



FARDUX TERMS AND CONDITIONS FOR SUPPLY

1 Definitions and Interpretation

In these Terms and Conditions:

- i. **“Agreement”** means any agreement for the supply of Goods or Services by the Company to the Customer.
- ii. **“Ancillary Documentation”** means any user manuals and user technical documentation provided by the Supplier of the Goods.
- iii. **“Commencement Date”** means the date on which Installation of the Goods under this Agreement takes place or, where the Customer is responsible for Installation, the date of Delivery of the Goods to the Customer.
- iv. **“Company”** means Fardux Limited.
- v. **“Conditions”** means these terms and conditions, including any appendices attached to and forming part of these terms and conditions.
- vi. **“Confidential Information”** means information of a confidential nature relating to a party’s technology, technical processes, business affairs, credit or finances and customer lists and information derived from any such information or relating to any associated body, subordinate organisation, employees, suppliers or customers of that party.
- vii. **“Customer”** means any firm, company, person or entity which acquires Goods or Services from the Company on the terms set out in these Conditions.
- viii. **“Daily Rate(s)”** means the charge for the provision of the relevant Service for a Working Day.
- ix. **“Delivery”** means, subject as provided in clause 4(b), the delivery of Goods to the Installation Location or other delivery address specified. In case of part or instalment deliveries, **“Delivery”** means the separate delivery of each part or instalment of Goods.
- x. **“Expenses”** means charges for travel, accommodation, subsistence and any other directly incurred costs relating to the provision of the Services, as set out in the Agreement.
- xi. **“Fault”** means a failure of or defect or malfunction in the Goods.



- xii. **“Goods”** means any Hardware, firmware, accessories, consumables or Software supplied by the Company to the Customer on and subject to these Conditions.
- xiii. **“Hardware”** means the electronic equipment identified in the Agreement to be supplied by the Company to the Customer on and subject to these Conditions.
- xiv. **“Hardware Specification”** means the specification for the Hardware as published by the Supplier thereof or such other specification as has been agreed in writing between the parties and is included in the Agreement.
- xv. **“Installation”** means the installation of Goods including, where relevant, loading of Software.
- xvi. **“Installation Location(s)”** means the location(s) specified in the Agreement at which Goods are to be installed and used.
- xvii. **“Intellectual Property”** means all intellectual property including without limitation any invention, improvement, design or process; information and know-how; copyright including rights in and to any technical processes, systems, methods, software design, algorithms, code, scripts or other computer software; rights in databases; domain names; and trade marks, trade names or get-ups, in each case whether or not capable of being patented or registered and including all such intellectual property rights throughout the world.
- xviii. **“Licensed Hardware”** means the electronic equipment specified in the Agreement, whether or not supplied by the Company, upon which the Software is to be installed or in conjunction with which the Software is to be used.
- xix. **“Licence Terms”** means the terms on which the Customer is licensed to use the Software as set out in Appendix A to these Conditions or, where applicable, as incorporated in a separate schedule to the Agreement.
- xx. **“Maintenance”** means any Standard Software Technical Support and Maintenance Service or other software maintenance services provided by the Company to the Customer.
- xxi. **“Prices”** means the prices stated in the Agreement for the purchase or rental of Goods, Maintenance and Services.
- xxii. **“Services”** means any or all of the services specified in the Agreement (including Maintenance) to be provided by the Company to the Customer.
- xxiii. **“Software”** means the software and/or firmware identified in the Agreement to be supplied by the Company to the Customer in a form suitable for Installation on and subject to these Conditions including the Licence Terms.



- xxiv. **“Software Specification”** means the specification for Software as published by the Supplier thereof or such other specification as has been agreed in writing between the parties and is included in the Agreement.
- xxv. **“Standard Technical Support and Maintenance Fee”** means the annual charge for the Standard Software Technical Support and Maintenance Service specified in the Agreement or such revised annual charges therefor as shall apply pursuant to clause 3(e) below.
- xxvi. **“Standard Software Technical Support and Maintenance Service”** means the software technical support and maintenance service specified in Appendix B to these Conditions.
- xxvii. **“Supplier”** means, in relation to Software, any third party author or ultimate licensor of the Software and, in relation to Hardware, any third party manufacturer, distributor or supplier of the Hardware.
- xxviii. **“Training Course”** means a structured classroom course, usually provided in accordance with a set curriculum.
- xxix. **“Travelling Time”** means the elapsed time from a person leaving home to arriving at the Customer’s location where the Service is to be provided or (where relevant, for example where such person is making a number of customer visits during a day) means the elapsed time from a person leaving the last location at which they were working to arriving at the Customer’s location where the Service is to be provided.
- xxx. **“Working Day”** means:
- (i) in the case of Training Courses at the Company’s premises, 08:30 hours to 17:00 hours each day with the exception of Saturdays, Sundays and United Kingdom designated public holidays;
 - (ii) in the case of Training Courses at the Customer’s premises, 08.30 hours to 17.00 hours on any day; and
 - (iii) in the case of field trips for the commissioning or repair of Goods, such hours as are required on a 12 hours per day, seven days per week basis in accordance with work rotas required at the relevant location.

