



Terms and Conditions of Support

'The Company': whose registered office is at:

**Espi Limited
Network House
St Neots Road
Dry Drayton
Cambridge
CB3 8AY**

'The Customer': whose registered office is at:

XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX

Together 'The Parties' may make other changes to the Contract, products, programs, services or prices at any time upon 3 weeks written notice to the customer.

1 Definitions

- 1.1 'Additional Charges' means the Company's rates from time to time for work undertaken on a time and materials basis
- 1.2 'Contract' Means any contract for the sale of Services by the Company to the Customer
- 1.3 'Designated Equipment' means the machine identified by type and serial number
- 1.4 'Fee' means the fee stated in the Company's acknowledgment form
- 1.5 'Licensed Programs' means the software programs in object code form identified by title and reference number in the Schedule including any new release of the same made or issued
- 1.6 'Licensed Program Materials' means the Licensed Programs and Program Documentation
- 1.7 'New Release' means any improved modified or corrected version of any of the Licensed Programs or Program Documentation from time to time issued by the Company pursuant to Condition 6 below
- 1.8 'Person' Includes a firm, company or other body of persons
- 1.9 'Place of Use' means that part of the Licencee's premises at the site where the Designated Equipment is installed and operated
- 1.10 'Program Documentation' means the instruction manuals user guides and other information (identified by title and reference number in the Company Acknowledgment Form) to be made available by the company at its discretion in either printed or machine readable form to the Customer
- 1.11 'Program Specifications' means the technical specifications from time to time published by the Company in respect of the licensed programs
- 1.12 'Renewal Fee' means the fee or fees payable
- 1.13 'Response Time' means either of the response times for Category C Technical Support set out in 10.2 below
- 1.14 'Services' means the provision of Technical Support and training services in accordance with respectively Conditions 9 and 10 below
- 1.15 'Site' means the address for delivery of the Licensed Program Materials specified by the Customer and set out in the Company Acknowledgement Form
- 1.16 'Technical Support' means the provision of such categories of technical support in accordance with Condition 10 below as shall be specified in respect of each of the Licensed Programs in the Company Acknowledgement Form
- 1.17 'Term' means a period of 12 months starting on the date stated on the Company Acknowledgement Form



- 1.18** 'Use' means the copying or transmission of the Licensed Programs (or where in machine readable form) the Program Documentation into the Designated Equipment for the processing of the instructions contained in the Licensed Programs (or as the case may be) the Program Documentation
- 1.19** 'Working Day' means Monday to Friday inclusive (excluding bank and other public holidays and the period the Company is closed over each Christmas and English New year period which the Customer is given notice of)
- 1.19.1 The headings to Conditions are inserted for convenience only and shall not affect the construction of these Terms and Conditions;
- 1.19.2 Words expressed in any gender shall where the context so requires or permits include any other gender;
- 1.19.3 Words expressed in the singular shall where the context so requires or permits include the plural;
- 1.19.4 Where any party is more than one Person that party's obligations and liabilities under these Terms and Conditions shall take effect as joint and several obligations;

2 Quotations

Quotations by the Company unless otherwise stated in them shall be open for acceptance in 30 days of the date of the quotation

3 Existence of Contract

- 3.1 No Contract shall come into existence until the order form has been completed and signed on behalf of the Customer and the order acknowledged on behalf of the Company.
- 3.2 These Terms and Conditions shall be incorporated in the Contract to the exclusion of any terms and conditions stipulated or referred to by the Customer, except in the case of variation or amendment as stipulated in 3.3
- 3.3 No variation or amendment to these Terms and Conditions shall be valid unless committed in writing and signed by or on behalf of both the Parties

4 Duration

The Contract shall commence on the date given in the Company's Acknowledgement Form or invoice and shall continue until terminated in accordance with the provision of Condition 15 below

5 Grant of provision of services

- 5.1 The Company in consideration of the payment by the Customer of the Licence fee in accordance with Condition 6.1 below hereby undertakes to the Customer to provide the Services upon the terms and conditions of the Contract.

