

**REACT Computer Partnership
Terms and Conditions – Telephone Support Contract**

The Customer's attention is particularly drawn to clause 6.

1. Definitions

1.1 In these Conditions, the following definitions apply:

Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in Ipswich are open for business;

Charges: the Charges payable by the Customer for the Services in accordance with clause 5;

Conditions: these conditions as amended from time to time in accordance with clause 15.2;

Contract: the contract between the Supplier and the Customer for the supply of Services in accordance with these Conditions;

Customer: the customer named in the Schedule;

Installation Address: the installation address set out in the Schedule;

IPRs: all patents, copyrights, design rights, trade marks, service marks, trade secrets, know-how, database rights and other rights in the nature of intellectual property rights (whether registered or unregistered) and all applications for the same, anywhere in the world;

Licensed Software: the licensed software listed in the Schedule;

Order: the Customer's order for Services;

Schedule: the Contract Schedule which forms part of the Contract;

Services: the remedial telephone support services set out in the Schedule;

Start Date: the contract start date set out in the Schedule;

Supplier: REACT Computer Partnership.

1.2 In these Conditions, the following rules apply:

a) a **person** includes a natural person, corporate or unincorporated body

(whether or not having separate legal personality);

b) a reference to a party includes that party's successors or permitted assigns;

c) any phrase introduced by the terms **including, include, in particular** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and

d) a reference to **writing** or **written** includes faxes and e-mails.

2. Basis of Service

2.1 The Order constitutes an offer by the Customer to purchase Services from the Supplier in accordance with these Conditions.

2.2 The Order shall only be deemed to be accepted when the Supplier issues a written acceptance or starts to provide the Services (whichever happens first).

2.3 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Supplier which is not set out in the Contract. Any samples, drawings, descriptive matter or advertising issued by the Supplier are issued or published for the sole purpose of giving an approximate idea of the Service described in them. They shall not form part of the Contract or any other contract between the Supplier and Customer for the supply of the Service. This clause does not limit or exclude liability for fraud or fraudulent misrepresentation.

2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are

implied by trade, custom, practice or course of dealing.

2.5 Any quotation given by the Supplier shall not constitute an offer and is only valid for a period of 7 Business Days from its date of issue.

3. Supply of Services

3.1 The Supplier will provide the Services on Business Days between the hours of 09.00 to 17.00 (**Support Hours**) in relation to the Licensed Software.

3.2 The Services will be provided via the telephone or remote internet connections where reasonably available. If the Customer requires the Supplier to provide remedial services on-site at the Installation Address then, the Supplier shall not be obliged to provide such services but if it does so, the Supplier shall levy an additional charge for such services at the Supplier's then prevailing charging rate.

3.3 Services not set out in the Schedule will not be provided. The Supplier will not provide the following services under the Contract:

- a) on-site visits;
- b) hardware malfunction or breakdown services; except where a hardware maintenance contract is also currently in force between the Supplier the Customer;
- c) any repair or replacement arising from causes external to the equipment including but not restricted to computer viruses, spyware, accident, neglect, misuse, or failure of the Customer to treat and use the Licensed Software or any software which may affect the Licensed Software or the equipment on which the Licensed Software operates in a prudent and proper manner;
- d) where faults are due to:

i) alterations to the Licensed Software otherwise than by or on behalf of the Supplier;

ii) electrical work external to the equipment or repair or replacement of any additional equipment carried out otherwise than by or on behalf of the Supplier;

iii) faults (bugs) which are present in software not produced by the Supplier;

iv) operator error;

v) relocation or installation of the Licensed Software by any person other than the Supplier or a person acting under the Supplier's instructions;

vi) any breach of the Customer's obligations under the Contract;

e) restoration of data or formatting of hard disks following hardware malfunction or breakdown.

3.4 The Supplier reserves the right to make additional charges to cover:

- a) any service call caused by other equipment malfunction including incidents such as program error or loss of electrical supply;
- b) any work carried out at the Customer's request otherwise than during Support Hours; and
- c) any services other than the Services.

3.5 The Supplier shall provide the Services from the Start Date in accordance with the Contract using reasonable skill and care.

3.6 The Supplier will use all reasonable endeavours to meet any performance dates specified in the Schedule but any such dates shall be estimates only and time shall not be of

the essence for the performance of the Services.