2 Application of Conditions

- (a) Subject to any variation under clause 2(c), the Agreement will be subject to these Conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, specification or other document). These Conditions and all



schedules and specifications attached to the Agreement are hereby incorporated into the Agreement.

- (b) No terms or conditions endorsed upon, delivered with or contained in the Customer's purchase order, confirmation of order, specification or other document will form part of the Agreement simply as a result of such document being referred to in the Agreement.
- (c) These Conditions apply to all supplies of Goods or Services by the Company and any variation to these Conditions and any representations about the Goods or Services shall have no effect unless expressly agreed in writing and signed on behalf of the Company. Nothing in this Condition will exclude or limit the Company's liability for fraudulent misrepresentation.
- (d) Each order the Customer places with the Company shall be deemed to be an offer by the Customer to purchase or rent Goods or Services subject to these Conditions.
- (e) No order placed by the Customer shall be deemed to be accepted by the Company until a written acknowledgement of order is issued by the Company or (if earlier) the Company supplies the Goods or Services to the Customer.
- (f) The Customer must ensure that the terms of its order and any applicable specification are complete and accurate.
- (g) Any supply of personnel to the Customer by the Company for any reason shall be governed by the Company's Standard Conditions for the Supply of Engineers, a copy of which is available to the Customer on request.
- (h) No quotation given by the Company shall be deemed to be an offer capable of acceptance. Quotations are given on the basis that no contract will come into existence until the Company despatches an acknowledgement of order to the Customer or until the Customer and the Company sign a written Agreement (as the case may be). Any quotation is valid for a period of 60 days only from its date, provided the Company has not previously withdrawn it.

3 Prices and Payment

- (a) Prices and all other charges are exclusive of Value Added Tax (or similar local tax), import duties and any other sales tax or levies payable by the Customer and shall be made in the currency stipulated in the Agreement.
- (b) All sums payable to the Company will be paid in full by telegraphic transfer or cheque on the due date without deduction, withholding or set off, unless agreed in advance by the Company. Interest shall be payable on overdue accounts at 3% over the base rate for the time being of Barclays Bank plc. calculated from the due date



until payment is received in full. The Company reserves the right to claim interest and compensation under the Late Payment of Commercial Debts (Interest) Act 1998 (as amended).

- (c) Subject to any provisions to the contrary elsewhere in the Agreement, Prices and other charges will be paid by the Customer within 30 days after the date of origination of the Company's sales invoice.
- (d) Services for which estimated prices are stated will be charged at the Company's prevailing Daily Rates for the relevant Service when the Service is provided. If the Daily Rates for any such Services are increased from those shown in the Agreement, the revised prices will be notified to the Customer prior to the provision of the relevant Service.
- (e) Subject to the remainder of this clause 3(e), the Company may adjust the Standard Technical Support and Maintenance Fee annually on the anniversary of the Commencement Date. Notwithstanding the foregoing, if the Company has agreed to provide the Standard Software Technical Support and Maintenance Service for a period in excess of one year, the Standard Technical Support and Maintenance Fee shall not be reviewed annually unless the parties agree otherwise.
- (f) The Standard Technical Support and Maintenance Fee shall be payable by the Customer throughout the period during which the Standard Software Technical Support and Maintenance Service is provided. Unless stated otherwise in the Agreement, the Standard Technical Support and Maintenance Fee shall be paid annually in advance.
- (g) The Company may adjust the charges for Expenses from time to time.

4 Delivery and Installation

- (a) The Customer shall notify the Company in writing of any discrepancies in relation to the quantity of Goods delivered within 15 days after Delivery. The Company shall have no liability in respect of such discrepancies if the Customer fails to notify the Company of such discrepancies within 15 days after Delivery.
- (b) If the Customer refuses or fails to take Delivery of any item of Goods tendered in accordance with these Conditions, Delivery will be deemed to have taken place at the time when the relevant Goods were tendered. The Company will render its invoice for payment as though Delivery of the Goods had taken place and the Company will be entitled to store the undelivered Goods at the Customer's risk and expense. Any additional costs and charges in re-tendering such Goods will be for the Customer's account.



