



## **IT Systems & Support Limited Managed Service Terms & Conditions V1.12**

For Academies, Secondary, Primary, Infant, Junior, Special, Nursery, Independent and Free Schools



# Foreword

This document provides details of terms and conditions for the delivery of IT Systems Technical Services.

IT Systems provides a dedicated and high quality service to support school Curriculum and Administration systems. This service is based within the Darlington area and provides on-site, remote and web based support.

To provide first, second and third line technical support to all client schools for administrative and curriculum use computers, including helpdesk, dedicated regular technical support and administration of broadband connectivity.

IT Systems remit is to support schools to raise standards of achievement, improve the quality of teaching and learning, create and share information via digital resources and improve administrative efficiency through the use of ICT. To support schools in implementing issues surrounding workforce reform by working alongside the supported school curriculum team, third party and multi agency departments.

John R Agar MSc  
Managing Director  
IT Systems & Support Limited

## Version Information

<b>Document Title:</b>	Managed Service Terms & Conditions
<b>Document Owner:</b>	Mr John Agar – IT Systems & Support Limited
<b>Audience:</b>	Schools / Education Establishments
<b>Distribution:</b>	Public
<b>Version Number:</b>	V1.12
<b>Date:</b>	May 2014, June 2014, January 2016, January 2017, January 2019, June 2021 April 2023

PLEASE ENSURE THAT THESE TERMS AND CONDITIONS ARE UNDERSTOOD BEFORE SIGNATURE AS ACCOMPANIED BY YOUR SUPPORT SCHEDULE AND SLA THESE CONSTITUTE THE ENTIRE AGREEMENT BETWEEN BOTH PARTIES.

## Managed Service Terms and Conditions

If there are any Terms and Conditions you do not understand, please contact Customer Services using the contact details set out on the Website at <http://www.itsystems.uk.net> calls to Customer Services may be monitored and recorded for training and quality assurance purposes.

These Terms and Conditions including the **Support Schedule(s)** ("**Conditions**") apply between the individual, firm or company named in the **Support Schedule (s)** (the "**Customer**", "**Service User**" or "**you**") and IT Systems & Support Limited, a company registered in England and Wales with company number 09064755 whose registered office is at North Point, Faverdale North, Faverdale, Darlington, DL3 0PH ("**The Company**" or referred to as "**Service Provider**" or "**us/we/our**").

### 1. Definitions and General

In these terms and conditions:

"The Company", "Service Provider" or "us/we/our" Means IT Systems & Support Limited its employee's agents and servants.

"Customer", "Service User" or "you" Means the party to whom the Company has agreed to provide the Service including its employee's agents and servants.

"Agreement" Means the Agreement however made for the supply of services by the Company to the Customer

"Agreement Term" Means each thirty six or sixty month period as stated within the Support Schedule

"Initial Contract Period" Means Initial Contract Period as set out within the Support Schedule

"Annual Charge" Means payment made for the provision of services under this Agreement for a period of 12 months (1 Year)

"Commencement Date" is defined in clause 2.1

"Monthly Charge" Means payment made for the provision of services under this Agreement for a period of 1 month.

"Termly Charge" Means payment made in advance for the provision of services under this agreement for a period of 4 Months

"Business Hours" Means the hours of 08.30 to 16.30 Monday to Friday excluding public holidays

"Equipment" Means the equipment listed in the Schedule or added with the agreement of both parties from time to time during the term of this Agreement

"Service Type" Means the Service supplied or to be supplied by the Company to the Customer

"Service Level" Means the Level of Service supplied or to be supplied by the Company to the Customer

"Response Period" Means response period specified in the Schedule

"Force Majeure" Shall include without prejudice to the generality of the expression act of God, war, riots, insurrection, governmental regulations, legal restrictions, embargoes, strikes, labour disputes, shortages of materials, fire, floods, tempest or any other cause or event outside of the control of the Company howsoever caused or arising.

## 2. Acceptance of Order

- 2.1 If the Customer wishes to subscribe to the Company's Managed Services, and if the parties shall agree in writing 2.2, to the provision of the Managed Services with effect from an agreed date ("**Commencement Date**"), then the Managed Services Terms & Conditions shall apply to such provision. In the event of any discrepancy or difference between the provisions of this Contract and the Managed Services Terms & Conditions, the Managed Services Terms & Conditions shall prevail.
- 2.2 The signed Support Schedule constitutes an offer by the Customer to purchase Managed Services in accordance with these Conditions and the Support Schedule shall only be deemed to be accepted when the Company issues written acceptance or signed electronic copy of the support schedule at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.3 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out within the Support Schedule. Any samples, drawings, descriptive matter or advertising issued by the Company, and any descriptions or illustrations contained in the Company's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.
- 2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. Any quotation given by the Company shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.
- 2.5 The Customer represents and warrants that it is duly authorised and empowered to enter into this Agreement and that such authority shall continue during the term of this Agreement.
- 2.6 This Agreement represents the entire Agreement between the parties. Each party warrants that no representation not recorded within this Agreement has been made which has induced the other to enter into this Agreement. No amendment of these terms and conditions is valid unless confirmed in writing by both parties on the same date as, or a later date than, the date of this Agreement.
- 2.7 No failure, delay, relaxation or indulgence on the part of either party in exercising any power or right conferred upon such party in this Agreement shall operate as a waiver of such power or right, nor shall any single or partial exercise of any such power or right preclude any other further exercise of any other power or right.
- 2.8 The Customer shall not assign the benefit of this Agreement without the prior written consent of the Company.
- 2.9 Any notice given under this Agreement by either party to the other must be in writing and may be effected by personal delivery, fax, e-mail or registered mail postage and shall in the case of personal delivery, fax or e-mail be deemed to be received on the same date as it was sent and in the case of postage within 48 hours after the date of posting. Notices sent by post shall be sent to the addresses of the parties set out on page 1 of this Agreement or to another address notified in writing to the other for such purpose after the date of this Agreement.
- 2.10 Where the provision of service has been provided and payment has been received it is deemed the Customer has accepted the terms stated within this document (Managed Service Terms & Conditions). Service provision will also be provided as per the (Support Schedule) and will be subject to 13.1 and 13.2, unless a notice of termination has been received and acknowledged.

### 3. Scope of Agreement

- 3.1 The terms of this Agreement are to govern any Contract between the Company and the Customer and prevail over any terms put forward by the Customer unless the Company expressly agrees to an amendment to its terms and conditions in writing. No conduct by the Company shall be deemed to constitute acceptance of any terms put forward by the Customer.
- 3.2 The employees of the Company are not authorised to make oral representations as to the description or quality of the Service or goods supplied under the Service. If a representation is made or an opinion expressed orally which materially affects the Customer's decision to purchase the Service, the Customer must ensure that any such details are confirmed in writing by an officer of the Company so as to form part of this Agreement otherwise no liability can be accepted.
- 3.3 All descriptions and other information contained in sales literature advertisements and estimates may include information received from the Company's suppliers and agents and the Company cannot be held responsible for any inaccuracy in their information passed on in good faith.
- 3.4 In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for the Company to use reasonable commercial efforts to restore the lost or damaged Customer Data from the latest backup of such Customer Data maintained by the Company. The Company shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties subcontracted by the Company to perform services related to Customer Data maintenance and back-up).
- 3.5 Customer Data provisioned within the Managed Service remains the sole property of the Customer, this clause 3.5 shall survive termination of the Contract, however arising.

### 4. Service

- 4.1 The Service shall commence from the Commencement / Contract date referred to within the Support Schedule.
- 4.2 Service Level will be provided as per Basic, Standard, Enhanced AV or Premium as set out within the Support Schedule. The Company reserves the right to introduce additional Service Levels as required from time to time.
- 4.2.1 Managed Service Levels as per 4.2 will be subject to an annual review two (2) months prior to the anniversary of the Commencement Date and not later than two (2) months prior to the following Academic Year. Customer adjustments to the Service Level can be provisioned via this mechanism however minimum provision can be no less than the Basic Services Level as set out within 4.2
- 4.3 Faults with the Equipment which are not identified by the Company's Managed Service Agent should be reported by the Customer during Business Hours to the Help Desk of the Company on the Service telephone number as notified to the Customer or such other telephone number as notified to the Customer by the Company within the Support Schedule.
- 4.4 The Company shall during Business Hours respond to the fault within the Service Level Agreement (SLA) following an alert from the Company's Managed Service Agent or report of the Fault by the Customer.
- 4.5 The Customer shall upon reporting an Equipment fault provide to the Company both the Equipment identification number and Customer reference number and thereafter the Customer shall be given a fault reference number.
- 4.6 Personnel supplied under this Agreement will be suitably experienced service engineers.

