



METAPHOR IT LIMITED TERMS AND CONDITIONS

1. INTRODUCTION

1.1 Purpose and Objectives

This Agreement outlines the terms and conditions under which the Supplier will provide managed support services (collectively referred to as the “Services”) to the Client and its Affiliates. The objective is to provide a basis and framework for the delivery of high quality services to the Client in accordance with this Agreement.

1.2 Commencement Date

This Agreement will commence on date documented in the Managed Services Schedule (the “Commencement Date”)

1.3. Non-exclusive Agreement

It is understood and agreed that this Agreement does not grant to the Supplier any exclusive rights to do business with the Client and that the Client may contract with other suppliers for the procurement of similar services. Nothing in the Agreement prevents the Supplier from marketing, developing, using and performing similar services or products to other potential clients’ subject to the confidentiality provisions set out in clause 9.2.

1.4. Definitions

“**Affiliate**” means a subsidiary organisation, sister organisation or an organisationally connected entity to either party.

“**Annual Fee**” means the charges, other than reimbursable expenses, due to the Supplier for the provision of the Services which amount is set out in the Managed Services Schedule.

“**Client**” means the owner, lessee or renter of the equipment to be maintained under this Agreement (and its group companies and affiliates who shall have the benefit of this Agreement



“Default” means any material breach of the obligations of the relevant party or its subcontractors or any other default, act, omission, negligence or statement of the relevant party, about or in relation to the subject matter of this Agreement and in respect of which such party is legally liable to the other in accordance with applicable law.

“Disclosing party” means the party who has disclosed confidential information to the other party.

“Fair Usage Policy” means the agreed number of hours of support available per month of a Managed Services agreement. This number is specifically defined in the Managed Services Schedule.

“Intellectual property rights” means patents, rights to inventions, copyright and related rights, moral rights, trademarks and service marks, business names and domain names, rights in getup and trade dress, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including knowhow and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

“Key personnel” means those people employed by the Supplier who have a key role in the delivery of the Services to the Client. **“Incident escalation”** means the agreed procedure for alerting and notifying increasingly senior members of the Supplier’s service desk and/or management of the nonresolution of problems. **“Incident management”** means the agreed procedures for providing support and incident resolution services to the Client.

“Managed Services Schedule” A document to accompany these terms and conditions which outlines the key components of the support agreement including dates, products, hours of support and key contacts.

“Receiving party” means the party who has received confidential information from the other party.

“Renewal Term” means consecutive periods of 12 months, each starting on the anniversary of the Start Date.



“Services” means the Standard Services and the Non-standard Services accepted by the parties in accordance with this Agreement.

“Service Review Meeting” means a meeting held between representatives of the Supplier and the Client specifically to discuss the delivery and performance of the Services.

“Supplier” means Metaphor IT Limited, a company registered in England (number 9588511)

“Supplier Personnel” means any directors, employees and/or consultants, of the Supplier who are engaged by the Supplier in the provision of the Services.

“Term” means the period from the Commencement Date until the date of expiry or termination of this Agreement.

“Third Party Personnel” means the service personnel of any third party engaged by the Supplier to provide any of the Services. For the avoidance of doubt this includes the subcontractors of the Supplier.

“Unlimited Incidents” means there will be no limit to the number of incidents which can be logged by the Client. The Supplier bases the cost of this service based on the monthly support not exceeding an agreed number of hours as specified in the Unlimited Incidents Support Schedule document. If the hours of support exceed this threshold in any given quarter, then both parties will convene within 14 days to review the incidents raised and agree a plan to either reduce the number of incidents being raised or amend the agreed threshold along with any associated costs.

2. SCOPE OF SERVICES

The Supplier shall deliver the Standard Services in accordance with this Agreement. If the Client requires Non-Standard Services, the parties shall agree their purchase at the relevant time.

2.1. Standard Services

Standard services to be delivered under this Agreement are as listed, described and specified in the Managed Services Schedule.

