

SOFTWARE SUPORT - TERMS & CONDITIONS

1. DEFINITIONS

1.1 In this agreement the following words and expressions shall have the following meanings:

“Business Day”	Monday to Friday inclusive, excluding public holidays.
“Commencement Date”	As shown on the face of this agreement.
“Plumtree Support”	the services referred to in clause 3.
“Helpdesk Services”	the services referred to in clause 4.
“Intellectual Property Rights”	any and all patents, trade marks, service marks, copyright, database rights, moral rights, rights in design, know-how and all other intellectual or industrial property rights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world.
“Named Contacts”	As shown on the face of this agreement.
“On-Site Support”	the services referred to in clause 5.
“Premises”	As shown on the face of this agreement.
“Services”	Helpdesk Services, On-Site Support and any other services provided by Plumtree to the Customer pursuant to this Agreement.
“Software”	the software (including the version or release of that Software) identified on the face of this agreement as varied with the approval of Plumtree.
“Support Hours”	9:00am – 5:00pm on Business Days.

2. DURATION

This Agreement shall commence on the Commencement Date and (subject to clause 10) shall continue until terminated by either party at any time giving no less than 30 days prior written notice to the other.

3. PLUMTREE SUPPORT SERVICES

3.1 In consideration of the Customer paying the Fees, Plumtree shall provide support services in relation to the Software as set out in this clause 3.

3.2 Plumtree will provide first line support and assistance in relation to the Software in response to the queries received from the Customer by telephone 0115 937 6661 during Support Hours.

3.3 Plumtree reserves the right to charge its standard rates for any assistance required by the Customer in the implementation of new releases of Software.

4. HELPDESK SUPPORT SERVICES

4.1 In consideration of the Customer paying the Fees, Plumtree shall provide the following services:

- 4.1.1 Plumtree shall provide support and assistance to the Customer in connection with the Software in response to queries by the Customer by telephone to 0115 937 6661 during Support Hours.
- 4.1.2 Plumtree shall use reasonable endeavours to answer most of the calls received during the Support Hours.

4.2 The Customer shall arrange appropriate service maintenance contracts for the hardware, operating system, communication and cabling systems with the relevant suppliers

4.3 Plumtree shall use reasonable endeavours to resolve the queries in relation to the Software. The Customer acknowledges that Plumtree are not the owners/developers and therefore will not be able to resolve all queries and problems that might be raised.

5. ON-SITE SUPPORT SERVICES

5.1 In consideration of the Customer paying the Fees, Plumtree shall provide the following services to the Customer:

Where a defect is identified as being due to any hardware item, operating system, communication or cabling system this will be reported by Plumtree to the external organisation providing support for these systems for the avoidance of doubt, Plumtree's obligations will be limited to reporting the defect to that external organisation.

- 5.1.2 Plumtree shall provide the following additional on site support services to Plumtree;
 - 5.1.2.1 one person shall be provided five days per week from 9:00am to 5 pm on Business Days only;
 - 5.1.2.2 Plumtree provides on site support only for full days and therefore if on site support is provided by Plumtree for part of a day, it shall be treated as a full day for the purposes of this Agreement;
 - 5.1.2.3 Plumtree will rotate its staff and cannot guarantee the attendance of any particular individual on site at any one time.

5.2 The Customer shall allow Plumtree (and its authorised representatives) free of charge to enter the Premises and gain unrestricted access to the Software and all hardware, systems and equipment at the Premises for the purposes of providing On-Site Support and upon Plumtree giving reasonable notice to the Customer, if Plumtree wishes to inspect the Software from time to time and the purposes for which it is being uses.

5.3 The Customer shall ensure that it operates a safe environment for Plumtree and its authorised representatives at the Premises and shall ensure that it has in place all necessary insurance cover associated with the use of the Premises by Plumtree and its authorised representatives. The Customer shall indemnify and keep indemnified Plumtree against all liabilities, loss, damages, costs and expenses, (including legal expenses) incurred by Plumtree arising from a claim by Plumtree's employees, sub-contractors or agents which relates to them entering onto, and/or carrying out Services from, the Premises pursuant to this Agreement.

5.4 The Customer shall arrange appropriate service and maintenance contracts for hardware, operating system, communication and cabling systems with the relevant suppliers. It is expressly agreed that Plumtree provide first line support only as On-Site support.

5.5 For the avoidance of doubt it is expressly agreed that Plumtree will provide only intermediate level On-Site support personnel who will not be able to resolve every problem reported. Should the Customer require more senior personnel to resolve an issue Plumtree shall assist at an additional charge.

6. NAMED CONTACTS

6.1 The Customer shall ensure that only the Named Contacts use any of the services and Plumtree may refuse to provide services to any other person.

6.2 The Customer may nominate replacement Named Contacts from time to time and shall give Plumtree reasonable prior written notice of this.

6.3 The Named Contacts must be reasonably competent in using IT and in using the Software. If Plumtree reasonably considers that any Named Contact does not demonstrate such level of competence in this way it may require the Customer to replace the Named Contact or to undertake appropriate training

7. SOFTWARE

7.1 The provision of the Services by Plumtree shall be conditional on the Customer using the Software in accordance with all instructions issued by the manufacturer an/or licensor of the Software and all reasonable instructions of Plumtree from time to time. The Customer shall be fully responsible for the management, operation, maintenance

and security of the Software and any data held, accessed or transferred by or on behalf of the Customer using the Software.

7.2 The Customer is responsible for acquiring the Software and ensuring that it holds all necessary licences, consents and approvals to use the Software and enable Plumtree to provide the Services in relation to the Software.