- (c) The Company will deliver to the Customer's Installation Location or other designated delivery site one copy of the Software in a form suitable for Installation on storage media compatible with the Licensed Hardware (or on such other media as is appropriate in the case of firmware).
- (d) The Customer will be responsible for providing a suitable installation environment (including all sources of power, computer cabling, telephone connections and transmission equipment and other facilities and accommodation necessary) at the Installation Location(s) before the date(s) scheduled for Delivery. Additional costs incurred by the Company as a result of failure by the Customer to meet this obligation will be borne or reimbursed by the Customer.
- (e) When Installation is carried out by the Company, the Installation will be complete when the Company notifies the Customer that the Company's standard test procedures have been successfully completed. Where Software is to be installed by the Customer, Installation will be deemed to be complete on the date of Delivery of the physical medium on which the Software is recorded.
- (f) Where Installation is carried out by the Company, personnel will be provided under the terms of the Company's Standard Conditions for the Supply of Engineers, a copy of which is available to the Customer on request.
- (g) Save as provided in clause 4(b) risk in the Goods (or, in the case of Software, in the physical medium on which Software is recorded) will pass to the Customer on Delivery. It will be the responsibility of the Customer to maintain all appropriate insurance cover in respect of the Goods from the date of Delivery.
- (h) Unless otherwise stated in the Agreement, Prices are exclusive of carriage, packaging (and import/export documentation or translations thereof) or costs of delivery to the Installation Location or, if different, the address for delivery.

5 Acceptance

Without prejudice to the rights of the Customer under any warranty in clause 13, in the absence of any agreed acceptance criteria set out in the Agreement, acceptance of each item of the Goods will take place on Delivery of such item.

6 Title

- (a) Title to each individual item of the Goods (including the physical medium on which Software is recorded) to be purchased by the Customer will only pass to the Customer when the full Price for that item has been paid. Until such time, the Customer will have possession of the relevant item of the Goods in a fiduciary capacity and as bailee for the Company.



- (b) In addition to the Company's other remedies, if the Customer is in breach of its obligations to pay for any item of the Goods, the Company will have the right to repossess and thereafter resell the same, to terminate any right of the Customer to use any Software, to suspend or terminate the provision of Services and to repossess all copies of Software and Ancillary Documentation relating thereto. The Customer shall afford the Company all necessary access to its premises for such purposes.
- (c) Where Goods are supplied to the Customer on a rental basis, title to such Goods shall remain with the Company. Notwithstanding the foregoing, risk in any Goods supplied to the Customer on a rental basis will pass to the Customer on Delivery in accordance with clause 4(g).

7 Rental

- (a) If Goods supplied on a rental basis are lost or damaged after Delivery or Installation, the following terms shall apply:
 - (i) where the Goods are damaged, the Company will provide to the Customer a full report of the damage and cost of repair. Provided that the Goods are not, in the Company's reasonable opinion, beyond economic repair, the Company shall carry out or arrange for the necessary repairs and invoice the customer for the cost of such repair. Payment will become due within 30 days after the date of origination of the Company's sales invoice;
 - (ii) where the Goods have been lost or are, in the reasonable opinion of the Company, beyond economic repair, the Company shall invoice the Customer for the amount normally chargeable by the Company for those Goods at the time of the loss or damage. Payment will become due within 30 days after the date of origination of the Company's sales invoice;
 - (iii) in the case of (i) above, rental charges in respect of the damaged Goods shall continue to be due at the times specified in the Agreement; and
 - (iv) in the case of (ii) above, rental charges shall be due at the times specified in the Agreement until such time as cleared funds in respect of the invoiced amount are received by the Company's Bank.

8 Services

- (a) Where Services are provided and charged for on a daily basis, the Company will render invoices periodically and generally no later than the month following the date of provision of the Service.



- (b) Daily Rates represent the charge for a single Working Day whether or not Services are rendered for the whole Working Day and whether or not provision of the relevant Service is completed on that Working Day.
- (c) For firmware enhancements, hourly rates may be quoted, subject to a minimum charge of four hours in any Working Day.
- (d) The Customer will be charged in full for all Training Courses booked, unless cancelled by the Customer by giving the Company notice in writing no later than 15 Working Days before the date of the relevant Training Course.
- (e) For the avoidance of doubt, where estimated price Services are specified in the Agreement this is indicative only in terms of both the number of days likely to be required to provide the Service and the applicable Daily Rates.
- (f) Where the Customer requires Services in excess of those itemised in the Agreement, a separate agreement between the parties will be required which shall be subject to these Conditions.

9 Expenses

Expenses incurred by the Company will be charged at the rates set out in the Agreement unless the Prices given for Services are specifically stated to be inclusive of Expenses. Airfares will be charged to the Customer at the documented cost plus a 15% handling charge.

10 Additional Services

- (a) In addition to the Standard Software Technical Support and Maintenance Service (where the Customer opts to take such Service) and other Services specified in the Agreement, the Company may, on request of the Customer, make available the following additional services to the Customer:
 - (i) instruction and training of the Customer's employees in the use of the Software and/or Hardware;
 - (ii) field consultancy and assistance on all aspects of the Software and/or Hardware; and
 - (iii) maintenance and repair of Hardware and firmware.
- (b) Services referred to in sub-clause (a) above will be provided:
 - (i) at such time as the parties shall agree;



- (ii) at the Company's prevailing rates for items listed in paragraph (i)-(iii) inclusive; and
- (iii) where relevant, subject to the Company's Standard Conditions for the Supply of Engineers, a copy of which is available to the Customer on request.

