

# ACS-Apt Computer Systems Ltd.



The Integrated Solutions Company

## Business Terms and Conditions

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This document contains business Terms and Conditions of ACS-Apt Computer Systems Ltd.

**ACS-Apt Computer Systems Ltd.**

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These terms and conditions ("Terms") apply to the sale, licence, maintenance and services (as applicable) provided by ACS-Apt Computer Systems Ltd (hereafter referred as "ACS-Apt" or "ACS") of any computer hardware or software, Consultancy Services or other similar or associated items or materials. These Terms are divided into four sections; Sales, System Support, Services and General Business Terms. The General Terms apply to all contracts of ACS-APT. The remaining terms apply depending upon the nature of business and service(s) to be provided by ACS-Apt.

## **SECTION: 1 - SALE OF GOODS:**

The following terms and conditions in this Section 1 apply to the sale of Goods by ACS-APT

### **1.1 Formation of Contract**

- 1.1.1 ACS-APT will sell and the Customer will buy the Goods in accordance with ACS-APT's written quotation (if accepted by the Customer) or the Customer's written order (if accepted by ACS-APT) subject in either case to these Terms. No order submitted by the Customer is deemed to be accepted by ACS-APT unless ACS-APT confirm this in writing.

### **1.2 Accuracy of Order**

- 1.2.1 The Customer is responsible for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Customer.

### **1.3 Software**

- 1.3.1 All software, whether supplied, developed, installed or implemented is provided within the terms and conditions and licence of the software provider.
- 1.3.2 If the software comprised in the Goods is not owned by ACS-APT then the Customer will be required to enter into an end-user licence agreement with the owner of the software concerned.
- 1.3.3 If any software has to any extent been written or developed by ACS-APT then subject to clause 1.3.2 above, ACS-APT hereby grants a non-exclusive, non-transferable licence for the use of such software by the Customer for the duration of this Contract and all copies of such software are the property of ACS-APT and notwithstanding clause 1.5.1 no title or ownership thereof will be transferred to the Customer.
- 1.3.4 Where software has been written or developed by ACS-APT for the Customer, the Customer acknowledges that such software may only be compatible with the current versions (available at the time) of other software, operating system and/or hardware, and ACS-APT provides no guarantee that it will be compatible with later versions of other software and/or hardware system. For the avoidance of doubt, unless otherwise agreed between the parties in writing, ACS-APT is under no obligation to supply the Customer with any updates, service pack, hotfixes or add-ons to the software.

### **1.4 Delivery**

- 1.4.1 ACS-APT will deliver the Goods to the place agreed in writing with the Customer.
- 1.4.2 Any dates and times quoted for delivery are estimates only and unless otherwise agreed in writing, delivery times are not of the essence of the contract. ACS-APT will not be liable for any loss or damage (how/whatsoever arising) to the Customer should ACS-APT be unable to deliver the Goods within the quoted period.
- 1.4.3 ACS-APT is entitled to make partial deliveries by instalments and these Terms will apply to each partial delivery.
- 1.4.4 If the Goods are to be delivered in instalments, each delivery will constitute a separate contract and failure by ACS-APT to deliver any one or more instalments in accordance with these Terms will not entitle the Customer to treat the Contract as a whole as terminated.

### **1.5 Transfer of Property and Risk**

- 1.5.1 Risk in respect of the Goods passes to the Customer at the time of delivery but the title in the Goods will not pass to the Customer until ACS-APT has received payment in full of the price of the Goods and all other goods agreed to be sold or services to be provided by ACS-APT to the Customer for which payment is then due.
- 1.5.2 Until title in the Goods has passed to the Customer, ACS-APT will be entitled at any time to require the Customer to deliver up the Goods to ACS-APT and, if the Customer fails to do so forthwith, to enter upon any premises of the Customer or any third party where the Goods are stored and repossess the Goods. In addition, ACS-APT is entitled to charge the customer for any costs incurred in repossessing the goods.
- 1.5.3 Until title in the Goods has passed to the Customer, the Customer will hold the Goods as ACS-APT's fiduciary agent and bailee, will not dispose of the Goods and will keep the Goods separate from those of the Customer and third parties and properly stored, protected and insured and identified as ACS-APT's property.

## **1.6 Installation**

**1.6.1** Where ACS-APT's written quotation for the sale of the Goods or the Customer's written order for the Goods (if accepted by ACS-APT) specifies installation of the Goods or ACS-APT otherwise undertakes any such installation then the Customer will complete all necessary works that may be required to receive the installation of the Goods including all necessary IT infrastructure (including hardware, software as applicable) and suitable electrical supply. If ACS-APT is prevented or delayed from carrying out the installation through no fault of ACS-APT then ACS-APT is entitled to charge the Customer at ACS-APT's then applicable charge rate/prices for any additional works carried out by or on behalf of ACS-APT to enable it to complete the installation and/or for compensation for any losses or costs incurred by ACS-APT by reason of such delay.

## **1.7 Warranty**

**1.7.1** The Goods supplied hereunder are warranted to be free from defects in materials and workmanship for a period of 30 days from the date of delivery by ACS-APT. The Customer must within the said period of 30 days notify ACS-APT in writing of any such defects and permit ACS-APT to inspect the Goods as required by ACS-APT. If the Customer does not do so then the Customer will not be entitled to reject the Goods and ACS-APT will have no liability for such defect.

**1.7.2** The above warranty only applies where the Goods have been properly used in accordance with the relevant manufacturer's specifications and any instructions by ACS-APT and does not apply to any Goods that have been repaired or modified by anybody other than ACS-APT.

**1.7.3** If a valid claim is notified under clause 1.7.1 above then ACS-APT may at its discretion repair or replace the Goods free of charge or refund the price of the Goods (or a proportionate part) in which case ACS-APT will have no further liability to the Customer.

## **1.8 Charges and Payment**

### **1.8.1 In respect of the sale of Goods:**

**1.8.1.1** Payment will be made by the Customer on the date(s) agreed in writing between the Customer and ACS-APT at the point of order for the Goods.

