
Terms and Conditions for Vermont Technology Services

The Company and the Client have agreed to enter into a contract (this 'Agreement') for the supply of certain IT Services based upon the following terms and conditions;

1. Definitions

- 1.1. In this Agreement unless inconsistent with the context or otherwise specified the following definitions will apply.
- 1.2. 'Agreement' means the Service Summary and the Vermont Terms and Conditions for Managed Services, these terms and third-party contracts annexed hereto and incorporated within.
- 1.3. 'Additional Charges' means any charges additional to the Service Charges that may be invoiced by the Company to the Client in connection with this Agreement (whether by virtue of a specific provision or otherwise) that will be calculated in accordance with the Company's relevant rates prevailing at that time.
- 1.4. 'Assets' means any Equipment, Software or Intellectual Property used by the Company exclusively for the delivery of the Service to the Client.
- 1.5. 'Client' means the person or company as set out in the Contract Summary or any agent thereof.
- 1.6. 'Commencement Date' means the date set out in the Contract Summary annexed hereto and incorporated herein.
- 1.7. 'Company' shall mean Vermont Systems Ltd.
- 1.8. 'Confidential Information' means information (however recorded or preserved) disclosed by one party to the other party in connection with this Agreement which is either labelled as such or should reasonably be considered as confidential because of its nature and the manner of its disclosure including but not limited to the Service Descriptions, business and technical information, plans, research, designs, methods, techniques, know-how and results whether tangible or intangible and whether or not stored, compiled or memorized physically, electronically or graphically or in writing.
- 1.9. 'Current Release' means that version of the Software installed on the Equipment at the Commencement Date and Modifications to it or any new Release supplied by the Company and accepted by the Client and installed on the Equipment and Modifications to it.
- 1.10. 'Equipment' means the computer equipment used for the operation of the Software and supported by the Service as is more particularly described in the Agreement and annexed hereto and incorporated herein.
- 1.11. 'Exit Plan' means a detailed plan for the orderly transition of the Service from the Company to the Client or its nominated replacement supplier.
- 1.12. 'Incident' means each Client invocation of technical support attributable to a discrete cause, within the scope of the Equipment and the Current Release.
- 1.13. 'Term' means the fixed initial Term as set out in the Contract Details that shall commence on the Commencement Date.
- 1.14. 'Intellectual Property' means any and all intellectual property rights of any nature anywhere in the world, whether registered, registerable or otherwise, including patents, utility models, trademarks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights which subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of customers, marketing methods and procedures and advertising literature, including the "look and feel" of any websites.
- 1.15. 'Location' means the location of the Equipment at the address given in the Contract Details.
- 1.16. 'Modification' means any correction, addition, amendment, enhancement, update or other change provided by the Company to the Software as part of providing the Service.
- 1.17. 'Mobile Devices' means mobile telecommunications equipment such as smartphones and tablet computers.
- 1.18. 'Release' means any improved or updated version of the Software made available to the Client.
- 1.19. 'Renewal Term' means fixed periods of equivalent duration to the Initial Term following expiry of the Initial Term.
- 1.20. 'Service' means those services described in the Scope of Work, annexed hereto and supplied hereunder subject to the terms of this Agreement.
- 1.21. 'Software' means the computer program(s) as briefly described in the Schedule 2 clause 1 and related operating manuals and user instructions.
- 1.22. 'Specification' means the specification of the current Release describing the facilities and functions of that Release.
- 1.23. 'Staff' means any individual provided by the Company to perform the Services.
- 1.24. 'Service Charge' means the fee payable by the Client for the provision of the Services as specified in the Agreement.
- 1.25. 'Term' means the duration of this Agreement from the Commencement Date to the effective date of its termination, howsoever arising.
- 1.26. 'Vendors' means a supplier or provider or owner of Software that the Client and the Company uses through the Service.

