

1 Definitions and Interpretation

- 1.1 In these Conditions, unless context requires otherwise, the following words and phrases have the meanings set out opposite them:

Agreement means the contract between BCC and the Customer for the supply of the Deliverables and/or hire of the Equipment, incorporating these Conditions and the Scope of Services Document.

BCC B C Computing Limited registered in England and Wales with company number 02230816.

Business Day a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business, excluding bank holidays (unless otherwise agreed between the parties).

Commencement Date the contract start date as set out in the Scope of Services Document.

Conditions means these terms and conditions as amended from time to time in accordance with clause 17.3.

Confidential Information means any information which the disclosing party notifies to the receiving party at the time of disclosure to be confidential or information which the receiving party ought reasonably to have known is confidential whether expressly told so or not by the disclosing party provided that any confidential information which is already in the public domain (not otherwise in breach of this clause) or already known to the receiving party shall not constitute confidential information, including, without limitation, any information relating to the systems, operations, plans, intentions, market opportunities, potential and actual customers, surveys, know-how, trade secrets and business affairs in whatever form.

Customer the client who purchases the Deliverables and/or hires the Equipment from BCC, as named and whose details are set out in the Scope of Services Document.

Customer Materials all documents, information, items and materials in any form (whether owned by the Customer or a third party), which are provided by the Customer to BCC in connection with the Support Services.

Deliverables the Software or Support Services or both as the case may be, as set out in the Scope of Services Document.

Documentation the documents (including any user manuals) and/or similar materials provided in electronic version or hard copy format by BCC to the Customer in the course of the Support Services hereunder as the same may relate to the Software.

Equipment means the item(s) to be hired by the Customer as listed in the Scope of Services Document (if any).

Fees the annual fee payable by the Customer to BCC for the supply of the Deliverables, as set out in the Scope of Services Document.

Hire Fee the fee payable by the Customer to BCC for hire of the Equipment, as set out in the Scope of Services Document.

Hire Period means the period for hire of the Equipment as stated in the Scope of Services Document or as otherwise agreed by the parties.

Initial Term three years from the Commencement Date, or as otherwise agreed.

IPR copyright, rights in inventions, patents, trade secrets, trademarks and trade names, service marks, design rights, rights in get-up, database rights and rights in data, semiconductor chip topography rights, domain names and all similar rights.

Personal Data means identity and contact data of individuals such as names, titles and other identifiers together with business address, email address and telephone numbers.

Scope of Services Document the Customer's order for the Deliverables and/or hire of Equipment, issued by BCC to the Customer.

Service Levels the agreed levels to which BCC's performance in providing the Support Services must adhere, as set out in the Scope of Services Document.

Site the address(es) listed in the Scope of Services Document or as otherwise agreed by the parties, where on-site support may be provided and/or Equipment is to be delivered.

Standard Support Hours the hours of 08.30 to 17.30 on Business Days.

Support Services IT support and maintenance services, and services which are incidental or ancillary to such services, agreed to be provided by BCC to the Customer from time to time, as set out in the Scope of Services Document.

Support Staff those employees, contractors or other representatives of BCC who perform BCC's obligations under the Agreement.

Software the proprietary software of a third-party, which may be supplied under the Agreement as specified in the Scope of Services Document.

Third-Party Licences the end user licences and other agreements governing the licensing of any Software.

- 1.2 In this Agreement, unless the context otherwise requires:

1.2.1 a reference to the Agreement includes these Conditions, the Scope of Services Document and its respective schedules (if any);

1.2.2 a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);

1.2.3 a reference to a party includes its personal representatives, successors or permitted assigns;

1.2.4 a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;

1.2.5 any phrase introduced by the terms **including**, **include**, **in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and

1.2.6 a reference to **writing** or **written** includes e-mail.

2 Application of these Conditions

- 2.1 These Conditions apply to and form part of the Agreement between BCC and the Customer. They supersede any previously issued terms and conditions and apply 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.

- 2.2 The Scope of Services Document constitutes an offer by BCC to supply the Deliverables and/or hire the Equipment subject to these Conditions. BCC may withdraw or amend the Scope of Services Document at any time before acceptance by the Customer.

- 2.3 Acceptance of the Scope of Services Document shall take place when it is signed by both parties, at which point the Agreement shall come into existence.

3 Supply of Support Services and Software

- 3.1 In consideration of the Customer paying the Fees in accordance with clause 9 below, BCC agrees to supply the Deliverables to the Customer.

- 3.2 The Deliverables shall be provided on the Commencement Date and continue for the Initial Term. At the end of the Initial Term, the Agreement shall continue on a one year Rolling Term, unless and/or until it is terminated in accordance with clause 14.

