

Standard Terms And Conditions

June 2009

1. DEFINITIONS

- 1.1 'Client' or 'Customer' means the organisation receiving the Service as specified in the Customer Schedule.
- 1.2 'Client Locations' are the sites at which the Client is entitled to receive the Service, specified in the Customer Schedule.
- 1.3 'Schedules' means the Service Schedule and the Customer Schedule attached hereto which identify the services to be performed, the software to be supported hereunder, the Support Charge, location(s) at which the Support Services are to be performed and other matters.
- 1.4 'Support Services' or 'Support' or 'Services' means the services to be performed by Aegis CSS, as set out in the Service Schedules at the agreed price.
- 1.5 'Software' means the computer programs set out in the Schedules for which Support Services will be provided by Aegis CSS under the terms of this Agreement.
- 1.6 'Firmware' means software which is required for the operation of certain Computer Equipment (including, but not limited to printers, switches and routers) and which is regarded as being an integral part of such Computer Equipment.
- 1.7 'Supported Equipment' means the equipment (including but not limited to Servers, PCs, printers, switches and routers) for which Support Services will be provided by Aegis CSS under the terms of this Agreement, as set out in the Customer Schedule.
- 1.8 'Computer Equipment' means all or any part of the IT equipment owned by the Client.
- 1.9 'Support Charge' means the annual charge made by Aegis CSS for the provision of the Support Services.
- 1.10 'Information' means information, documentation, know-how, data, diagrams, specifications or other materials (written or oral), belonging to the other and concerning the business and affairs of the other.
- 1.11 'Working Day' means 9am to 5pm Monday to Friday, excluding Bank and Public Holidays.
- 1.12 'Working Hour' means an hour within the Working Day
- 1.13 'Out of Hours' means any time outside of the Working Day.
- 1.14 'Extended Cover Period' means the additional (to the Working Day) hours set out in the Customer Schedule, during which Aegis CSS shall also provide Support Services.
- 1.15 'Incident' means any event that is not part of the standard operation of the service provided by the Computer Equipment and that causes, or may cause, an interruption to, or a reduction in the quality of, that service.
- 1.16 'Initial Response' means to notify the Client of the commencement work on an Incident and to identify the course of action to be taken, but not necessarily the action itself
- 1.17 'Resolution' means action which will resolve an Incident, and which may comprise advice, a fix or a work-around.
- 1.18 'Incident Report' means a request made by the Client for the resolution of an Incident, which shall be made in accordance with the guidelines set out in the Service Schedule.
- 1.19 'Configuration Change' means any change to the configuration of the supported Computer Equipment or Software.
- 1.20 'Scope' means the extent of coverage of the Services, whether by equipment, location, time, or other limitation, without additional charge.
- 1.21 'Standard Rate' means the scale of charges levied by Aegis CSS in their normal operation as if no pre-existing agreement was in effect.

2. COMMENCEMENT AND TERM

This Agreement will be deemed to come into effect on the Commencement Date set out in the Customer Schedule and shall run for twelve months (the 'Initial Term'). Thereafter this Agreement will run from year to year until terminated in accordance with clause hereof.

3. AEGIS CSS' OBLIGATIONS

During the execution of this Agreement, and within the Agreement's Scope, Aegis CSS shall:

- 3.1 Carry out the Support Services on the terms and conditions of this Agreement and as set out in the Schedules.
- 3.2 Respond to properly made Incident Reports and requests to provide Support Services according to the response times set out in the Schedules.
- 3.3 Conduct its business with the Client, its employees, agents and subcontractors in a courteous and professional manner.
- 3.4 Propose and initiate backup and security procedures as they see fit.
- 3.5 Take full ownership of Incidents properly reported to Aegis CSS and will maintain ownership until the Incident is resolved.
- 3.6 On behalf of the Client, work directly with the third party suppliers set out in the Customer Schedule and that are involved in the resolution of particular Incidents, subject to the following limitations:
 - 3.6.1 Both parties to this Agreement acknowledge that the third party is an agent of the Client, and not an employee, agent or subcontractor of Aegis CSS;
 - 3.6.2 Aegis CSS shall only have access to third party services that are subject to the contract between the Client and the said third party.
- 3.7 Carry out remote and/or on-site routine inspection(s) of the Software in accordance with the manufacturers and Aegis CSS' usual practices.
- 3.8 Warrant that the Services shall be performed by competent staff, exercising a reasonable level of skill appropriate to their responsibilities.
- 3.9 Undertake to make good any failure to perform the Services arising from a failure of Aegis CSS, its employees, subcontractors or agents to exercise a reasonable level of skill, at no charge to the Client.
- 3.10 Without prejudice to its other obligations or responsibilities, Aegis CSS shall ensure that when any of its obligations are performed on the Client's premises all rules and instructions in force and published thereat are complied with.
- 3.11 Provide the Client with monthly reports that shall indicate details of all interventions made and the time spent by Aegis CSS.
- 3.12 Use reasonable endeavours to fulfil properly made requests to make Configuration Changes.
- 3.13 Provide the Client with the information necessary for the Client to gain full administrative access to the Software on termination of this Agreement, howsoever occasioned.

