

**1 DEFINITIONS**

1.1 In this Contract the following words and phrases shall have the following meanings:-

"Additional Charges"	means the charges calculated by the Company on a time and materials basis at its then prevailing rates (Schedule D) and in respect of the provision of the Excepted Services;
"Anniversary Date"	means the date of the end of the Initial Contract Period and the date falling at the end of every subsequent Contract Period;
"Company"	means IP Professional Services Ltd (Company No.4718486) trading as IP Professional Services;
"Contract"	means this Contract including all the Schedules attaching hereto which are hereby incorporated;
"Contract Period"	means the duration of the Contract, which will be the Initial Contract Period and unless written notice of cancellation is received in accordance with Clause 12 for further period(s) equal to the Initial Contract period;
"Customer"	means the person, firm or company to whom the Company is supplying the Equipment or Services under this Contract;
"Commencement Date"	means the date specified in the Contract on which the Support commences;
"Engineer"	means a person employed or contracted by the Company to provide Support;
"Equipment and Software"	means the hardware and software as listed in Schedule A and any subsequent revisions to this list, which will be shown in a numbered and dated Revision to this list;
"Excepted Services"	means those services referred to in Clause 4 below and any other services provided by the Company which do not fall within the Support;
"Hours"	means an hour of time within the Specified Coverage Times. For example, for a Response Time of four hours and a Specified Coverage Times of 8am to 6pm, then for a fault reported at 4pm, the four hours include the two hours between 4pm and 6pm, and the two hours from 8am to 10am the following day. Time outside the Specified Coverage Times is not included in measuring Response Times;
"Initial Contract Period"	means the initial period of this Contract as specified in the Contract;
"Joint Venture"	arrangement whereby 2 or more corporate bodies each provide capital, assets or other resources to a joint venture limited liability company in exchange for shares in that company, with a view to its carrying on a business commonly involving expertise provided by each of them
"Manufacturer Levied Charges"	means the specific charges levied by the manufacturer in relation to Software and/or Hardware support services and/or software upgrades as listed in Schedule B;
"No Fault Found Charge"	means the charge from time to time specified by the Company in relation to Support provided by the Company or Equipment returned by the Customer to the Company in respect of which the Company determines there is no fault or the fault is not covered by the Support;
"Parts"	means the interchangeable whole units, modules, components, assemblies or sub-assemblies of the Equipment or any other parts required for the provision of Support by the Company;
"Remote Access"	means the provision of software, hardware and network services which allows an Engineer to gain remote access to the Equipment and Software for the purposes of diagnostics and Support.
"Replaced Parts"	means the Parts that are deemed as faulty and have been removed from the system;
"Response Times"	means the elapsed time between receipt of a Service Call and the commencement of Support either via Remote Access or on-site as deemed appropriate by an Engineer, and calculated in Hours as defined in Schedule A;
"Revisions"	means any changes to the Site Details, Equipment and Software covered, Services provided, Specific Coverage Times, Response Times and/or Support Charge as detailed in the Schedule A Revisions list, which will be issued to reflect each separate incidence of such a change and provided with a unique incremental number and date of issue;
"Site Details"	means the full postal address and main telephone number of each location receiving Support as shown in Schedule A;
"Service Call"	means calls made by the Customer to the Company support desk in accordance with Clause 10;
"Service Level Agreement"	means those operating targets that will be worked towards by the Company and the Customer in performing the Support as specified in Schedule A (abbreviated to SLA);
"Severity Code"	means the code to be assigned to each Service Call as detailed in Clause 2.5 or as otherwise agreed in writing between the Company and the Customer;
"Software"	means the software as listed in Schedule A and any subsequent revisions to this list, which will be shown in a numbered and dated Revision to this list;
"Specified Coverage Times"	means the Hours during which Support will be provided for the Equipment and Sites listed in Schedule A;
"Support"	shall comprise the relevant activities required to be performed by the Company in order to meet the SLA of the Contract as specified in Schedule A;
"Support Charge"	means the periodic charge for the Company providing the Support on the Equipment to the Customer as specified in Schedule A and any subsequent Revisions.

1.2 The headings in this Contract do not affect its interpretation. Save where the context otherwise requires, references to Sub-clauses, Clauses and Schedules are to Sub-clauses, Clauses and Schedules of this Contract.

1.3 Unless the context otherwise so requires, references to statutory provisions include those statutory provisions as amended or re-enacted and references to any gender includes all genders.

1.4 In the event of any conflict between the general terms and conditions of this Contract and any provision of any Schedule, the terms and conditions of this Contract shall prevail.