2.2. Non--Standard Services

Non-standard services will not be delivered under this Agreement. Non-standard services include but are not limited to: installation or upgrades of products or services; project work; implementation of new products or services; purchases of new technologies.

2.3. Changes to Services

From time to time the Supplier or Client may find it necessary or advantageous to change the agreement outside of the changes permitted in the rest of the document. Either party may propose changes to the scope, nature or time schedule of the Services being performed under this Agreement.

The parties will mutually agree to any proposed changes, including adjustments to fees and expenses as a result of any changes to the Services. All changes are to be subject to the change control procedures and must be approved in writing by both parties.

If either party should wish to implement a change, they will provide the other with notification in writing at the others registered address. The other party agrees to respond to this request within ten working days.

Both parties shall meet within 20 working days of the delivery of the change request notice to discuss the request.

Neither party is obliged to accept requested changes; however, the Supplier is inclined to look favourably on changes forced on the Client in the event of radical downsizing.

2.4. Delays to Services

The Supplier shall not be liable for any delays in the provision of the Services which are caused other than by the Supplier, any Supplier Personnel or any Third Party Personnel.

3. INCIDENT MANAGEMENT

The services described in this clause form part of the Standard Services.

3.1. Service Desk

Any IT problems initially encountered by the Client should be directed to the designated customer support contacts who will in turn contact the Suppliers service desk once they have triaged the issue as agreed by the Supplier and the Client. All calls made to the service desk are subject to the response times detailed in section A1.5.3 of this document.

3.2. Service Out of Hours (OOH)

An Out of Hours (OOH) Support Service is available at an additional charge. The out of hours' service is a reactive service with a one-hour target response time for business critical issues only. Support will be given via telephone or remotely via the Supplier's remote access facilities.

3.3. Incident Definition

An incident is defined as: "an unplanned interruption to an IT service or a reduction in the quality of an IT service. Events that indicate a change in the status of a hardware or software component that has not yet affected service is also an incident". All software and hardware as described in the client specific Managed Services Schedule is covered. This Agreement does not include any costs associated with the repair of failed hardware or software, and the Supplier shall not be under any obligation to repair, or arrange for the repair, of any failed hardware or software unless expressly agreed by the parties in writing.

3.4. Incident Escalation

In the event that an incident cannot be resolved by the Suppliers' Managed Service desk level engineers within a timeframe commensurate with the incident's impact and urgency, the incident will be escalated to a higher level and/or management. If the incident is categorised as a priority 1 incident and cannot be resolved solely by the Supplier, then the Supplier may seek the assistance of the appropriate vendors. In the event of doing so the relevant service level agreements as dictated by the vendor will be applicable.

3.5. Unlimited Support Incidents

The Supplier will offer unlimited support incidents based upon a fair usage policy.

If following the annual technical audit the environment is deemed acceptable for unlimited support incidents, then the Supplier will rate the infrastructure as Low, Medium or High risk. This grading is an indication of the effort that the Supplier will have to put into managing the environment, and this will drive the pricing and fair usage policy for the service accordingly. If not suitable for unlimited support incidents, then a token-based support service may be offered.

The annual technical audit will suggest improvements that, when implemented by the client or by the client in combination with the Supplier, may reduce the risk rating for unlimited support or may even take an environment that is unsuitable for unlimited support and make it suitable.

The Supplier may offer only “reasonable endeavours” support for some products in certain circumstances, which include but are not limited to:

- Where the product version is no longer supported by the vendor
- Where the Suppliers Managed Service desk do not have the specific product skills in--house

3.6. Fair Usage Policy

The support service for this agreement is based upon an unlimited incidents format. This format is subject to a fair usage policy. Under this policy the Client is entitled to a specified maximum of number of hours per month. The maximum number of hours is defined in the Managed Services Schedule. If the hours of support exceed this threshold in any given month then both parties shall convene within 14 days to review the incidents raised and agree a plan to either reduce the number of incidents being raised or amend the agreed threshold along with any associated costs.