4. CLIENT'S OBLIGATIONS

During the execution of this Agreement, the Client shall:

- 4.1 Pay the first instalment of Support Charge forthwith and the remainder in equal payments (in addition to any other charges arising out of the execution of this Agreement) as set out in the Customer Schedule.
- 4.2 Pay all additional charges levied by Aegis CSS, including but not limited to those arising from Configuration Change requests made by the Client, charges levied on Aegis CSS by third parties for the provision of ad hoc support services during the resolution of Incidents or the provision by Aegis CSS of Support Services during the Out of Hours period.
- 4.3 Where possible, arrange to provide facilities to enable remote access to the Computer Equipment by Aegis CSS, including, as a minimum, 500k broadband connection to the internet and access to the Client's network via any firewall. On such occasions that on-site support is necessitated because remote access has not been made available to Aegis CSS and the Incident(s) could reasonably have been corrected remotely, Aegis CSS shall be entitled to charge the Client at its Standard Rate for such on-site support.

- 4.4 Initiate calls for Support Services by using the method designated in The Service Schedule.
- 4.5 Initiate requests for Configuration Changes using the "Change Request" forms provided from time to time by Aegis CSS.
- 4.6 Conduct its business with Aegis CSS, its employees, agents and subcontractors in a courteous and professional manner.
- 4.7 Preserve, protect and secure data and software residing on the Computer Equipment by proper back-up procedures and ensure that it has adequate restoring functions and facilities to rebuild its computer operating system, software and data following any irregular shutdown.
- 4.8 Replace any worn media.
- 4.9 Operate the Software and Computer Equipment in a prudent and proper manner, and avoid any activity that knowingly could be prejudicial to its correct functioning.
- 4.10 Make available to the users proper and clear written instructions or instructions as supplied for proper use and care of the Software and Computer Equipment.
- 4.11 Ensure that the Software and Computer Equipment is operated in accordance with installation guidelines and / or the manufacturer's operating instructions and / or in accordance with the Site Policy agreed with Aegis CSS. In the event that the cause of an Incident Report is determined to be a result of the Client not following the Site Policy, Aegis CSS shall be entitled to charge the Client for such work at their Standard Rate.
- 4.12 Use only supplies of consumables recommended by Aegis CSS or the manufacturer.
- 4.13 Promptly allow Aegis CSS to make alterations or modifications to the Software and Computer Equipment that are recommended by Aegis CSS or the manufacturer.
- 4.14 Not to access the configuration or make any alterations or modifications to the Software or Computer Equipment without the prior written consent of Aegis CSS, such consent not to be unreasonably delayed or withheld.
- 4.15 Allow Aegis CSS proper access to the Software and Computer Equipment, adequate storage, working space, telephone(s) and other facilities as may be reasonably requested by Aegis CSS.
- 4.16 Provide suitably qualified personnel for such times as may be reasonably required by Aegis CSS:
 - 4.16.1 to give Aegis CSS information and assistance in identifying and correcting any malfunctions;
 - 4.16.2 to receive and execute the appropriate corrective measures (or other instructions in relation to this Agreement) given by Aegis CSS;
 - 4.16.3 to carry out diagnostic tests on the Software or Computer Equipment as requested by Aegis CSS;
 - 4.16.4 to test any corrections supplied by Aegis CSS.
- 4.17 In the event that it is impossible for Aegis CSS to perform the Support Services at the relevant premises of the Client to give consent for Aegis CSS to take the Computer Equipment out of service for so long as it is required to carry out such Support Services, provided always that Aegis CSS shall take all reasonable precautions to prevent any unnecessary disruption to the Client's business. Such consent not to be unreasonably delayed or withheld.
- 4.18 Have at all times a valid right to use the Software that is covered by this Agreement.