## 2 THE SUPPORT

2.1 In consideration of the payment by the Customer of the Support Charge in accordance with the provisions of Clause 7, the Company undertakes to provide Support for the Equipment during the Specified Coverage Times and within the relevant Response Times relevant thereto for the Contract Period. For the avoidance of doubt, the Customer hereby acknowledges and agrees with the Company that any relevant Response Time will be deemed to have been fully satisfied by the Company if within the relevant Response Time either the Company can clear the fault via Remote Access, an Engineer has arrived on the Customer's Site or the Company has commenced remote diagnosis and the Customer has agreed that such should continue for a further period prior to the Company despatching an Engineer to the Customer's Site.

2.2 The Company shall deliver the Support in accordance with the terms of the SLA as defined within Schedule A.

2.3 Where a SLA refers to obligations and undertakings of the Customer, the Customer shall comply with the same.

2.4 The Company offers four levels of Support as follows

Level	Days covered	Hours covered	Response times (Working Hours)		
			System Failure	System Fault	Device fault
<b>Bronze</b>	Monday to Friday	08.30 to 17.30	4 hours	8 hours	24 hours
<b>Silver</b>	Monday to Saturday	08.00 to 20.00	4 hours	4 hours	24 hours
<b>Gold</b>	Monday to Sunday	24 hours	4 hours	4 hours	24 hours
<b>Platinum</b>	Bespoke coverage as defined in Schedule A				

2.5 The Company will classify the severity of faults as follows

Severity	Classification	Definition
1	System Failure	System is completely unavailable
2	System Fault	System suffering major disruption (affecting >=25% of capacity)
3	Device Fault	Minor disruption to system - e.g. Functional Degradation of system components - system affecting. Handset fault
4	Enhancement	Enhancement to system or minor usability issue
5	Query	Question or non system affecting issue.

2.6 Where the Company fails to meet its obligations under the terms of the SLA defined in Schedule A, it will provide service credits to the Customer as follows:

SLA Missed	Service Credit
Severity 1	Two days of on-site or remote professional services (consultancy, programming or training)
Severity 2	One day of on-site or remote professional services
Severity 3	Half day of on-site or remote professional services

Acceptance by the Customer of service credits does not affect any right of the Customer to terminate this contract as defined within Clause 12.8.

2.7 The Customer will receive minor programming works free of charge from the support desk subject to the following criteria;

Total number of requests per annum	1 per £1,000 (or part thereof) of annual Support Charge
Total time per annum	10 min per £1,000 (or part thereof) of annual Support Charge
Maximum time on a single request	30 min

Where a request would exceed any of these criteria, the Customer will be notified and provided with a written quotation (using pricing as shown in Schedule D) prior to any work being undertaken.

2.8 Any member of the Customer's group may place an order (an "Order") for the provision of the Support as though it were the Customer and the Company shall be obliged to issue its invoice in respect of any such Order to the relevant member of the Customer's group, but shall otherwise issue its invoices in accordance with the provisions of Clause 7 of this Contract. The Company must quote the Customer's Order reference number on all despatch or consignment notes, advice notes, invoices and any other documentation related to an Order

## 3 INSPECTIONS

3.1 Where the Equipment has not been supplied or installed by the Company, the Company may inspect the Equipment (subject to a Maintenance Acceptance Charge in accordance with Schedule D) within 30 days of the Commencement Date and reserves the right to:-

3.1.1 With the appropriate reduction in the Support Charge immediately remove from this Contract any Equipment which is in the Company's sole opinion beyond reasonable economic repair, requires workshop reconditioning or has not been configured in accordance with the relevant manufacturer's specification or standards; or

3.1.2 Agree to maintain such Equipment which will be added to Schedule A and charged in accordance with the prevailing rate.

3.2 Notwithstanding Clause 3.1 above, the Company shall be entitled to inspect the Equipment at any time by providing reasonable notice to the Customer to verify the types, configuration and quantity of the Equipment.

## 4 LIMITATIONS ON SUPPORT

4.1 Only the Equipment as detailed in Schedule A and any subsequent Revisions is eligible for Support.

4.2 The Company reserves the right to charge for Support in accordance with Schedule D where the issue is shown to be as a result of the following:-

4.2.1 The Customer's failure to maintain a suitable environment for the Equipment at the Site in accordance with the Company's written specifications therefore including (without limitation) failure to maintain a constant electric power supply, air conditioning or humidity control;

4.2.2 The Customer's neglect, incorrect use, misuse, or wilful abuse of the Equipment or its failure to operate the Equipment in accordance with relevant manufacturers', the Company's or any other suppliers' instruction manuals or for the purposes for which it was designed;