4. COMPENSATION

4.1. Annual Fees

The Annual fees payable for performing the Standard Services and the Non-Standard Services shall be as set out in the Managed Services Schedule. Fees are shown excluding VAT.

4.2. Reimbursable Expenses

Reimbursable expenses mean agreed incidental expenses reasonably incurred by the Supplier in performing its obligations. Examples of expenses that may be considered as reimbursable are stated in Appendix A of this Agreement. No expenses shall be reimbursable unless the Supplier receives the prior written approval from the Client prior to them being incurred. Notwithstanding such written approval, no expenses shall be reimbursable without the submission to the Client of appropriate receipt or other acceptable proof of expense.

4.3. Invoices

The Supplier shall pay the annual fee in accordance with the payment terms.

4.4. Payment Terms

4.4.1. The parties agree that the Client shall pay the Annual Fees as defined in the Managed Services Schedule.

4.4.2. All fees and expenses are to be paid to the Supplier, in the currency of the invoice, by telegraphic transfer of funds to the account designated by the Supplier.

4.4.3. All invoices are payable within 14 days from the date of the invoice. All hardware and software purchases will be pre-payable unless a credit account is authorised by the supplier. Any amounts disputed in good faith may be deducted from the invoice and the remainder must be paid by the due date. The disputed amount shall be notified in writing to the Supplier within seven days of receipt of the invoice giving the reasons for withholding payment. Upon receipt of the Client's dispute notice, the Supplier and Client will work together in good faith to resolve such disputes in a prompt and mutually acceptable manner. The Client agrees to pay any disputed amounts within five days once the issues have been resolved.

4.4.4. In the event that this Agreement is terminated the Supplier shall refund the Client the pro-rata prepaid amount associated with the unused portion of the services.

4.5. Taxes

The Client agrees to pay directly or reimburse the Supplier for any government taxes arising directly out of this Agreement excluding any taxes on the Suppliers income.

4.6. Interest for Late Payment

Unless there is a valid reason to dispute an invoice, and if the invoice is not settled within 14 days from receipt of invoice, the Supplier may add interest, and the Client shall pay interest, at the rate of 8% per annum above the base rate of the Bank of England.

5. CLIENT DUTIES AND RESPONSIBILITIES

5.1. Processing and Authorisation of Invoices

Unless there is a valid reason to dispute an invoice, the Client undertakes to process and settle invoices by the due dates.

5.2. Training on Specialised Equipment or Tasks

The Client will ensure that all Client personnel who work on the Supplier's systems or equipment are adequately qualified and receive suitable training both to ensure the safety of the Client's personnel and to safeguard the Supplier's systems or equipment.

5.3. Approvals and Information

The Client will respond promptly, and in any case, within five working days, to any Supplier requests to provide direction, information, approvals, authorisations or decisions that are reasonably necessary for the Supplier to perform the Services.

6. WARRANTIES AND REMEDIES

6.1. Quality of Service

The Supplier warrants that the Services will be performed in a professional and workmanlike manner consistent with industry standards reasonably applicable to such services. The Supplier warrants, undertakes and represents that it has and shall maintain all necessary licences, consents, permits and authorities required for the provision of the Services by the Supplier and the performance of its obligations under this Agreement.

6.2. Indemnification

If, as a direct result of the Supplier's Personnel's and/or Third Party's Default, the Client or Client's employees suffer personal injury or tangible property damage, the Supplier will reimburse the Client for such injury or damage, subject, in the case of tangible property damage, to the limitations of liability in clause 10.6.

6.3. Third Party Claims

The Supplier warrants that any works of authorship written by Supplier Personnel and/or Third Party Personnel and provided to the Client in the course of providing the Services will not infringe any third party Intellectual Property Rights. If a third party takes action against the Client for any infringements of this nature, then the Supplier will, at its own expense, settle any such claim.

6.4. Exclusions

The Supplier is not responsible for any infringements to third Intellectual Property Rights where the Client has made amendments to original documents and similar works prepared by the Supplier without the express approval of the Supplier, or where the Client fails to use the most recent versions of such works that have been delivered by the Supplier.