- 4.7 Where the Company provides Service for Equipment which has not been the subject of a maintenance agreement from when the Equipment was new or has been maintained other than by the Company the Equipment will be inspected and where remedial maintenance is required the costs shall be charged at the Company's charging rate from time to time in force.
- 4.8 Where the Company is requested to provide Service for:
  - 4.8.1 Equipment damaged by physical or electrical stress or non-normal use including damage to hard disks caused by the use of storage media not approved by the Manufacturer
  - 4.8.2 Equipment not listed in the Schedule or consumable items or accessories as defined by the Manufacturer
  - 4.8.3 Equipment not expressly included in a written quotation
  - 4.8.4 Material components concealed in the Equipment but which are not listed in the Schedule
  - 4.8.5 Application software or network/system operating firmware/software which does not form part of the Company Software Maintenance and Support Agreement the Customer will be charged at the Company's current charging rate from time to time in force.
- 4.9 All goods supplied in connection with the Service shall remain the property of the Company unless and until payment for the same is received by the Company.
- 4.10 If from time to time the Customer wishes to add or replace any item of equipment covered by this Agreement the Customer may do so by agreement with the Company. This agreement will take place within the service review mechanism or at such point agreed. The Company in these circumstances will, depending on when such amendment is required, adjust the applicable Monthly, Termly or Annual Charge to reflect these changes.

## 5. Excluded Service

- 5.1 The Services or replacement of spare parts deemed necessary by the Company or its agents or servants due to:
  - 5.1.1 Wilful acts defaults or negligent use of the Equipment outside of the manufacturers operating instructions
  - 5.1.2 Any damage caused by the Customer or a third party as a result of upgrade or modification of the Equipment.
  - 5.1.3 Faults with software or due to connections with other equipment
  - 5.1.4 Use of destructive software and faulty software
  - 5.1.5 Service requested by Customer outside of Business Hours will be charged in accordance with the Company's current charging rate from time to time in force.

## 6. Customers Obligations

- 6.1 The Customer at its own expense will care for and operate the Equipment in accordance with the manufacturer's specifications and instructions and will only use it for the purpose for which it was designed. If as a result of the Customer's reconfiguration or alteration to the Equipment remedial action is required, the Company reserves the right to charge the Customer at the Company's current charging rate from time to time in force.
- 6.2 The Customer shall ensure the Equipment is operated in a skilful and proper manner by persons who are trained to a competent standard.

- 6.3 The Customer shall provide full free and safe access to the Company in order to provide the Service to the Equipment and the Customer shall protect the health and safety of the Company while its personnel are at the Equipment location address.
- 6.4 To effectively manage the Customers network the Company may make recommendations for improvements to provide resilience and allow the Company to fulfil their obligations under this Agreement. If the Customer refuses to undertake these recommendations it may not be possible for the Company to provide a Managed Service and therefore this Agreement will be immediately terminated and the Customer will be liable to costs incurred by the Company.

## **7. Force Majeure**

- 7.1 If performance of the Company is delayed or hindered by circumstances outside its control or amounting to Force Majeure as defined in the Agreement the following provisions shall apply:
- 7.2 The Company will as soon as reasonably practicable give the Customer notice of the reasons of the delay or hindrance and failing to give such notice will not prevent the Company relying on the remaining provisions of this clause and the Company will incur no liability for failure to give such notice.
- 7.3 The Company duty to perform shall be suspended for as long as the circumstances amounting to Force Majeure continue and the time for performance of the Company's obligations shall be extended by a period equal to the duration of those circumstances.

## **8. Faulty Goods and Defects**

- 8.1 The Company will only supply and use as part of the Service materials and goods within the scope of published specifications from appropriate manufacturers and suppliers but the goods are supplied subject to any conditions of sale relating thereto by the relevant manufacturer or supplier. Where any materials or goods are found to be faulty the Company's liability in respect of such faults will be limited to replacement of such materials or goods.
- 8.2 Save as expressly provided in the Agreement no statutory or other warranty condition description or representation of any kind whatsoever on the part of the Company including (but not limited to) any such as to the merchantability or fitness for any purpose of the goods supplied under the Service or the Service is given or to be implied by the Agreement nor is any such warranty description condition or representation to be taken to have been given or implied from anything said or written in negotiations between the Company and the Customer or their respective representatives prior to this Agreement.
- 8.3 Save as aforesaid the Company's liability under this head shall be limited to the annual charge for the individual item of equipment covered under this Agreement.

## **9. Liability**

- 9.1 Except as expressly and specifically provided in these Conditions: the Customer assumes sole responsibility for results obtained from the use of the Services, and for conclusions drawn from such use. The Company shall have no liability for any damage caused by any acts, omissions or delays of the Customer, or the Customer's breach or negligent performance of the Contract, or any actions taken by the Company at the Customer's direction; and all warranties, conditions and

other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this Contract; and that Managed Services are provided to the Customer on an “as is” basis.

- 9.2 Nothing in these Conditions excludes or limits the liability of the Company for death or personal injury caused by the Company's negligence; fraud or fraudulent misrepresentation; or any other liability which cannot lawfully be excluded or limited.
- 9.3 The Service Level Arrangements state the Customer's full and exclusive right and remedy, and the Company's only obligation and liability in respect of, the performance and/or availability of the Managed Service, or its non-performance and non-availability.
- 9.4 Subject to clause 9.2 and clause 9.3:  
the Company shall not be liable for any loss of profits, loss of business, loss of data, depletion of goodwill or similar losses, whether direct or indirect, or any pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising; and the Company's total aggregate liability in contract, tort, misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract.

## 10. Terms of Payment

- 10.1 The charges and terms of payment for the Managed Service are shown within the support schedule of this agreement, and shall remain fixed for the duration of the contract period not exceeding the initial contract term from the commencement date, except where there is a variation in accordance with clause 4.10 of this Agreement, and the Company shall be entitled to receive within thirty days of submitting an invoice to the Customer or thirty days of providing Service to the Customer the sum representing the Monthly, Termly or Annual Charge.
- 10.2 Where Hardware Support is included in the Managed Service provided under this Agreement the charges include all labour and replacement parts (subject as hereinafter provided) provided the customer is not in breach of any of the provisions under this Agreement and subject to services level as per 4.2.
- 10.3 The charges are payable by the Customer within thirty days of receipt of invoice or thirty days before the start of the period of cover to which the invoice refers whichever is the sooner.
- 10.4 The charges do not include but are not limited to the following:
  - 10.4.1 Supply and labour for fitting of consumable items or accessories as defined by the Manufacturer, laser drums, fuser units, portable screens and print heads
  - 10.4.2 Electrical work – external to the Equipment
  - 10.4.3 Rental charges for replacement Equipment other than loan equipment from stock provided under this Agreement
  - 10.4.4 Replacement of magnetic media (except fixed disks)
- 10.5 If the Customer moves the Equipment from the installation address shown within the support schedule then the Company reserves the right to make an appropriate adjustment to the Monthly, Termly or Annual Charge and to the Response Period to a fault call referred to in clause 4.
- 10.6 If the Customer shall fail to make payment to the Company for the Service as required by this Agreement or any other Agreement between the Customer and the Company, the Company reserves the right (without prejudice to its other rights) to suspend the Service until such sum is received by the Company and for the avoidance of doubt there will not be an abatement to the Annual Charge if the Service is suspended by the default of the Customer.



- 10.7 Where the Company is unable to provide the Service as a result of the Customer being in breach of its obligations contained in this Agreement all time expenditure and material costs will be charged to the Customer at the Company's current charging rate from time to time in force.
- 10.8 The Customer will pay the price in full without any discount deduction set off or rebate on any grounds.
- 10.9 If we do not receive payment of an invoice when due to us, then we may charge interest on any overdue amounts at the rate of 2% over the base lending rate of the Company's bankers in the UK from time to time, commencing on the due date and continuing until fully paid, whether before or after the judgment.

## **12. Sub-Contract**

- 12.1 The company reserves the right to sub-contract the performance of this Agreement in whole or in part without prior notice to the Customer.