11 Rights

Unless otherwise stated by the Company in writing the Customer shall have the same rights to use enhancements, updates, corrections and new releases of the Software as are granted in respect of the original Software under the Licence Terms and for all purposes such enhancements, updates, corrections and new releases shall be deemed to be comprised within the definition of Software for the purpose of the Licence Terms.

12 Leasing

- (a) If the Customer enters into an arrangement to finance the acquisition of any Goods and/or Services under which title to the Goods is to pass to a third party, the Customer will remain liable under the provisions of these Conditions with the exception only of those provisions as to payment to the extent that such payment is discharged by the third party.
- (b) In the event that any finance arrangements referred to in clause (a) above are for any reason not implemented then clause (a) above will not apply and all provisions of these Conditions shall remain in full force and effect.

13 Warranty

- (a) The Company will, so far as it is able, extend to the Customer the benefit of any warranty provided by the Supplier of the Hardware (a "Manufacturer's Warranty"). The Company warrants subject to clause 13(e) that in any case where there is not a more extensive warranty available to the Customer under a Manufacturer's Warranty, the Hardware will be free from defects or faults for a period of 180 days following Delivery. Any claim that any item of Hardware is defective or faulty must be notified in writing, identifying the alleged defect or fault, promptly by the Customer and in any event within 180 days after the date of Delivery. If any claim under this sub-clause is shown to be valid, the Company will at its option either repair, replace or rectify the defective or faulty item of Hardware or accept the return of the defective or faulty item of Hardware and refund the Customer the price paid for that item but, subject thereto, the Company will have no further liability by reason of the defect or default.
- (b) The Company warrants subject to clause 13(e) that the Hardware will comply in all material respects with the Hardware Specification. Any claim that any item of



Hardware is not in accordance with this warranty must be notified in writing, identifying the alleged non-compliance, promptly by the Customer and in any event within 90 days after the date of Installation. If any claim under this sub-clause is shown to be valid, the Company will at its option either rectify the non-compliance or accept the return of the non-compliant item(s) and refund the Customer the price paid for that item but, subject thereto, the Company will have no further liability by reason of such non-compliance.

- (c) The Company warrants subject to clause 13(e) that the Software will comply in all material respects with the Software Specification. Any claim that any item of Software is not in accordance with this warranty must be notified in writing, identifying the alleged non-compliance, promptly by the Customer and in any event within 30 days after the date of Installation. If any claim under this sub-clause is shown to be valid, the Company will at its option either rectify the non-compliance or accept the return of the non-compliant item(s) and refund the Customer the price paid for that item but, subject thereto, the Company will have no further liability by reason of such non-compliance.
- (d) The Company warrants subject to clause 13(e) that Services will be supplied by competent personnel and to appropriate standards of workmanship. Any claim that any Services have not been supplied in this manner must be notified to the Company on the day on which the relevant Service is alleged to have fallen below the appropriate standard. All Services provided before the date of such notification shall be deemed to have been performed by competent personnel and to the appropriate standards of workmanship and shall be fully chargeable to the Customer. If any claim under this sub-clause is shown to be valid, the Company will, where practicable, re-perform the relevant Service over the same or similar period of time as such Service was first performed without charge but, subject thereto, the Company's liability in respect of claims that the Services have not been supplied by competent personnel and to appropriate standards of workmanship shall be limited to a sum equivalent to the Daily Rate paid or payable by the Customer in respect of the personnel whose workmanship is shown to be defective on the days on which the Services are shown not to have been provided to the appropriate standard.
- (e) The Company will not have any liability for any defects, faults, non-compliance or non-performance of any Goods or for defects or other shortcomings in Services which are not notified within the time periods specified in (a), (b), (c) or (d) of this clause or which are caused by:
 - (i) any act, neglect or default of the Customer or of any third party; or
 - (ii) use of the Goods other than in accordance with the recommendations or instructions of the Company; or



- (iii) use of the Goods with accessories or equipment which do not conform to the manufacturer's technical specifications; or
 - (iv) any amendment or modification of Software which has not been made by or with the written approval of the Company; or
 - (v) use of Software other than in accordance with the Licence Terms applicable thereto; or
 - (vi) use of the Goods in conjunction with software not supplied or approved in writing by the Company; or
 - (vii) use of the Software with hardware or equipment not supplied or approved in writing by the Company.
- (f) Subject to the provisions of clauses 13(a) through (e) and the provisions of clause 14 all conditions, warranties and representations expressed or implied by statute, common law or otherwise are, in so far as the law allows, excluded and the Company will not be liable to the Customer for any loss, damage or injury, direct or indirect, resulting from faulty workmanship or materials or otherwise whether or not caused by the negligence of the Company, its sub-contractors or their respective employees. The Customer acknowledges that it has not relied upon any representations or warranties not expressly incorporated in the Agreement.
- (g) In the event of breach or alleged breach of the warranties in this clause 13, the parties shall co-operate to establish whether a breach exists and the Customer shall co-operate with all reasonable proposals of the Company to remedy or mitigate the effects of the breach.