5. CONFIDENTIALITY

- 5.1 Each party will, prior to disclosing any confidential Information to the other party, ensure that the receiving party understands that it owes a duty of confidence to the other party. Each of the parties to this Agreement shall, and procure that its staff, agents and subcontractors shall, keep confidential all Information that it shall have obtained as a result of the discussions leading up to or entering into or performance of this Agreement except:-
 - 5.1.1 to the extent that it can be shown that the Information is publicly available other than through a breach of this Agreement;
 - 5.1.2 to the extent that it can be shown that the Information was lawfully in its possession prior to the date of its disclosure by any other party;

- 5.1.3 to the extent that the receiving party may have received the Information from a third party without (bona fide) restriction as to disclosure;
- 5.1.4 where the receiving party receives or has received written consent to such disclosure from the party entitled to such Information;
- 5.1.5 to the extent that the receiving party may be required by law to make such disclosure.
- 5.2 Upon written request from the other Party, either party will either destroy or return to the other all copies of the Information obtained during the performance of the Agreement within thirty days of such request.
- 5.3 Both Parties warrant that the Information received from the other in connection with this Agreement shall be used only for the purposes of this Agreement.
- 5.4 Nothing in this clause shall prohibit Aegis CSS from supplying the same or similar equipment, software or services to other persons.
- 5.5 This clause in its entirety shall survive in perpetuity the termination of this Agreement, howsoever occasioned.

6. DATA PROTECTION

- 6.1 Aegis CSS acknowledges that it will have access to and may be entrusted with Personal Data (as defined in the 1998 Data Protection Act) in the provision of the Services and agrees that it will not at any time whether during or after termination for whatever reason of this Agreement (except as a necessary part of the performance of its obligations in connection with the provision of the Services):-
 - 6.1.1 retain any copy, abstract, summary or précis of the whole or any part of such Personal Data;
 - 6.1.2 disclose to any person such Personal Data other than to its agents, subcontractors or employees who are placed under the same obligation of confidence and who need access to such Personal Data to facilitate proper performance of their contractual obligations to Aegis CSS.
- 6.2 Aegis CSS will indemnify the Client against any and all claims and proceedings made or brought against the Client in respect of any alleged breach of this clause provided that such breach was due to the act or omission of Aegis CSS, its agents, subcontractors or employees.
- 6.3 Aegis CSS will on demand deliver to the Client all documents that may be in its possession or in the possession of its agents, subcontractors or employees (including documents prepared by the Client) which may include Personal Data.
- 6.4 The provisions of this clause shall survive in perpetuity the termination of this Agreement, howsoever occasioned.

7. CHARGES AND REVIEW

- 7.1 The Support Charge for the Initial Term of this Agreement shall be as set out in the Customer Schedule.
- 7.2 All elements of the Support Charge will be reviewed by Aegis CSS to be effective at the end of the Initial Term (the 'Anniversary') and at each subsequent Anniversary thereafter. Any proposed changes in charges will be notified to the Client in writing not less than ninety days prior to the Anniversary. In the event that there are material changes to the charges levied by third parties on Aegis CSS, such costs will be passed on to the Client.
- 7.3 Payments for regular support charges are due on the 1st of the month in advance. Otherwise, Aegis CSS' standard payment terms are strictly 30 days for labour and strictly 7 days for hardware from invoice date. Unless otherwise agreed or indicated on the invoice, Aegis CSS' standard terms apply.
- 7.4 In the event that Aegis CSS carries out a Configuration Change in response to a specific request by the Client, Aegis CSS shall be entitled to levy charges in accordance with its standard scale of charges as published from time to time, in addition to those stated in this Agreement.
- 7.5 Aegis CSS shall be entitled to levy charges in addition to those stated in this Agreement, in the event that charges are levied on it by third parties during the resolution of specific Incidents.
- 7.6 Aegis CSS shall be entitled to levy charges in accordance with its standard scale of charges as published from time to time, in addition to those stated in this Agreement in the event of failure of Software or Computer Equipment resulting from the failure of the Client to comply with his responsibilities under the terms of this Agreement.

