

This Support Agreement is made between SHARPE GROUP LIMITED incorporated in England with its registered office at Westthorpe Innovation Centre, Killamarsh, Derbyshire, S21 1TZ ("the Contractor") and the customer whose details are set out in the Schedule 1 Order Acknowledgement Support Agreement Part 1 of 2 ("the Customer").

1 CONSIDERATION

1.1 In consideration of the payment by the Customer of the charges specified in Schedule 1 ("Monthly Payment") the Contractor will from the date specified in Schedule 1 ("Commencement Date") for the period set out in schedule 1 ("the Minimum Contract Term") provide to the Customer the support services specified in the Schedule 1 Order Acknowledgement Support Agreement Part 1 of 2 ("Service") in respect of the Customer's support requirements set out in Schedule 2 ("Description") which is/are located at the address specified in Schedule 1 ("Address").

1.2 The Agreement between the Customer and the Contractor for the provision of the Services shall be made subject to the terms and conditions of this Agreement to the exclusion of all other terms and conditions including but not limited to any contained or set out in the Customer's purchase order or other form or otherwise stipulated by the Customer and such terms shall in no way bind the Contractor unless otherwise agreed in writing by a director of the Contractor.

1.3 The terms and conditions of this Agreement shall supersede any arrangements, statements, representations or negotiations made or existing between the parties prior to the execution of this Agreement which shall constitute the entire understanding between the parties hereto. Except as otherwise provided herein, no addition, amendment or modification to this Agreement shall be effective unless agreed in writing by a director of the Contractor.

2 CHARGES

2.1 In consideration of the agreement by the Contractor to supply the Services in respect of the support the Customer shall pay the Charges as set out in this clause 2.

2.2 The Charges are payable in advance on or before the 1st day of the month during which the Services are to be provided unless otherwise agreed in writing by the Contractor. No aspect of the Services will be provided until payment has been received in cleared funds by the Contractor and the Contractor reserves the right to withdraw any or all of the services in the event that any invoice due is unpaid by the Customer. Time shall be of the essence in this respect.

2.3 The Charges payable pursuant to this Agreement are based on the Services being provided during the Contractor's standard working hours (09:00 17:00) Monday to Friday excluding national public holidays, unless

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otherwise specified in Schedule1. Additional or out-of-hours services are subject to a higher charge as set out in clause 2.7.

2.4 All charges referred to in this Agreement are exclusive and net of any taxes, duties or such other additional sums including but not exclusively value added or purchase tax and such taxes shall be added to any invoice at the appropriate rate and shall be payable by the Customer.

2.5 The Contractor reserves the right to charge:

2.5.1 Interest on overdue invoices at the rate of 5 per cent over Barclays Bank base lending rate from the due date until the total invoice sum has been paid; and/or

2.5.2 An administration fee of £50 in the event that any payment made by the Customer (including any cheque, direct debit or standing order) is rejected, returned or is unpaid or unsatisfied for any reason.

2.6 The Contractor shall charge for maintenance services requested by the Customer which are in addition to the Services covered by this Agreement at its standard rates for the provision of such Services.

2.7 The Contractor shall be entitled to charge the Customer for any expenses incurred by it in providing the Services including but not limited to a charge of £1.25 per mile for any travelling required to provide support at an address other than the Address.

2.8 The Charges may increase or decrease at any time depending on the support being maintained from time to time however:

2.8.1 Any increase shall be paid by the Customer for at least 3 months from the date the increase occurs notwithstanding that the Equipment that has been added may no longer be in the possession of the Customer; and

2.8.2 The Charges will not decrease below the minimum amount set out in Schedule1 (“Minimum Monthly Cost”).

3 **Not included in the support (Hardware Maintenance)**

The Services shall not include:

3.1 electrical work external to the Equipment;

3.2 maintenance of accessories, attachments, machines or other devices not listed in the Schedule2;

3.3 repair of damage arising from:

3.3.1 transportation or relocation of the Equipment not performed by the Contractor;

3.3.2 failure of electrical power, air conditioning or humidity control;

3.3.3 changes, alterations or additions not performed by the Contractor; or

3.3.4 operator error or omission;

3.4 maintenance rendered more difficult because of changes, alterations or additions;

- 3.5 attendance to faults caused by operating the Equipment outside design specifications or outside any documentation or manuals supplied with the Equipment;
- 3.6 cleaning, painting, refinishing or touching up, specification changes, relocation of Equipment, addition/removal of accessories, attachments and other devices;
- 3.7 software support;
- 3.8 repair of any malfunction due to radiation in the environment of the Equipment;
- 3.9 diagnosis and/or rectification of problems not associated with the Equipment;
- 3.10 diagnosis and/or rectification of problems arising from the operating environment;
- 3.11 overhaul or repair of Equipment:
 - 3.11.1 which can no longer be maintained in good working order; or
 - 3.11.2 where the cost of repair is greater than 50% of the then current value of the Equipment requiring repair in which event the Customer shall be required to purchase replacement equipment;
- 3.12 refusal, difficulty or inability of the Contractor to obtain access to the Equipment for the performance of its obligations hereunder; or
- 3.13 the provision of any back up services.