**1.8.1.2** Invoices for Goods will ordinarily be issued on delivery of the Goods. If the Goods are specific to the Customer or if the Customer fails to take delivery when required ACS-APT may invoice the Customer at any time after the Goods become available.

**1.8.1.3** ACS-APT may require the Customer at any time prior to delivery to pay a deposit to secure any order or part thereof.

**1.8.1.4** Any quantity discount given by ACS-APT at the point of order may be removed if the order quantity is subsequently reduced.

## **SECTION: 2 – PROVISION OF SYSTEM SUPPORT**

The following terms and conditions apply to the service described in the Scope of Service ("System Support")

### **2.1 ACS-APT Responsibilities**

**2.1.1** ACS-APT will, subject to these Terms, provide System Support in accordance with the terms of the Scope of Service and Definition of Service.

**2.1.2** ACS-APT will use its reasonable endeavours to respond to a valid Call within the response time set out in the Definition of Service.

**2.1.3** ACS-APT will use its reasonable endeavours to rectify defects or malfunctions in the Equipment on the telephone or by use of remote access in accordance with the Definition of Service.

**2.1.4** If a defect or malfunction in the Equipment cannot be resolved on the telephone or by remote access, ACS-APT will use its reasonable endeavours to visit the Installation Address within the response times set out in the Definition of Service.

**2.1.5** When carrying out work in accordance with these Terms, ACS-APT will use its reasonable endeavours to return the Equipment to service and, subject to these Terms, reinstate the Customer's applications.

**2.1.6** ACS-APT may at its discretion provide a permanent replacement part for the Equipment, either new or refurbished, and on exchange that part becomes the property of the Customer, and the faulty part replaced becomes the property of ACS-APT.

**2.1.7** ACS-APT may repair the Equipment away from the Installation Address when it considers it is necessary to do so.

**2.1.8** ACS-APT may at its discretion, lend the Customer temporary replacement equipment (as compatible as may be available) while repairs are carried out. Equipment loaned to the Customer remains ACS-APT's property and will be returned to ACS-APT on demand. The Customer is entirely responsible for such equipment and will indemnify ACS-APT in respect of any loss or damage to that equipment.

**2.1.9** ACS-APT may make use of new releases, patches and updates of Third-Party Software to rectify known problems where this is permitted under the applicable software licence agreement.

- 2.1.10 Where ACS-APT is required to carry out or does carry out work that is subsequently found to be outside scope of System Support, ACS-APT will be entitled to charge for that work at ACS-APT's then applicable charge rates.

## **2.2 Term**

- 2.2.1 System Support will commence on the date set out in the Scope of Service and, subject to these Terms, continue unless and until either party serves at least 3 month's prior written notice of termination on the other expiring on the date of expiry of the Initial Term or expiry of any Renewal Period (as the case may be).

## **2.3 Period of Availability**

- 2.3.1 ACS-APT will only provide System Support during the Scheduled Service Hours. If the Customer requests ACS-APT to carry out any System Support outside the Scheduled Service Hours then, ACS-APT will use its reasonable endeavours to comply with this request but will charge the Customer for such services at ACS-APT's then applicable premium charge rates, which is twice the standard charge rate, unless agreed otherwise.
- 2.3.2 The time taken by ACS-APT to respond to a Call will only be measured during the Scheduled Service Hours.

## **2.4 Customer Responsibilities**

- 2.4.1 The Customer will keep the Equipment in the environmental conditions recommended by the Equipment manufacturer and ensure that the external surfaces, cables and fittings of the Equipment are kept clean and in good condition.
- 2.4.2 The Customer will ensure that the Equipment is only used by properly trained staff in accordance with the manufacturer's user instructions, current computing practice and instructions issued by ACS-APT from time to time.
- 2.4.3 The Customer will ensure that only personnel authorised by ACS-APT adjust, or the Customer's in house IT support personnel, modify, configure, maintain, repair, replace or remove any part of the Equipment.
- 2.4.4 The Customer will maintain adequate records of the use, maintenance and malfunction of the Equipment and will provide ACS-APT with such information and assistance concerning the Equipment, its application, use, location and environment as ACS-APT may reasonably require to enable it to carry out System Support.
- 2.4.5 The Customer will immediately notify ACS-APT if there is any failure of the Equipment and will allow ACS-APT full and free access to the Equipment and all documentation, software, materials and services necessary for the provision of the System Support/Maintenance.
- 2.4.6 The Customer will ensure that relevant trained and experienced staff are available when required by ACS-APT to provide ACS-APT with information required by ACS-APT to diagnose and/or repair the Equipment.
- 2.4.7 Where ACS-APT provides remote diagnostic services in respect of the Equipment, the Customer will put and keep in place a remote access link to the Equipment which is acceptable to ACS-APT. The Customer hereby agrees that ACS-APT shall have the right at any time to access the Customer's Equipment remotely for the purpose of providing System Support. The Customer acknowledges and agrees that such remote diagnostic services may be undertaken at times where the Customer is unavailable (for example, outside the Customer's working hours) and ACS-APT shall have the right to perform any diagnostic and maintenance services as it sees fit even if it has not been possible to contact the Customer and inform the Customer of the proposed performance of such services.
- 2.4.8 The Customer must tell ACS-APT in writing immediately that the Equipment or any part of it is changed.
- 2.4.9 The Customer will notify ACS-APT of change in the location of any part of the Equipment. Whilst any Equipment is being moved, all ACS-APT's obligations to provide System Support will be suspended. System Support will be reinstated following re-installation of the Equipment provided that the Equipment has not been damaged or affected during the move. If the Equipment has been damaged or affected during the move ACS-APT shall have the option to inspect such Equipment at ACS-APT's then applicable charge rates.
- 2.4.10 Unless specifically included in the Scope of Service, the Customer is responsible for the cost of any Third-Party Software upgrades, for which ACS-APT's advice is required.
- 2.4.11 It is the Customer's sole responsibility, in a manner acceptable to ACS-APT, to operate and verify a proper backup routine, maintaining all backup copies in a secure environment such that they can and will be provided to ACS-APT when required.
- 2.4.12 The Customer undertakes to put and keep in place adequate security measures to protect the Equipment and any other software or data from viruses, security breaches, harmful code or unauthorised access. ACS-APT shall not be responsible for any unauthorised access to the Equipment by means of hacking, any unauthorised access of the Equipment with intent to commit or facilitate the commission of an offence or any unauthorised modification of Equipment by a third party.
- 2.4.13 Whilst every effort is made to maintain a remote access link to the Equipment, ACS-APT will not be liable for any loss suffered by the Customer if for any reason the remote access link is unavailable or interrupted for any period of time.
- 2.4.14 The Customer is solely responsible for any connection charges, line rental charges and call charges in relation to any Equipment, including any charges related to internet data usage.