- 3.3 All Software supplied by BCC is subject to Third Party Licences and the Customer acknowledges that the licensors of such Software may require updates to the Software and/or the Third-Party Licences from time to time. The grant of such rights to use the Software may be subject to a restriction on the duration for which the Software may be used, in accordance with any Third-Party Licences. Accordingly, the duration of the licence to use the Software shall be subject to any restriction as to duration as may be specified in those Third-Party Licences from time to time in force.

- 3.4 The Support Services shall be provided:

3.4.1 with reasonable care and skill; and

3.4.2 by properly qualified and trained Support Staff sufficient in number to enable them to perform the tasks assigned to them and to enable BCC to fulfil its obligations under this Agreement.

- 3.5 BCC shall provide the Support Services during the Standard Support Hours, in accordance with the Service Levels set out in the Scope of Services Document. BCC reserves the right to

charge additional charges for any Support Services performed outside Standard Support Hours, in accordance with clause 9. Time for performance of the Support Services shall not be of the essence.

4 The Customer's Obligations

4.1 The Customer acknowledges that BCC's ability to provide the Support Services is dependent on the timely cooperation of the Customer and the accuracy and completeness of all information and data the Customer provides to BCC. Accordingly, the Customer shall provide BCC with:

- 4.1.1 reasonable co-operation and assistance;
- 4.1.2 such access to the Customer's premises and data, and such office accommodation and other facilities, as may reasonably be required by BCC and agreed by the Customer in advance for the purposes of the Support Services; and
- 4.1.3 such information as BCC may request, and the Customer considers reasonably necessary, in order to carry out the Support Services.

4.2 The Customer shall:

- 4.2.1 comply with BCC's oral or written instructions as to the storage, use or maintenance of the Software and/or Equipment;
- 4.2.2 promptly notify the Company of any faults in the Software and/or Equipment and report such faults to the BCC Helpdesk on 01977 667 777 or by email to support@bccgroup-uk.com;
- 4.2.3 control the Site environmental conditions in accordance with any environmental operating ranges specified by BCC or any manufacturer of the Equipment, and shall take all reasonable steps to ensure that the Software and Equipment are operated in a proper manner by the Customer's staff; and
- 4.2.4 assist BCC in maintaining up to date and correct database information, including the number of workstations and servers the Customer operates from time to time and/or the quantity of Equipment hired by the Customer.

Clauses 5 to 8 shall only apply if the Customer is hiring Equipment

5 Hire of Equipment

- 5.1 In consideration of the Customer paying the Hire Fee in accordance with clause 9 below, BCC agrees to hire the Equipment to the Customer.
- 5.2 BCC shall hire the Equipment to the Customer for the Hire Period for use in accordance with the Scope of Services Document and these Conditions. BCC shall not interfere with the Customer's quiet possession of the Equipment.
- 5.3 At the end of the Hire Period, if all amounts due to BCC in respect of the Equipment have been paid in full by the Customer, title to the Equipment as BCC had on the Commencement Date shall transfer to the Customer. The Equipment shall transfer to the Customer in the condition and at the Site in which it is found on the date of transfer.
- 5.4 The Customer shall be liable for any loss, theft, damage or destruction to any Equipment (unless such loss, theft, damage or destruction is caused by an act or omission of an employee, agent, consultant or subcontractor of BCC or a Force Majeure Event). The Customer shall, at its own expense, insure the Equipment against all loss, theft, damage or destruction of the Equipment, and keep BCC and the Customer jointly insured against liability to other persons for death, personal injury, and damage to or loss of property arising directly or indirectly out of the use, possession or operation of the Equipment.
- 5.5 The Customer's liability shall include the obligation to pay to BCC an amount equal to the cost to BCC of repair or replacement (as BCC may in its reasonable discretion decide) of the Equipment, together with such costs and losses as BCC may incur as a direct consequence of such loss, theft, damage or destruction, including (for example) in relation to any subsequent scheduled hires of the Equipment.
- 5.6 The Customer shall give immediate written notice to BCC in the event of any loss, theft, damage or destruction to the Equipment occurring during or arising out of or in connection with the Customer's possession or use of the Equipment.
- 5.7 At the end of the Hire Period, the Customer may at its sole discretion return the Equipment to BCC's premises at the

Customer's cost, for BCC to dispose of the Equipment on the Customer's behalf.

- 5.8 If the Customer wishes to hire new and/or updated Equipment at the end of the Hire Period, a new Agreement shall be entered into between the parties.