2. Warranty

- 2.1. The Company warrants that the Service will be performed by competent persons and will be carried out with reasonable care and skill. The Company undertakes to use all reasonable endeavours to remedy free of charge to the Client any faulty work arising from a breach of this warranty which is reported to the Company in writing within one month after performance by the Company of such work. If the Company rectifies such faulty work by the provision at the Company's option of replacement or additional materials or services within a reasonable period of time, then the Company will have no other liability of any kind in respect of or arising from such faulty work.
- 2.2. If a problem is found upon investigation not to be the Company's responsibility under the provisions of clause 2.1, the Company may charge the Client for all reasonable costs and expenses incurred by the Company in the course of or in consequence of such investigation.
- 2.3. The Company will not be liable under clause 1.1 to remedy any problems arising from or caused by any Modification (whether by way of alteration, deletion, addition or otherwise) made to any part of the Software (including data structure) or the Equipment by persons other than the Company or Vendor without its express prior written consent.
- 2.4. The Company has professional indemnity insurance limited to £1,000,000.
- 2.5. Notwithstanding the above, the Company does not warrant that the Client's use of the Service will be uninterrupted or error free.

3. Limitation of liability

- 3.1. The Client acknowledges that the Company's obligations and liabilities in respect of the Service are exhaustively defined in this Agreement.
- 3.2. The Client is responsible for the consequences of any use of the Service. The Company will not be liable, to the extent permitted by law, for any indirect, consequential or economic 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 the Company has been advised of their possibilities.
- 3.3. The Company accepts liability for:
 - 3.3.1. death or personal injury caused by the Company's negligence: and
 - 3.3.2. physical damage to or loss of the Client's tangible property up to the amount of £5,000,000 in respect of each incident or series of connected incidents and
 - 3.3.3. fraud or fraudulent misrepresentation.
- 3.4. In all other cases not falling within Clause 3.3 the Company's total liability (whether in contract, tort, including negligence or otherwise) misrepresentation, restitution or otherwise under or in connection with this Agreement (and any other agreement with the Client relating to the Equipment and/or Software) or based on any claim for indemnity or contribution will not exceed the sum of the total charges paid by the Client during the 12 months preceding the date on which the claim arose (whichever is less).
- 3.5. The Client will indemnify the Company in respect of any third party claim for any injury, loss, damage or expense occasioned by or arising directly or indirectly from the Client's possession, operation, use, modification or supply to a third party of anything supplied under the Service and any part of it except and in so far as the Company is liable as expressly provided in this Agreement.
- 3.6. The Company acknowledges and agrees that the allocation of risk contained in this clause 2 is reflected in the Service Charge and is also recognition of the fact that, inter alia, it is not within the Company's control how and for what purpose the results of the Service are used by the Client.

4. Ownership

- 4.1. The Client acknowledges and agrees that the Company and/or its Vendors own all intellectual property rights in the Services. Except as expressly stated herein, this Agreement does not grant the Client any rights to, or in, patents, copyrights, database rights, trade secrets, trade names, trademarks (where registered or unregistered), or any other rights or licences in respect of the Services or any related documentation.

5. Confidentiality

- 5.1. During the course of this Agreement each party may have access to Confidential Information of the other party. Each party will secure and protect the Confidential Information of the other party using at least as great a degree of care as it uses to maintain the confidentiality of its own Confidential Information, but in no event less than reasonable care. The recipient party will not disclose such Confidential Information to any person (except only to those employees who need to know it) or use such Confidential Information for purposes other than the Service without the other party's prior written consent.
- 5.2. The recipient party will only disclose Confidential Information to any agents, sub-contractors, suppliers and other representatives on receipt of written authority by the other party.
- 5.3. Each party will ensure that all persons to whom it discloses any Confidential Information of the other party are aware prior to disclosure of the confidential nature of the information and that they owe a duty of confidence to the other party and such persons enter into a written confidentiality agreement. These obligations of confidentiality will survive ad infinitum the termination of this Agreement.