14 Limitations of Liability

- (a) The Company accepts liability to the Customer for:
- (i) personal injury or death caused by the negligence of the Company or its employees or sub-contractors (acting within the course of their employment or duties and the scope of their authority); and
 - (ii) direct damage to physical assets or other tangible property caused solely by the negligence of the Company or its employees or sub-contractors (acting within the course of their employment or duties and the scope of their authority) provided that the total liability of the Company under this sub-clause will be limited to £1,000,000 for any one event or series of connected events.



- (b) Other than stated in clause 14(a) the aggregate liability of the Company whether for negligence, breach of contract, misrepresentation or otherwise will not in any event exceed the price paid for the item of Goods or Services which gives rise to the claim or in relation to which the claim is made. Where the claim arises from Standard Software Technical Support and Maintenance Service liability will be limited to the most recent annual Standard Technical Support and Maintenance Fee paid or payable by the Customer.
- (c) The Company will not in any circumstances have any liability for loss of profits, loss of data, loss of production, business or goodwill, economic loss or consequential loss, whether direct or indirect, howsoever arising or incurred by the Customer.
- (d) Prices and other charges are determined on the basis of the limits of liability set out in these Conditions. The Customer may by written notice to the Company request a higher limit of liability and the Company will seek to effect insurance up to that limit and the Customer will pay upon demand the amount of all additional premiums. The Customer agrees to disclose all information as the insurers may require. Increases in liability limits are dependent upon availability of insurance.
- (e) Neither the Company nor the Customer will be liable for any loss or damage of whatsoever nature or be regarded as being in breach of these Conditions where performance of its obligations is prevented, hindered or delayed by circumstances or events beyond its reasonable control including but not limited to – Act of God, inclement weather, terrorist act, flood, lightning, fire, industrial action, lock-outs, act or omission of Government or other competent authority, war, military operations, riot, difficulty in securing access to relevant source codes or other technical information, difficulty in securing supplies through its normal source of supply or the act or omission of any party for whom the Company or the Customer (as appropriate) is not responsible.
- (f) The Company shall not have any liability in respect of any Standard Software Technical Support and Maintenance Services provided where the circumstances or events referred to in clause 13 have occurred or arisen or the requirement for service derives there from.

15 Intellectual Property Rights and Copyright Indemnity

- (a) Copyright and all other Intellectual Property Rights of whatever nature in the Goods and the products of the Services will remain the property of the Company and/or the Supplier as the case may be.
- (b) The Company will defend or settle at its option and expense any claim or action brought against the Customer in the United Kingdom alleging that any Software infringes any copyright subsisting in the United Kingdom (a “Claim”). The



Company will pay any costs or damages finally awarded against the Customer that are attributable to any such Claim provided that the Customer:

- (i) notifies the Company promptly in writing of the Claim;
 - (ii) provides the Company with all reasonable information and assistance to settle or defend the Claim; and
 - (iii) grants the Company sole authority and control of the defence or settlement of the Claim.
- (c) The Company will have no liability if the Claim is based upon the combination of Software with any product not supplied or approved by the Company, the modification of Software other than by the Company, the use of Software as part of any infringing process or otherwise than in accordance with the Licence Terms or if the Customer has not complied with its obligations under clause 15(b).
- (d) If a Claim is brought against the Customer which precludes the Customer from making effective use of any item of Software the Company will as soon as reasonably practicable at its option and expense either replace or modify the Software affected so that it is non-fringing or procure for the Customer the right to continue the use of such Software. If neither of these alternatives is in the opinion of the Company reasonably available the Company will accept the return of the Software affected by the Claim. Without prejudice to any other rights or remedies available to the Customer the Company will repay to the Customer the price paid for the item(s) returned adjusted to take into account the use of the Software enjoyed by the Customer and any obligation of the Company to provide Services related to the Software so returned will cease.
- (e) This clause 15 states the entire liability of the Company to the Customer in respect of any infringement or alleged infringement of the intellectual property rights of any third party. In no circumstances will the Company be liable for any costs or expenses incurred by the Customer without the Company's prior written authorisation or in respect of any claim based upon infringement or alleged intellectual property rights outside the United Kingdom.

16 Confidentiality

- (a) The Customer undertakes to treat as confidential all Confidential Information obtained by the Customer regarding the Goods or provided in connection with the supply of the Services and will not save as provided in clause 16(c) disclose the same in whole or in part to any third party without the prior written consent of the Company.