6 Delivery of the Equipment

- 6.1 BCC shall deliver the Equipment to the Site or make the Equipment available for collection at the address set out in the Scope of Services Document or such other location as the parties may agree in writing (**Delivery Location**).
- 6.2 If the Customer is to collect the Equipment, the Customer shall collect the Equipment from the Delivery Location at the date and time agreed in writing between BCC and the Customer.
- 6.3 Except to the extent expressly agreed by BCC, delivery of the Equipment shall be completed on the Equipment's arrival at the Delivery Location.
- 6.4 BCC shall not be liable for any delay in the Equipment being available for collection at the Delivery Location or delivered to the Delivery Location, which is caused by:
 - 6.4.1 a Force Majeure Event;
 - 6.4.2 the Customer's failure to provide BCC with adequate instructions; or
 - 6.4.3 the Customer requesting a material change to the Agreement after the Scope of Services Document is issued to the Customer.

7 Quality of Equipment

- 7.1 The Customer acknowledges that BCC is not the manufacturer of the Equipment. BCC's responsibility in respect of the Equipment is limited to transferring the benefit of any applicable manufacturer warranty (where possible) to the Customer.
 - 7.2 During the Hire Period, if the Equipment does not comply with any manufacturer's warranty in respect of which the Customer is entitled to the benefit, BCC shall assist the Customer in seeking to enforce the terms of that manufacturer's warranty as soon as reasonably practicable.
 - 7.3 BCC shall not be obliged to assist the Customer pursuant to clause 7.2 if:
 - 7.3.1 the Customer does not notify BCC of the non-compliance within 5 Business Days of discovery of the non-compliance; or
 - 7.3.2 the Customer has done or failed to do anything which would invalidate a claim under the applicable manufacturer's warranty.
 - 7.4 BCC shall supply to the Customer any repaired or replacement Equipment which the manufacturer provides to it. The terms of these Conditions shall apply to any repaired or replaced Equipment (whether in whole or in part) supplied by BCC to the Customer.
- #### **8 Returning the Equipment**
- 8.1 At the end of the Hire Period (or earlier termination of the hire of the Equipment, howsoever caused), if title to the Equipment has not passed to the Customer in accordance with clause 5.3, the Customer shall deliver up the Equipment to BCC's premises, at the Customer's cost, on the last day of the Hire Period or the date of earlier termination of hire (as applicable).
 - 8.2 If the Customer does not deliver up the Equipment to BCC within 5 Business Days of the date required pursuant to clause 8.1, BCC reserves the right to:
 - 8.2.1 by its authorised representatives, without notice and at the Customer's expense, retake possession of the Equipment, and for this purpose may enter the Site or any premises at which the Equipment is located;
 - 8.2.2 charge the Customer: (a) an additional fee in respect of the period from the date that delivery up of the Equipment was required pursuant to clause 8.1 until the Equipment is returned charged at the pro rata equivalent of the Hire Fee; (b) any costs for aborted collection; and (c) BCC's reasonable administration costs.

The remaining clauses shall apply whether the Customer is hiring the Equipment or not

9 Fees and Payment

- 9.1 The price for the Deliverables (**Fees**) and the fee for hiring the Equipment (**Hire Fee**) shall be as set out in the Scope of Services Document.