6.5. Remedies for Breaches

Without prejudice to the rights and remedies available to Client in accordance with applicable law, in the event of any defective performance from the Supplier or failure to furnish the agreed level of service, the Supplier will use reasonable commercial efforts to restore the service to a good operating condition on an urgent basis at no additional cost to the Client.

6.6. Force Majeure

Neither party will be liable for any failure or delay in its performance under this Agreement due to reasons beyond its reasonable control, including acts of war, acts of terrorism, acts of God, earthquake, flood, riot, embargo, sabotage, governmental act or failure of the Internet, provided the delayed party gives the other party prompt notice of the reasons for such cause. For the avoidance of doubt, the Client shall not be entitled to invoke an act of force majeure as the reason for any non-payment, or delay in payment, of any amount due to the Supplier for which the Client has received the relevant Services in the terms of this Agreement.

7. SECURITY

7.1. Physical Access

The Client is to ensure that the Supplier Personnel and any Third Party Personnel nominated by the Supplier are given reasonable authorised access to premises and equipment in order that the Services may be delivered and maintained in accordance with the terms of this Agreement.

7.2. Logical Access

The Client is to ensure that the Supplier Personnel and any Third Party Personnel nominated by the Supplier are given administrative access to the software and systems the Supplier supports in order that the Services may be delivered and maintained in accordance with the terms of this Agreement.

7.3. Compliance with Client Security Policies

In the event that the Client operates formal security policies, and the Client makes the Supplier formally aware of these in written form, then the Supplier will ensure that the Supplier Personnel and any relevant Third Party Personnel are made aware of such policies, and will also ensure on-going compliance with these policy statements. The Client will provide the Supplier with up to date information in written form on its security policies and will keep the Supplier informed about any changes to these policies.

7.4. Information and Data Security Measures

The Supplier will manage information and data security with reasonable efforts to restrict unauthorised access. The Supplier will use reasonable commercial efforts to ensure that the Supplier Personnel and any relevant Third Party Personnel are fully aware of the risks associated with information and data security issues and that they manage the information as set out in the beginning of this clause. The Supplier cannot be held liable for data loss due to security breaches, hardware or software failure or virus infection, save to the extent that such loss is caused directly by Supplier Personnel and/or Third Party Personnel's Default.

7.5. Disaster Recovery

The Client is responsible for the implementation and testing of disaster recovery procedures. Any data or information loss resulting from the failure of devices managed by the Supplier or services rendered by the Supplier in the course of the provision of the Services is the Client's sole responsibility, save to the extent that such loss results from the Default of the Supplier. In the event of a major system failure, the Supplier will respond to the Client's issue in a timely manner and follow best practice methodology in an attempt to recover service availability. Before the Supplier commences work on a specific device the Client will ensure that a correct and recent copy of the Client's information and data stored on the said device is available.

8. INTELLECTUAL PROPERTY RIGHTS AND CONFIDENTIALITY

8.1. Intellectual Property Rights

8.1.1 Both parties acknowledge the Intellectual Property Rights of the other party. In the event that the Supplier creates any Client-specific Intellectual Property in the provision of the Services during the Term and in accordance with this Agreement, ownership of such Intellectual Property shall automatically transfer to the Client. However; the Client acknowledges that such Intellectual Property is limited to Client specific work and the Supplier retains the right of



ownership of Intellectual Property which leads to the creation of any such Client Specific Intellectual Property.

8.1.2 The Client acknowledges that monitoring agents may be installed on to the Client's equipment for the duration of the Term to assist the Supplier to provide the Services.

8.1.3 No Intellectual Property Rights shall transfer and vest in the other party save for any Client--specific deliverables created by the Supplier during the performance of the Services under this Agreement. The Client acknowledges that nothing in this Agreement shall transfer or have the effect of transferring to the Client any right, title or interest in or to: (a) any background Intellectual Property Rights of the Supplier (b) any know-how or methodology used by or on behalf of the Supplier in the provision of the Services or (c) any third party Intellectual Property Rights which have been licensed to the Supplier for the purposes of enabling the Supplier to provide the Services.