- (b) The Company will keep confidential all Confidential Information obtained by the Company relating to the Customer and/or other companies within the same group of companies as the Customer.
- (c) The provisions of clauses 16(a) and (b) will not apply to information which:
 - (i) is in or comes within the public domain other than by reason of a breach of any provision of this clause 16;
 - (ii) was already in the possession of the receiving party prior to receipt of the information from the other party;
 - (iii) is received from a third party who is free from any obligation of confidence with respect thereto; or
 - (iv) is required to be disclosed by law.
- (d) Each party will effect and maintain reasonable security measures to safeguard the Confidential Information of the other from theft and from access by or disclosure to any person other than those of their employees and sub-contractors who require such access or disclosure in the normal course of their employment or in connection with the performance of obligations under this Agreement.

17 Expertise of Employees

The Customer recognises the investment made by the Company in developing the technical and other expertise of those engaged in the supply of Goods and Services and the Company recognises a corresponding investment by the Customer. Accordingly, each party agrees that if it engages or procures the benefit of the services of any employee or sub-contractor of the other party (whether directly or indirectly through the device of an interposed legal entity) at any time during the period of the supply or within 12 months after Installation of the Goods or, if later, within 6 months after completion of the supply of Services (other than Maintenance), then it shall pay to the other party a compensatory amount reflecting the cost to the other party of recruiting and training a replacement. In the case of an employee, the compensatory amount will be 15% of the annual salary paid to the employee and, in the case of a sub-contractor, the compensatory amount will be the Daily Rate paid by the Customer for the sub-contractor multiplied by 35, subject to a minimum fee of £5,000.

18 Cancellation

Any Agreement entered into for the supply (or rental) of Goods, Maintenance and Services cannot be cancelled in whole or in part except by agreement between the parties. Where the Company agrees to cancellation requested by the Customer, the Company will be entitled, as a minimum and without prejudice to any additional rights, to retain any deposit and other advance payments paid by the Customer, it being acknowledged that such payments represent



a reasonable pre-estimate of the minimum costs and losses that the Company will incur as a result of such cancellation.

19 Duration and Termination

- (a) Subject to sub-clause (b) below, the Agreement shall continue unless and until terminated by either party giving to the other not less than three months notice to expire on any anniversary of the Commencement Date.
- (b) Such Agreement (and subject to sub-clause 19(d) any licences granted under the Licence Terms):
 - (i) may be terminated by either party by notice with immediate effect if the other enters into a deed of arrangement, dies or if a bankruptcy order is made against the other or if an order is made or a resolution is passed for the winding up of the other, or if a receiver or administrator is appointed in respect of any of the other's assets or if the other takes or suffers any similar action consequence of debt;
 - (ii) may be terminated by either party by notice with immediate effect if the other shall be in breach of these Conditions and, if such breach is capable of remedy, shall fail to have remedied the same within 30 days of notice requiring such remedy.
- (c) The Company may terminate its obligation to provide Standard Software Technical Support and Maintenance Service with respect to particular item or items comprised in the Software by not less than three months notice to expire on any anniversary of the applicable Commencement Date or Delivery Date. Notice given under this sub-clause shall not affect the continuance of the Agreement in force with respect to those items of Software not designated.
- (d) Notwithstanding clause 19(b) where the Company has supplied Software which the Customer has paid for in full and where the Customer is not in breach of the Licence Terms, termination of the Agreement will not affect the right of the Customer to continue to use the Software in accordance with the Licence Terms.
- (e) Termination of the Agreement will not affect the rights and remedies of either party subsisting at the date of termination or the provisions of clauses 22, 23 and all other provisions of the Agreement which are intended to continue to operate following termination.
- (f) The supply of each item of Goods and Services constitutes a separate and independent Agreement between the parties. Accordingly notices of termination given under this clause will relate only to those items or Services specified in the notice. Where notice of termination is given in relation to some of the items or Services only the contract



between the parties in relation to the other items or services will remain in full force and effect.

- (g) Where the Customer is in breach and notice requiring remedy of such breach has been given under sub-clause 19(b), the Company shall be entitled without liability to suspend performance of all obligations to the Customer whatsoever whilst such breach remains unremedied.

20 Additional Items

1. If at any time the Customer requires and the Company supplies items of Goods, Maintenance or Services in addition to those identified in the Agreement such items or Services shall be deemed to be supplied on these Conditions unless otherwise expressly agreed between the parties in writing.

21 General

- (a) The Customer shall have no right to and shall not assign or transfer the benefit of the Agreement or its rights hereunder without the prior written approval of the Company. The Company will be entitled to sub-contract the performance of its obligations under the Agreement but such sub-contracting will not affect the liability of the Company to the Customer. References in these conditions to the Company will, where applicable, include references to any such sub-contractors.
- (b) Any Agreement entered into under these Conditions will constitute the entire Agreement between the parties as to the matters to which it relates.
- (c) Amendments to the Agreement will only be effective if in writing and signed by an authorised representative of each party.
- (d) If any provisions in these Conditions this are held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired.
- (e) Failure or Delay by the Company in enforcing or partially enforcing any provision of the Agreement will not be construed as a waiver of any of its rights under the Agreement.
- (f) Any waiver by the Company of any breach of, or any default under, any provision of the Agreement by the Customer will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Agreement
- (g) Notices under these Conditions shall be given in writing by first class post, personal delivery or fax. Notices given by post are deemed to be received 48 hours after the



posting, notices given by personal delivery on the date of delivery and notices given by fax on the date of transmission.