- 9.2 The Fees for any Support Services performed outside Standard Business Hours, shall be calculated in accordance with BCC's standard hourly fee rates.
- 9.3 BCC shall be entitled to charge the Customer for:
- 9.3.1 any Site visits requested by the Customer for purposes other than resolving an incident as part of the Support Services;
- 9.3.2 any expenses reasonably incurred by BCC in connection with the Support Services and/or hire of Equipment, including travelling expenses, accommodation, subsistence and associated expenses, and the cost of any materials.
- 9.4 The Fees and the Hire Fee shall be exclusive of VAT and of all costs, expenses, charges and where applicable, import duties and taxes, associated with the performance of the Support Services, supply of the Software and/or hire of the Equipment.
- 9.5 The Customer shall pay any applicable VAT to BCC on receipt of a valid VAT invoice.
- 9.6 Unless otherwise agreed, BCC shall invoice the Customer quarterly in advance, and the Customer shall pay each invoice submitted by BCC within 30 days from the date of each invoice, to the bank account nominated by BCC from time to time.
- 9.7 BCC reserves the right to increase the Fees and/or the Hire Fee from time to time giving the Customer 30 days' advance written notice.
- 9.8 Time of payment is of the essence. If the Customer fails to pay any amount due, BCC may:
- 9.8.1 charge interest on the overdue amount from the due date up to the date of actual payment, after as well before judgement, at the rate of 4% per annum above the Bank of England's base rate. Such interest shall accrue on a daily basis. Alternatively, BCC may claim interest under the Late Payment of Commercial Debts (Interest) Act 1998; and
- 9.8.2 suspend the Support Services, supply of the Software and/or all further deliveries of the Equipment.
- 10 IPR**
- 10.1 The Customer acknowledges that all IPR in or arising out of the Software, Documentation, or in connection with the Support Services (other than the IPR in any Customer Materials) shall belong to BCC or the relevant third-party owners (as the case may be), and the Customer shall have no rights in or to the same other than in accordance with these Conditions and any Third-Party Licences.
- 10.2 The Customer shall not make copies of any of the Documentation provided by BCC, without the prior written consent of BCC.
- 11 Data Protection**
- 11.1 Both parties will collect Personal Data relating to the other party and / or its employees or staff in the course of providing / receiving the Software, Support Services and/or Equipment. This is used by both parties to manage the relationship between them, and for BCC, for the provision of the Software, Support Services and/or Equipment. The use of Personal Data for this purpose is necessary for the performance of the contract that will be in place between the Customer and BCC and for both BCC's and the Customer's legitimate interests in managing that contract. For further information about how BCC handles Personal Data, please refer to our Privacy Policy at www.bccgroup-uk.com.
- 11.2 BCC may disclose the Personal Data to third parties where permitted by law, including to third-party licensors.
- 12 Confidentiality**
- 12.1 Each party undertakes that it shall not at any time, disclose to any person any confidential information concerning the business, affairs, customer, clients or suppliers or the other party, except as permitted by clause 12.2.
- 12.2 Each party may disclose the other party's confidential information:
- 12.2.1 to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this Agreement. 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; and
- 12.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 12.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Agreement.
- 13 Limitation of Liability**
- 13.1 Nothing in these Conditions shall limit or exclude either party's liability for:
- 13.1.1 death or personal injury resulting from negligence;
- 13.1.2 fraud or fraudulent misrepresentation; or
- 13.1.3 any other liability which cannot be limited or excluded by applicable law.
- 13.2 Without prejudice to clause 13.1, BCC shall not under any circumstances be liable to the Customer whether in contract, tort (including negligence) for breach of statutory duty or otherwise howsoever arising under or in connection with these Conditions in respect of:
- 13.2.1 any direct loss of profit;
- 13.2.2 any loss of anticipated profit including loss of profit on contracts;
- 13.2.3 any loss of anticipated savings;
- 13.2.4 any loss of business, contracts or opportunity in each case whether direct or indirect;
- 13.2.5 any loss of goodwill or reputation in each case whether direct or indirect; or
- 13.2.6 any indirect, special or consequential loss or damage however caused including:
- 13.2.6.1 any indirect loss of profit; or
- 13.2.6.2 any indirect loss of anticipated profit; or
- 13.2.6.3 any indirect loss of anticipated savings; or
- 13.2.6.4 loss of use of money or revenue; or
- 13.2.6.5 loss of data; or
- 13.2.6.6 any other special, indirect or consequential loss,
- and the parties agree that the categories of loss as referred to at this clause 13.2 shall be distinct and severable.
- 13.3 Subject to clauses 13.1 and 13.2, BCC's total liability in contract, tort (including negligence), breach of statutory duty, misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of the Agreement shall be limited to an amount equal to (i) the total Fees for the Deliverables, or (ii) the Hire Fee, paid by the Customer to BCC in the 12 month period preceding the date on which the breach or other event giving rise to the liability occurred (or if less than 12 months, the pro-rata annual equivalent price or Hire Fee paid by the Customer).
- 14 Termination**
- 14.1 Either party may terminate the Agreement (in respect of the Deliverables only) upon the expiry of the Initial Term or agreed Rolling Term at any time thereafter, by giving to the other not less than three months' written notice, such notice to expire no earlier than the end of the Initial Term.
- 14.2 The Customer shall not be entitled to terminate the Agreement before the end of the Initial Term or to terminate the hire of the Equipment before the end of the Hire Period. However, without prejudice to the foregoing, if BCC agrees (in its sole discretion) to the early termination of the Agreement and/or hire of the Equipment, or if the Agreement is terminated before the end of the Initial Term or the hire of the Equipment is terminated before the Hire Period for any other reason, then without prejudice to any other rights it may have, the Customer shall pay to BCC on demand:
- 14.2.1 if the hire of the Equipment only is terminated, an amount equal to the total Hire Fee which would have been payable over the remainder of the Hire Period plus VAT thereon;
- 14.2.2 if the Agreement is terminated, the amount referred to in clause 14.2.1 above plus an amount equal to the Fees which would have been payable over the remainder of the Initial Term plus VAT thereon,
- plus any expenditure or costs incurred by BCC in relation to the supply of the Deliverables and/or hire of the Equipment or such part of it that is cancelled. The Customer acknowledges that the