6 Fee

- 6.1 The Fee shall include the cost of the provision of the Services
- 6.1.1 the delivery of the Licensed Program Materials and any New Release thereof to the Site; and
- 6.1.2 the provision of the Services
- 6.2 The Fee, renewal fee (if any) and additional charges shall not include value added tax which shall be payable by the Customer in the manner and at the rate from time to time prescribed by law
- 6.3 The Fee, renewal fee (if any) and additional charges (together with value added tax thereon) shall be levied by the Company and shall be payable by the Customer within 30 days of receipt of the Company's invoice therefore unless otherwise specified in writing by the Company
- 6.4 If the Customer shall move the Designated Equipment from the Site to a new location then without prejudice to the provisions Condition 6.1 above the Company shall be entitled to make such reasonable increase to the Fee as shall be necessary to take account of any increased costs that it shall incur in providing the Services at the new location



7 Interest

Without prejudice to any other rights of the Company if the Customer fails to pay the invoice by the due date the Customer shall not be allowed any discount given in that invoice or in any other way agreed and shall pay interest on any overdue amount from the date of which the payment was due to that on which it was made (whether before or after judgement) on a daily basis at a rate of 4% per annum over the base rate from time to time quoted by the Natwest Bank Plc and reimburse to the Company all costs and expenses (including legal costs) incurred in the collection of any overdue amount

8 Customer's Representatives

The Customer shall give written notice to the Company at the commencement of the Contract of the identity of the person(s) or the department within its undertaking at the Site who shall act as main contact point and channel of communication for the provision by the Company of the Services during the Contract. The Customer shall forthwith notify the Company of any change in the identity of any such person(s) or department

9 Training

- 9.1 The Company shall provide to the customer for the period stated in the Company's acknowledgement form
- 9.2 Any additional training services requested by the Customer shall be provided by the Company for Additional Charges levied on the basis set out in Condition 10.8 below

10 Technical Support

- 10.1 With effect from the Acceptance Date and for the duration of Contract the Company shall provide in respect of each of the Licensed Programs such category of Technical Support within such Response Time as shall be indicated in the Schedule.
- 10.2 Technical Support shall comprise all or any of the following categories:
 - 10.2.1 advise by telephone, modem, electronic mail or post on the Use of the Licensed Programs "Category 'A'";
 - 10.2.2 information and advise by telephone, modem, electronic mail or post on forthcoming New Releases of the Licensed Programs "Category 'B'";
 - 10.2.3 upon request by the Customer the diagnosis of faults in the Licensed Programs and the rectification of such faults (remotely or by attendance on Site as determined by the Company) by the issue of fixes in respect of the Licensed Programs and the making of all necessary consequential amendments (if any) to the Program Documentation (attendance on Site will incur an additional charge) "Category 'C'";
 - 10.2.4 the creation and despatch to the Customer from time to time at the Company's sole discretion of fixes in respect of the Licensed Programs "Category 'D'";or
 - 10.2.5 the creation and despatch to the Customer from time to time at the company's sole discretion of a New Release of the Licensed Programs or Program Documentation (Category 'E');
- 10.3 The Customer shall supply in writing to the Company a detailed description of any fault requiring Technical Support within Category C above and the circumstances in which it arose forthwith upon becoming aware of the same.
- 10.4 The Response Time for Category C Technical Support shall be between the hours of 9am and 5.30pm on Working Days. The Company shall use its reasonable endeavours to respond within one Working Day of notification
- 10.5 Technical Support shall not include the diagnosis and rectification of any fault resulting from:
 - 10.5.1 the improper use operation or neglect of either the Licensed Program Materials or the Designated Equipment;
 - 10.5.2 modification of the Licensed Programs or their merger (in whole or in part) with any other software;
 - 10.5.3 the use of the Licensed Programs on equipment other than the Designated Equipment;



- 10.5.4 the failure by the Customer to implement recommendations in respect of or solutions to faults previously advised by the Company;
- 10.5.5 any repair, adjustment, alteration or modification of the Licensed Programs by any person other than the Company without the Company's prior written consent;
- 10.5.6 any breach by the Customer of any of its obligations under any maintenance agreement in respect of the Designated Equipment;
- 10.5.7 The Licensee's failure to install and Use upon the Designated Equipment in substitution for the previous release any New Release of the Licensed Programs within 7 days of receipt of the same;
or
- 10.5.8 the use of the Licensed Programs for a purpose for which they were not designed.
- 10.6 The Company shall upon request by the Customer provide Technical Support notwithstanding that the fault results from any of the circumstances described in Condition 10.5 above. The Company shall in such circumstances be entitled to levy Additional Charges in the manner set out in Condition 10.8 below.
- 10.7 Without prejudice to Condition 10.6 above the Company shall be entitled to levy reasonable Additional Charges in the manner set out in Condition 10.8 below if Technical Support is provided in circumstances where any reasonably skilled and competent data processing operator would have judged the Customer's request to have been unnecessary.
- 10.8 Additional charges shall be levied by the Company weekly in arrears and shall be payable by the Customer (together with the value added tax thereon) within 30 days of the date of the Company's invoice.