## **13. Termination, Suspension & Renewal**

- 13.1 This agreement shall commence on the commencement date shown within the support schedule and shall continue until terminated by one party as set out within 13.2 in writing to the other party. Such notice period not to commence until the end of the Agreement Term / Initial Contact Period as set out within the Support Schedule. The termination payment is based on the annual charge or the capped maximum expenditure to the end of the Initial Contract Period at the discretion of the Company.
- 13.2 Notification of withdrawal must be given, in writing, by the end of August (March for LA Maintained Schools) one (1) years in advance within a contract period for Technical Support Service Basic, Standard, Enhanced AV this also includes other contracts (including MIS Support) where school or establishment wish to leave the following contractual year, and end of August (March for LA Maintained Schools), two (2) years preceding for Technical Support Service Premium. Broadband services should be notified within year 4 for termination at the end of the original 5 year period. Penalties will be subject for early termination of contract and services.
- 13.3 Contracts will automatically be renewed at the end of the contract period and each year thereafter unless notification is received in line with section 13.2

## **15. Care of Equipment**

- 15.1 The Customer shall house and operate the equipment covered by this Agreement in accordance with the relevant manufacturer's instructions.
- 15.2 The Customer shall ensure that no part of the Equipment is modified without the prior written approval of the Company or is subjected to unusual physical or electrical stress, accident, neglect, misuse or other damage. If any such action is taken without approval the Company reserves the right to charge for any remedial action required in accordance with the Company's current charging rate from time to time in force.
- 15.3 No attachment shall be made to the Equipment nor repairs or adjustments made, nor shall any part of the Equipment be moved without the Company's prior written approval, which shall not be unreasonably withheld.

- 15.4 The Customer shall not use on the Equipment any stationery, magnetic media or other consumable which does not meet with the manufacturer's specifications or which are defective.

## **16. Intellectual Property**

- 12.1 The Customer acknowledges and agrees that, as between the parties, the Company and/or its licensors own all Intellectual Property in all materials connected with the Services and in any material developed or produced in connection with the Contract by the Company, its officers, employees, subcontractors or agents. Except as expressly stated in clause 12.2, these Conditions do not grant the Customer any rights to such Intellectual Property.
- 12.2 The Company hereby grants the Customer a non-exclusive, non-transferrable, not sub-licensable, revocable licence to use its Intellectual Property rights for the sole purpose of receiving and using the Services during the Term.

## **17. Confidentiality**

- 17.1 Each party undertakes that it shall not disclose to any person any Confidential Information concerning the business, affairs, customers, clients or suppliers of the other party save that each party may disclose the other party's Confidential Information to its employees, officers, representatives or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract and as may be required by law, court order or any governmental or regulatory authority. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's Confidential Information comply with this clause 13.1.
- 13.2 No party shall use any other party's Confidential Information for any purpose other than to perform its obligations under the Contract and each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is secure. This clause 13 shall survive termination of the Contract, however arising.

## **18. Non-solicitation.**

- 18.1 It is a condition of this Agreement that the Customer will not solicit for themselves or any third party any employee of the Company and in the event there is a breach of this condition the Customer shall pay forthwith to the Company a sum equal to the salary of such employee or any sum payable by the Customer to the Company for the exclusive use of that employee (whichever is the greater) for an additional twelve month period following the expiration of the Agreement Term.

## **19. Jurisdiction**

- 19.1 This Agreement is governed by and construed in accordance with English Law and the parties submit to the Jurisdiction of the English Courts.

## 20. General

- 20.1 If in the opinion of the Company the cost of repair of the Equipment or itemised part of the Equipment is in excess of seventy-five percent of the cost to the Company of replacing the Equipment or itemised part of the Equipment or itemised part thereof becomes obsolete, the Company shall have the right to refund to the Customer the Annual Charge paid by the Customer to the Company for the Equipment or a proportional part thereof in respect of any itemised part of the Equipment, if applicable, or remove the Equipment from the Schedule for subsequent Monthly Charges, and there shall be no further liability or obligation by the Company and the Customer in connection therewith.
- 20.2 The Customer represents and warrants that it is duly authorised and empowered to enter into this Agreement and that such authority shall continue during the term of this Agreement.
- 20.3 Clause headings are for convenience only and shall not affect the construction of the terms and conditions of this Agreement.
- 20.4 For security and support requirements IT Systems & Support Limited will administer usernames and passwords for the duration of the SLA.
- 20.5 Where items are to be repaired or replaced within the Technical Support Service Premium this takes place at the discretion of the company.
- 20.6 The Company are unable to guarantee support for and is not limited to standalone systems, laptops / workstations, Interactive whiteboard / screens, projectors, speakers and amplifiers over 5 years old or items purchased outside the support schedule.

## 21. Dispute Resolution

- 21.1 The Company and the Customer will attempt in good faith to resolve any dispute or claim arising out of or in relation to this Agreement through negotiations between senior representatives of each of the Parties with authority to settle the relevant dispute. If the dispute cannot be settled amicably within thirty (20) days from the date on which either Party has served written notice on the other of the dispute then the remaining provisions of this Clause 21 shall apply.
- 21.2 If the Company and the Customer fail to resolve the dispute via 21.1 either party may refer the matter to an independent adjudicator. An adjudicator shall be selected by agreement between the Company and the Customer, should the parties fail to agree within fourteen days (14), either party, upon giving written notice, may apply to the President or the Vice President, for the time being, of the Chartered Institute of Arbitrators, for the appointment of a mediator. Should the mediation fail, in whole or in part, either party may, upon giving written notice, and within twenty eight days thereof, apply to the President or the Vice President, for the time being, of the Chartered Institute of Arbitrators, for the appointment of a single arbitrator, for final resolution. The arbitrator shall have no connection with the mediator or the mediation proceedings, unless both parties have consented in writing. The arbitration shall be governed by both the Arbitration Act 1996 and the Controlled Cost Rules of the Chartered Institute of Arbitrators (2014 Edition), or any amendments thereof, which Rules are deemed to be incorporated by reference into this clause. The seat of the arbitration shall be England and Wales.
- 21.3 All information, data or documentation disclosed or delivered by a party to the Adjudicator in consequence of or in connection with his appointment as Adjudicator shall be treated as confidential.

- 21.4 The adjudicator is not liable for anything done or omitted in the discharge or purported discharge of his functions as adjudicator unless the act or omission is in bad faith and any employee or agent of the adjudicator is similarly protected from liability
- 21.5 If:
  - 21.5.1 Either party is dissatisfied with or otherwise wishes to challenge the Adjudicator's decision made in accordance with clause 21.2 or:
  - 21.5.2 Both Parties agree
  - 21.5.3 then either party may notify the other party of its intention to refer the dispute to the courts.
- 21.6 The parties shall continue to comply with, observe and perform their obligations hereunder this contract regardless of the nature of the dispute and notwithstanding the referral of the dispute for resolution under this clause 18 and shall give effect forthwith to the decision of the Adjudicator and the courts delivered under this clause 21
- 21.7 Where costs of Adjudication are referenced each party shall bear its own costs arising, including legal costs and cost and expenses of any third party witnesses.