4 **ALTERATIONS AND ADDITIONS**

Alterations and additions to or in connection with any of the support (Hardware Maintenance) may only be carried out by the Contractor and no liability whatsoever shall be accepted by the Contractor for any alterations or additions carried out in contravention of this clause 4 nor for any effect such alterations or additions may have on the Equipment.

5 **INSURANCE**

The Customer shall at all times insure the support (Hardware Maintenance) against any loss (including but not limited to total loss) or damage from all risks, including but not limited to third party risks, on a new for old basis and for its full new replacement value.

6 **CUSTOMER UNDERTAKINGS FOR HARDWARE MAINTENANCE**

- 6.1 The Customer undertakes:
 - 6.1.1 to comply with the provisions of any software licence agreement(s) the Customer has entered into in relation to software used on or in relation to the Equipment;

6.1.2 to use the Equipment only in accordance with the manufacturer's instructions and guidelines, in the normal course of its business and in accordance with applicable law (including but not exclusively law relating to Health and Safety);

6.1.3 to keep the Equipment at the Address and in the event of relocation to inform the Company immediately;

6.1.4 to keep the Equipment in good working order, condition and repair;

6.1.5 to obtain the benefit of and comply with all manufacturer's warranties and guarantees that may be applicable to the Equipment and to refrain from doing anything that may invalidate such warranties or guarantees; and

6.1.6 to notify the Company immediately by telephone or email in the event that the Equipment suffers any fault, failure or damage, whether such fault, failure or damage would fall to be covered by the Services or not.

6.2 The Customer acknowledges and agrees that the selection of the Equipment it uses shall be entirely at its discretion and that the Contractor shall not be responsible for advising the Customer on the suitability of any particular piece of Equipment for its purposes, or on any functionality provided by any particular piece of Equipment.

7 CONTRACTOR'S LIABILITY

7.1 The Contractor shall not be liable to the Customer for any loss or damage whatsoever or howsoever caused arising directly or indirectly in connection with this Agreement, the Equipment or other hardware, its use, or other equipment, property or otherwise except to the extent that such liability may not be lawfully excluded.

7.2 Notwithstanding the generality of clause 7.1 above, the Contractor expressly excludes liability for:

7.2.1 indirect or consequential loss or damage which may arise in respect of the Software, any Support Software, any modem or other hardware, its use, the System or other equipment or property or for any loss of profit, business, revenue, goodwill or anticipated savings;

7.2.2 accidental loss of or damage to any backup of Customer data;

7.2.3 loss or damage caused by viruses, Trojans, logic bombs or other malware;

7.2.4 loss or damage caused to the Equipment as a result of hacking, third party attack or other illegal activity;

7.2.5 any support or maintenance undertaken by any third party not instructed or appointed by the Company.

7.3 In the event that any exclusion or other provision contained in this Agreement be held to be invalid for any reason and the Contractor becomes liable for loss or damage that could otherwise have been limited, such liability shall be limited to the amount of Charges actually paid by the Customer in the 12 months immediately preceding the date of the incident giving rise to the loss(es).

7.4 Neither party seeks to exclude liability for:

7.4.1 death or personal injury to the extent that the same arises as a result of the negligence of the Contractor, its employees, agents or authorized representatives; nor

7.4.2 fraud or fraudulent misrepresentation.

8 CONFIDENTIAL INFORMATION

8.1 All information, drawings, specifications, documentation, software listings or code which the Contractor may have imparted and may from time to time impart to the Customer relating to any Equipment, modem or other hardware or generally to the maintenance provided hereunder is proprietary and confidential and the Customer agrees that it shall use the same solely in accordance with the provisions of this Agreement and that it shall not at any time during or after expiry or termination of this Agreement disclose the same whether directly or indirectly to any third party without the Contractor's prior written consent.

8.2 Subject only to the specific, limited provisions of Clause 8.1 above the Customer further agrees that it shall not itself or through any subsidiary, agent or third party use such confidential information to copy, reproduce, translate, adapt, vary, modify, decompile, disassemble or reverse engineer any software nor shall the Customer sell, lease, license, sub-license or otherwise deal with any supporting software or hardware or variations, modifications, copies, releases, versions or enhancements thereof or have any software or other program written or developed for it based on any confidential information supplied to it by the Contractor.