11 Property of the Company

Except for any which are expressly agreed to be included in the Services all tools, patterns, materials, drawings, specifications and other data provided by the Company shall remain its property and the technical information, patentable or unpatentable, copyright and registered designs arising from the execution of any orders shall become the property of the Company

12 Confidentiality

- 12.1 Subject to Conditions 12.2 – 12.3 below, the Customer shall not at any time whether before or after the termination of the contract divulge or use any unpublished technical information deriving from the Company or any other confidential information in relation to the Company's affairs or business or method of carrying business.
- 12.1 All records in any medium (whether written, computer readable or otherwise) including but not limited to accounts, documents, drawings and other papers and all copies and extracts of them made or acquired by the Customer shall: -
- 12.1.1 Be used only in connection with the Licensed Programs and the Designated Equipment and for the purposes of the Services; and
- 12.1.2 Be returned to the Company on demand at any time and without demand on the termination Contract.
- 12.2 The provisions of Condition 12.1 above shall not apply to any confidential information which the Customer can show by written records: -
- 12.2.1 Was known to the Customer before the said information was imparted by the Company; or
- 12.2.2 Is in or subsequently comes into the public domain (through no fault on the Customer's part)

13 Warranty

- 13.1 SUBJECT TO THE EXCEPTIONS SET OUT IN CONDITION 13.4 BELOW AND THE LIMITATION OF LIABILITY IN CONDITION 14 BELOW THE COMPANY WARRANTS THAT IT WILL PERFORM THE SERVICES WITH REASONABLE CARE AND SKILL
- 13.2 THE CUSTOMER SHALL GIVE NOTICE TO THE COMPANY AS SOON AS IT IS REASONABLY ABLE UPON BECOMING AWARE OF A BREACH OF WARRANTY



13.3 SUBJECT TO CONDITION 13.4 BELOW THE COMPANY SHALL REMEDY ANY BREACH OF WARRANTY SET OUT IN CONDITION 13.1 ABOVE BY THE PROVISION OF TECHNICAL SUPPORT (CATEGORY C) FREE OF CHARGE

13.4 THE COMPANY SHALL HAVE NO LIABILITY TO REMEDY A BREACH OF WARRANTY WHERE SUCH A BREACH ARISES AS A RESULT OF ANY OF THE CIRCUMSTANCES DESCRIBED IN CONDITION 10.5 ABOVE

14 Liability

14.1 THE COMPANY SHALL NOT BE LIABLE FOR ANY PENALTY, LOSS, INJURY, DAMAGE OR EXPENSE ARISING FROM ANY DELAY OR FAILURE IN PERFORMANCE FROM ANY CAUSE AT ALL NOR SHALL ANY SUCH FAILURE ENTITLE THE CUSTOMER TO REFUSE TO ACCEPT PERFORMANCE OF OR REPUDIATE THE CONTRACT

14.2 THE COMPANY SHALL HAVE NO LIABILITY TO THE CUSTOMER FOR ANY LOSS (INCLUDING BUT NOT LIMITED TO THE LOSS OF PROFITS OR GOODWILL OR ANY TYPE OF SPECIAL INDIRECT OR CONSEQUENTIAL LOSS) OR DAMAGE OF ANY NATURE ARISING FROM THE BREACH OF ANY EXPRESS OR IMPLIED WARRANTY OR CONDITION OF THE CONTRACT OR ANY NEGLIGENCE, BREACH OF STATUTORY OR OTHER DUTY ON THE PART OF THE COMPANY OR IN ANY OTHER WAY OUT OF OR IN CONNECTION WITH THE FAILURE TO PERFORM OR THE CONTRACT EXCEPT:

- 14.2.1 FOR DEATH OR PERSONAL INJURY RESULTING FROM THE COMPANY'S NEGLIGENCE
- 14.2.2 AS EXPRESSLY STATED IN THESE TERMS AND CONDITIONS