## **2.5 Proactive Support Visits/Calls**

- 2.5.1** At ACS-Apt's discretion or as agreed otherwise, during the Initial Term and any Renewal Period, ACS-APT will provide to the Customer the number of support visits/calls (onsite or remote login) specified in the Scope of Service during Normal Business Working Hours, the purpose of which is to provide general support in respect of the operation of the System. Any unused support visits/calls that are remaining at the end of the Initial Term and/or any Renewal Period will automatically lapse and shall not be rolled on to the next Renewal Period.
- 2.5.2** Where applicable, the customer to make sure to provide safe and secure access to ACS-Apt's Engineer/consultant to the service premises or secure remote connectivity with required access rights/privileges.

## **2.6 System Audit**

- 2.6.1** ACS-APT will, as often as ACS-APT thinks necessary and (save in the event of an emergency) upon reasonable notice carry out a System Audit within ACS-APT's Normal Business Working Hours to confirm that, in ACS-APT's opinion, the Equipment is in reasonable operating condition.
- 2.6.2** If work is required to put the Equipment in such full working order ACS-APT will notify the Customer accordingly. If the Customer declines to have such work carried out at its expense within thirty days of such notification, ACS-APT may on written notice exclude such equipment from System Support, without refunding any prepaid support fees for remainder of support period, in respect of such equipment from the end of the notice period.

## **2.7 Service Exclusions**

- 2.7.1** System Support does not extend to:
- 2.7.1.1** any Equipment not specified or included in the Scope of Service including any part of the Equipment which is in any way changed from that included in the Scope of Service;
  - 2.7.1.2** any Equipment which was, in ACS-APT's reasonable opinion, operating in an unstable or unsuitable manner prior to the commencement of System Support;
  - 2.7.1.3** any work arising as a result of any breach by the Customer of any of its obligations under these Terms;
  - 2.7.1.4** any work arising from any incident, wilful act or any error or omission in the operation of the Equipment or any other cause (except for wear and tear) which is not due to the neglect or default of ACS-APT;
  - 2.7.1.5** any failure or defect caused by hardware or software not covered by these Terms;
  - 2.7.1.6** failures or defects due to manufacture or design defects over which ACS-APT has no control;
  - 2.7.1.7** refurbishment or repair of casings or outer surfaces;
  - 2.7.1.8** any work to accessories, alterations, attachments or any other equipment that is external to the Equipment not identified within the Scope of Service;
  - 2.7.1.9** reinstatement of customised versions of the standard desktop/operating system;
  - 2.7.1.10** reinstatement of the Customer's software and data not identified within the Scope of Service;
  - 2.7.1.11** any consultancy, training or software or hardware ACS-APT may provide;
  - 2.7.1.12** integration of the Equipment or any part thereof with other systems;
  - 2.7.1.13** cleansing of viruses and spyware, or resolving the consequences of security breaches and incompatibilities in hardware and/or software.
  - 2.7.1.14** upgrading the Operating Platform to be able to operate the Customer's selected software applications;
  - 2.7.1.15** consumable supplies or accessories such as magnetic media, batteries, print heads, toner cartridges, ink, paper, and any other items identified as consumable by the Equipment manufacturer, unless listed in the Scope of Service;
  - 2.7.1.16** any Equipment in respect of which a notice has been served by ACS-APT under clauses 2.8 or 2.9;
  - 2.7.1.17** any work arising by reason of any maintenance or repair work carried out in respect of the Equipment by a third party not previously approved in writing by ACS-APT;
  - 2.7.1.18** in respect of any personal digital assistants or other mobile solutions comprised within the Equipment anything other than support of the Third-Party Software to enable synchronisation to such server of the Customer as is specified in the Scope of Service;
  - 2.7.1.19** any services which are specifically excluded in the Definition of Service.

## **2.8 Beyond Economic Repair**

- 2.8.1** ACS-APT will give the Customer written notice if, in its reasonable opinion, the Equipment (or any part of it) is identified as "end of life", becomes beyond reasonable repair or spare parts become not readily available, or if faults and/or its condition are such that overhaul or replacement is necessary at which point any obligations of ACS-APT to provide System Support in respect of such equipment will be suspended. If the Customer declines to have the Equipment overhauled or replaced at its expense within thirty days of such notification, ACS-APT may on written notice exclude such equipment from this Contract, without refunding any prepaid support fees for remainder of support period, in respect of such equipment from the end of the notice period and will remove any loan equipment relating to the said equipment from the end of the notice period.
- 2.8.2** The provisions of clause 2.8.1 will apply equally in respect of any software included within the Equipment which, in the reasonable opinion of ACS-APT, is no longer economically viable to maintain or requires upgrading or updating.

## **2.9 Take on Visit**

- 2.9.1** Prior to commencement of System Support, ACS-APT may during Normal Working Hours inspect the Equipment, or any part of it, at the Installation Address to confirm that it is, in ACS-APT's reasonable opinion, in full working order in accordance with the manufacturer's requirements. If work is required to put the Equipment in such full working order ACS-APT will notify the Customer accordingly. If the Customer declines to have such work carried out at its expense within thirty days of such notification, ACS-APT may on written notice exclude such equipment from System support, without refunding any prepaid support fees for remainder of support period, in respect of such equipment from the end of the notice period.