3.7 The Supplier shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services and the Supplier shall notify the Customer in such event.

4. Customer Obligations

4.1 The Customer shall:

a) ensure that appropriate environmental and electrical conditions are maintained for the Licensed Software and take reasonable care that the supply of electricity to all equipment necessary or desirable for the proper operation of the Licensed Software does not become affected by other equipment on the same circuitry;

b) ensure the Licensed Software is operated correctly and by competent and authorised members of staff;

c) carry out minor maintenance of the Licensed Software as required by the Supplier and operate the Licensed Software in accordance with the software manufacturer's and/or supplier's (as the case may be) instructions;

d) make freely available to the Supplier, full and free access to the software and documentation necessary or desirable for the provisions of the Services;

e) co-operate with the Supplier in performing the Services and provide any assistance or information as may be reasonably required by the Supplier, including in relation to the diagnosis of any faults;

f) notify the Supplier immediately of any abnormal functioning of the Licensed Software;

g) not allow any person other than the Supplier or those authorised by it to maintain or repair the Licensed Software or attempt to do such during the term of the Contract;

h) notify the Supplier if the Licensed Software is moved from the Installation Address;

i) ensure adequate backups of programs and data are taken and kept.

4.2 The Customer shall indemnify the Supplier against any losses, damages, costs (including reasonable legal costs) and expenses suffered or incurred by the Supplier arising out of or in connection with the Customer's breach of the Contract or any negligent or wrongful act of the Customer, its officers, employees, contractors or agents.

4.3 The Customer shall not for the term of the Contract and for a period of six months following termination directly or indirectly induce or attempt to induce any employee of the Supplier who has been engaged in the provision, receipt, review or management of the Services or otherwise in connection with the Contract to leave the employment of the Supplier.

4.4 Where the Licensed Software is not provided by the Supplier the Customer warrants to the Supplier that the Supplier performing the Services will not breach any third party's Intellectual Property Rights in, to or in respect of the Licensed Software and the Customer shall obtain from the Start Date and will maintain for the duration of the Contract all permissions, licences and consents necessary for the Supplier to perform the Services.

5. Payment

5.1 The Customer pay to the Supplier in advance at the frequency detailed in the Schedule the Annual Maintenance

Charge plus VAT at the then current rate, within seven (7) days of the date the Supplier's invoice.

5.2 The Customer shall pay to the Supplier all costs (at the Supplier's then prevailing rates) and reasonable expenses incurred by the Supplier for work carried out by the Supplier in connection with any fault which is not covered by the Contract.

5.3 Without limiting any other right or remedy of the Supplier, if the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment (**Due Date**) the Supplier shall be entitled to charge interest at the rate of (3) percent per annum above the base lending rate of the HSBC Bank accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment and compounding quarterly.

5.4 The Supplier reserves the right to increase its charges and rates. The Supplier will give the Customer written notice of any such increase one month before the proposed date of the increase. If such increase is not acceptable to the Customer, it shall notify the Supplier in writing within two weeks of the date of the Supplier's notice and the Supplier shall have the right without limiting its other rights or remedies to terminate the Contract by giving two weeks written notice to the Customer.

5.5 The Customer shall make payment of each invoice in full and in cleared funds and time for payment shall be of the essence of the Contract.

5.6 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on

receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.

6. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

6.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:

a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors; or

b) fraud or fraudulent misrepresentation; or

c) breach of the terms implied by section 12 of the Sale of Goods Act 1979 section 2 of the Supply of Goods and Services Act 1982; or

d) any other liability which cannot be excluded by law.

6.2 Subject to clause 6.1:

a) the Supplier shall not be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty or otherwise for any:

i) loss of profit; or

ii) loss of revenues; or

iii) loss of anticipated savings; or

iv) loss of opportunity; or

v) loss of goodwill; or

vi) loss of, or damage to (including corruption of) data; or

vii) indirect or consequential loss

arising under or in connection with the Contract; and

b) the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty or otherwise shall not exceed the total charges payable by the Customer to the Supplier under the Contract in the year in which the loss or damage occurred.

6.3 No representation or warranty is given by the Supplier that all faults will be fixed, or will be fixed within a specified period of time.

