



Terms & Conditions

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CONDITIONS OF SUPPLY

1. DEFINITIONS AND INTERPRETATION:

1.1 The following terms as used herein shall have the meaning as stated:

Acceptance: the Company's written acknowledgment of the Customer's instructions to the Company to undertake support services for the Customer;

Company: Renaissance Computer Services Limited;

Conditions: these terms and conditions for the provision of fixed-price support services to the Customer;

Contract: a contract between the Company and the Customer for the supply of Support Services, as evidenced by the Acceptance;

Customer: the party named as the Customer in the Acceptance;

Effective Date: the date on which the Acceptance is issued by the Company;

Excluded Matters: those services and/or parts of the System which are set out in the Support Schedule at Section C;

Initial Contract Term: the initial period of 3, 6, 12 or 24 months (as stipulated in the Acceptance) from the Effective Date;

Service Manager: the person appointed by the Company to manage the delivery of the Support Services;

Support Fee: the fixed monthly fee for the Support Services set out in the Acceptance;

Support Schedule: the schedule attached to the Acceptance;

Support Services: the remote, telephone, (or, where deemed appropriate by the Company, on-site) support services described in the Support Schedule at Section A, which description shall be deemed to include any stated limitation or restriction (if any) in respect of the hours, times, or intervals during which the Support Services shall normally be provided;

Supported Items: those parts of the System which are delineated in the Support Schedule at Section B;

System: the Customer's systems, hardware, software and any other equipment owned or operated by the Customer.

2. APPLICATION OF CONDITIONS:

2.1 The Company and the Customer shall each be deemed to be a party for the purposes of these Conditions and the term parties shall be construed accordingly.

2.2 No Contract shall come into existence other than in accordance with the Acceptance.

2.3 The Contract shall remain in force from the Effective Date for the Initial Contract Term and shall continue thereafter for successive periods of equal duration to the Initial Contract Term, unless either party gives the other party written notice of termination of the Contract at least 14 days prior to the end of the Initial Contract Term or any successive period of equal duration thereto, as appropriate, subject to earlier termination of the Contract under clause 7.1.

2.4 The Contract shall be governed by these Conditions to the exclusion of any other terms or conditions.

2.5 Any advice or recommendation given by the Company to the Customer as to the maintenance, application or use of the System, which is not confirmed in writing by the Company, is followed or acted upon entirely at the Customer's risk. Accordingly, the Company shall not be liable for any such advice or recommendation.

2.6 Any typographical, clerical, or other error or omission in any sales literature, quotation, price list, Acceptance, invoice or other document issued by the Company shall be subject to correction without liability on the part of the Company.

3. OBLIGATIONS OF THE PARTIES:

3.1 The Company shall provide the Support Services for the Supported Items for the duration of the Contract in return for payment of the Support Fee by the Customer.

3.2 The Customer acknowledges that any performance timescales given by the Company are estimates only and the Company shall not be liable for any delay in performing the Support Services, unless the Company has agreed in writing to abide by any specific performance date(s). Time shall not be of the essence for the performance of the Support Services.

3.3 The Company warrants that the Support Services will be performed with reasonable skill and care.

3.4 The Customer shall be responsible for:

(a) providing the Company promptly with such information as may reasonably be required for the proper performance of the Support Services; (b) notifying the Company of any fault or maintenance issue related to the System without undue delay;

(c) ensuring good operating and environmental conditions including the provision of a stable electricity supply;

(d) ensuring operators are trained and capable of operating the Supported Items in a proper and prudent manner;

(e) ensuring all software is used in accordance with the terms of its respective software license;

(f) appointing a systems administrator who will initiate service calls to the Company;

(g) co-operating with the Company in the rectification of malfunctions and the implementation of any advice and/or instructions given by the Company;

(h) ensuring that any non-supported products utilised in the System are compatible with the Supported Items

(i) not carrying out (nor permitting to be carried out by any third party) any modifications, additions, relocation or adjustments to the System without

obtaining the prior written approval of the Company;