## **2.10 Charges and Payment**

- 2.10.1** The Charges quoted in the Scope of Service for System Support are for the Initial Term only. The Customer will be notified of the Charges applicable to any Renewal Period within 60 days before the end of the Initial Term and 60 days before the end of any subsequent Renewal Period (as applicable). In case of monthly subscription/rolling contracts, renewal notice period will not apply.
- 2.10.2** In respect of System Support for the Initial Term the Customer will pay the Charges to ACS-APT on the Agreement Start Date, or within 30 days of the date of ACS-APT's invoice, whichever is earlier, and thereafter in respect of any Renewal Period the Customer will pay the Charges to ACS-APT within 15 days prior to the commencement of any subsequent Renewal Period.

## **SECTION: 3 – SERVICES**

The following terms and conditions apply to all Services provided or to be provided to the Customer.

### **3.1 Formation of Contract**

- 3.1.1** ACS-APT will sell and the Customer will buy the Services in accordance with ACS-APT's written quotation (if accepted by the Customer) or the Customer's written order (if accepted by ACS-APT) subject in either case to these Terms. No order submitted by the Customer is deemed to be accepted by ACS-APT unless ACS-APT confirm this in writing.

### **3.2 ACS-APT's obligations**

- 3.2.1** ACS-APT shall use reasonable endeavours to provide the Services and to deliver the System to the Customer, in accordance in all material respects with the Functional Specification (if any), Proposal (if any) and/or Project Plan (if any).
- 3.2.2** ACS-APT may at its discretion appoint a project manager to liaise with the Customer on all matters relating to the Services. ACS-APT shall use reasonable endeavours to ensure that the same person acts as project manager throughout the provision of the Services, but may replace him from time to time where reasonably necessary in the interests of ACS-APT's business.
- 3.2.3** ACS-APT shall use reasonable endeavours to meet any performance dates or Project Milestones specified in the Project Plan, but any such dates shall be estimates only and time shall not be of the essence of the Contract.

### **3.3 Customer's obligations**

- 3.3.1** The Customer shall:
- 3.3.1.1** co-operate with ACS-APT in all matters relating to the Services and appoint a project manager (or a suitably qualified member of staff), who shall have the authority to contractually bind the Customer on matters relating to the Services;
- 3.3.1.2** provide in a timely manner such access to the Customer's premises and data, and such office accommodation and other facilities, as is requested by ACS-APT;
- 3.3.1.3** provide in a timely manner such information and documentation as ACS-APT may request, and ensure that such information and documentation is correct and accurate in all material respects;
- 3.3.1.4** be responsible (at its own cost) for preparing the relevant premises for the supply of the Services; and
- 3.3.1.5** ensure in the interests of health and safety that ACS-APT's personnel, while on the Customer's premises, are at all times familiar with the Customer's premises and safety procedures.
- 3.3.2** If ACS-APT's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer or the Customer's agents, sub-contractors or employees, the Customer shall be liable to pay to ACS-APT on demand all reasonable costs, charges or losses sustained or incurred by it (including, without limitation, any direct or indirect consequential losses, loss of profit and loss of opportunity to deploy resources elsewhere), subject to ACS-APT confirming such costs, charges and losses to the Customer in writing.

### **3.4 Change control**

- 3.4.1** The project managers shall meet on a regular basis to discuss matters relating to the Services. If either party wishes to change the scope or execution of the Services, it shall submit details of the requested change to the other in writing.
- 3.4.2** If either party requests a change to the scope or execution of the Services, ACS-APT shall, within a reasonable time, provide a written estimate to the Customer of:
- 3.4.2.1** the likely time required to implement the change;
  - 3.4.2.2** any variations to ACS-APT's charges arising from the change;
  - 3.4.2.3** the likely effect of the change on the Proposal and/or Project Plan; and
  - 3.4.2.4** any other impact of the change on the terms of the Contract.
- 3.4.3** If the Customer wishes ACS-APT to proceed with the change, ACS-APT has no obligation to do so unless and until the parties have agreed in writing on the necessary variations to its charges, the Services, the relevant Proposal, Project Plan and any other relevant terms of the Contract to take account of the change. This will be set out in an addendum to the Functional Specification.
- 3.4.4** Notwithstanding clause 3.4.3 ACS-APT may, from time to time and without notice, change the Services in order to comply with any applicable safety or statutory requirements, provided that such changes do not materially affect the nature, scope of, or the charges for the Services.
- 3.4.5** ACS-APT may charge for the time it spends assessing a request for change from the Customer on a time and materials basis in accordance with Clause 3.5.2.

### **3.5 Charges and payment**

- 3.5.1** Clause 3.5.2 shall apply if the Services are to be provided on a time and-materials basis, and clause 3.5.3 shall apply if the Services are to be provided for a fixed price.
- 3.5.2** Where the Services are provided on a time-and-materials basis:
- 3.5.2.1** The charges payable for the Services shall be calculated in accordance with ACS-APT's standard daily fee rates as amended from time to time;
  - 3.5.2.2** ACS-APT's standard daily fee rates are calculated on the basis of a 7.5 hours day worked between 9.00 am and 5 pm on weekdays (excluding weekends and public holidays) either spent at the Customer's premises or at ACS-APT's premises;
  - 3.5.2.3** ACS-APT shall be entitled to charge overtime rate at its standard rates for time worked by members of the project team outside the hours referred to in clause 3.5.2.2;
  - 3.5.2.4** ACS-APT shall invoice the Customer for its charges for time, expenses and materials (and VAT, where appropriate) either at the start of a project or monthly in advance for the month concerned.
- 3.5.3** Where the Services are provided for a fixed price the total price for the Services shall be the amount set out in the Proposal. The total price shall be paid by the Customer to ACS-APT in instalments as set out in the Proposal on its achieving the corresponding Project Milestone.  
On achieving a Project Milestone, ACS-APT shall invoice the Customer for the charges that are then payable, together with expenses and materials (and VAT, where appropriate) in accordance with clauses 3.7.1 and 3.7.2.