4.2.3 Repair, adjustment, alteration, modification, maintenance or merger of the Equipment with other equipment by any party other than the Company and not under the control of the Company or the Customer provided that, in respect of the Customer, the adjustment, alteration or modification of the Equipment is non material and has been carried out by Trained Employees and for example, includes but is not limited to adding and deleting users and configuring ports;

4.2.4 The transportation or relocation of the Equipment otherwise than by or under the instruction and direction of the Company;

4.2.5 The use of defective or inappropriate supplies or consumables with the equipment;

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- 4.2.6 Defect in any attachments or associated equipment which does not form part of the Equipment;
- 4.2.7 Any accident or disaster affecting the Equipment including without limitation fire, flood, lightning, wind, transportation, vandalism, burglary, act of God, war or other similar occurrence;
- 4.2.8 Any defect or failure of the Equipment caused by any change in any software not supplied by or approved by the Company;
- 4.2.9 Operator error or damages incurred because of actions undertaken by the Customer, its agents, employees or subcontractors;
- 4.2.10 Any defects or errors caused by the use of the Software on or with equipment or with programmes not supplied by or approved in writing by the Company;
- 4.2.11 Painting or refinishing the Equipment; relocation or transportation of the Equipment; electrical or other environmental work external to the Equipment; repair or renewal of consumables; application of an incorrect or abnormal electricity supply or signal lead connection to the Equipment including electrical fluctuations as a result of acts or omissions of the Customer or any third party; defects in external wiring or in the electrical connections which are not part of the Equipment; routine service inspection or adjustment (other than by The Company); plugs, fuses, wires or cables that are not part of the Equipment; air filters; batteries, tapes, expendable parts and cosmetic damage;
- 4.2.12 Support visits because of programme errors effected by the Customer or where the fault is not a fault within the Equipment or where the Equipment is reported as faulty and proves not to be or attendance by the Company outside the Specified Coverage Times.

**5 CUSTOMER RESPONSIBILITIES**

- 5.1 The Customer hereby warrants and undertakes to the Company that it has full power and authority to enter into this Contract for the procurement of the Support.
- 5.2 The Customer undertakes to fully indemnify and keep the Company fully indemnified against all and any loss or damage the Company might suffer because of breach by the Customer of the warranties provided by it under Clause 5.1.
- 5.3 The Customer agrees and undertakes with the Company that throughout the period of this Contract it will:-
  - 5.3.1 Subject to compliance with the Customer's Health and Safety Policies and reasonable instructions, grant the Company, its employees, agents and sub-contractors full, free and safe access to the Site and the Equipment to enable it to perform the Support including, if the Company requests it, outside the Specified Coverage Times and that the time taken to request and be granted access will not form part of the response times as shown in clause 2.4;
  - 5.3.2 Ensure that appropriate environmental conditions (Schedule E) are maintained for the Equipment and ensure the Equipment is operated in a proper manner by its employees, agents and sub-contractors;
  - 5.3.3 Make available at the Site such facilities free of charge as the Company shall reasonably require in order to discharge its obligations hereunder including (without limitation) adequate works space, storage and safekeeping of equipment, office furniture and other equipment, and access to computer runs, memory dumps, preparation, telephones and photocopying as appropriate;
  - 5.3.4 Take all reasonable precautions to protect the health and safety of the Company's employees, agents and sub-contractors while on the Site (subject to compliance with the Customer's Health and Safety Policies and reasonable instructions);
  - 5.3.5 Ensure that the Equipment's configuration, accommodation, environment and power source are suitable in all respects and comply with manufacturers', the Company's or any other suppliers' recommendations and specifications and that such use does not contravene and is in accordance with all statutory enactments, instruments, regulations and codes of practice;
  - 5.3.6 At its own cost provide suitable consumables as reasonably required. If the provision and suitability of such consumables is inadequate or unsuitable then the Company may provide such consumables which will be separately charged to the Customer in accordance with the Company's current prices from time to time for such items;
  - 5.3.7 Is responsible for the protection and recovery of any data held on disk or other recording devices and shall be responsible for taking regular back ups;
  - 5.3.8 Not alter or modify the Software in any way nor permit the Software to be combined with any other programme, save to the extent permitted by applicable law;
  - 5.3.9 Not use in conjunction with the Equipment any accessory, attachment, additional equipment or programme other than that which has been supplied by or approved in writing by the Company;
  - 5.3.10 Not attempt to adjust repair modify or maintain the Equipment nor request, permit or authorise anyone other than the Company to carry out any adjustments, repairs, modifications or maintenance of the Equipment.
  - 5.3.11 Provide and maintain at its own expense sufficient Remote Access as is deemed necessary to provide Support. Failure to provide and maintain Remote Access will result in the raising of Additional Support Charges (in accordance with the Company's then prevailing labour rates shown in Schedule D) in the event that a Service Call which could have been dealt with via Remote Access requires an Engineer to be despatched to site.
- 5.4 The Customer hereby agrees to promptly notify the Company if the Equipment requires Support or is not operating correctly and acknowledges that Response Times will be calculated from the time at which the Customer logs a Service call as defined in Clause 10.