8.2. Confidentiality

8.2.1 Both parties agree to keep confidential all information concerning the other party's business or its ideas, products, customers or services that could be considered to be 'confidential information'. 'Confidential Information' is any information belonging to or in the possession or control of a party that is of a confidential, proprietary or trade secret nature and that is furnished or disclosed to the other party or which a party comes across in performing its obligations under this Agreement.

8.2.2 The foregoing obligation of confidentiality shall not apply to any information which:

- (a) is, as of the time of its disclosure or thereafter becomes part of the public domain through a source other than the Receiving party;
- (b) was rightfully known to the Receiving party as of the time of its disclosure without an obligation of confidentiality; or
- (c) is independently developed or obtained by the Receiving party otherwise than in breach of confidence.

8.2.3 Confidential Information will remain the property of the Disclosing party and the Receiving party will not acquire any rights to that Confidential Information.

8.3. Court Orders

If the Receiving party receives a court order to divulge any Confidential Information belonging to the disclosing party, then the Receiving party is permitted to release such information to the court in accordance with any such order so served.

8.4. Destruction of Data and Records or Return on Termination

Upon termination of this Agreement, the Receiving party, at the option of the Disclosing party, will return or destroy all Confidential Information belonging to the other party.

9. LEGAL COMPLIANCE AND RESOLUTION OF DISPUTES

9.1. Governing Law

This Agreement shall be governed by, and construed in accordance with, English law.

9.2. Export Control

Both Supplier and Client agree to comply fully with all relevant export laws and regulation of the country or countries where their offices are located if relevant.

9.3. Informal Resolution

In the event of dispute, the parties will attempt to resolve any such disputes through informal negotiation and discussion. Formal proceedings should not be commenced until such informal negotiations and discussions are concluded without resolution.

9.4. Arbitration

Any unresolved dispute should be referred to a qualified independent arbitrator acceptable to both parties. In the event that a suitable independent arbitrator cannot be identified and agreed on by both parties, then the courts shall be requested to appoint one.

9.5. Limitation of Action

Neither party may bring proceedings more than 18 months after the actual event occurred except for proceedings for non-- payment.

9.6. Limitation of Liability

9.7.1 The Supplier shall be liable to the Client for any Default of its obligations under this Agreement which shall be limited in each contract year to an aggregate amount equal of the total fees paid or payable by the Client during the 12 months preceding the Default event provided that such limitation of liability shall not apply to any claim alleging Default of the obligations in clauses 7.3 (Third Party Claims) or 8.2 (Confidentiality).

9.7.2 The Client shall be liable to the Supplier for any Default of its obligations under this Agreement which shall be limited in each contract year to an aggregate amount equal of the total fees paid or payable by the Client during the 12 months preceding the Default event provided that such limitation of liability shall not apply to any claim for non-payment of fees or charges for Services provided to the Client or to any claim alleging Default of the obligations in clause 8.2 (Confidentiality).

9.7.3 Neither party shall be liable under this Agreement for any loss of profit, loss of revenue, loss of contracts, loss of anticipated savings, loss of goodwill, or for any indirect, special or consequential loss or damage.

9.7.4 The Supplier is not responsible for any loss or damage caused by the failure of the Client or its Affiliates or other suppliers to perform their responsibilities.

9.7.5 Nothing in this Agreement shall be construed as attempting to limit or exclude the liability of any party in respect of death or personal injury caused by negligence, or for fraud and/or fraudulent misrepresentation of its employees or agents or subcontractors, or other liability not able to be limited or excluded in accordance with applicable law.

9.7.6 The limitations of liability included in this clause 10.6 will survive termination of this Agreement

10. TERMINATION

10.1. Automatic Renewal

This Agreement starts on the Commencement Date. Unless terminated by either party by giving 90 days written notice in accordance with Clause 11.2, this Agreement will automatically renew for consecutive periods of 12 months, each starting on the anniversary of the Start Date (each period being a "Renewal Term").