### **3.6 Intellectual Property Rights**

- 3.6.1** Intellectual Property Rights and all other rights in the System and any associated or other documentation produced as a result of the Services (other than the Third-Party Software) shall be owned by ACS-APT and the Customer shall have no right title or interest therein except as expressly set out in this Contract.
- 3.6.2** So long as the Customer shall have made all payments due under this Contract in accordance with its terms and subject to the terms of clause 1.3, ACS-APT shall grant to the Customer a non-exclusive, non-transferable licence to such extent as is necessary to enable the Customer to make reasonable use of the System and the Services as is envisaged by the parties. If ACS-APT terminates the Contract, this licence will automatically terminate.

### **3.7 Acceptance**

- 3.7.1** The Customer shall carry out the Acceptance Tests in accordance with the Project Plan and if the relevant Project Milestone passes the Acceptance Tests the Customer's project manager shall within 2 days from completion of the Acceptance Tests sign a User Acceptance Sign Off and send a copy to the ACS-APT project manager confirming that the relevant Project Milestone has passed the Acceptance Tests. Once the ACS-APT project manager has accepted the User Acceptance Sign Off, ACS-APT shall invoice the Customer and commence to the next Project Milestone.
- 3.7.2** If ACS-APT does not receive a User Acceptance Sign Off within 14 days of the date set out in the Project Plan for carrying out the Acceptance Tests, acceptance of the relevant Project Milestone will be deemed to have occurred and ACS-APT will raise an invoice for the relevant Project Milestone.
- 3.7.3** Acceptance of the System shall be deemed to have occurred on whichever is the earliest of:

- 3.7.3.1** the signing by the Customer of a User Acceptance Sign Off for the final Project Milestone to pass the Acceptance Tests; or
- 3.7.3.2** the use of the System by the Customer in the course of its business.

## **SECTION: 4 – GENERAL BUSINESS TERMS AND PROVISIONS**

The following terms and conditions apply to all Equipment sold or to be sold, Software licensed or to be licensed, Services provided or to be provided and/or System Support provided or to be provided to the Customer.

### **4.1 General**

- 4.1.1** These Terms may only be amended, or varied with ACS-APT's agreement in writing. The parties agree that these Terms will prevail notwithstanding any conflicting or additional terms or any orders or other notifications submitted by the Customer.
- 4.1.2** Words of a technical nature used in these Terms will (unless inconsistent with the context) be construed in accordance with general trade use in the computer industry in the United Kingdom.
- 4.1.3** Headings in these Terms are for convenience only and have no effect on the interpretation.
- 4.1.4** Failure by either party to exercise or enforce any rights, or the giving of any forbearance, delay or indulgence, will not be construed as a waiver of its rights under these Terms or otherwise nor will any single or partial exercise thereof preclude any further or subsequent exercise.

### **4.2 Specification**

- 4.2.1** The description of any Goods contained in any order form, invoice, descriptive matter, specifications, catalogue or advertising material published or issued by ACS-APT is for identification only and the use of such description will not constitute a sale by description. Any typographical or other error or omission in any such literature or any other document issued or provided by ACS-APT may be corrected by ACS-APT without any liability on the part of ACS-APT.
- 4.2.2** ACS-APT reserve the right to supply Goods which differ from the specifications agreed between the parties and/or to modify any specifications in respect of System Support provided that this does not materially affect the performance of the Goods or System Support.

### **4.3 Prices**

- 4.3.1** Unless otherwise stated in writing, quotations are valid for 30 days from the date of issue or until price changes from OEM, whichever arises first, and are exclusive of VAT and any other relevant taxes which are payable by the Customer in addition.
- 4.3.2** All waiting time spent by any employees or agents of ACS-APT (which includes any time which had been allocated to a Customer by ACS-APT and which is not utilised by such Customer for any of the reasons set out in this clause) as a result of any delay, variation or failure by the Customer to comply with these Terms (which for these purposes includes any delays or postponements by the Customer of any installation dates specified by ACS-APT, of dates of scheduled service visits or otherwise) will be payable by the Customer to ACS-APT at ACS-APT's then applicable charge rates.
- 4.3.3** The Customer shall pay any chargeable expenses and disbursements which are incurred by ACS-APT personnel on behalf of the Customer including but not limited to hotels, subsistence, travelling, mileage at 45p per mile, supplies, telephone charges, copying charges and the cost of any materials or services reasonably and properly provided by third parties required by ACS-APT for the supply of services.

### **4.4 Payment**

- 4.4.1** If no payment date(s) has been agreed in writing in accordance with these Terms then payment by the Customer will be made within 30 days after the date of ACS-APT's invoice.
- 4.4.2** If any payments from the Customer under these Terms are payable by instalments, the Customer will pay such instalments in advance by direct debit or such other method as ACS-APT may agree, at the intervals agreed in writing with ACS-APT.
- 4.4.3** If the Customer fails to make any payment due to ACS-APT (whether under these Terms or otherwise) on its due date then ACS-APT may (without prejudice to any other remedy) cancel the Contract or suspend any further performance of any obligations by ACS-APT to the Customer or appropriate any money received from the Customer against such sums as ACS-APT may determine (notwithstanding any instructions from the Customer). For the avoidance of doubt, ACS-APT will be entitled to suspend the performance of System Support in the event that there are any sums owing by the Customer in respect of any other goods and/ or services provided by or on behalf of ACS-APT to the Customer.
- 4.4.4** All payments due to ACS-APT under these Terms will be paid in full without any set off, deduction, counterclaim or withholding of any sum for whatever reason.



**4.4.5** ACS-APT reserves the right to charge interest on amount of any delayed payment at the rate of 0.05% on daily basis and calculated on the outstanding amount until payment has been made in full.

#### **4.5 Lease**

**4.5.1** If any payments due to ACS-APT in respect of Goods or services is to be paid by a third party then the Customer agrees that immediately on delivery of the Goods in question the Customer will sign the acceptance note for the leasing company or other third party and will generally take all steps as may be necessary to ensure that payment is made to ACS-APT for the Goods and/or services in accordance with these Terms.