**6 REPLACEMENT AND LOAN OF EQUIPMENT AND/OR PARTS**

- 6.1 The Company reserves the right to supply and use refurbished and reconditioned replacement Equipment and Parts in the performance of its duties hereunder, provided such are of good quality and fit for purpose and subject to the provisions of clause 8.1.3.
- 6.2 Replaced Parts shall upon replacement become the property of the Company and the Customer hereby warrants and undertakes to the Company that the Company shall have a free and unencumbered title to such Replaced Parts or where such are leased or charged that it shall have obtained all necessary consents and authorities to part with possession and give good title to the Replaced Parts.
- 6.3 Replacement Parts shall upon replacement become the property of the Customer and the Company hereby warrants and undertakes to the Customer that the Customer shall have a free and unencumbered title to such Replacement Parts or where such are leased or charged that it shall have obtained all necessary consents and authorities to part with possession and give good title to the Replacement Parts.
- 6.4 Notwithstanding the provisions of Clause 6.2 the Company reserves the right to replace any Parts or equipment installed by it for the Customer pursuant to Clause 6.1 (and in respect of which it has received Replaced Parts) with the original Equipment or other Parts following their repair by providing 5 working days' notice to the Customer. The Customer shall then allow the Company access to the Site to affect the transfer. Any further parts or equipment replaced by the Company pursuant to this Clause 6.4 ("further replaced parts") shall upon replacement become the property of the Company and the Customer warrants and undertakes to the Company that the Company shall have a free and unencumbered title to such further replaced parts or where such are leased or charged that it shall have obtained all necessary consents and authorities to part with possession and give good title to the further replaced parts.

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- 6.5 In the event that the Customer receives Parts under the terms of this Contract the Customer shall be obliged, within 5 working days of receiving any Parts from the Company which have been requested, to return to the Company the Equipment or Parts replaced by such Parts and shall pay in addition to any Support Charge all costs and expenses of carriage (including insurance) and bear the risk of any loss or damage until the Equipment or Parts returned to the Company have been delivered and signed for by the Company at the address specified in this Contract. In the event that the Customer does not comply with this Clause 6.5 the Company shall be entitled to levy rent on the Equipment or Parts not returned at the rate of 5% of RRP per month or any part thereof.
- 6.6 If following receipt by the Company of any Equipment or Parts returned to it by the Customer, the Company determines in its reasonable discretion that there is no fault to the item or items concerned, or that such fault is not covered by the terms of the Support the Customer shall be obliged to pay to the Company on demand a No Fault Found Charge together with all the costs and expenses of carriage, (including for the avoidance of doubt insurance) for the Company to return the item or items concerned to the Customer.

**7 CHARGES**

- 7.1 In consideration of the Company providing the Support the Customer shall pay the Support Charges in advance of the Commencement Date and thereafter in advance of the Anniversary Date, or any other frequency as stipulated within Schedule A.
- 7.2 The Support Charge shall be fixed for the Initial Contract Period. Thereafter, the Customer agrees that the Company shall have the right to increase the Support Charge by up to RPI annually upon giving not less than 120 days written notice to the Customer immediately preceding any relevant Anniversary Date to take effect from such Anniversary Date.
- 7.3 In the event that the Company wishes to increase the Support Charge by more than RPI it must notify the Customer of its intention to do so no less than 120 Days immediately preceding any relevant Anniversary Date to take effect from such Anniversary Date.
- 7.4 In the event that the Company provides to the Customer any Excepted Services, these shall be charged to the Customer in accordance with Schedule D, together with the cost of any Parts which are utilised in the provision of the Excepted Services.
- 7.5 All amounts payable under this Contract shall be exclusive of value added tax (if any) which shall be additionally paid by the Customer at the rate and in the manner from time to time prescribed by law (subject to provision by the Company of the appropriate VAT invoices to the Customer).
- 7.6 In addition to any other remedy available to the Customer the Company reserves the right to charge the Customer interest in respect of any overdue invoice under this Contract (as well after as before judgement) at the rate of 4% above the base rate from time to time of National Westminster Bank plc from the due date therefore until payment in full is received by the Company.
- 7.7 The Customer agrees to pay the Manufacturer Levied Charges at the rate and frequency and for the duration defined within Schedule B and that their obligations in relation to Schedule B are specifically defined and bound by the terms of this Schedule.
- 7.8 Notwithstanding Clauses 7.2, 7.3 and 7.8 the Customer agrees that the Company shall be entitled to revise the Support Charge at any time in the event of Revisions to Schedule A or B and that any such amended charges shall be effective from the start of the month in which the Revision was made. Such charges will be applied pro rata to the end of the current billing period, and in full at the next billing period.
- 7.9 In the event that the Company wishes to increase the prevailing labour rates contained within Schedule D it must notify the Customer of its intention to do so no less than 120 Days immediately preceding any relevant Anniversary Date to take effect from such Anniversary Date
- 7.10 Any member of the Customer's group of companies may place an order for the Support services as though it were the Customer and the Company shall be obliged to issue its invoice in respect of any such order to the relevant member of the Customer's group, but shall otherwise issue its invoices in accordance provisions of this clause 7.
- 7.11 The Company will quote the Customer's order reference number on all despatch or consignment notes, advice notes, invoices and any other documentation related to an order. Where provided by the Customer, such despatch or consignment notes, advice notes, invoices and any other documentation shall also set out the relevant 'asset tag reference numbers' for each of the goods and/or services that are the subject of an order. The Customer shall pay all invoices in accordance with this Contract, subject to the relevant invoice(s) having been provided by the Company in accordance with this clause 7
- 7.12 Payment of the Support Charge shall be deemed an acceptance of these Terms and Conditions of Support.