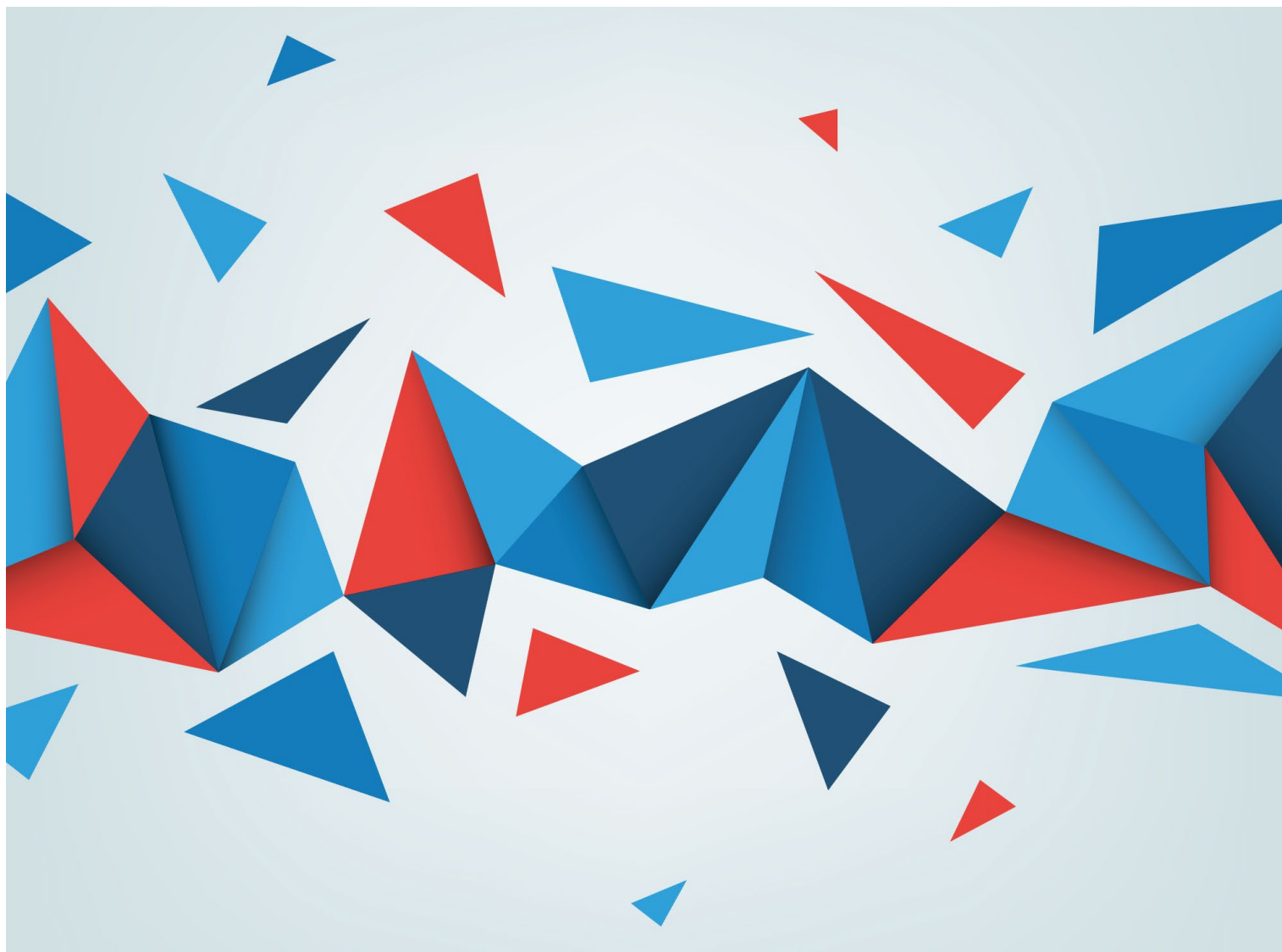
Content and specification of service within this document is subject to change without notice please contact IT Systems & Support for clarification on any aspect as required.



For Schools  
For Learning  
For Support

## **IT Systems & Support Limited Managed Cloud Services Terms & Conditions V1.02**

For Academies, Secondary, Primary, Infant, Junior, Special, Nursery, Independent and Free Schools



# Foreword

This document provides details of terms and conditions for the delivery of IT Systems Managed Cloud Services.

IT Systems provides a dedicated and high quality service to support school Curriculum and Administration systems. This service is based within the Darlington area and provides on-site, remote and web based support.

To provide first, second and third line technical support to all client schools for administrative and curriculum use computers, including helpdesk, dedicated regular technical support and administration of broadband connectivity.

IT Systems remit is to support schools to raise standards of achievement, improve the quality of teaching and learning, create and share information via digital resources and improve administrative efficiency through the use of ICT. To support schools in implementing issues surrounding workforce reform by working alongside the supported school curriculum team, third party and multi agency departments.

John R Agar MSc  
Managing Director  
IT Systems & Support Limited

## Version Information

<b>Document Title:</b>	Managed Cloud Services Terms & Conditions
<b>Document Owner:</b>	Mr John Agar – IT Systems & Support Limited
<b>Audience:</b>	Schools / Education Establishments
<b>Distribution:</b>	Public
<b>Version Number:</b>	V1.02
<b>Date:</b>	January 2021

PLEASE ENSURE THAT THESE TERMS AND CONDITIONS ARE UNDERSTOOD BEFORE SIGNATURE AS ACCOMPANIED BY YOUR SUPPORT SCHEDULE AND SLA THESE CONSTITUTE THE ENTIRE AGREEMENT BETWEEN BOTH PARTIES.

# Managed Cloud Services Terms and Conditions

If there are any Terms and Conditions you do not understand, please contact IT Systems & Support Limited using the contact details set out on the website at [www.itsystems.uk.net](http://www.itsystems.uk.net), calls to IT systems may be monitored and recorded for training and quality assurance purposes.

These Terms and Conditions including the **Support Schedule(s)** ("**Conditions**") apply between the individual, firm or company named in the **Support Schedule (s)** (the "**Customer**", "**Service User**" or "**you**") and IT Systems & Support Limited, a company registered in England and Wales with company number 09064755 whose registered office is at North Point, Faverdale North, Faverdale, Darlington, DL3 0PH ("**The Company**" or referred to as "**Service Provider**" or "**us/we/our**").

## 1. Definitions and General

In these terms and conditions:

"The Company", "Service Provider" or "us/we/our" Means IT Systems & Support Limited its employee's agents and servants

"Customer", "Service User" or "you" Means the party to whom the Company has agreed to provide the Service including its employee's agents and servants.

"Agreement" Means the Agreement however made for the supply of services by the Company to the Customer

"Agreement Term" Means each thirty six or sixty month period as stated within the Support Schedule

"Initial Contract Period" Means Initial Contract Period as set out within the Support Schedule

"Commencement Date" is defined in clause 2.1

"Cloud Connect" is defined as our Cloud Networking Product

"Cloud VOIP" is defined as our Cloud Phone Provision and associated call routing services

"Cloud Wireless" is defined as our Cloud On-Site Access Point, Wireless Provision and Infrastructure.

"Cloud Backup" is defined as our Cloud remote and disaster solution including replicated services

"Monthly Charge" Means payment made for the provision of services under this Agreement for a period of 1 month

"Termly Charge" Means payment made in advance for the provision of services under this agreement for a period of 4 Months

"Annual Charge" Means payments or contract value for the provision of services under this agreement for a period of 12 Months (1 Year)

"Business Hours" Means the hours of 08.30 to 16.30 Monday to Friday excluding public holidays

"Equipment" Means the equipment listed in the Schedule or added with the agreement of both parties from time to time during the term of this Agreement

"Service Type" Means the Service supplied or to be supplied by the Company to the Customer

"Service Level" Means the Level of Service supplied or to be supplied by the Company to the Customer

"Response Period" Means response period specified in the Schedule

“Force Majeure” Shall include without prejudice to the generality of the expression act of God, war, riots, insurrection, governmental regulations, legal restrictions, embargoes, strikes, labour disputes, shortages of materials, fire, floods, tempest or any other cause or event outside of the control of the Company howsoever caused or arising

## 2. Acceptance of Order

- 2.1 If the Customer wishes to subscribe to the Company’s Managed Cloud Services, and if the parties shall agree in writing 2.2, to the provision of the Cloud Services with effect from an agreed date ("**Commencement Date**"), then the Managed Cloud Services Terms & Conditions shall apply to such provision. In the event of any discrepancy or difference between the provisions of this Contract and the Cloud Services Terms & Conditions, the Cloud Services Terms & Conditions shall prevail.
- 2.2 The signed Support Schedule constitutes an offer by the Customer to purchase Managed Cloud Services in accordance with these Conditions and the Support Schedule shall only be deemed to be accepted when the Company issues written acceptance or signed electronic copy of the support schedule at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.3 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out within the Support Schedule. Any samples, drawings, descriptive matter or advertising issued by the Company, and any descriptions or illustrations contained in the Company's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.
- 2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. Any quotation given by the Company shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.
- 2.5 The Customer represents and warrants that it is duly authorised and empowered to enter into this Agreement and that such authority shall continue during the term of this Agreement.
- 2.6 This Agreement represents the entire Agreement between the parties. Each party warrants that no representation not recorded within this Agreement has been made which has induced the other to enter into this Agreement. No amendment of these terms and conditions is valid unless confirmed in writing by both parties on the same date as, or a later date than, the date of this Agreement.
- 2.7 No failure, delay, relaxation or indulgence on the part of either party in exercising any power or right conferred upon such party in this Agreement shall operate as a waiver of such power or right, nor shall any single or partial exercise of any such power or right preclude any other further exercise of any other power or right.
- 2.8 The Customer shall not assign the benefit of this Agreement without the prior written consent of the Company.
- 2.9 Any notice given under this Agreement by either party to the other must be in writing and may be effected by personal delivery, fax, e-mail or registered mail postage and shall in the case of personal delivery, fax or e-mail be deemed to be received on the same date as it was sent and in the case of postage within 48 hours after the date of posting. Notices sent by post shall be sent to the



addresses of the parties set out on page 1 of this Agreement or to another address notified in writing to the other for such purpose after the date of this Agreement.