- 7.7 In the event that the Client requests Aegis CSS to provide Support Services for additional Software or Computer Equipment, such will be subject to charge at the rate prevailing at the time of purchase. Such charges shall be calculated on a pro-rata basis adjusted to coincide with the next Anniversary of this Agreement, when the additional Software, Computer Equipment and associated charges will be engrossed into this Agreement.
- 7.8 In the event that the Client fails to make any payment in respect of the Support Services by the due date, Aegis CSS shall be entitled to take one or more of the following actions:
- 7.8.1 suspend the provision of services to the Client until such time as the outstanding invoice(s) is/are paid;
- 7.8.2 charge the Client interest at the rate of 3% above the prevailing Barclays Bank plc base lending rate, on any amount outstanding from the due date to the date of actual payment. Interest shall be applied on a daily basis;
- 7.8.3 terminate this Agreement and recover from the Client damages for any loss suffered by Aegis CSS as a result of such termination.
- 7.9 If any materials or data supplied by the Client fail to perform in the expected manner, Aegis CSS shall be entitled to levy a charge related to any increased or additional cost of working and/or reasonably incurred expenses.
- 7.10 All prices or charges stated or referred to in this Agreement are exclusive of Value Added Tax which shall be charged in addition at the rate ruling at the tax point.

8. LIMITATION OF LIABILITY

- 8.1 The Client acknowledges that Aegis CSS' obligations and liabilities are exhaustively defined in this Agreement.
- 8.2 The Client agrees and accepts that the express obligations and warranties made by Aegis CSS in this Agreement are in lieu of and to the exclusion of any other warranty, condition, term, undertaking or representation of any kind, (excluding fraudulent misrepresentations) express or implied, statutory or otherwise relating to the Services provided under or in connection with this Agreement, including (though not limited to) those as to the quality and performance.
- 8.3 Aegis CSS will not be liable for any indirect or consequential loss, damage, cost or expense of any kind whatever and however caused, whether arising under contract, tort (including negligence) or otherwise, including (without limitation) loss of production, loss of or corruption to data, loss of profits or of contracts, loss of operation time and loss of goodwill or anticipated savings, even if Aegis CSS has been advised of their possibility.
- 8.4 Aegis CSS accepts liability for:-
- 8.4.1 Death or injury caused by the negligence of Aegis CSS, its employees, agents or sub-contractors in the course of their engagement under this Agreement up to an amount of £2 million in respect of each incident or series of connected incidents;
- 8.4.2 Physical damage to or loss of the Client's tangible property to the extent it results from the negligence of Aegis CSS, its employees, agents or sub-contractors within the course of their engagement under this Agreement up to an amount of £2 million in respect of each incident or series of connected incidents.
- 8.5 In all other cases not falling within clause , Aegis CSS' total liability (whether in contract, tort, including negligence, or otherwise) under or in connection with this Agreement or based on any claim for indemnity or contribution will not exceed, in any one year, the annual Support Charge set out in the Customer Schedule, provided always that before any such claim is made Aegis CSS is given reasonable opportunity to make good the breach giving rise to such claim.
- 8.6 In the event that the Client requests Aegis CSS to engage the services of an agent or supplier, Aegis CSS will not be liable for any claim (whether in contract, tort, including negligence, or otherwise) resulting from the performance of the agent or supplier.
- 8.7 The Client acknowledges and agrees :-
- 8.7.1 that the allocation of risk contained in this clause is reflected in the price charged for the Services;
- 8.7.2 that Aegis CSS shall not be liable to the Client for any losses, costs or damages whatsoever under this Agreement, where proceedings for such losses, costs or damages are begun one year or more after the occurrence of the breach giving rise to the claim.

9. TERMINATION

- 9.1 This agreement may be terminated:-

- 9.1.1 By the Client giving Aegis CSS not less than ninety days' written notice to terminate at the end of the Initial Term or at any subsequent Anniversary thereafter ('Termination at Convenience');
- 9.1.2 By Aegis CSS giving the Client not less than ninety days' written notice to terminate at the end of the Initial Term or at any subsequent Anniversary thereafter.
- 9.2 This Agreement may also be terminated:
 - 9.2.1 forthwith by either party if the other commits any material breach of any terms of this Agreement and which (in the case of a breach capable of being remedied) shall not have been remedied within thirty days of a written request to remedy the same;
 - 9.2.2 forthwith by either party if the other convenes a meeting of its creditors or if a proposal shall be made for a voluntary arrangement within Part 1 of the Insolvency Act of 1986 or a proposal for any other composition, scheme or arrangement with (or assignment for the benefit of) its creditors or if the other is unable to pay its debts within the meaning of the Section 123 of the Insolvency Act 1986, or if a trustee receiver, administrative receiver or similar officer is appointed in respect of all or any part of the business or assets of the other or if a petition is presented or if a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding up of the other or the making of an administration order (otherwise than for the purpose of an amalgamation or reconstruction);
- 9.3 Any termination of this Agreement (however occasioned) shall not affect any accrued rights or liabilities of either party. Nor shall it affect the continuance in force of any provision of this Agreement that is expressly or by implication intended to continue in force after such termination.