**8 COMPANY'S WARRANTY**

- 8.1 The Company warrants and undertakes to the Customer:-
- 8.1.1 To perform the Support with reasonable care and skill;
  - 8.1.2 That it shall have a free and unencumbered title to any replacement parts or further replacement parts supplied hereunder;
  - 8.1.3 That any replacement parts, supplied hereunder shall be of satisfactory quality and fit for purpose for a period of 90 days from delivery to the Customer or for the balance of the initial manufacturers warranty, whichever is the greater;
- 8.2 The Company does not warrant that the Support will cause the Equipment to operate entirely without interruption or error.
- 8.3 Subject to the foregoing all conditions, warranties, terms and undertakings expressed or implied as statutory or otherwise in respect of the performance by the Company of the Support hereunder are (save for the conditions implied by section 12 of the Sale of Goods Act 1979 and all subsequent amendments) hereby excluded.

**9 LIMITATION OF LIABILITY**

- 9.1 The following provisions set out the entire financial liability of each party (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:-
- 9.1.1 Any breach of each party's contractual obligations under any terms of this Contract;
  - 9.1.2 Any representation, statement or tort act or omission including negligence arising under or in connection with this Contract.
- 9.2 Each party will not be liable for its failure to perform or any delays in performance hereunder to the extent that such failures and/or delays are due to circumstances beyond its reasonable control including (without limitation) acts of God, war, civil commotion, acts of any government or agency thereof, explosions, fire, flood, mechanical failures, strikes, weather, transportation, delays, failure of supplies, delays which are not the fault of either party, similar circumstances or causes beyond the reasonable control of either party. Each party shall not be liable for the other's loss or damage caused by such circumstances.
- 9.3 Subject to Clauses 9.2 and 9.6 either party's total liability in contract, tort (including negligence or breach of statutory duty) misrepresentation or otherwise, arising in connection with the performance or contemplated performance of this Contract shall be expressly limited to the value of the Support Charge.
- 9.4 Each party shall not be liable under any circumstances to the other for any indirect special exemplary incidental or consequential loss or damage including but not limited to loss of profits or revenue, loss of business, depletion of goodwill, loss of use of any Equipment or

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any associated equipment, loss of data, loss of substitute hardware facilities or services, downtime costs, or any other expenses or claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

- 9.5 Nothing in this Contract shall exclude or restrict either party's liability for death or personal injury caused by its negligence or for fraudulent misrepresentation.
- 9.6 Each party shall indemnify the other party and keep the other fully and effectively indemnified against any loss or damage to any property or injury or death of any person caused by the negligence or wilful default of the other party, its servants or agents. The indemnifying party shall have control of any claims and the indemnified party agrees not to settle or compromise any claims.
- 9.7 Nothing in this Clause shall confer any right or remedy upon either party to which it would not otherwise be entitled.