### 3. Scope of Agreement

- 3.1 The Company shall perform the Set-up Services in accordance with any timetable set out in the Specification, provided that performance dates set out in the Order shall be estimates only, and time shall not be of the essence of the Contract.
- 3.2 When the Company considers that the Managed Cloud Service is ready for activation he shall notify the Customer. Within 5 days of such notification the Customer shall review the operation of the Managed Cloud Service to confirm that it functions in material conformance with the Specification. If the Managed Cloud Service fails in any material respect to conform to the Specification, the Customer shall give the Company a detailed description of any such non-conformance ("**Error**") in writing, within the 5 day review period.
- 3.3 The Company shall use reasonable efforts to correct any Error within a reasonable time and, on completion, re-submit the Managed Cloud Service to the Customer. If the Company is unable to correct the Error within 30 Business Days, either party may terminate the Contract without further liability to the other.
- 3.4 If:
  - 3.4.1 the Customer does not provide any written comments in the initial period described in clause 3.2 above; or
  - 3.4.2 if the Managed Cloud Service is found to conform with the Specification; or
  - 3.4.3 if the Customer fails to, or delays the provision of any deliverables set out in the Specification, or fails to meet any other of its requirements under the Specification or the Contract, and such failure causes the Set-up Services to run for a period of more than 90 days from the date of the Contract, then in each case the Managed Cloud Service shall be deemed accepted, in respect of acceptance pursuant to clause 3.4.1 and 3.4.2 as from the date of the notification by the Company pursuant to clause 3.2, and in respect of acceptance pursuant to clause 3.4.3, with effect from the end of the period of 90 days from the date of the Contract ("**Commencement Date**").
- 3.5 To the extent that the provision of Services requires the Customer to transfer Assets and/or Assumed Contracts to the Company, the parties will enter into a separate agreement in this regard, and for the avoidance of doubt the Company shall not take on any Assets or Assumed Contracts in the absence of such written agreement.
- 3.6 Subject to termination or expiry of the Contract in accordance with its terms, the Company shall provide the Managed Service as from the Acceptance Date. The Service Level Arrangements (if any) shall apply with effect from the start of the first complete calendar month occurring at least 30 days after the Acceptance Date.

### 4. Customer Data

- 4.1 The following definitions apply in this clause 4: the terms "**Data Controller**", "**Data Processor**", "**Personal Data**" and "**Processing**" bear the respective meanings given them in the Data Protection Act 2018 and "**Customer Personal Data**" means any Personal Data comprised in the Customer Data.
- 4.2 The Customer acknowledges that the Company will be the Customer's Data Processor in line with a completed Data Processing Agreement, rather than a separate Data Controller, in respect of

Processing of Customer Personal Data under the Contract, and that the Company is reliant on the Customer alone for direction as to the extent the Company is entitled to use and process the Personal Data. The Company shall only carry out processing of any Customer Personal Data on the Customer's instructions; and shall implement appropriate technical and organisational measures to protect any Customer Personal Data against unauthorised or unlawful processing and accidental loss or damage.

- 4.3 In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for the Company to use reasonable commercial efforts to restore the lost or damaged Customer Data from the latest backup of such Customer Data maintained by the Company. The Company shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties subcontracted by the Company to perform services related to Customer Data maintenance and back-up).
- 4.4 Customer Data provisioned within the Managed Cloud Services remains the sole property of the Customer, this clause 4.4 shall survive termination of the Contract, however arising.

## 5. Company's Obligations

- 5.1 The Company warrants that the Managed Cloud Service will be performed with all reasonable skill and care and that it will be provided substantially in accordance with the Specification. Notwithstanding the foregoing, the Company does not warrant that the Customer's use of the Managed Cloud Service will be uninterrupted, secure or error free.
- 5.2 The warranty in clause 5.1 shall not apply to the extent of any non-conformance which is caused by use of the Managed Cloud Service contrary to the Company's instructions.
- 5.3 If the Managed Cloud Service does not conform to the warranty in clause 5.1, the Company will, at its expense, use reasonable commercial efforts to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the warranty in clause 5.1.
- 5.4 The Company is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the Internet, where it is not part of the Company's Infrastructure, and the Customer acknowledges that it, and not the Company, is responsible for the Customer's internet and other network connections to the Cloud Services and that the Cloud Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 5.5 The Company warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under these terms, subject to clause 8.1
- 5.6 The Company may suspend the Services where it reasonably believes that the Services are being used (or will be used) in breach of the Contract, or where it believes such action is necessary to protect its network, other customers or reputation or to comply with any legal or regulatory requirement.
- 5.7 The company will provide Cloud Backup services as per the overall cloud solution where included within the Support Schedule, and chargeable at the prevailing rate.

## 6. Customers Obligations

### 6.1. The Customer shall:

- 6.1.1 pay the Fees when due;
- 6.1.2 comply with any Company policies (including any acceptable use policy) that may be in place from time to time;
- 6.1.3 provide the Company with all information as may be required by the Company in order to provide the Managed Cloud Service, including Customer Data, security access information and interfaces to the Customer's other business applications, together with such personnel assistance as may be requested by the Company;
- 6.1.4 comply with all applicable laws and regulatory requirements with respect to its activities under the Contract;
- 6.1.5 take good care of the Company's Equipment to prevent damage or loss to such equipment arising from misuse by Customer personnel in accordance with any applicable Company policy or instructions of the Company from time to time;
- 6.1.6 maintain adequate policies of insurance which provide cover for the Company's Equipment when located at the Customer's premises against the normal risks which the Customer could reasonably be expected to insure against in respect of its own equipment;
- 6.1.7 not store, distribute or transmit any material through the Managed Cloud Service that is unlawful, harmful, threatening, defamatory, obscene, harassing or racially or ethnically offensive; facilitates illegal activity; depicts sexually explicit images; promotes unlawful violence, discrimination based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activities;
- 6.1.8 take all reasonable precautions against unauthorised access to and loss of data and ensure that its data is backed up subject to 5.7
- 6.1.9 shall use all reasonable endeavours to procure that it and any necessary third party shall execute and deliver such documents and perform such acts as may reasonably be required for the purpose of giving full effect to the Contract; and
- 6.1.10 where applicable and appropriate, comply (and shall procure that any end users shall comply) at all times with the terms of any end user software licences as notified by the Company to the Customer from time to time, including the terms of the end user licence agreement (Appendix A) set out to these Conditions.
- 6.1.11 ensure that the Authorised Users use the Cloud Services in accordance with these terms and shall be responsible for any Authorised User's breach of these terms;
- 6.1.12 obtain and shall maintain all necessary licences, consents, and permissions necessary for the Company, its contractors and agents to perform their obligations under these terms;
- 6.1.13 ensure that its network, data communication lines and systems comply with the relevant specifications provided by the Company from time to time, unless provisioned by the Company; and
- 6.1.14 unless provisioned by the Company, be solely responsible for procuring and maintaining its network connections and telecommunications links from the customers systems to the Company's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