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- 5.4. The Company will not access data stored in the Client's IT systems unless it is strictly necessary for the performance of the Company's services. The Company will then deem this data to be Confidential Information and treated in accordance with 5.1.
 - 5.5. If either Party discloses confidential information to an un-authorized party or the Company accesses the Client's IT systems without authorization, then both Parties must declare the same to the other immediately.
 - 5.6. Each Party shall indemnify and keep the other Party fully and effectively indemnified from and against all losses arising out of, or in connection with, any breach by it of this Clause 5 as per Clause 3.

6. Non-solicitation

- 6.1. The Company and the Client mutually agree that they will not during the Term of this Agreement and for a period of 6 months after that, without the other party's prior written consent, directly or indirectly solicit or offer employment or engagement to any of the other party's Staff, who at the time of such action or during a period of 12 months immediately preceding such action was employed by the Company or the Client.
- 6.2. In the event of a breach of this clause 5, the offending party will pay to the other party damages equivalent to 12 months' salary of the individual concerned.

7. Termination

- 7.1. Either party may terminate this Agreement by notice with immediate effect if the other materially breaches this Agreement and (if the breach is remediable) fails to remedy it within 14 days of receiving written notice requiring rectification of the breach from the injured party.
- 7.2. Either party may terminate this Agreement forthwith on written notice if the other party shall convene a meeting of its creditors or if a proposal shall be made for a voluntary arrangement within Part 1 of the Insolvency Act (or subsequent legislation) or a proposal for any composition scheme or arrangement with (or assignment for the benefit of) its creditors or if the other party shall be unable to pay its debts within the meaning of section 123(1)(e) 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 party or if a petition is presented (and not discharged with 30 days) or a meeting is convened for the purpose of considering a resolution or other steps are taken for a winding up of the other party or for the making of an administrative order (otherwise than for the purpose of any non-insolvent amalgamation or reconstruction) or the other party ceases to carry on business as a going concern or ceases to be in a position to fulfil this Agreement or suffers an event in a foreign jurisdiction analogous to or comparable with any of the foregoing.
- 7.3. Any termination of this Agreement howsoever occasioned 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.
- 7.4. The Company acknowledges and the Client agrees that any termination of this Agreement howsoever caused will invoke an Exit Plan mutually agreed by both parties.
- 7.5. If the Company terminates the Agreement, then the Exit Plan will be invoked. The Company will carry out the exit plan, which will not exceed three months in duration. The Client has the option for immediate termination of Services.
- 7.6. Upon the termination of the Agreement by the Client there is the option for immediate termination or via the agreed Exit Plan.
- 7.7. The Company will charge reasonable expenses and fees on a time and materials basis at the Company's prevailing Charges (to be agreed in advance of the invocation of the Exit Plan). Neither party will unreasonably withhold their agreement to the Exit Plan. No assets critical to the continuing delivery of service to the Client will be removed by the Company during the Exit Plan. In the event that the Company employees may have resigned (in the light of the contract being terminated), the Company would use all reasonable endeavours to supply appropriate skills to ensure the delivery of the Exit Plan.
- 7.8. The Client request's on termination that the Company will provide all information that the Company has in its possession relating to the Client's network.
- 7.9. The Company shall transfer and return any software or hardware belonging to the Client on termination of the Agreement or destroy by certification, only with the Clients agreement.

8. Data Protection

The following words shall have the following meanings:

- 8.1. **Data Protection Legislation:** (i) unless and until the General Data Protection Regulation ((EU) 2016/679) (**GDPR**) is no longer directly applicable in the UK, the GDPR and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then (ii) any successor legislation to the GDPR or the Data Protection Act 1998.