#### **4.6 ACS-APT Employees**

**4.6.1** The Customer will take all such steps as may be necessary to ensure the safety and welfare of any of ACS-APT's representatives who visit any premises of or on behalf of the Customer.

**4.6.2** The Customer will fully indemnify and hold harmless ACS-APT from and against any claim for loss, damage or injury to any person or property occasioned by or arising directly or indirectly from any negligence or misuse of the Goods or the Equipment or any other breach of these Terms by or on behalf of the Customer.

#### **4.7 Liability**

**4.7.1** Subject as expressly provided in these Terms and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977) all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law, but nothing in these Terms will affect the liability of ACS-APT for any fraudulent misrepresentation.

**4.7.2** Where the Goods are sold under a consumer transaction (as defined by the Consumer Transaction (restrictions on Statements) Order 1976) the statutory rights of the Customer are not affected by these Terms.

**4.7.3** The Customer accepts that in respect of the sale of the Goods, whilst ACS-APT will endeavour to use its expertise and experience to advise the Customer, ACS-APT is acting as a supplier only and it is the Customer's responsibility to ensure that the Goods will be suitable for its requirements and the Customer acknowledges that prior to the Contract it has fully and accurately advised ACS-APT of its requirements, both present and anticipated, in respect of the Goods.

**4.7.4** If ACS-APT is unable, other than through the act or default of the Customer, within a reasonable time to repair or replace any defective Goods in accordance with the Warranty set out in these Terms and where such Goods are unusable due to such defect then, the Customer's only remedy is to reject such Goods and on their return to ACS-APT's premises the Customer is entitled to recover the price paid for such Goods provided the Customer notified such defect in accordance with these Terms,

**4.7.5** Except in the case of death or personal injury caused by ACS-APT's negligence, or liability for defective products under the Consumer Protection Act 1987, ACS-APT will not have any Liability to the Customer for loss of profit or any indirect, special or consequential Loss of the Customer arising out of or in connection with the provision of any goods or services or any delay in providing or failure to provide any goods or services even if ACS-APT had been advised of the possibility of such potential loss.

**4.7.6** Without prejudice to clause 4.7.8, if ACS-APT fails to provide System Support in accordance with its obligations hereunder, the total Liability of ACS-APT in any one year for any Loss suffered by the Customer as a result of such failure will not exceed the Charges paid by the Customer in such year for the System Support in question.

**4.7.7** Without prejudice to clause 4.7.8, if ACS-APT fails to provide the Services in accordance with its obligations hereunder, the total Liability of ACS-APT for any Loss suffered by the Customer as a result of such failure will not exceed the charges paid by the Customer in respect of such Services.

**4.7.8** Notwithstanding the express provisions of clauses 4.7.6 and 4.7.7, except in the case of death or personal injury caused by ACS-APT's negligence, or liability for defective products under the Consumer Protection Act 1987, in no event shall ACS-APT's Liability in respect of any Loss to the Customer exceed £50,000.

**4.7.9** Except in the case of death or personal injury caused by ACS-APT's negligence, or liability for defective products under the Consumer Protection Act 1987, no action regardless of form may be brought by the Customer more than 12 months after the cause of action has accrued.

**4.7.10** ACS-APT will have no liability under these Terms or otherwise to the Customer arising out of:

**4.7.10.1** any loss or corruption of any documents, data, memory erasure of media stored on disk, whether total or partial howsoever arising by reason (in whole or in part) of the Customer's failure to maintain adequate back-up copies of all of its operating system software, application software, data files and other documentation;

**4.7.10.2** any loss or corruption of any documents, data, memory erasure of media stored on disk, whether total or partial howsoever arising, including but not limited to loss which may occur, whilst installation, service or maintenance work is being carried out by or on behalf of ACS-APT in accordance with these Terms or any other reason;

**4.7.10.3** any act or omission of any third-party telecommunication provider, or fault or failure of their equipment (including any prevention of any remote servicing facility in respect of the Equipment);

**4.7.10.4** and if any damage to any of the program or data files of the Customer occurs then ACS-APT's responsibility will be confined to assisting the Customer to restore the latest backup copy and installing application software made available on site by the Customer. If on site assistance is required to reconstruct the files then ACS-APT will charge the Customer for the cost of such assistance at ACS-APT's then applicable charge rates.

**4.7.11** The Customer warrants to ACS-APT that none of its employees nor the employees of any other party will become employees of ACS-APT by reason of the provision of the services by ACS-APT under these Terms, the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("the Regulations") or otherwise. The Customer will repay to ACS-APT any costs, expenses or other sums for which ACS-APT is or may be liable by reason of the applicable or alleged application of the Regulations in relation to provision of such services by ACS-APT including (without limitation) any compensation or damages which ACS-APT pays to any such person.

#### **4.8 Warranties**

**4.8.1** The Customer warrants and represents that the use by ACS-APT of any data, materials or equipment supplied by the Customer for use by ACS-APT, will not infringe the Intellectual Property Rights of any third party and the Customer will fully indemnify ACS-APT in this respect.

#### **4.9 Confidentiality**

**4.9.1** Except as expressly provided, neither party may at any time whether during or after the expiry of these Terms use or disclose the other party's Confidential Information and the Customer will take all reasonable steps to ensure that its employees are bound by the same obligations and that such obligations will continue beyond the termination of employment with the Customer.

**4.9.2** ACS-APT may as a consequence of providing any services to the Customer be exposed to information which the Customer may consider to be Confidential Information. It is the Customer's responsibility to ensure that any such Confidential Information is marked appropriately or otherwise identified in writing to ACS-APT.

**4.9.3** The obligations of this clause 4.9 shall survive the termination of these Terms.

#### **4.10 Performance**

**4.10.1** ACS-APT will not be liable for any failure or delay in complying with these Terms if the failure or delay was due to force majeure, including any circumstances whatsoever beyond the reasonable control of ACS-APT in which event ACS-APT will as soon as reasonably practicable notify the Customer of the nature and extent of the circumstances in question. If the force majeure continues for more than 30 days then ACS-APT may cancel this Contract (or any part thereof) without liability to the Customer.