## 7. Fees

- 7.1 The Fees for the provision of the Managed Cloud Services will be as set out or referred to within the Support Schedule, provided that if no Fees are set out there, then the Fees for the Services shall be the Company's list prices as in force at the time of the Contract.
- 7.2 Save where other payment terms are set out within the Support Schedule, and save for the Set-up Service Fee payable in accordance with clause 7.3, all fees will be payable via invoice within 30 Days. The Customer shall provide the Company with valid up-to-date and complete payment information. The Company will invoice the Customer Termly in advance in respect of the Fees, and shall be entitled to take this amount via direct debit if desired on the dates set out in the Support Schedule.
- 7.3 The Customer shall pay the Set-up Service Fee (where applicable) upon execution of the Contract, subject to having receipt of an invoice for the same.
- 7.4 All amounts and Fees stated or referred to in this Contract are exclusive of value added tax, which shall be added to the Company's invoice(s) at the appropriate rate.
- 7.5 If we do not receive payment of an invoice when due to us, then we may charge interest on any overdue amounts at the rate of 2% over the base lending rate of the Company's bankers in the UK from time to time, commencing on the due date and continuing until fully paid, whether before or after the judgment.
- 7.6 The Fees for the Managed Cloud Service are payable with effect from the Commencement Date and are applied termly within the Initial contract Period or subsequent extension as stated on the Acceptance Information & Authorisation page of the Support Schedule .
- 7.7 The Company may vary the Monthly, Termly or Annual Charges shown within the Support Schedule by giving three months' notice in writing to the Customer, such notice to take effect not before the first anniversary of the commencement date as highlighted within the Support Schedule. Such changes shall be restricted to one in any period of twelve months and shall increase the Monthly Charge per item or the Annual Charge in force by not more than the percentage rate as set in the RPI – Retail Price Index at that time.
- 7.8 Managed Cloud Services will be subject to an annual review two (2) months prior to the anniversary of the Commencement Date and not later than two (2) months prior to the following Academic Year. Price variations will be applied for the services, Cloud Connect, Cloud VOIP, Cloud Wireless and Cloud Backup, these price variations will be subject to Pupil Numbers, Staff FTE and Backup Data prevailing and agreed at that time.
- 7.9 The company will fix the Per Pupil and Backup Data cost for the duration of the initial contract period but will be subject to 7.8
- 7.10 Third Party Software or licencing including Microsoft is subject to pricing outside the control of the Company and the Company reserve the right to review cost fluctuations in line with 7.8
- 7.11 Where changes in Pupil Number, Staff FTE and Backup Data (other than additional sites) take place between review cycles charges fixed at the annual review will prevail.

## 8. Software

- 8.1 The Customer warrants that licence terms of each application that have not been provisioned by the Company within the Customer Software Library do permit the Company to use the Customer Software to provide software provision within the Managed Cloud Services.
- 8.2 Where software is provisioned by the Company for use by the Customer, the Company warrant the licencing provision in terms of the cloud solution and will liaise with Third Party supplier(s) so not to infringe intellectual property rights.
- 8.3 The Customer grants the Company a royalty-free licence or sub-licence (as appropriate) to use the Customer Software and any for the purpose of providing the Managed Cloud Service to the Customer for the Term.
- 8.4 The Customer shall fully indemnify and hold harmless the Company from and against any losses, damages, costs (including all legal fees) and expenses incurred by or awarded against the Company as a result of, or in connection with, the breach by the Customer of clause 8.1.
- 8.5 Managed Cloud Services (Section 1) are provided as a service and as such are supplied and licenced to the customer via an End User Agreement (Appendix A). Ownership of the Managed Cloud Services remains the property of the Company.
- 8.6 Software purchased to support the curriculum or via subscription services will be included within the Managed Cloud Services however payment for such services will be at the Customers cost as per 7.10

## 9. Change Control

- 9.1 If either party wishes to change the scope of the Services (including Customer requests for additional services), it shall submit details of the requested change to the other in writing. The Company shall, within a reasonable time of such request (as stated with the **Service Level Agreement**), provide a written estimate to the Customer of the likely time required to implement the change, any variations to the Fees arising from the change, the likely effect of the change on the order, and any other impact of the change on the terms of the Contract and whether a variation need be recorded in writing. If the Company requests a change to the scope of the Services, the Customer shall not unreasonably withhold or delay consent to it. The Company is under no obligation to proceed with a change proposed by the Customer.
- 9.2 The Company advocate constant development, and will make available as required updates and improvements to the Managed Cloud Services without notice. Where system downtime is unavoidable the Company will provide as much notice as possible to the customer, however no liability will be entered into during any updates or upgrades.

## 10. Cloud Services

- 10.1 Interpretation  
The definitions and rules of interpretation in this paragraph apply in these conditions in addition to those defined terms as set out in the Terms and Conditions for the Supply of Managed Cloud Service, which shall apply equally in these conditions:

**Authorised Users:** those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Managed Cloud Services and the Documentation, as further described in paragraph 10.2

**Managed Cloud Services:** the subscription services provided by the Company or any other website notified to the Customer by the Company from time to time, and includes but is not limited to “Cloud Connect” including remote desktop solution, “Cloud Wireless”, “Cloud VOIP” and “Cloud Backup”.

**Documentation:** the Company's documentation with instructions for its customers as to how to use the Managed Cloud Services.

**Subscription Fees:** the subscription fees payable by the Customer to the Company for the User Subscriptions, as set out Support Schedule or if not set out in the Support Schedule, at the Company's list prices from time to time.

**User Subscriptions:** the user subscriptions purchased by the Customer in line with school pupil numbers as provisioned per clause 7.8

## 10.2 User Subscriptions

10.2.1 Subject to the Customer purchasing the User Subscriptions and the other terms and conditions of the Contract, the Company grants to the Customer a non-exclusive, non-transferable right to permit the Authorised Users to use the Managed Cloud Services during the contact term solely for the Customer's internal business operations.

10.3 In relation to the Authorised Users, the Customer undertakes that:

10.3.1 the maximum number of Authorised Users that it authorises to access and use the Managed Cloud Services shall not exceed the number of User Subscriptions it has purchased from time to time subject to clause 7.9;

10.3.2 it will not allow or suffer any User Subscription to be used by more than one individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the Managed Cloud Services;

10.3.3 each Authorised User shall keep a secure password for his use of the Cloud Services that such password shall be changed no less frequently than monthly and that each Authorised User shall keep his password confidential;

10.3.4 it shall maintain a written, up to date list of current Authorised Users and provide such list to the Company within 5 Business Days of the Company's written request at any time or times;

10.3.5 it shall permit the Company to audit the Managed Cloud Services in order to establish the name and password of each Authorised User. Such audit may be conducted no more than once per quarter, at the Company's expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Customer's normal conduct of business;

10.3.6 if any of the audits referred to in paragraph 10.3.5 reveal that any password has been provided to any individual who is not an Authorised User, then without prejudice to the Company's other rights, the company shall promptly disable such passwords and the Company shall not issue any new passwords to any such individual.

10.4 The Customer shall not access, store, distribute or transmit any viruses, or any material during the course of its use of the Cloud Services that:

10.4.1 is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;

10.4.2 facilitates illegal activity;

10.4.3 depicts sexually explicit images;

10.4.4 promotes unlawful violence;

- 10.4.5 is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activity; or
- 10.4.6 causes damage or injury to any person or property; and the Company reserves the right, without liability to the Customer, to disable the Customer's access to any material that breaches the provisions of this paragraph.
- 10.5 The Customer shall not:
  - 10.5.1 except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties, and except to the extent expressly permitted under these terms, attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software (as applicable) in any form or media or by any means; or
  - 10.5.2 attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or
  - 10.5.3 access all or any part of the Cloud Services in order to build a product or service which competes with the Cloud Services; or
  - 10.5.4 use the Cloud Services to provide services to third parties; or
  - 10.5.5 license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Cloud Services available to any third party except the Authorised Users, or
  - 10.5.6 attempt to obtain, or assist third parties in obtaining, access to the Cloud Services and/or Documentation, other than as provided under this paragraph 2; and
  - 10.5.7 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Cloud Services and, in the event of any such unauthorised access or use, promptly notify the Company.
  - 10.5.8 The rights provided under this paragraph 2 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer.
- 10.6 Additional User Subscriptions
  - 10.6.1 Subject to paragraph 10.2.1 and paragraph 10.3.1, the Customer may, from time to time during any Subscription Term, request additional User Subscriptions in excess of the original number, by giving the Company written notice and will be subject to clause 7.9
- 10.7 Hardware Support
  - 10.7.1 Where Hardware Support and onsite equipment is included within the Managed Cloud Service this will be provided at the Company's cost for equipment provisioned including installation, as part of the Managed Cloud Service. All equipment supplied unless specified 10.7.2 will remain the property of the Company.
  - 10.7.2 Where hardware support is included to provide Infrastructure upgrades and or improvements (5 year term), this will be provisioned at the Company's cost for the equipment, including installation (excluding additional cabling). Where hardware is provided for onsite Wireless and Switch Infrastructure this provision will remain the property of the company for the duration of the contract. Where the book value of the equipment is greater than zero £ (0) at contract termination the remaining value of the equipment provided will be removed from site unless a: Book Value is £ Zero (0) b: Agreed Payment is Received (book value) or c: End date of contract is extended within 14.3
- 10.8 Third Party
  - 10.8.1 Where Managed Cloud Services provide integration to Third Party solutions such as Microsoft 365 these are provided as-is and are not subject to SLA provision. The Company will support via best endeavours to ensure functionality.