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- 8.2. Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
 - 8.3. The parties acknowledge that for the purposes of the Data Protection Legislation, the Client is the Data Controller and the Company is the Data Processor (where **Data Controller** and **Data Processor** have the meanings as defined in the Data Protection Legislation). This clause sets out the scope, nature and purpose of processing by the Company, the duration of the processing and the types of personal data (as defined in the Data Protection Legislation, **Personal Data**) and categories of Data Subject.
 - 8.4. The Client warrants that it has obtained and will obtain all legally required consents and permissions from the relevant parties, including employees, and directors and data subjects, for the use, processing and transfer of Data as described in this clause and will in all respects abide by the terms of the Data Protection Legislation for the duration and purposes of this agreement.
 - 8.5. The Client shall indemnify the Company in respect of liability under the Data Protection Legislation when acting in accordance with the instructions of the Client, this Agreement or as is required by any applicable law.
 - 8.6. The Client acknowledges that the Company will by virtue of the provision of the Service and other services provided hereunder, come into possession of information and data regarding the Client, its employees and directors ("Data").
 - 8.7. This Data may include but shall not be limited to data transmitted, IP addresses, personal information of the Client, its employee, directors and Clients, such as email addresses, addresses and telephone numbers and other information obtained by or provided to the Company. .
 - 8.8. The Client acknowledges and agrees that the Company may use process, store and/or transfer the Data; in connection with the provision of the Services provided hereunder; to incorporate the Data into databases controlled by the Company for the purpose of administration, provisioning, reconciliation, analysis and reporting and meeting any legal or regulatory obligation imposed from time to time on the Company; to communicate to the Client regarding the products and services of the Company by voice, letter, fax or email. The Client may withdraw consent to such communications (or use of the Data save as is necessary for the provision of the Service and the fulfilment of the party's obligations under this Agreement) by delivering a notice to the Company in accordance with the provisions of this Agreement.
 - 8.9. The Company shall notify the Client as soon as practicable (but within 24 hours) upon becoming aware of loss or damage to the Client's data, a Personal Data breach or other security breach. In the event of such loss or damage, the Company will use reasonable commercial endeavours to restore the lost or damaged Client data from the latest backup. If, in the opinion of the Company, a third party is required to carry out work, then the Company shall advise the Client and shall have no other obligations. This is the sole and exclusive remedy for the Client.
 - 8.10. The Company shall, in relation to any Personal Data processed in connection with the performance by the Company of its obligations under this agreement:
 - a. process that Personal Data only on the written instructions of the Client unless the Company is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Company to process Personal Data (**Applicable Laws**). Where the Company is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, the Company shall promptly notify the Client of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Company from so notifying the Client;
 - b. ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Client, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
 - c. ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
 - d. not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Client has been obtained and the following conditions are fulfilled:
 - i. the Client or the Company has provided appropriate safeguards in relation to the transfer;
 - ii. the data subject has enforceable rights and effective legal remedies;
 - iii. the Company complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - iv. the Company complies with reasonable instructions notified to it in advance by the Client with respect to the processing of the Personal Data;
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- e. assist the Client, at the Client's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
 - f. at the written direction of the Client, delete or return Personal Data and copies thereof to the Client on termination of the agreement unless required by Applicable Law to store the Personal Data; and
 - g. maintain complete and accurate records and information to demonstrate its compliance with this clause 23 and allow for audits by the Client or the Client's designated auditor.
- 8.11. Where any conflict between the terms of this clause or any other clause in another agreement between the parties the terms of this clause in this agreement take precedence.
- 8.12. This agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and interpreted in accordance with the law of England and Wales.
- 8.13. The parties irrevocably agree that the courts of England and Wales have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) that arises out of, or in connection with, this variation agreement or its subject matter or formation.

9. Force Majeure

- 9.1. Force Majeure is limited to hurricanes, earthquakes and other natural disasters, terrorism, embargoes, and labour strikes (not including strikes by a party's own personnel).
- 9.2. Neither party will be liable for any delay in performing or failure to perform its obligations (other than a payment obligation) under this Agreement due to Force Majeure. Such delay or failure will not constitute a breach of this Agreement and the time for performance of the affected obligation will be extended by such period as is reasonable.