8. FEES

Plumtree shall be entitled to invoice the Customer for the Fees after Commencement Date monthly in advance as specified on the face of this agreement. Any other sums due to Plumtree pursuant to this Agreement may be invoiced by Plumtree at any time.

8.2 The Customer shall pay invoices within 30 days of the invoice date.

8.3 The Fees are exclusive of VAT or any other applicable tax, which the Customer shall be liable to pay when paying the Fees. In addition the Customer shall reimburse Plumtree for their out of pocket expenses in connection with the performance of this agreement at cost.

8.4 If the Customer fails to pay any invoice by the due date then (without prejudice to its other right and remedies) Plumtree may suspend the provision of the Services and/or charge the Customer interest (both before and after judgment) on the amount unpaid at the annual rate of 2% above Barclays Bank plc's base rate from time to time until payment is made in full.

8.5 Plumtree shall be entitled to serve written notice to the Customer to increase the Fees.

8.6 The Fees shall be non-refundable, notwithstanding any termination of the Agreement by either party prior to the end of the period for which the Fees have been paid.

9. WARRANTIES AND LIMITATION OF LIABILITY

9.1 Plumtree warrants that the Services will be provided with reasonable care and skill. In the event that the Services provided do not conform to this warranty, Plumtree will, at its option:

9.1.1 take such steps as it deems necessary (acting reasonably) to remedy the shortcomings; or

9.1.2 refund such part of the Fees as is reasonable and appropriate

provided that performance of any one of the above options shall constitute an entire discharge of Plumtree's liability under this warranty.

9.2 The warranty in Clause 9.1 is conditional upon the Customer giving written notice to Plumtree detailing any alleged shortcoming within 14 days of the time when the Customer discovers or ought to have discovered the shortcoming.

9.3 To the maximum extent permissible in law, all conditions and warranties which are to be implied by statute or otherwise by general law in relation to this Agreement (except the warranty in clause 9.1) are hereby excluded.

9.4 Plumtree shall be under no liability for any indirect or consequential losses, damages, costs or expenses, for any loss of profits, loss of business, loss of goodwill, or loss of anticipated savings (whether direct, indirect or consequential) in contract, tort (including negligence and breach of statutory duty) or otherwise howsoever arising which may be suffered by the Customer.

9.5 Nothing in this Agreement shall operate to exclude Plumtree's liability to the Customer for fraudulent misrepresentations or for death or personal injury resulting from the negligence of Plumtree.

9.6 Without prejudice to the foregoing provisions of this Clause 9 Plumtree's liability to the Customer pursuant to this Agreement (in contract, tort, negligence, breach of statutory duty or otherwise) shall not exceed in aggregate the annual Fees payable under this Agreement.

10. TERMINATION

10.1 Either party may terminate this Agreement forthwith by notice in writing to the other if the other is in material or persistent breach of this Agreement and shall have failed (where the breach is capable of remedy) to remedy the breach within 21 days of the receipt of a request in writing from the party not in breach, to remedy the breach, such request setting out the breach and indicating that failure to remedy the breach may result in termination of this Agreement.

10.2 Plumtree shall be entitled to terminate this Agreement forthwith by notice in writing to the Customer if the Customer becomes the subject of a voluntary arrangement under section 1 of the Insolvency Act 1986, is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, has a receiver, manager, administrator or administrative receiver appointed over all or any part of its undertaking, assets or income, has passed a resolution for its winding-up, has a petition presented to any court for its winding-up or for an administration order or suffers any distress, execution or other process levied or enforced on any of its property which is not paid, withdrawn or discharged within 20 days.

10.3 Either party may terminate this Agreement by giving the other 30 days prior written notice.

11. FORCE MAJEURE

Neither party shall be liable for any failure or delay in performing its obligations if such failure or delay is caused by circumstances outside the party's reasonable control and such party shall be entitled to a reasonable extension of time for the performance of such obligations.

12. SOLICITATION OF EMPLOYEES

12.1 Neither party shall during the term of this Agreement and for a period of twelve months after expiry or termination howsoever caused, solicit the other party's staff who have been employed or engaged in the provision or receipt of the Services or in the performance of this Agreement at any time during the previous twelve months. For the purposes of this clause "solicit" means the soliciting of such person with a view to engaging such a person as an employee, director, sub-contractor or independent contractor.

13. GENERAL

13.1 The Customer will not be entitled to assign the benefit or delegate the burden of this Agreement without the prior written consent of Plumtree. Plumtree will be free to sub-contract any or all of its rights and obligations under this Agreement.

13.2 Failure to exercise or a delay in exercising on the part of either party any right, power or privilege of that party under this Agreement shall not in any circumstances operate as a waiver thereof, nor shall any waiver of any breach of this Agreement be deemed to be a waiver of any subsequent breach.

13.3 The illegality, invalidity or unenforceability of any clause or part of this Agreement will not affect the legality, validity or enforceability of the remainder. If any such clause or part is found by any competent Court of authority to be illegal, invalid or unenforceable the parties agree that they will substitute provisions in a form as similar to the offending provisions as is similar to the offending provisions as is possible without thereby rendering them illegal, invalid or unenforceable.

13.4 This Agreement sets out the entire agreement between the parties with respect to the subject matter and supersedes and replaces all prior communications, representations, warranties, stipulations, undertakings and agreements whether oral or written between the parties, but this shall not operate so as to exclude any liability which either party would otherwise have for any fraudulent representations.

13.5 The construction, validity and performance of this Agreement shall be governed by English law, and both parties submit to the exclusive jurisdiction of the English courts.

13.7 This Agreement is enforceable by the original parties to it, by their successors in title and permitted assignees. Any rights of any person to enforce the terms of this Agreement pursuant to the Contracts (Rights of the Third Parties) Act 1999 are excluded.