**10 SERVICE CALLS**

- 10.1 As soon as the Customer becomes aware of a fault on any Equipment, it shall telephone the Company's support desk and provide detailed information so that the Company can respond to the same within the relevant Response Times. The Customer undertakes to train and inform its personnel of the Service Call procedures and ensure that such personnel are capable of giving technical information about the fault and have an understanding of the operational impact to the Customer of the fault being reported to be able to agree Severity Codes for each Service Call made to the Company.
- 10.2 In making a Service Call and reporting a fault, the Customer must contact the Company's Support Desk by telephone and notify it of the following information:-
- 10.2.1 Caller Name;
  - 10.2.2 Customer Name;
  - 10.2.3 Location;
  - 10.2.4 Contact Telephone Number;
  - 10.2.5 Backup Contact Telephone Numbers - Administrative and Technical;
  - 10.2.6 Type of Equipment;
  - 10.2.7 Platform;
  - 10.2.8 Brief Problem Description;
  - 10.2.9 Perceived Severity Code;
  - 10.2.10 Internal Customer Fault Tracking Reference Number (if applicable).
- 10.3 All Service Calls will be allocated a unique tracking number to which the Customer should refer in all future calls in relation to the fault throughout the resolution process.
- 10.4 Only authorised personnel may make Service Calls to the Company's support desk and such Service Calls do not require any form of written confirmation. A list of authorised personnel is provided in Schedule C and shall be reviewed and updated by the Customer at the Quarterly Service Review.
- 10.5 In the event that the Customer requests a system to be shut down remotely, such request must be made to the Company's support desk by authorised personnel and the Company will only be obliged to action such shut down if confirmed in writing by authorised personnel. Any requirement for the Company to instigate a system reset for whatever reason will also require prior written approval from authorised personnel prior to implementation.
- 10.6 The Company support desk requires the Customer to provide remote access to all Equipment and Software which should be available 24 hours a day for the operation of Support which will primarily be used to interrogate the system configuration, to aid problem analysis, to reset the system or modify the system configuration for problem workaround. The Customer hereby agrees that this facility may also be used by the Company for transmission of software updates and maintenance releases to Customer Sites.
- 10.7 The Customer will provide the Company with 7 days prior written notice of any proposed changes to any login procedures or networking changes which may affect system performance where possible.
- 10.8 The Customer shall communicate to the Company upon the date hereof the identity of the persons or the department within its undertaking at the Site who shall act as the contact point and channel of communication for the provision by the Company of the Support during the period of this Contract. The Customer shall forthwith inform the Company of any change in the identity of such persons or department in writing.

**11 RECORDS AND MEETINGS**

- 11.1 For the period of this Contract, the Company shall maintain records of its performance against the targets set out in the SLA and the parties hereto shall meet at least once each year or as specified in schedule A, at a time to be agreed for discussing the same. The Company shall make this information available to the Customer upon request.
- 11.2 For all Severity 1 faults a written report will be provided by the Company to the Customer within 3 working days, detailing the nature of the problem, the course of action taken and any recommendations to prevent future occurrence.
- 11.3 For the period of this contract, the Company shall hold Quarterly Service Reviews with the Customer, at which the Company shall provide a written record of the previous quarters Service Calls, received by the Company, including response and clear times in relation to the SLA together with descriptions of all actions taken in relation to each call. All open Calls with current status and next action will be documented. In addition, all end of sale/support/compatibility notices and service price changes including any changes to Schedule D issued in the preceding quarter will be included within the review.
- 11.4 For the period of this Contract, the Company shall hold Monthly Account Management Reviews with the Customer. The Review will have sections for Current, Quoted, and Potential Projects together with Technical Issues. Each section shall contain a description of the project and list all actions, with owner and deadline information.
- 11.5 Both parties shall meet at least 120 days prior to the end of the Contract Period to discuss renewal terms.

**12 TERM AND TERMINATION**

- 12.1 This Contract shall commence on the Commencement Date and subject to earlier termination in accordance with this Clause shall continue in force for the Initial Contract Period and thereafter for further Contract Periods of 12 months.
- 12.2 The contract may be terminated at the end of the Initial Contract Period or at the end of any subsequent Contract Period by either party providing notice to the other in writing by recorded delivery 90 days prior to the Anniversary Date.
- 12.3 This Contract may be terminated or suspended at the Company's sole option forthwith by the Company if the Customer fails to pay the Support Charges or any Additional Charges provided the Company has served notice of its intent to withdraw service at least 14 days prior to withdrawal. In the event of such suspension, the Customer shall remain liable to continue to make payment of all Support Charges or Additional Support Charges due or to become due under the terms of this Contract

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## 12.4 This Contract may also be terminated:-