#### **4.11 Sub-Contracts**

**4.11.1** ACS-APT may assign, sub-contract or otherwise transfer the benefit of, and/or its obligations under this Contract to any person at any time. ACS-APT is a member of a group of companies and accordingly ACS-APT may perform any of its obligations or exercise any of its rights under this Contract through any member of its group.

**4.11.2** The Customer acknowledges that this Contract is personal to the Customer and that it may not assign or in any way make over to any third party, whether in whole or in part, the benefit of, and/or its obligations under this Contract without the prior written authority of ACS-APT and on such terms as ACS-APT may reasonably require.

**4.11.3** Save where expressly stated in these Terms, no person will become entitled to enforce any of its provisions of these Terms who would not have been so entitled but for the provisions of the Contracts (Rights of Third Parties) Act 1999, the provisions of which do not apply to these Terms.

#### **4.12 Termination**

**4.12.1** ACS-APT may without prejudice to any other remedy available to it at any time by giving written notice terminate or suspend this Contract or such part of it as ACS-APT may elect (including stopping any Goods in transit) if:

**4.12.1.1** the Customer commits any continuing or material breach of these Terms and if the breach is capable of remedy, is not remedied within thirty days of a written notice detailing the breach;

**4.12.1.2** a resolution is passed or an order is made for the liquidation of or the winding up of the Customer (save for the purpose of a bona fide reconstruction or amalgamation);

**4.12.1.3** the Customer becomes subject to an administration order, a receiver or manager or administrative receiver is appointed over the Customer's property or assets;

**4.12.1.4** the Customer suffers execution or distress or takes or suffers any similar action in consequence of a debt;

**4.12.1.5** the Customer is insolvent or would be taken as insolvent under section 123 Insolvency Act 1986;

**4.12.1.6** the Customer is dissolved or otherwise threatens or ceases to carry on business or a substantial part of it;

**4.12.1.7** in the case of a sole trader or partnership anything analogous to any of the above occurs.

- 4.12.2** On termination of this Contract for any reason the Customer will return or delete any of ACS-APT's Confidential Information and return to ACS-APT all property of ACS-APT under the Customer's possession or control and ACS-APT will return or delete any of the Customer's Confidential Information and return to the Customer all property of the Customer under ACS-APT's possession or control.
- 4.12.3** On termination of the Contract any licence to use software granted by ACS-APT will immediately terminate and the Customer will return to ACS-APT any such software and all copies thereof and will not use or permit the use of any such software. The Customer acknowledges and agrees that ACS-APT will be entitled to remove such software from all operating systems of the Customer whether by means of remote access or otherwise. The Customer will not do or omit to do anything which might prevent or hinder such removal.
- 4.12.4** If the Customer terminates this Contract (or ACS-APT terminates by reason of any acts or omissions of the Customer) then
- 4.12.4.1 in respect of any Goods such termination can only be made with ACS-APT's written consent and on terms that the Customer will indemnify ACS-APT in full against all loss (including loss of profit) costs, charges and expenses incurred by ACS-APT as a result of such termination;
- 4.12.4.2 in respect of System Support if the termination occurs prior to the end of the Initial Term or any Renewal Period, ACS-APT may without prejudice to any other remedies available to it demand and receive from the Customer an early termination charge. This charge will be calculated to recover such costs as ACS-APT has reasonably incurred in equipping itself to deliver System Support and which have not been fully recovered by ACS-APT from the Charges paid by the Customer at the date of termination; and
- 4.12.4.3 in respect of Services the Customer shall be liable for the full value of ACS-APT's charges set out in the Proposal as well as any and all charges, fees and additional costs accrued up to the point of termination, which may include but not be limited to software costs and travelling / miscellaneous expenses.

#### **4.13 Data Protection**

- 4.13.1** The Customer and ACS-APT agree to the terms of the Data Processing Addendum for ACS-APT Customers, the terms of which are hereby incorporated into the Contract by reference.

#### **4.14 Non-Solicitation**

- 4.14.1** The Customer acknowledges the investment made by ACS-APT in the training of ACS-APT's Personnel and the commercial interest which ACS-APT has in retaining their services.
- 4.14.2** The Customer agrees that if any of the ACS-APT Personnel who have provided all or any part of any services for or on behalf of ACS-APT to the Customer within 6 months of leaving the employment or engagement of ACS-APT accepts an Engagement with the Customer then the Customer will pay to ACS-APT such sum as represents 50% of the anticipated annual salary or other sums to be paid by the Customer to such person(s) within the first year of such Engagement.

#### **4.15 Notices**

- 4.15.1** All notices under these Terms must be in writing and will be effective only if given by either party to the other party at their last known principal place of business or such other address as that party has nominated, in writing, for that purpose.

#### **4.16 Law and Jurisdiction**

- 4.16.1** These Terms will be governed by and construed in accordance with English Law and the English Courts will have non-exclusive jurisdiction to hear all disputes arising in connection with these Terms.
- 4.16.2** The invalidity or unenforceability for whatever reason will not prejudice the continuation in force of the remainder of these Terms and if any part of these Terms is held by a Court or other competent authority to be illegal or ineffective it or they will be replaced with such legal and effective terms that most closely approach the ineffective terms.

#### **4.17 Entire Agreement**

- 4.17.1** These Terms, the Proposal, Project Plan, Scope of Service and Definition of Service contains the entire agreement between the parties with respect to their subject matter and supersede all previous written and oral agreements and understandings between the parties. The Customer acknowledges that in entering into the Contract it does not rely on any representation, warranty, agreement or other provision except as expressly set out in these Terms and that all conditions, warranties or other terms implied by statute or common law are excluded to the fullest extent permitted by law, but nothing in these Terms will affect the liability of ACS-APT for any fraudulent misrepresentation.

#### **4.18 Miscellaneous**

- 4.18.1** any reference to person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality); and
- 4.18.2** any reference to company includes any company, corporation or other body corporate, wherever and however incorporated or established.
- 4.18.3** The parties hereby agree that a person who is not a party to this agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 (as amended, modified or supplemented from time to time) to enforce any of these Terms.

