

SOFTWARE SUPPORT CONTRACT TERMS & CONDITIONS

DEFINITIONS

In this Agreement the following words shall have the following meanings: -

Company – means Clockwork IT Ltd or any other Company which is a subsidiary.

Customer – means the person, firm or Company, which places the order with the Company's

Agreement – means this Agreement and any Schedule hereto.

Equipment – means those items set out in Schedule II hereto excluding any associated firmware and software.

Services – means the maintenance services described in Schedule I hereof.

Support Charge – means the rate at which the charge for annual support is calculated. Currently 15% per annum of the software license RRP.

WHEREBY IT IS AGREED as follows:-

SCHEDULE I

1. GENERAL

The terms and conditions in this contract are the sole terms and conditions of the contract between the Company and the Customer (denoted overleaf). No variation or modification of these terms or conditions and no agreement made, or purported to be made, between the Company and the Customer inconsistent with these terms and conditions shall be valid or of any effect, unless made in writing and signed by an authorised officer of the Company.

No representation relating to, or in any way connected with the equipment shall be deemed to be made on behalf of the Company nor shall any such representation bind the company unless such representation is made in writing and signed by an authorised officer of the company.

The support charge and other amounts payable under the terms of this Agreement are exclusive of Value Added Tax or any other similar tax levies or duties which will be added to or charged on invoices at the appropriate rate.

The Company may, at their discretion, provide updates to the program under this agreement.

The company may alter the cost of service for any year following the first year on giving the customer 60 days' written notice. Any alteration will only occur after an initial 36 month period of the contract.

The Company reserves the right to a pre-installation inspection prior to the inception of contract.

2. EXCLUSIONS

Except where provided otherwise in these conditions, the Company shall be under no liability of whatever kind howsoever caused whether or not due to the negligence or wilful default of the Company or its servants or agents arising out of or in connection with the services. All conditions, warranties or other terms, whether express or implied, statutory or otherwise are hereby expressly excluded providing that nothing in this paragraph shall exclude or restrict any liability of the Company for death or personal injury resulting from the negligence of the Company or its servants or agents.

In any event the Company's liability shall be limited to direct

loss and shall not include indirect or consequential loss.

The Company shall not be liable for the loss or damage to software programs or data during repair or upgrade of goods or carrying out of services whether or not the same are under warranty.

All work is performed on the basis that the Customer has back-up and archiving procedures that ensure that any data or operating software lost by reason of Equipment failure or as a result of maintenance operations, is recoverable from back-up files or archives maintained by the Customer.

The Company will not be liable for any hardware or software compliance issues.

3. ASSIGNMENT

The Company may assign this contract to any other persons. However, the Customer cannot assign this contract without the prior written consent from the Company.

4. LIABILITY

- 4.1 The Company shall in no circumstances be liable for any failure or defective working of the equipment due to any fault failure or change in the electricity supply service.
- 4.2 In no circumstances shall the Company be liable for any expense or additional charge or for any loss of profit business or production or any similar loss or damage consequential or otherwise whether direct or indirect howsoever caused whether by the negligence of the Company or its servants or agents or otherwise.
- 4.3 Any expense or change or loss or damage referred to in clause 4.2 which may be incurred by the Customer shall not be sufficient cause for cancellation of this contract.
- 4.4 The Company does not exclude its liability for death or personal injury resulting from negligence.
- 4.5 The Customer acknowledges that these terms and conditions set out the entire liability of the Company and that the Customer is responsible to effect insurance cover in respect of all risks relating to this contract.
- 4.6 In the event of a fault being reported to the Company, which is found to be a fault external to the software, then the Company reserves the right to make a reasonable additional charge.
- 4.7 The Company shall not be liable for the loss or damage to software programs or data during repair or upgrade of goods or carrying out of services whether or not the same are under warranty.
- 4.8 All work is performed on the basis that the Customer has back-up and archiving procedures that ensure that any data or operating software lost by reason of equipment failure or as a result of maintenance operations, is recoverable from back-up files or archives maintained by the Customer.
- 4.9 The Company will not be liable for any hardware or software compliance issues.

5. CANCELLATION

This Agreement shall start on the commencement date specified overleaf and shall continue for an initial minimum term of 12 months ("the Initial Period") and shall remain in force thereafter from year to year unless and until terminated by either party giving not less than 42 days prior written notice to the other, such notice to expire on the last day of the Initial

Period.