- (h) If disagreements arise between the parties on technical issues (related to the interpretation of or compliance with the Software Specification or the cause of or effectiveness of remedies for defects) and such disagreements cannot be resolved between the parties such matters may at the instance of either party be referred to be determined by an independent expert appointed by agreement between the parties or in default of agreement by the President of the Computing Services Association. Such expert shall determine the issue as an expert and not as an arbitrator and his decision shall be final and binding. Each party will co-operate to ensure the expert is provided with all relevant information. The costs of the expert will be borne as he shall determine.
- (i) A person who is not a party to this Agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement but this does not affect any right or remedy of a third party which exists or is available apart from that Act.
- (j) Headings are inserted for convenience only and will not affect the construction of the Agreement.
- (k) Technical expressions relating to computers and/or software programs not defined in this Agreement will have the meanings attributed to them in the computer and information technology industries and in the event of disagreement the interpretation of such terms shall be resolved in accordance with sub-clause 21(h).
- (l) This Agreement will be governed by and construed in all respects in accordance with English Law and save as provided in clause 21(h) the parties hereby submit to the non exclusive jurisdiction of the English Courts.

22 Appendix A - Licence to use the Software

- 1 The Licence Terms set out in this Appendix A will only apply in the absence of any other Licence Terms being specified or referred to in the Agreement or being supplied with the Software. Where other Licence Terms apply, the Customer will, if so required by the Company, enter into a separate agreement with the Company or the Supplier incorporating such terms.
- 2 The Company grants the Customer a non-exclusive, non-transferable licence to use the Software on the Licensed Hardware subject to these Licence Terms and the other terms set out in the Conditions. Unless otherwise agreed by the Company and the Customer in writing, the Customer shall have no right to sub-license use of the Software to any third party. Subject to the Company's right to terminate under the Conditions, the licence granted to the Company to use the Software under these



Licence Terms shall be perpetual. The Customer shall have no further licence rights beyond those specified in this Appendix A.

- 3 The Customer may take such back-up copies of the Software as are reasonably necessary for operational security and use. The Customer will ensure all back up copies bear the same proprietary and copyright notices as those affixed to the copy of the Software supplied by the Company. Copies may only be used for the purposes and subject to the limits specified in paragraph 2 of this Appendix A.
- 4 Ancillary Documentation is subject to copyright and the Customer may not make copies. The Company will supply additional copies of Ancillary Documentation upon request at the prevailing price.
- 5 If the Software cannot be used with the Licensed Hardware because it is inoperable for any reason, the licence set out in these Licence Terms will, with the prior written approval of the Company, be temporarily extended to enable the Customer to use the Software with any alternative compatible hardware until such time as the failure has been remedied.
- 6 If the Customer transfers ownership of or otherwise disposes of the Licensed Hardware (save where the Software is moved on to replacement hardware with the permission of the Company), the licence granted hereunder will terminate automatically at the time of transfer or disposal. The Customer will ensure the Software has been deleted from the Licensed Hardware and all copies destroyed prior to such transfer or disposal and will confirm in writing to the Company that this has been done.
- 7 The Customer agrees not to make available or distribute all or any part of the Software or Ancillary Documentation to any third party whether by sub-licence or by any other means.
- 8 The Customer agrees not to adapt, reverse engineer, de-compile, disassemble or modify, in whole or in part, any of the Software or Ancillary Documentation. If requested by the Customer, the Company will offer such assistance as is reasonable in the circumstances in respect of information or work necessary to achieve interoperability of the Software with other programs.
- 9 The Customer agrees not to use the Software in a time-sharing, outsourcing, or service bureau environment or in any way which allows third parties to use or access the Software.
- 10 The Customer agrees not to remove any title, trademark, copyright, proprietary or restricted rights notices contained in the Software.



23 Appendix B – Standard Software Maintenance Service

The terms set out in this Appendix B apply where the Customer has opted to take the Standard Software Technical Support and Maintenance Service.