- 10.8.2 As applicable, Microsoft 365 and associated tenancies are the property of the customer including configuration and associated setup. The Company will administer these systems as part of its provision but are subject to 10.8.1
- 10.9 General
- 10.9.1 For security and support requirements IT Systems & Support Limited will administer usernames and passwords for the duration of the contract.
- 10.9.2 Where items are to be repaired or replaced within the Managed Cloud Service this takes place at the discretion of the company.

## **11. Intellectual Property**

- 11.1 The Customer acknowledges and agrees that, as between the parties, the Company and/or its licensors own all Intellectual Property in all materials connected with the Services and in any material developed or produced in connection with the Contract by the Company, its officers, employees, subcontractors or agents. Except as expressly stated in clause 11.2, these Conditions do not grant the Customer any rights to such Intellectual Property.
- 11.2 The Company hereby grants the Customer a non-exclusive, non- transferrable, not sub-licensable, revocable licence to use its Intellectual Property rights for the sole purpose of receiving and using the Services during the Term.

## **12. Confidentiality**

- 12.1 Each party undertakes that it shall not disclose to any person any Confidential Information concerning the business, affairs, customers, clients or suppliers of the other party save that each party may disclose the other party's Confidential Information to its employees, officers, representatives or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract and as may be required by law, court order or any governmental or regulatory authority. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's Confidential Information comply with this clause 12.1.
- 12.2 No party shall use any other party's Confidential Information for any purpose other than to perform its obligations under the Contract and each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is secure. This clause 12 shall survive termination of the Contract, however arising.

## **13. Liability**

- 13.1 Except as expressly and specifically provided in these Conditions: the Customer assumes sole responsibility for results obtained from the use of the Services, and for conclusions drawn from such use. The Company shall have no liability for any damage caused by any acts, omissions or delays of the Customer, or the Customer's breach or negligent performance of the Contract, or any actions taken by the Company at the Customer's direction; and all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law,



excluded from this Contract; and the Managed Cloud Services are provided to the Customer on an “as is” basis.

- 13.2 Nothing in these Conditions excludes or limits the liability of the Company for death or personal injury caused by the Company's negligence; fraud or fraudulent misrepresentation; or any other liability which cannot lawfully be excluded or limited.
- 13.3 The Service Level Arrangements state the Customer's full and exclusive right and remedy, and the Company's only obligation and liability in respect of, the performance and/or availability of the Managed Cloud Service, or its non-performance and non-availability.
- 13.4 Subject to clause 13.2 and clause 13.3:  
the Company shall not be liable for any loss of profits, loss of business, loss of data, depletion of goodwill or similar losses, whether direct or indirect, or any pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising; and the Company's total aggregate liability in contract, tort, misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract.

## 14. Term and Termination

- 14.1 This agreement shall commence on the commencement date shown within the Support Schedule and shall continue until terminated by one party as set out within 14.2 in writing to the other party with such notice period not to commence until the end of the Agreement Term / Initial Contract Period as set out within the Support Schedule. The termination payment is based on the annual charge or the capped maximum expenditure to the end of the Initial Contract Period at the discretion of the Company.
- 14.2 Notification of withdrawal must be given, in writing, by the end of August (March for LA Maintained Schools) one (1) year in advance within a Contract Period / Agreement Term for Managed Cloud Service. Penalties will be subject for early termination of contract and services.
- 14.3 Contracts will automatically be renewed at the end of the contract period and each year thereafter unless notification is received in line with section 14.2
- 14.4 Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate the Contract without liability to the other if:
  - 14.4.1 the other party commits a material breach of any of the terms of these Conditions and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach;
  - 14.4.2 an order is made or a resolution is passed for the winding up of the other party, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order in relation to the other party;
  - 14.4.3 an order is made for the appointment of an administrator to manage the affairs, business and property of the other party, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the other party, or notice of intention to appoint an administrator is given by the other party or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986);
  - 14.4.4 a receiver is appointed of any of the other party's assets or undertakings, or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the other party, or if any other person takes possession of, or sells, the other party's assets;

- 14.4.5 or the other party makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way, or becomes bankrupt; the other party ceases, or threatens to cease, to trade, there is a Change of Control of the other party, or the other party takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.
- 14.5 On termination of the Contract for any reason:
  - 14.5.1 the Company shall immediately cease provision of the Managed Service Cloud but may provide transitional services for a further period subject to commercial terms being agreed between the parties for the provision of such services;
  - 14.5.2 any Company Equipment used to provide support or subject to 10.7.2 located at the Customer's premises or within the Customer's possession at expiry or termination of the Contract shall be promptly returned by the Customer to the Company, and the parties shall cooperate to make appropriate arrangements for the Company to uplift the Company Equipment, at the Company's cost;
  - 14.5.3 each party shall return and make no further use of any equipment, property, materials and other items (and all copies of them) belonging to the other party;
  - 14.5.4 the Company may destroy or otherwise dispose of any of the Customer Data in its possession unless the Company receives, no later than ten days after the effective date of the termination or expiry of the Contract, a written request for the delivery to the Customer of the most recent backup of the Customer Data and is subject to clause 4.4. The Company shall use reasonable commercial efforts to deliver the backup to the Customer within 30 days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at, and resulting from, termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by the Company in returning or disposing of Customer Data;
  - 14.5.5 and the accrued rights of the parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, shall not be affected or prejudiced.

## 15. General

- 15.1 **Force majeure.** The Company shall have no liability to the Customer under the Contract if it is prevented from, or delayed in, performing its obligations under this Contract, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of the Company or any other party), failure of part of the power grid, utility service or transport network, significant failure of the internet, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of Company's or subcontractors, provided that the Customer is notified of such an event and its expected duration.
- 15.2 **Waiver** A waiver of any right under the Contract is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and to the circumstances for which it is given. Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.
- 15.3 **Severance** If any provision (or part of a provision) of the Contract is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other

provisions shall remain in force. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

- 15.4 **Assignment** The Customer shall not, without the prior written consultation of the Company, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract. The Company may at any time assign, transfer, charge, subcontract or deal in any other manner, with all or any of its rights or obligations under the Contract with notification of the Customer.
- 15.5 **No Partnership or Agency** Nothing in this Contract is intended to, or shall be deemed to, establish any partnership, joint venture or agency between any of the parties. No party shall be authorised to enter into any commitments for or on behalf of any other party except as expressly provided in the Contract.
- 15.6 **Third-Party Rights** The contract is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns, and is not intended to benefit or be enforceable by anyone else.
- 15.7 **Notices** Any notice required to be given under the Contract shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its registered address, or such other address as may have been notified by that party for such purposes. A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9am on the first Business Day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post.
- 15.8 **Governing Law and Jurisdiction** This Contract and any disputes or claims arising out of or in connection with its subject matter are governed by and construed in accordance with the law of England. The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Contract.

## 16. Sub-Contract

- 16.1 The company reserves the right to sub-contract the performance of this Agreement in whole or in part without prior notice to the Customer.

## 17. Non-solicitation.

- 17.1 It is a condition of this Agreement that the Customer will not solicit for themselves or any third party any employee of the Company and in the event there is a breach of this condition the Customer shall pay forthwith to the Company a sum equal to the salary of such employee or any sum payable by the Customer to the Company for the exclusive use of that employee (whichever is the greater) for an additional twelve month period following the expiration of the Agreement Term.