10. GOVERNING LAW

This Agreement and the rights and obligations of the parties hereto shall be governed by the laws of England and both parties hereby agree to submit to the exclusive jurisdiction of the English courts.

11. DISPUTE RESOLUTION

- 11.1 The parties to this Agreement will attempt in good faith to resolve any dispute or claim arising out of or relating to this Agreement promptly through negotiations between the respective senior executives of the parties who have authority to settle the same.
- 11.2 If the matter is not resolved through negotiation within thirty days, the parties will attempt in good faith to resolve the dispute through mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure (the 'Model Procedure').
- 11.3 If the matter is not resolved by the Model Procedure within ninety days of the initiation of the Model Procedure, the dispute shall be referred to arbitration in London under the rules of the London Court of Arbitration.
- 11.4 Neither party may commence any court proceedings in relation to any dispute arising out of this Agreement until they have attempted to settle said dispute by mediation and that mediation has terminated.
- 11.5 The fees and the costs of such mediation or arbitration shall be borne equally by the parties.

12. FORCE MAJEURE

If either party is unable to perform any part of this Agreement and such failure is caused by circumstances beyond its reasonable control (including but not limited to flood, fire, earthquake, war, tempest, hurricane, industrial action (except by Aegis CSS' staff), government restrictions, legislation, act of God or any other occurrence of a like nature), then it shall be excused from performance for a period which is reasonable under the prevailing circumstances, provided always that the party affected by the force majeure immediately notifies the other.

13. ADVERTISING

Neither party shall be entitled to use any trademark or trade name of the other, refer to the other, this Agreement or the Services to be rendered hereunder, either directly or indirectly in connection with any promotion or publication without the prior, written consent of the other (such consent not to be unreasonably withheld or delayed).

14. ASSIGNATION

- 14.1 Aegis CSS shall be entitled to subcontract all or any part of the Support Services. Such assignation will not relieve Aegis CSS of any of its obligations under this Agreement.

14.2 Aegis CSS shall be entitled to assign the benefit of this Agreement, but for the avoidance of doubt, not the burden thereof.

14.3 The Client shall not be entitled to assign the benefit or burden of this Agreement without the prior written consent of Aegis CSS (such consent not to be unreasonably withheld or delayed).

15. NON-SOLICITATION OF STAFF

Each party agrees not to approach employees of the other in order to entice them to join the other whether as an employee or in any other capacity, during the term of this Agreement or for a period of six months after its termination. If either party breaches the terms of this clause 15 the party in breach agrees, by way of liquidated damages and not a penalty, to pay the other, 'the Injured Party' a sum equal to the annual salary of the employee concerned except where that employee has responded to a bona fide advertisement or other offer published or made to the general public.

16. HEADINGS

Headings to clauses in this Agreement have been inserted for convenience of reference only and should not be construed as forming part of this Agreement.

17. WAIVER

No forbearance, delay or failure by either party to exercise any of its powers rights or remedies under this Agreement will operate as a waiver of them nor shall any single or any partial exercise of any such powers or rights or remedies preclude any other or further exercise of them. Any waiver to be effected must be in writing. The remedies provided in this Agreement are cumulative and not exclusive of any remedies provided by law.

18. SEVERABILITY

If any part of this Agreement is found by any competent jurisdiction to be invalid, unlawful or unenforceable then such part will be severed from this Agreement. The remainder of this Agreement will continue to be valid and enforceable to the full extent permitted by law.

19. NOTICES

Any notice or communication to be given hereunder shall be delivered or sent by e-mail or first class post to the address of the other party set out in this Agreement and shall be deemed to have been received by the addressee within two working days of posting.

20. ENTIRE AGREEMENT

This Agreement contains the entire agreement between the parties and supersedes any previous agreement between the parties, including, but not limited to terms and conditions attached to the Client's purchase order. Except for fraudulent misrepresentations, the parties shall not be bound by or be liable for any statement, representation, promise, inducement or understanding of any kind or nature not set forth herein. No changes amendments or modifications of any of the terms or conditions of this Agreement shall be valid unless in writing, signed by both parties and engrossed into this Agreement.