- 12.4.1 Subject to Clause 12.6 forthwith by either party if the other commits any material breach of any term of this Contract which breach is either incapable of remedy or (if capable of remedy) is not remedied within 28 days of written notice having been given to remedy such breach;
  - 12.4.2 Either party provides materially inaccurate or misleading facts or information in connection with the Contract; or
  - 12.4.3 A bankruptcy or insolvency petition is presented in respect of either party or either party becomes bankrupt or insolvent or either party makes or intends to make a proposal for any arrangement or composition with the it's creditors; or
  - 12.4.4 Petition for an administration order or winding up order is presented in respect of either party or either party goes into liquidation whether compulsory or voluntary; or
  - 12.4.5 Any execution or distress of seizure is levied on or sued out against any of the real or personal property of either party; or
  - 12.4.6 Either party shall have a receiver or administrative receiver or manager appointed in respect of the whole or any part of their undertaking or property; or
  - 12.4.7 Either party is unable to pay their debts
- 12.5 Any termination of this Contract pursuant to this Clause 12 shall be without prejudice to any other rights or remedies a party may be entitled to hereunder or at law and shall not affect any accrued rights or liabilities of either party nor the coming into or continuance in force of any provisions hereof which it is expressly or by implication intended to come into or continue in force on or after such termination.
- 12.6 The Customer undertakes with the Company that promptly upon becoming aware of the same it shall notify the Company in writing of any claim or claims it may have against the Company under this Contract specifying such reasonable details as shall then be available in relation to the event or default to which the claim relates.
- 12.7 If the Company receives written notice from the Customer of any breach by the Company of the representations and warranties contained in Clause 8.1 the Company shall have the right at its own expense to remedy that breach within 28 days following receipt of such notice failing which the Customer shall be entitled to pursue such rights and remedies as are available to it.
- 12.8 The Customer will be entitled to terminate this Contract at the end of any 12 month period following the commencement date, if during the course of that 12 month period the Company has failed to achieve the SLA for Severity 1 or Severity 2 Calls, as defined in Clause 2 and Schedule A, on 2 or more occasions. or Severity 3 Calls on 4 or more occasions.
- 12.9 The Company shall provide a pro rata refund of fees paid in advance if the Contract is terminated as a result of a breach by the Company as defined in this clause 12.

**13 NON SOLICITATION OF EMPLOYEES**

- 13.1 Each of the parties hereto covenants with the other that for the period of this Contract and for 12 calendar months following its termination it will not directly or indirectly induce or attempt to induce any employee of the other party who has been engaged in the provision, receipt, review or management of the Support or otherwise been involved in connection with this Contract to leave the employment of that other party. This paragraph shall not prohibit the employment of any person recruited through an employment agency, if neither party nor any person connected with them has encouraged that agency to approach the relevant individual, or the placing of a public advertisement for a post available to members of the public generally or the employment of any person who answers such an advertisement.
- 13.2 Each party estimates the impact that a breach of Clause 13.1 would have upon its business which is herein specified as liquidated damages in the amount of one times the current gross annual salary of the personnel concerned. Each party accepts that this is a reasonable estimate of the loss and agrees to pay the same upon demand in the event of its breach of Clause 13.1.
- 13.3 Nothing in this Clause 13 shall prejudice the right of the non breaching party to seek injunctive relief.

**14 FORCE MAJEURE**

- 14.1 Subject to due compliance with Clause 15.2 neither party shall be liable to the other for any delay or non performance of its obligations under this Contract arising from any cause or causes beyond its reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Company's reasonable control:-
- 14.1.1 Act of God, explosion, flood, tempest, fire or accident;
  - 14.1.2 War or threat of war, sabotage, insurrection, civil disturbance or requisition;
  - 14.1.3 Acts, restrictions, regulations, bye-laws, prohibition or measures of any kind on the part of any governmental parliamentary or local authority;
  - 14.1.4 Import or export regulations of embargoes;
  - 14.1.5 Strikes, lock outs or other industrial actions or trade disputes (whether involving employees of the Company or any third party);
  - 14.1.6 Difficulties in obtaining raw materials, labour, fuel, parts or machinery;
  - 14.1.7 Power failure or break down in machinery.
  - 14.1.8 Difficulties in obtaining raw materials, labour, fuel, parts or machinery;
- 14.2 In the event of either party being so delayed or prevented from performing its obligations such party shall:-
- 14.2.1 Give notice in writing of such delay or prevention to the other party as soon as reasonably possible stating the date the problem occurred and extent of such delay or prevention the cause thereof and its estimated duration;
  - 14.2.2 Use all reasonable endeavours to mitigate the effects of such delay or prevention upon the performance of its obligations under this Contract; and;
  - 14.2.3 Resume performance of its obligations as soon as reasonably practicable after the removal of the cause of the delay or prevention.

**15 HEALTH AND SAFETY AT WORK**

- 15.1 It is a condition of any Contract that any information which may have been supplied by the Company about the use for which the Equipment are designed and have been tested about the results of any relevant tests and about conditions necessary to ensure that the Equipment will be safe and without risk to health when properly used are publicised or displayed by the Customer and that specification of the Equipment contained in trade categories or circulars are made known by the Customer to those persons who will use the Equipment.