(j) ensuring that System keys, operator manuals and System disks are made available to the Company on request;

(k) ensuring that regular System and data backups are made and providing copies of backups for restoration as necessary

- 3.5 Where any Support Services are to be undertaken on-site at the Customer's premises then the Customer shall be responsible for providing uninterrupted access to the Customer's premises for the Company's employees or agents as well as with uninterrupted access to appropriate office facilities, operating manuals, power facilities, external telephone facilities and access into the System. The Customer is also responsible for taking all reasonable precautions to ensure the health and safety of the Company's employees or agents.
- 3.6 In the event that the Customer is aware or becomes aware that the Support Services will or may conflict with any law, rule or regulation, or any contract, licence or similar business agreement between the Customer and a third party, then the Customer will inform the Company of the existence or likelihood of such conflict as soon as is reasonably practicable.
- 3.7 If the Company, acting reasonably, determines the Customer's usage of the Support Services to be excessive in light of the utilisation of the same resources by the Company's other customers, the Company reserves the right to restrict or limit the Customer's use of the Support Services to levels which the Company deems to be fair and reasonable.
- 3.8 The Company shall not be obliged to provide the Support Services when the Supported Items have been neglected or wilfully damaged or used outside any manufacturers' specifications; this includes damage resulting from accident, transportation, fluctuations in electrical power, Acts of God and environmental conditions.
- 3.9 If the Company is unable to perform the Support Services in whole or in part due to any act, omission or delay directly or indirectly attributable to the Customer, then the Company shall be entitled to be paid for the Support Services in full or in part, as appropriate; the Customer shall further be liable for any costs incurred as result of such obstruction and the Company shall not be liable for any delay as a result of such obstruction.

4. INTELLECTUAL PROPERTY RIGHTS AND CONFIDENTIAL INFORMATION:

- 4.1 All intellectual property rights in relation to the Support Services shall vest in and belong solely and exclusively to the Company.
- 4.2 The Customer and the Company agree that in the course of the Company providing the Support Services to the Customer, the parties may disclose to each other certain information which is confidential to the disclosing party. The information may be confidential because it has been marked or designated as such by the disclosing party, or because the information should reasonably be supposed by the receiving party to be confidential. The Customer and the Company agree that each party will maintain the confidentiality of the confidential information and not disseminate it to any third party without the disclosing party's prior consent, save that this obligation shall not apply to any confidential information that either party has a duty (whether legal or otherwise) to communicate or that is in the public domain or is already in the receiving party's possession through no fault of the receiving party.

5. CHARGES AND PAYMENT:

- 5.1 The Support Fee only covers Support Services provided in respect of Supported Items and does not cover any other matter, in particular (but without limitation) any Excluded Matters. Any matters not covered by the Support Fee shall be separately chargeable at the Company's standard pay-as you-go rates from time to time, details of which are available from the Company upon request. Separate terms and conditions apply to the Company's pay-as-you-go support services, details of which are also available upon request.
- 5.2 The Support Fee is exclusive of Value Added Tax.
- 5.3 The Company reserves the right to increase the Support Fee on each anniversary of the Effective Date of the Initial Contract Term and the Company will notify the Customer of any such increase at least 30 days prior to any such anniversary.
- 5.4 Notwithstanding the provisions of clause 5.3, the Company may increase the Support Fee in order to reflect any additional costs to the Company in providing the Support Services to the Customer.
- 5.5 The Company will invoice the Customer on the dates or times or at the intervals specified in the Acceptance.
- 5.6 The Company's payment terms are 30 days from date of invoice. Time for payment shall be of the essence.
- 5.7 If the Customer fails to pay to the Company any sum due to the Company on or before the date that such sum falls due for payment, then the Company shall be entitled to charge the Customer interest thereon at a rate of five per cent (5%) per annum above the Bank of England's Base Rate or, where applicable, the allowable rate of interest chargeable on commercial debts (whichever is the higher) from the date that such sum falls due until the same has been paid to the Company.