- 1 Unless otherwise specified in the Agreement, any Standard Software Technical Support and Maintenance Service to be provided by the Company shall comprise the provision upon request by the Customer of the following:
 - a) advice on Faults notified by the Customer in accordance with paragraph 3 of this Appendix B and the use of reasonable endeavours to diagnose and provide corrections for such Faults;
 - b) advice on normal operation of the Software;
 - c) replacement copies in current release form of any Software which has been damaged or erased by virtue of defects in the media on which it is recorded;
 - d) all error corrections and minor enhancements (including updates and releases) including new or supplemental documentation to be supplied free of any additional charge to the Customer.
- 2 The services referred to in paragraph 1 of this Appendix B above shall be available during Working Days (although technical support calls of an urgent nature will be dealt with on a 24 hours per day, seven days per week basis). Advisory and diagnostic services will normally be provided by telephone or email and within a reasonable time of the request for service being made by the Customer, taking into account availability of data resources and the accuracy of information provided by the Customer. If an on-site visit is essential, the Company reserves the right to charge for time spent on site, Travelling Time and Expenses.
- 3 Where the Customer suspects a Fault, the Customer shall notify this by telephone, e-mail, letter or fax to the Company. Prior to notifying a suspected Fault, the Customer shall take all reasonable steps to diagnose the nature of the Fault and carry out all check and diagnostic procedures notified by the Company in the documentation relating to the Software affected in order to verify whether or not a Fault exists.
- 4 Upon a Fault being notified, the Customer shall carry out all further verification and diagnostic procedures, which the Company specifies to assist in establishing the existence and nature of the Fault.
- 5 Standard Software Technical Support and Maintenance Service shall not extend to the provision of maintenance service in the circumstances set out in paragraph 11 of this Appendix B nor to the provision of services in connection with lost or corrupted data where such loss or corruption results from an incorrect operation of the Software by



the Customer or a failure by the Customer to carry out appropriate back up procedures.

- 6 For the avoidance of doubt, the Standard Software Technical Support and Maintenance Service does not include training, consultancy or commissioning/installation services required to implement error corrections, enhancements or updates to or new versions of the Software provided within the Standard Software Technical Support and Maintenance Service.
- 7 It shall be a condition of the provision of the Standard Software Technical Support and Maintenance Service that the Customer:
 - (a) co-operates fully should the need arise in the resolution of any problems;
 - (b) ensures that the Software is operated only by users trained by the Company and in accordance with the Software's operating instructions and documentation provided with Software and guidelines issued by the Company from time to time;
 - (c) ensures that all personnel requesting or receiving service under this Appendix B are appropriately qualified and have been trained by the Company in the use of the Software and any Licensed Hardware;
 - (d) maintains a complete copy of all written operating instructions relating to the Software and its use provided by the Supplier in good condition and accessible to operators of the Software and ensures that the Software is operated in accordance therewith by appropriately skilled employees;
 - (e) maintains security copies of the Software in machine readable form;
 - (f) maintains current and comprehensive back-up copies of all data in machine readable form in accordance with good practice and any recommendations made by the Company or contained in any documentation relating to the Software;
 - (g) provides all information and assistance required by the Company to identify and correct any malfunction of the Software and to test any correction to the Software;
 - (h) routes all requests to the Company for maintenance through the Customer's recognised and approved management and other suitably experienced employees; and
 - (i) provides communication equipment and, where appropriate, remote access software (as recommended by the Company) as appropriate to enable the



Company to provide the Customer with a remote diagnostic and support service.

- 8 Enhancements, updates and corrections of the Software provided as part of the Standard Software Technical Support and Maintenance Service will be delivered on the storage/recording media designated for the Software. The cost of such media is not comprised in the Standard Technical Support and Maintenance Fee and may be charged for separately.
- 9 The obligation of the Company to provide the Standard Software Technical Support and Maintenance Service shall, in respect of the Software specified in the Agreement as being subject to the Standard Software Technical Support and Maintenance Service, commence on the Installation of each item of such Software.
- 10 The obligation of the Company to provide the Standard Software Technical Support and Maintenance Service shall be conditional upon the Standard Technical Support and Maintenance Fee for the relevant Software having been paid on the due date.
- 11 The Company shall be entitled in addition to the Standard Technical Support and Maintenance Fee to charge for Maintenance provided at the Company's prevailing Daily Rates if the Customer requests provision of Maintenance and the Company provides Maintenance where:
 - (a) the Customer has not complied with the provisions of paragraph 7 of this Appendix B or is otherwise in breach of these Licence Terms or the Conditions; or
 - (b) the Fault is caused by the act neglect or default of the Customer or of a third party or by some event or occurrence beyond the control of the Company including without limitation, Act of God, lightning, power fluctuation or loss of power, fire, flood or unfavourable environmental conditions; or
 - (c) the Customer has had the Software maintained otherwise than by the Company or a third party approved by the Company or where the Software has been tampered with or modified by the Customer or any third party; or
 - (d) the Customer is no longer operating the Software on the Licensed Hardware specified in Schedule A or any upgrades thereof (or a system replacement configuration supplied or approved in writing by the Company); or
 - (e) the Customer fails to provide suitable and fully operational equipment to enable the Standard Software Technical Support and Maintenance Service to be provided in accordance with paragraph 7 i) of this Appendix B; or
 - (f) the failure of the Software to operate or the Fault is caused by:



- i) a defect or breakdown in hardware or software supplied by a third party to or developed by the Customer save only where such defect or breakdown is covered by any other maintenance agreement between the Customer and the Company; or
- ii) failure by the Customer to implement any error correction, enhancement, update or release provided as part of the Standard Software Technical Support and Maintenance Service.