14.3 NO CLAIM AGAINST THE COMPANY SHALL BE ENTERTAINED FOR ANY DEFECT ARISING FROM ANY SPECIFICATION PROVIDED OR MADE BY THE CUSTOMER OR IF ANY ADJUSTMENTS, ALTERATIONS OR OTHER WORK HAS BEEN DONE TO THE LICENSED PROGRAMS OR DESIGNATED EQUIPMENT BY ANY PERSON EXCEPT THE COMPANY OR UNDER THE INSTRUCTIONS OF THE COMPANY

14.4 IN NO CIRCUMSTANCES SHALL THE LIABILITY OF THE COMPANY TO THE CUSTOMER UNDER THESE TERMS AND CONDITIONS EXCEED THE INVOICE VALUE OF THE SERVICES

15 Termination

15.1 The Contract may be terminated:

- 15.1.1 By either party giving not less than 3 calendar months written notice before end of the Term
- 15.1.2 Forthwith by the Company if the Customer fails to pay any sum due hereunder within 30 days of due date therefore or within other written payment contract
- 15.1.3 Forthwith by either party if the other commits any material breach of any term of the Contract (other than one falling within 15.1.1 above) and which (in the case of a breach capable of being remedied) shall not have been remedied within 30 days of written notification to remedy the same;

15.2 Any termination of the Contract pursuant to this condition 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 provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.

15.3 Within 30 days of the termination of the Contract (howsoever and by whomsoever occasioned) the Customer shall destroy all copies of the Licensed Program Materials in its possession and a duly authorised officer of the Customer shall certify in writing to the Company that the Customer has complied with such obligation.

15.4 The Company may at its discretion suspend or terminate the supply of Services if the Customer fails to make any payment when and as due or otherwise defaults in any of its obligations under the Contract or any other document with the Company bona fide believes that any of those events may occur, and in case of termination may forfeit any deposit paid

16 Alterations to Contract

The Company may make other changes to the Contract at any time upon 3 weeks written notice to the Customer.

17 Assignment

The Customer shall not be entitled to assign or otherwise transfer the Contract nor any of its rights or obligations hereunder without prior written consent of the Company



18 Waiver

Any waiver by the Company of any breach of any of the obligations and liabilities of the Customer under these Terms and Conditions or otherwise shall not be a waiver of any continuing breach or of any breaches of any of those obligations and/or liabilities

19 Invalidity & Severability

If any provision of these Terms and Conditions shall be prohibited by law or adjudged by a court to be lawful, void or unenforceable such provision shall to the extent required be severed from these Terms and Conditions and rendered in effective as far as possible without modifying the remaining provisions of these Terms and Conditions and shall not in any way affect any other circumstances of or the validity or enforcement of these Terms and Conditions

20 Force Majeure

The Company shall not be liable for any failure in the performance of any of its obligations under the Contract caused by factors outside its control

21 Exclusion of Contracts (Rights of Third Parties) Act 1999

No person other than the Parties may enforce any provision of the Contract by virtue of the Contracts (Rights of Third Parties) Act 1999

22 Notice

All notices to be given under these Terms and Conditions shall be in writing and shall either be delivered personally or sent by first class mail or airmail pre paid post, by electronic mail, facsimile transmission and shall be deemed as duly served:

- 22.1 In the case of a notice delivered personally, at the time of the delivery;
- 22.2 In the case of a notice sent overseas by airmail, 7 Working Days after the date of despatch;
- 22.3 In the case of a notice sent inland by first class pre paid post, two Working Days after the date of despatch;
- 22.4 In the case of electronic mail or facsimile transmission, if sent between normal business hours of the Company then at the time of transmission and if sent outside 9.00am to 5.30pm GMT on a Working Day then on the next following Working Day provided (in each case) that a confirmatory copy is sent by first class pre-paid post or by hand by the end of the next Working Day

Each notice shall be addressed to the address of the party concerned set out in these Terms and Conditions or to such other address as that party shall have previously notified the sender.

23 Law and Jurisdiction

The Contract shall be governed by English law and the Customer consents to the exclusive jurisdiction of the courts of England.

I agree to the terms and conditions above

Print Name.....

Signature.....

Date.....

Company Name..... - ("The Customer")