- provisions of this clause 14.2 are a genuine pre-estimate of the losses which BCC would suffer as a result of such termination, and in particular reflect that BCC would not be able to re-sell or re-hire Equipment which has been used by the Customer on commercial terms.
- 14.3 Without affecting any other right or remedy available to it, either party may terminate the Agreement at any time by giving written notice to the other party if:
- 14.3.1 the other party commits a material breach of any term of these Conditions and (if such a breach is remediable) fails to remedy that breach within 30 days after being notified in writing to do so by the other party;
 - 14.3.2 the other party takes any step or action in connection with its entering administration, liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or anything similar or analogous to any of the foregoing occurs in any jurisdiction;
 - 14.3.3 the other party suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
 - 14.3.4 the other party's financial position deteriorates to such an extent that in the other party's reasonable and good faith opinion that party's capability to adequately fulfil its obligations under these Conditions has been placed in jeopardy.
- 14.4 If a party becomes aware that any event has occurred, or circumstances exist, which may entitle the other party to terminate the Agreement under this clause 14, it shall immediately notify the other party in writing.
- 15 Consequences of Termination**
- 15.1 On termination of this Agreement:
- 15.1.1 the Customer shall pay to BCC any outstanding unpaid invoices and interest (including invoices which have not yet been submitted), within 30 days of such termination; and
 - 15.1.2 each party shall as soon as reasonably practicable return all of the other party's equipment and materials, failing which, the other party may enter the relevant premises and take possession of them.
- 15.2 Termination of the Agreement, for any reason, shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination.
- 16 Force Majeure**
- 16.1 A party shall not be liable if delayed in or prevented from performing its obligations due to a Force Majeure Event, provided that it promptly notifies the other of the Force Majeure Event and its expected duration and uses reasonable endeavours to minimise the effects of that event.
- 16.2 A **Force Majeure Event** means an event beyond a party's reasonable control which by its nature could not have been foreseen or if it could have been foreseen was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, explosion, collapse of building structures, fire, flood, storm, earthquake, loss at sea, epidemic or similar events, natural disasters or extreme adverse weather conditions or default of suppliers or subcontractors.
- 16.3 If, due to a Force Majeure Event, a party is or shall be unable to perform a material obligation or is delayed in or prevented from performing its obligations for a continuous period exceeding 14 days or total of more than 30 days in any consecutive period of 60 days, the other party may, within 30 days, terminate the Agreement on immediate notice the parties shall, within 30 days, renegotiate the Agreement to achieve, as nearly as possible, the original commercial intent.
- 17 General**
- 17.1 The parties agree that the Agreement constitutes the entire agreement between the parties and supersedes all previous agreements, understandings and arrangements between them, whether in writing or oral in respect of its subject matter.
- 17.2 BCC may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Agreement.
- 17.3 No amendment or variation of these Conditions will be valid unless agreed in writing by an authorised signatory of each party.
- 17.4 The Customer may not assign, subcontract or encumber any right or obligation under the Agreement, in whole or in part, without BCC's prior written consent, which it may withhold or delay at its absolute discretion.
- 17.5 Any notice given by a party under these Conditions shall be in writing, be signed by, or on behalf of the party giving it, and be sent in the case of BCC to Redlands House, 32 Bulstrode Way, Gerrards Cross, Buckinghamshire SL9 7QU, and in the case of the Customer to the address referred to in the Scope of Services Document. Notices are deemed received if delivered by hand, when left at the address referred to in the Scope of Services Document; if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed. All references to time are to the local time at the place of deemed receipt. The provisions of this clause 17.5 does not apply to notices given in legal proceedings or arbitration.
- 17.6 Nothing in the Agreement is intended to, or shall be deemed to, establish any partnership between any of the parties, nor constitute either party the agent of another party for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.
- 17.7 If any provision of the Agreement (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of the Agreement shall not be affected.
- 17.8 A waiver of any right or remedy under the Agreement or at law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 17.9 A person who is not a party to the Agreement shall not have any rights to enforce its terms.
- 17.10 The Agreement and any dispute or claim arising out of, or in connection with, it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of England and Wales. The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, the Agreement, its subject matter or formation (including non-contractual disputes or claims).