## 18. Indemnity

- 18.1 Indemnity
- 18.2 The Customer shall defend, indemnify and hold harmless the Company against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Cloud Services provided that:
  - 18.2.1 the Customer is given prompt notice of any such claim;
  - 18.2.2 the Company provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
  - 18.2.3 the Customer is given sole authority to defend or settle the claim.
- 18.3 In no event shall the Company, its employees, agents and sub- contractors be liable to the Customer to the extent that the alleged infringement is based on:
  - 18.3.1 a modification of the Cloud Services by anyone other than the Company; or
  - 18.3.2 the Customer's use of the Cloud Services in a manner contrary to the instructions given to the Customer by the Company; or
  - 18.3.3 the Customer's use of the Cloud Services after notice of the alleged or actual infringement from the Company or any appropriate authority.
- 18.4 The foregoing states the Customer's sole and exclusive rights and remedies, and the Company's (including the Company's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

## 19. Dispute Resolution

- 19.1 The Company and the Customer will attempt in good faith to resolve any dispute or claim arising out of or in relation to this Agreement through negotiations between senior representatives of each of the Parties with authority to settle the relevant dispute. If the dispute cannot be settled amicably within thirty (20) days from the date on which either Party has served written notice on the other of the dispute then the remaining provisions of this Clause 18 shall apply.
- 19.2 If the Company and the Customer fail to resolve the dispute via 18.1 either party may refer the matter to an independent adjudicator. An adjudicator shall be selected by agreement between the Company and the Customer, should the parties fail to agree within fourteen days (14), either party, upon giving written notice, may apply to the President or the Vice President, for the time being, of the Chartered Institute of Arbitrators, for the appointment of a mediator. Should the mediation fail, in whole or in part, either party may, upon giving written notice, and within twenty eight days thereof, apply to the President or the Vice President, for the time being, of the Chartered Institute of Arbitrators, for the appointment of a single arbitrator, for final resolution. The arbitrator shall have no connection with the mediator or the mediation proceedings, unless both parties have consented in writing. The arbitration shall be governed by both the Arbitration Act 1996 and the Controlled Cost Rules of the Chartered Institute of Arbitrators (2014 Edition), or any amendments thereof, which Rules are deemed to be incorporated by reference into this clause. The seat of the arbitration shall be England and Wales.
- 19.3 All information, data or documentation disclosed or delivered by a party to the Adjudicator in consequence of or in connection with his appointment as Adjudicator shall be treated as confidential.

- 19.4 The adjudicator is not liable for anything done or omitted in the discharge or purported discharge of his functions as adjudicator unless the act or omission is in bad faith and any employee or agent of the adjudicator is similarly protected from liability
- 19.5 If:
  - 19.5.1 Either party is dissatisfied with or otherwise wishes to challenge the Adjudicator's decision made in accordance with clause 18.2 or:
  - 19.5.2 Both Parties agree
  - 19.5.3 then either party may notify the other party of its intention to refer the dispute to the courts.
- 19.6 The parties shall continue to comply with, observe and perform their obligations hereunder this contract regardless of the nature of the dispute and notwithstanding the referral of the dispute for resolution under this clause 18 and shall give effect forthwith to the decision of the Adjudicator and the courts delivered under this clause 18
- 19.7 Where costs of Adjudication are referenced each party shall bear its own costs arising, including legal costs and cost and expenses of any third party witnesses.

## **Appendix A: End User Licence END USER LICENSE TERMS**

### **TERMS AND CONDITIONS REGARDING USE OF MICROSOFT SOFTWARE / IT SYSTEMS CLOUD**

This document governs the use of Microsoft Software and IT Systems Cloud, which may include associated media, printed materials, and “online” or electronic documentation (individually and collectively, “Products”) and are provided by IT Systems & Support Limited as part of their Managed Cloud Services (hereinafter referred to as “Company”). You the Customer does not own the Products and the use thereof is subject to certain rights and limitations of which the company must inform you the Customer. Your right to use the Products is subject to the terms of your agreement with the Supplier, and to your understanding of, compliance with, and consent to the following terms and conditions, which the Customer does not have authority to vary, alter, or amend.

#### **1. DEFINITIONS.**

**“Client Software”** means software that allows a Device to access or utilize the services or functionality provided by the Server Software.

**“Device”** means each of a computer, workstation, terminal, handheld PC, pager, telephone, personal digital assistant, “smart phone,” server or other electronic device.

**“Server Software”** means software that provides services or functionality on a computer acting as a server.

**“Software Documentation”** means any end user document included with server software.

**“Redistribution Software”** means the software described in Paragraph 4 (“Use of Redistribution Software”) below.

**2. OWNERSHIP OF PRODUCTS.** The Products are licensed to Customer from an affiliate of the Microsoft Corporation (collectively “Microsoft”) and IT Systems & Support Limited. All title and intellectual property rights in and to the Products (and the constituent elements thereof, including but not limited to any images, photographs, animations, video, audio, music, text and “applets” incorporated into the Products) are owned by Microsoft, IT Systems or its Suppliers. The Products are protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. Your possession, access, or use of the Products does not transfer any ownership of the Products or any intellectual property rights to you.

**3. USE OF CLIENT SOFTWARE.** You may use the Client Software / Cloud Client installed on your Devices by Customer only in accordance with the instructions, and only in connection with the services, provided to you by the Company. The terms of this document permanently and irrevocably supersede the terms of any Microsoft End User License Agreement that may be presented in electronic form during your use of the Client Software.

**4. USE OF REDISTRIBUTION SOFTWARE.** In connection with the services provided to you by Customer, you may have access to certain “sample,” “redistributable” and/or software development (“SDK”) software code and tools (individually and collectively “Redistribution Software”). YOU MAY NOT USE, MODIFY, COPY, AND/OR DISTRIBUTE ANY REDISTRIBUTION SOFTWARE UNLESS YOU EXPRESSLY AGREE TO AND COMPLY WITH CERTAIN ADDITIONAL TERMS CONTAINED IN THE SERVICES PROVIDER USE RIGHTS (“SPUR”) APPLICABLE TO CUSTOMER, WHICH TERMS MUST BE PROVIDED TO YOU BY

CUSTOMER. Microsoft does not permit you to use any Redistribution Software unless you expressly agree to and comply with such additional terms, as provided to you by Customer.

5. **COPIES.** You may not make any copies of the Products; provided, however, that you may (a) make one copy of Client Software on your Device as expressly authorized by the supplier; and (b) you may make copies of certain Redistribution Software in accordance with Paragraph 4 (Use of Redistribution Software). You must erase or destroy all such Client Software and/or Redistribution Software upon termination or cancellation of your agreement with the supplier, upon notice from the supplier or upon transfer of your Device to another person or entity, whichever occurs first. You may not copy any printed materials accompanying the Products.

6. **LIMITATIONS ON REVERSE ENGINEERING, DECOMPILE AND DISASSEMBLY.** You may not reverse engineer, decompile, or disassemble the Products, except and only to the extent that applicable law, notwithstanding this limitation, expressly permits such activity.

7. **NO RENTAL.** You may not rent, lease, lend, pledge, or directly or indirectly transfer or distribute the Products to any third party, and may not permit any third party to have access to and/or use the functionality of the Products except for the sole purpose of accessing the functionality of the Products in the form of software services in accordance with the terms of this agreement and any agreement between you and Customer.

8. **TERMINATION.** Without prejudice to any other rights, Customer may terminate your rights to use the Products if you fail to comply with these terms and conditions. In the event of termination or cancellation of your agreement with Customer or Customer's agreement with Microsoft under which the Products are licensed, you must stop using and/or accessing the Products, and destroy all copies of the Products and all of their component parts.

9. **NO WARRANTIES, LIABILITIES OR REMEDIES BY MICROSOFT.** ANY WARRANTIES, LIABILITY FOR DAMAGES AND REMEDIES, IF ANY, ARE PROVIDED SOLELY BY CUSTOMER AND NOT BY MICROSOFT, ITS AFFILIATES OR SUBSIDIARIES.

10. **PRODUCT SUPPORT.** Any support for the Products is provided to you by Customer and is not provided by Microsoft, its affiliates or subsidiaries.

11. **NOT FAULT TOLERANT.** THE PRODUCTS MAY CONTAIN TECHNOLOGY THAT IS NOT FAULT TOLERANT AND ARE NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE IN ENVIRONMENTS OR APPLICATIONS IN WHICH THE FAILURE OF THE PRODUCTS COULD LEAD TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL, PROPERTY OR ENVIRONMENTAL DAMAGE.

12. **EXPORT RESTRICTIONS.** The Products are subject to U.S. export jurisdiction. Customer must comply with all applicable laws including the U.S. Export Administration Regulations, the International Traffic in Arms Regulations, as well as end-user, end-use and destination restrictions issued by U.S. and other governments. For additional information, see <http://www.microsoft.com/exporting/>.

13. **LIABILITY FOR BREACH.** In addition to any liability you may have to Customer, you agree that you will also be legally responsible directly to Microsoft for any breach of these terms and conditions.