6.4 All conditions, warranties or other terms which might have effect between the parties or be implied or incorporated in to the Contract or any collateral contract, whether by statute, common law or otherwise other than those expressly set out in the Contract are hereby excluded to the fullest extent permitted by law.

7. Termination

7.1 Unless terminated in accordance with its terms, the Contract shall remain force for the initial period shown in the Schedule (the **Initial Period**) and continue thereafter.

7.2 Either party may terminate the Contract on giving to the other party three (3) months notice in writing such notice not to expire before the end of the Initial Period.

7.3 If any sums due to be paid by the Customer to the Supplier under the Contract *or otherwise under any other arrangement* remain unpaid for fifteen days after the due payment date, the Supplier, may at its discretion, without prejudice to any other remedy available to it, either:

a) suspend the Service (and any other services which the Supplier may be required to provide to the Customer

under any other contract) for (i if the suspension happens within the Initial Period for the Initial Period plus three months or ii) if the suspension happens after the Initial Period for a period of three months and thereafter immediately terminate the Contract (and any other contract between Supplier and the Customer); or

b) immediately terminate the Contract (and any other contract between Supplier and the Customer).

7.4. The Customer shall remain liable to pay the Charges during the period the service is suspended pursuant to clause 7.3(a).

7.5 Without prejudice to any rights that have accrued under the Contract or any of its rights or remedies, either party may at any time terminate the Contract and/or the Services with immediate effect by giving written notice to the other party if:

a) the other party commits a material breach of any term of the Contract and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;

b) the other party repeatedly breaches any of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention of ability to give effect to the terms of the Contract;

c) the other party suspends, or threatens to suspend payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;

d) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other

than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

e) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that party;

f) the other party (being an individual) is the subject of a bankruptcy petition or order;

g) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;

h) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);

i) a floating charge holder over the assets of the other party (being a company) has become entitled to appoint or has appointed an administrative receiver;

j) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;

k) any event occurs or proceeding is taken with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clauses 7.5 (c) to (j) (inclusive);

l) the other party suspends or ceases or threatens to suspend or cease to carry on all or a substantial part of its business; or

m) the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical) is incapable of managing his own affairs or becomes a patient under any mental health legislation.

8. Consequences of Termination

8.1 Other than as set out in the Contract, neither party shall have any further obligation to the other under this agreement after its termination.

8.2 Any provision of the Contract which expressly or by implication is intended to come into or continue in force on or after termination of the Contract, shall remain in full force and effect.

8.3 Termination of the Contract, for any reason, shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination.

8.4 Notwithstanding its obligations in this clause 8, if a party is required by any law, regulation, or government or regulatory body to retain any documents or materials containing the other party's confidential information, it shall notify the other party in writing of such retention, giving details of the documents and/or materials that it must retain.

8.5 On termination of the Contract for any reason, the Customer's right to receive the Services shall cease automatically and each party shall as soon as reasonably practicable:

a) return, destroy or permanently erase (as directed in writing by the other party) any documents, handbooks, CD-ROMs or DVDs or other information or data provided to it by the other party containing, reflecting, incorporating or based on confidential information belonging to the other party.

(b) return all of the other party's equipment and materials, failing which, the other party may enter the relevant premises and take possession of them. Until these are returned or repossessed, the party in possession shall be solely responsible for their safe-keeping.

8.6 On termination of the Contract for any reason, the Supplier shall as soon as reasonably practicable, vacate the Customer's premises leaving them clean and tidy and removing any goods, materials or equipment belonging to it.

8.7 On termination of the Contract for any reason, the Customer shall immediately pay any outstanding unpaid invoices and interest due to the Supplier. The Supplier shall submit invoices for any Services that it has supplied, but for which no invoice has been submitted, and the Customer shall pay these invoices immediately on receipt.

9. Data Protection

9.1 The following definitions apply:

a) the terms "data controller", "data processor", "data subject" and "processing" bear the respective meanings given them in the Data Protection Act 1998, and "data protection principles" means the eight data protection principles set out in Schedule 1 to that Act;

b) data includes Personal Data;

c) Customer Personal Data and Supplier Personal Data mean any Personal Data provided by or on behalf of the Customer or the Supplier, respectively.