6. WARRANTIES, LIABILITY AND INDEMNITY:

- 6.1 The following provisions set out the Company's financial liability to the Customer in respect of:

(a) any breach of these Conditions;

(b) any use made by the Customer of any of the Support Services; and

(c) any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

- 6.2 Except for the warranty given by the Company in clause 3.3, all warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 2 of the Supply of Goods and Services Act 1982) are, to the fullest extent permitted by law, excluded from the Contract.

- 6.3 Nothing in these Conditions excludes or limits the Company's liability:

(a) for death or personal injury caused by the Company's negligence; or

(b) for any matter for which it would be illegal for the Company to exclude or attempt to exclude the Company's liability; or

(c) for fraud or fraudulent misrepresentation.

6.4 Subject to clause 6.2 and clause 6.3:

(a) the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance of the Contract shall be limited to the total amount of the Support Fees paid by the Customer for the Support Services in the 12 month period immediately preceding the claim or claims in respect of which liability is alleged; and

(b) the Company shall not in any event be liable to the Customer for loss of profit, economic loss, loss of business, or depletion of goodwill in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

6.5 Subject to clauses 6.2, 6.3 and 6.4, the Company will use all reasonable endeavours to ensure that the carrying out of the Support Services will not adversely affect the System, but the Company cannot provide any guarantees in this respect. The Customer hereby agrees that, prior to the Company accessing the System, the Customer will make backup copies of such software and data on the System as the Customer deems fit. The Company will not be responsible for the loss, damage or corruption of any data or software on the System that is due, directly or indirectly, to the Company's actions or the actions of the Company's employees or agents.

6.6 The Customer acknowledges that the limitations and exclusions set out in these Conditions are reasonable in all the circumstances.

6.7 The Customer shall indemnify and hold the Company harmless against all claims, demands, loss or damage whatsoever, howsoever or whensoever arising out of or in any way connected with any third party claim, action or allegation brought against the Company arising out of the Company's use (in accordance with the Contract) of the Customer's premises, computer systems, hardware, software, equipment, communication systems or any materials provided to the Company by the Customer for the purpose of providing the Support Services.

7. TERMINATION:

7.1 Either party shall be entitled by notice in writing to the other party at any time forthwith to terminate the Contract if the other party is in material or persistent breach of the Contract or if the other party becomes subject to insolvency proceedings.

8. NON-SOLICITATION:

8.1 The Customer shall not at any time during the Contract or for a period of 6 months after its termination offer employment to or employ a person engaged in the provision of the Support Services.

8.2 In the event that the Customer breaches clause 8.1 in relation to any person, the Customer shall pay to the Company in respect of each such person on demand a sum equivalent to 15% of the salary and other remuneration of such person over a period of 6 months.

9. FORCE MAJEURE:

9.1 The Company shall not be liable to the Customer for any loss or damage experienced by the Customer as a direct or indirect result of the provision of the Support Services by the Company being prevented, restricted, hindered or delayed by any circumstances outside the control of the Company.

10. GENERAL:

10.1 The Contract constitutes the entire agreement between the parties.

10.2 The Company may subcontract all or any of its obligations under the Contract.

10.3 No variation to the Contract shall be effective unless agreed in writing by the parties hereto.

10.4 In the event that any part of the Contract shall be held to be unenforceable by a court of competent jurisdiction, then the remainder thereof shall remain in full force and effect.

10.5 If the Customer wishes to lodge a complaint or settle a disagreement with regard to any aspect of the Support Services then the Customer should in the first instance contact the Service Manager.

10.6 In the event that the Customer and the Service Manager cannot mutually agree a resolution to the complaint or disagreement then both the Customer and the Company will appoint senior managers with the capacity and authority to settle the matter. The senior managers shall meet at a mutually convenient time to discuss the complaint or disagreement with the intention of resolving such complaint or disagreement.

10.7 The Contract shall be construed in accordance with the laws of England and Wales and shall be subject to the exclusive jurisdiction of the English Courts.