help desk:

(a) The Provider may notify the Customer in writing that it is receiving an unduly high number of calls from the Customer.

(b) On receipt of such notice, the Customer will promptly investigate the high level of calls and the Provider will endeavour to assist the Customer to determine why this is happening and will if possible assist in any remedial action required to reduce the number of calls or resolve the issues causing the high number of calls. The Provider may charge for these activities on a time and materials basis.

(c) If the excessive number of communications continues, the Provider may, at its discretion, either suspend or terminate the Support Services and in the latter case shall refund to the Customer a pro rata portion of the Annual Maintenance Fee for the current Support Year, calculated by reference to the unexpired portion of the Support Year.

6.2 The Provider reserves the right to refuse to accept or act on a communication if the person requesting assistance is not on the list of Customer Representatives. In such event the Provider shall use reasonable efforts to redirect the person requesting assistance to a Customer Representative.

## SCHEDULE 3 (SUPPORT SLA)

### 1. Introduction

1.1 This Schedule 3 sets out the service levels applicable to the Support Services.

### 2. Response and resolution

Cases are prioritised as follows:

| Priority                       | Description   | Examples   |
|--------------------------------|---|--|
| 1 – Severity Class A           | System down or unable to access data                                | Users cannot log into the system<br>Users cannot use a specific function.                        |
| 2 – Severity Class B           | Time-critical business function out of action or malfunctioning     | Cannot process a Service request   |
| 3 – Severity Class C (Default) | Non time-critical business Function out of action or malfunctioning | Cannot print management report   |
| 4 – Severity Class D           | Other   | Advice requested regarding configuration of a report<br>Requests for modifications to the system |
| 5 – Training                   | Training Requests   | See section below  |
| 6 – On Site Request            | On Site Support Requests  | See section below  |

### 3. Prioritisation

Priorities are actioned as follows:

| Action   | Priority 1      | Priority 2      | Priority 3       | Priority 4     |
|--|-----------------|-----------------|------------------|----------------|
| Response from knowledgeable support consultant who will commence work on diagnosing and solving the case within: | 1 working hour  | 2 working hours | 4 working hours  | 2 working days |
| Status Updates within:   | 2 working hours | 4 working hours | 10 working hours | 5 working days |
| Escalate to Help Desk Manager within   | 2 working hours | 4 working hours | 1 working day    | Not applicable |
| Endeavour To Resolve (Fix) within:   | 1 working day   | 2 working days  | 5 working days   | Not applicable |