**16 INTELLECTUAL PROPERTY AND CONFIDENTIALITY**

- 16.1 Each party agrees and undertakes to the other that during the period of this Contract and thereafter it will keep confidential all and will not use for its own purposes nor without the prior written consent of the other disclose to any third party any information of a confidential nature (including trade secrets and information of commercial value) which may have become known to such party from the other party and which relates to the other party or any of its Affiliates unless such information is public knowledge or already known to such party at the time of disclosure or subsequently becomes public knowledge other than by breach of this Contract or subsequently becomes lawfully into the possession of such party from a third party
- 16.2 Intellectual property rights existing in any tools made for the provision of the Support for the Customer shall remain the property of the Company notwithstanding that the Customer may have been charged with part of the cost of such tools.
- 16.3 Each party shall take all such steps as shall be necessary to protect all and any confidential information of the other party which comes into its possession and without prejudice to the generality of the foregoing shall not copy or reproduce the same nor distribute, sell or disclose the contents of the same to any third party without the prior written consent of the other party.
- 16.4 Each party undertakes to the other to make its employees, agents and subcontractors aware of the provisions of this clause 16 and to use its reasonable endeavours to ensure compliance by its said employees, agents and subcontractors with its obligations hereunder.
- 16.5 All copyright and intellectual property rights in the Support are and will remain vested in the Company and the Customer agrees that it will not claim any proprietary rights thereto. For the avoidance of doubt, this does not extend to the IP addressing scheme.
- 16.6 Any bespoke development work undertaken by the Company on behalf of the Customer remains at all times the property of the Company. Upon termination of this Contract, the Customer is granted non-exclusive rights to continue to use the software in perpetuity.
- 16.7 Each party agrees and undertakes to the other that it has the right to grant the licences and rights granted in this Agreement, and that it is under no obligation or restriction, nor will it assume any obligation or restriction which would in any way interfere with, be inconsistent with, or infringe the copyright or other intellectual property right of any third party.
- 16.8 The provisions of this Clause 16 shall remain in full force and effect notwithstanding any termination of this Contract.

**17 MISCELLANEOUS**

- 17.1 Each party shall be responsible for compliance with all relevant laws and regulations and for obtaining and maintaining at its expense any consent or other authorisations and permits required to fulfil its obligations in connection with the Support.
- 17.2 This Contract, the Schedules and the documents annexed hereto or otherwise referred to herein constitute the entire Contract between the parties as to the matters to which it relates and supersedes all previous Contracts between the parties and may only be varied by written agreement of the parties. All prior representations or statements made before this Contract was entered into and not expressly repeated in it are withdrawn and of no effect.
- 17.3 The Company may perform its obligations hereunder through agents or subcontractors (subject to prior notification); the Contract shall not be assigned by either party without the other party's prior written consent (save that the Customer shall be entitled to assign any or all of its rights and obligations under this Contract to any of its group companies without requiring the Company's prior written consent). References herein to the Company include references to any assignee of the Company's rights or obligations under this Contract. References herein to the Customer include references to any assignee of the Customer's rights or obligations under this Contract and to any Joint Venture arrangement involving the Customer.
- 17.4 A notice to be given hereunder by either party to the other may be served personally upon the other or by sending the same by recording delivery post addressed to the Company Secretary in the case of the Company at its registered office and in the case of the Customer to the Procurement Director at its registered office or Site address or last known address.
- 17.5 If any provision of this Contract is held by any Court or other competent authority to be void or unenforceable in whole or in part, the Contract shall continue to be valid as to the remaining provisions.
- 17.6 Each of the parties acknowledges and agrees that in entering into this Contract it does not rely on and shall have no remedy in respect of any statement or representation or warranty (whether negligently or innocently made) of any person (whether party to this Contract or not) other than as expressly set out in this Contract. The only remedy available to it shall be for breach of contract under the terms of this Contract. Nothing in this Clause shall, however, operate to limit or exclude any liability for fraud.
- 17.7 This Contract and these conditions shall be governed by and construed in accordance with English law and both the Company and the Customer shall submit to the non exclusive jurisdiction of the English courts.
- 17.8 Is not intended that any third party should be entitled to enforce terms of this Contract (unless otherwise expressly so provided) purely by virtue of the Contract (Rights of Third Parties) Act 1999
- 17.9 As defined by the Waste Electrical and Electronic Equipment (WEEE) regulations 2006, IPI are a distributor of B2B EEE who is not a manufacturer, importer or brand owner and as such, IPI has no obligations for disposal of EEE provided or WEEE replaced.

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