8.3 The foregoing provisions shall not prevent the disclosure or use by the Customer of any information which is or hereafter, through no fault of the Customer, becomes public knowledge or to the extent permitted by law.

9 TERM AND TERMINATION

9.1 This Agreement shall commence on the Commencement Date and shall (subject to the remainder of this clause 9) continue in force for the duration of the Term and from year to year thereafter until or unless terminated by either party giving to the other party a minimum of 90 days' prior written notice of that party's wish to terminate.

9.2 In addition to the right to terminate set out in clause 9.1 the Contractor may by notice in writing to the Customer terminate this Agreement at any time and with immediate effect if:

9.2.1 the Customer is in breach of any term, condition or provision of this Agreement (other than one relating to payment as referred to in clause 9.2.3) or required by applicable law and fails to remedy such breach (if capable of remedy) within 10 days of having received written notice of such breach from the Contractor;

9.2.2 the Customer, being a body corporate shall present a petition or have a petition presented by a creditor for its winding up, or convene a meeting to pass a resolution for voluntary winding up, or shall enter into any liquidation whether compulsory or voluntary (other than for the purposes of reconstruction or amalgamation), shall call a meeting of its creditors, shall enter any composition or arrangement with its creditors, or shall have a receiver of all or any of its undertakings or assets appointed, or shall be unable to pay its debts or shall cease to carry on business in accordance with the law relating to this Agreement; or

9.2.3 the Customer fails to make any payment to the Contractor within 7 days of it becoming due.

9.3 Upon termination, the Customer shall pay to the Contractor all costs and expenses, including legal and other fees incurred and all arrears of charges or other payments arising in respect of the Equipment, the Services, this Agreement or otherwise but nothing in this clause 9.3 shall prejudice any other rights and remedies the Contractor may have under this Agreement or in accordance with applicable law.

9.4 Upon giving notice to terminate this Agreement pursuant to clause 9.1 the Customer shall immediately pay to the Contractor 100% of the amount that will be due in respect of the Services to be provided until the date termination takes effect.

9.5 Termination, howsoever or whenever occasioned shall be subject to any rights and remedies the Contractor may have under this Agreement or under applicable law.

10 **FORCE MAJEURE**

10.1 The Contractor shall be under no liability to the Customer in respect of anything which, apart from this provision, may constitute breach of this Agreement arising by reason of force majeure, namely, circumstances beyond the control of the Contractor which shall include (but shall not be limited to) acts of God, perils of the sea or air, fire, flood, drought, explosion, sabotage, accident, embargo, riot, civil commotion, including acts of local government and parliamentary authority, acts of war or terrorism; inability to provide support or supply materials; breakdown of equipment and labour disputes of whatever nature and for whatever cause arising including (but without prejudice to the generality of the foregoing) work to rule, overtime bars, strikes and lockouts and whether between either of the parties hereto and any or all of its employees and/or any other employer and any or all of its employees and/or between any two or more groups of employees (and whether of either of the parties hereto or any other employer).

10.2 In the event that the Company is unable at any time to provide all or any of the Services as a result of any event of force majeure (as defined in clause 10.1) the Company may, without liability to the Customer, terminate this Agreement upon giving to the Customer 1 months' notice in writing.

11 **GENERAL**

11.1 **Waiver**

Failure or neglect by the Contractor to enforce at any time any of the provisions hereof shall not be construed nor shall be deemed to be a waiver of the Contractor's rights hereunder nor in any way affect the validity of the whole or any part of this Agreement nor prejudice the Contractor's rights to take subsequent action.

11.2 **Headings**

The headings of the terms and conditions herein contained are inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of any of the terms and conditions of this Agreement.

11.3 **Severability**

In the event that any of these terms, conditions or provisions shall be determined by any competent authority to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall to that extent be severed from remaining terms, conditions and provisions which shall continue to be valid to the fullest extent permitted by law.

11.4 **Assignment and Subcontracting**

11.4.1 The Customer shall not assign or otherwise transfer all or any part of this Agreement without the prior written consent of the Contractor.

11.4.2 The Contractor shall be at liberty to assign or subcontract any part of this Agreement or its rights or obligations under it to any party.

11.5 **Notices**

Any notice to be given by either party to the other may be sent by recorded delivery to the address of the other party as appearing herein or such other address as such party may from time to time have communicated to the other in writing and if so sent shall be deemed to be served 2 days following the date of posting.

11.6 **Third Party Rights**

Nothing in this Agreement shall grant to any third party any right to take action on it pursuant to the Contracts (Rights of Third Parties) Act 1999 but nothing in this clause 9.6 shall affect any right of any third party available to it apart from under that Act.

11.7 **Law**

The parties hereby agree that this Agreement shall be construed in accordance with English Law and the courts of England and Wales shall have exclusive jurisdiction over any dispute.