If notice to terminate this Agreement is given by the Customer less than 42 days prior to the last day of the Initial Period or any subsequent anniversary thereof the Customer shall remain liable to pay the Company the contract charge due for the next succeeding year and such payment shall become immediately due and payable.

6. PAYMENT

- 6.1 Payment shall be due in accordance with the terms agreed overleaf. In default the Company shall be entitled to charge interest on the amount outstanding at the rate of 4% above Barclays Bank plc base rate per month to accrue on a daily basis until the date of actual payment after as well as before any judgement. It is an essential condition of this contract that payment is made on time.
- 6.2 Late payment could lead to a suspension of services from the Company. If so this would not prejudice any other remedies available to the Company.

7. FAULTS

THE CUSTOMER

- 7.1 Shall orally notify the Company immediately of any fault which may be necessary such notification to be confirmed in writing (preferably by email) and to provide the Company at all reasonable times with access to the software and allow it to carry out maintenance of the software under the terms of this contract.

SOFTWARE SUPPORT

- 7.2 The Agreement will cover support on software upon proof of licence where requested.
- 7.3 The terms of this contract does not include any development work on software packages to enhance performance over and above existing levels. Any development work is subject to further negotiations between the parties.
- 7.4 In addition, the Company cannot guarantee compatibility between programmes and/or system software.
- 7.5 Hardware Support is not covered under this agreement.
- THE COMPANY**
- 7.6 This Agreement is only applicable to the software covered in SCHEDULE II
- 7.7 The Company cannot safeguard against infection by virus, and such acts of terrorism fall outside the terms and conditions of the contract. The Company is not responsible for integrity of the Customer's Data.
- 7.8 Has standard working hours of 9am – 5.50pm UK time Monday-Friday (excluding public holidays).
- 7.9 Standard contracts are based upon 9am to 5.30pm operation with a guaranteed response time of 4 working hours, any variation from standard contract will be detailed on the cover sheet of this contract.
- 7.10 The Agreement entitles the Customer to access free of charge, the Software Help-line and remote support.

GEOGRAPHICAL RESTRICTIONS

- 7.11 The Agreement does not cover any call-outs to the Customer's premises.
- 7.12 Call-outs to the customer's site are to be the subject of further negotiation between the two parties.

TRAINING

- 7.13 Training is not covered by the Agreement, and is to be arranged separately.

8. OTHER PROVISIONS

If at any time one or more of the provisions of this contract becomes invalid illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

The Customer agrees that it shall not, during the term of this Agreement, nor for a period of twenty four months after its termination, solicit for employment, or employ, whether as employees or independent contractor, any personnel who are or have been employed by the Company during the said term, without the prior consent in writing of the Company.

This Agreement and any conflict arising therefore shall be governed by the Law of England.

9. COPYRIGHT, PATENTS, TRADE MARKS AND INTELLECTUAL PROPERTY RIGHTS

The Customer acknowledges that rights in respect of trademarks, trade names, copyrights, patents and other intellectual property rights connected with the service do not pass to the Customer.

The intellectual property of the software outlined in SCHEDULE II belongs to the Company. By issuing a license(s) to the Customer, the Company authorises the Customer to use the software.

The Customer agrees to indemnify the Company against all liabilities costs and expenses which the Company may incur as a result of work done in accordance with the Customer's specifications which involve infringement of patent, software license agreement or other proprietary right.

10. FORCE MAJEURE

In the event of any services being suspended or delayed, or access of the Company's servants or agents being denied directly or indirectly on account of riot, government act or regulation, fire, flood, explosion, strike, lock-out or pay dispute or any other event beyond the reasonable control of the Company the period of the contract shall be correspondingly extended. If deliveries are suspended or access denied for one month or more the Company or the Customer may, at its option, exercisable by notice in writing to the other, cancel the contract with respect to any goods which may not have been despatched for delivery to the Customer at the date of such notice

11. TERMINATION

The Company shall be entitled by notice in writing summarily to determine any agreement without prejudice to any claim or right the Company may otherwise make or exercise where:

- a) the Customer is in breach of any term, condition or provision of this agreement or required by law.
- b) the Customer shall go into liquidation (except for the purpose of reconstruction) or if any petition or resolution to wind up the Customer shall be presented or if a receiver is appointed of the Customer's undertaking property or assets or if a distress shall be levied upon any of the Customer's property or if the Customer shall commit any act of

bankruptcy.

SCHEDULE II

Product Trade Marks and Software Include:-

Support Desk Pro
SD Mobile