10.2. Terminating the Agreement on notice

Either party may terminate this agreement by giving the other party at least 90 days' written notice in advance of the end of the initial Duration of Agreement or any subsequent Renewal Term.

10.3. Termination for Cause

If either party fails to perform its obligations under this Agreement, then the other party shall notify the failing party in writing within 30 days of the perceived failure. On receiving written notice describing such failure, the failing party should take measures to remedy such failure and a written response outlining the measures and timescales for rectification shall be sent in writing to the other party. If after this process both parties agree that the failure has not been rectified or cannot be rectified by the other party, then this Agreement may be terminated forthwith.

10.4. Termination for Force Majeure

Either party shall be entitled to give notice to the other party to terminate this Agreement with immediate effect, if any event of force majeure (as referred to in clause 7.6) continues for a period of 90 days or more.

10.5. Termination for Insolvency

Either party will have the right, without prejudice to its other rights or remedies, to terminate this Agreement immediately by written notice to the other party if any of the following events occurs (or any event analogous to any of the following occurs in a jurisdiction other than England & Wales) in respect of the other party:

10.5.1 a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors;

10.5.2 a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation);

10.5.3 a petition is presented for its winding up (which is not dismissed within 14 days of its service), or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of Insolvency Act 1986;

10.5.4 a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or

10.5.5 an application is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or

10.5.6 it is or becomes insolvent within the meaning of s.123 Insolvency Act 1986.

10.6. Payment on Termination

In the event of termination of this Agreement for any cause, the Supplier will continue to be paid up to the effective date of termination for any fees or expenses due for Services delivered up to that date and the Supplier shall refund the Client for the pro-rata portion of any advance payments.

11. GENERAL

11.1. Notices

Notices required under this Agreement are to be sent to the address and persons specified in the Service Description attached to this Agreement. Notices are to be sent in writing by registered post, recorded post, express courier service or be delivered personally.

11.2. Standard of Care

Each party will act in good faith in the performance of its respective duties and responsibilities and will not unreasonably delay or withhold the giving of consent or approval required for the other party under this Agreement. Each party will provide an acceptable standard of care in its dealings with the other party and its employees.

11.3. Assignment

Neither party may assign or otherwise transfer its rights or obligations under this Agreement without the prior written consent of the other party save that the Client may assign or transfer its rights or obligations under this Agreement to a Client group company, provided always that the assignee or transferee shall be responsible for the Annual Fees in accordance with this Agreement and compliance of this Agreement. In the event that consent for assignment is given, the terms of this Agreement will be binding upon each party's respective successor.

11.4. Entire Agreement

This document constitutes the entire agreement between the parties, and supersedes and extinguishes all other prior agreements between the parties for the provision of the Services. Each party acknowledges that in entering into this Agreement it does not rely on, and shall have no remedies in respect of, any representation or warranty (whether made innocently or negligently) that is not set out in this Agreement.

11.5. Severability

The provisions of this Agreement shall be deemed severable, and the unenforceability of any one of the provisions shall not affect the enforceability of other provisions. In the event that a provision is found to be unenforceable, the parties shall substitute that provision with an enforceable provision that preserves the original intent and position of the parties.

11.6. Changes to the Agreement

All changes to this Agreement must be approved in writing by authorised representatives of both parties and follow the formal change control procedure set out within the Service Description attached to this Agreement.

11.7. Non-solicitation

During the term of this Agreement and for two years after its expiration or termination, neither party will solicit any employee of the other party for the purposes of offering employment. The provision of this clause shall not apply in respect of general recruitment campaigns by either party run during the normal course of their business.

11.8. Exhibits

The Schedules and Appendices referred to in and attached to this document are to be considered an integral part of this Agreement. The Managed Services Schedule referred to in this document is also to be considered an integral part of this Agreement.