9.2 The Supplier shall:

a) only carry out processing of any Customer Personal Data on the Customer's instructions;

b) implement appropriate technical and organisational measures to protect any Customer Personal Data against unauthorised or unlawful processing and accidental loss or damage; and

c) only transfer Customer Personal Data to countries outside the European Economic Area that ensure an adequate level of protection for the rights of the data subject.

9.3 The Supplier shall notify the Customer in writing of any notices in connection with the processing of any Customer Personal Data, including subject access requests, and provide at the Customer's cost and expense such information and assistance as the Customer may reasonably require.

9.4 The Customer acknowledges that the Supplier will be acting as a data processor, rather than as a data controller, in respect of all such data processing activities which the Supplier carries out under this agreement.

9.5 Except as expressly provided otherwise, the Contract does not transfer ownership of, or create any licences (implied or otherwise), in any Intellectual Property Rights in any data.

10. Assignment and Sub-Contracting

10.1 The Customer shall not assign, novate, charge, subcontract or deal in any other manner with any or all of its rights and obligations under the Contract without the prior written consent of the Supplier (such consent not to be unreasonably withheld or delayed).

10.2 The Supplier may at any time assign, novate, charge, subcontract or deal in any other manner with any or all of its rights and obligations under the Contract.

10.3 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

10.4 A party assigning any or all of its rights under the Contract may disclose to a proposed assignee any information in its possession that relates to this agreement or its subject matter, the negotiations relating to it and the other party which is reasonably necessary to disclose for the purposes of the proposed assignment, provided that no disclosure pursuant to this clause 10.4 shall be made until notice of the identity of the proposed assignee has been given to the other party.

11. Severability

7.1 In the event that any one or more of the provisions of the Contract shall for any reason be held to be unenforceable in any respect, such unenforceability shall not affect any other provisions and the Contract shall then be construed as if such unenforceable provision of provisions has never been contained in it.

12. Force Majeure

12.1 Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure results from events, circumstances or causes beyond its reasonable control, and in such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations, provided that if the period of delay or non-performance continues for 180 days or more, the party not affected may terminate this agreement by giving 30 days' written notice to the other party.

12.2 If termination occurs under clause 12.1, all sums paid to the Supplier by the Customer under the Contract shall be refunded to the Customer, except that the Supplier shall be entitled to

payment on a quantum meruit basis for all work done before termination.

13. Notices

All notices shall be made in writing and sent by prepaid first class local post, by facsimile or delivered by hand to the address of the recipient party set out in the Schedule (or to such other address as each party may, in respect of itself, from time to time notify in writing to the other party). Any notice served by facsimile shall be deemed served at the time of transmission provided that a confirmatory receipt of transmission has been made and provided that if any such notice would otherwise be deemed to be served outside working hours, such notice shall be deemed to be served at the start of working hours on the next Business Day. Any notice served by post shall be deemed served two business days after the date of posting and any notice delivered by hand, upon delivery.

14. No Partnership or Agency

Nothing in the Contract shall or shall be deemed to create any partnership or joint venture between the Supplier and the Customer. Nothing in the Contract shall be deemed or construed to constitute either party or any of its officers or employees the agent or legal representative of the other party for any reason whatsoever except only as and to the extent specifically stated in this Agreement and, except as so stated, neither party is hereby granted any right or authority to act for, or to incur, assume or create any obligation, responsibility or liability, express or implied, in the name of or on behalf of the other party or to bind the other party in any manner whatsoever.

15. Waiver and Variation

15.1 No waiver (whether express or implied) by the Supplier of any of the provisions of the Contract or of any breach of or default by the Customer

in performing any of those provisions shall constitute a continuing waiver and no such waiver shall prevent the Supplier from enforcing any of the provisions of the Contract or from acting upon any subsequent breach of or default by the Customer under any of the provisions of the Contract.

15.2 No variation of the Contract shall be effective unless it is in writing and signed by the parties or their authorised representatives.

16. Further Assistance

The Customer agrees to execute and deliver to the Supplier as appropriate all such other documents, assurances and acts as may be reasonably necessary to fulfil the provision of the Contract or to carry into effect the intentions of the parties as expressed herein.

17. Third Party Rights

No person who is not a party to the Contract shall have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

18. Proper law and jurisdiction

The Contract are governed by and shall be construed in accordance with English law and the parties hereby irrevocably submit to the exclusive jurisdiction of the English Courts.