#### **4.19 Export Restrictions**

- 4.19.1** If Customer delivers/uses the Products outside the United States or the European Union or EFTA countries, Customer acknowledges and shall advise its customer/subsidiaries/branches that some Products are controlled for export by the U.S. Department of Commerce or by EU/EFTA member state bodies and such Products may require authorization prior to export. Customer agrees that it will not export, re-export, or otherwise distribute Products, or direct products thereof, in violation of any export control laws or regulations of the United States or any EU/EFTA member state. Customer warrants that it will not export or re-export any Products with knowledge that they will be used in the design, development, production, or use of chemical, biological, nuclear, or ballistic weapons, or in a facility engaged in such activities, unless Customer has obtained prior approval from the U.S. Department of Commerce or any other competent government agency. Customer further warrants that it will not export or re-export, directly or indirectly, any Products to embargoed countries or sell Products to companies or individuals listed on the Denied Persons List published by the U.S. Department of Commerce.
- 4.19.2** These restrictions change from time to time. If the Customer has any questions regarding its obligations under USA export regulations the Customer should contact the Bureau of Export Administration, United States Department of Commerce, Office of Export Licensing, Washington DC, USA (202) 377 4811 or the local United States Consulate.
- 4.19.3** Upon request the Customer agrees to confirm in writing its intention to comply with applicable export and restricted user and uses regulations, by signing up to the terms in ACS-APT's reseller application form.

## DEFINITIONS AND INTERPRETATION:

In these terms and conditions, unless the context otherwise requires, the following words have the following meanings:  
(The headings in these Terms and Conditions are for convenience only and shall not affect their interpretation)

- **Agreement Start Date:** The date set out in the Scope of Service.
- **Acceptance Tests:** The tests undertaken by the Customer to confirm the System complies in all material respects with the Functional Specification.
- **Call:** Communication (including an email) received by ACS-APT from the Customer reporting a defect or malfunction in the Equipment.
- **Charges:** The sums payable by the Customer to ACS-APT for System Support, as set out in the Scope of Service.
- **Charge Rate:** ACS-Apt's standard daily/hourly charge rate for consultancy/software development services as agreed by the customer and/or provided by ACS-Apt in its estimates/quotations.
- **Confidential Information:** Any trade secrets or confidential or proprietary information of either party, including these Terms, but excluding any information:
  - i. in the public domain otherwise than by a breach of the Contract;
  - ii. which, prior to disclosure, was already known by the recipient;
  - iii. that the other party develops independently of or to any information that is disclosed to it under the provisions of the Contract; or
  - iv. which is subsequently disclosed to the recipient by a third party at liberty to disclose it.
- **Contract:** The contract between the Customer and ACS-APT for the sale of Goods, Services and/or System Support in accordance with these Terms.
- **Customer:** The person who accepts ACS-APT's written quotation for the sale of the Goods, Services and/or the supply of System Support or whose written order in respect thereof is accepted by ACS-APT.
- **Definition of Service:** The document provided to the Customer by ACS-APT setting out response times and support in relation to System Support as amended by ACS-APT from time to time (to include any upgrades) and available on request.
- **Engagement:** The employment, hire or other use, directly or indirectly and whether as an employee or on a self-employed basis.
- **Equipment:** All or part of the network, hardware, software and Third-Party Software as specified or identified in the Scope of Service.
- **Functional Specification:** The functional specification document detailing the System that is to be delivered.
- **Goods:** The computer hardware, software and related equipment which ACS-APT is to supply in accordance with these Terms.
- **Initial Term:** The fixed period for which System Support is to be provided as specified in the Scope of Service.
- **Intellectual Property Rights:** Patents, rights to inventions, copyright and related rights, trademarks, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered, and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.
- **Installation Address:** The address specified in the Scope of Service at which the Equipment is located or such other address as may be agreed in writing by ACS-APT.
- **Liability:** Any liability arising by reason of any representation (unless fraudulent), or any breach of any implied warranty, conditions or other term or any duty at common law, or under any statute, or under any express term of this Contract.
- **Loss:** In relation to the Customer means loss of profit (or any other loss), damages, costs or other compensation and any legal or other expenses awarded against or incurred by or paid or agreed to be paid in settlement of any claim by the Customer, howsoever arising and whether by reason of negligence of ACS-APT, its employees, its agents or otherwise.
- **Normal working hours:** 09:00 to 17:00 Monday to Friday but excluding bank or statutory holidays.
- **Operating Platform:** The complete configuration of hardware, ancillaries/accessories and operating system for an item of Equipment.
- **Personnel:** Any employee, agent, consultant and/or sub-contractor of the party concerned.
- **Premium Charge Rate:** Charge rate for non-office working hour services, generally twice the standard charge rate.
- **Project Plan:** The plan describing the Services and setting out the estimated timetable and responsibilities for the provision of the Services by ACS-APT.
- **Project Milestone:** A date by which a part of the Services is estimated to be completed, as set out in the Project Plan.
- **Proposal:** The proposal to the Customer setting out ACS-APT's understanding of the Customer's requirements.

- **Renewal Period:** The period commencing after the Initial Term, which unless stated otherwise in the Scope of Service, will be for the period equal to the Initial Term, during which ACS-APT will continue to provide System Support in accordance with the Scope of Service and Definition of Service.
- **Services:** The services to be provided by ACS-APT as set out in the Proposal and/or Project Plan, together with any other services including but not limited to training and consultancy which ACS-APT provides or agrees to provide to the Customer.
- **Scheduled Service Hours:** The times during which ACS-APT will endeavour to provide System Support as specified on the Definition of Service.
- **Scope of Service:** The Schedule signed by the Customer setting out details of the Equipment and other information in respect of System Support.
- **System Support:** The provision of a maintenance service for the Equipment, Software System together with proactive support visits/remote calls/connectivity and servicing as set out in the Scope of Service.
- **System Audit:** Means an inspection of the Equipment or part thereof but does not include repair or replacement.
- **System:** The configured computer program(s), network, documentation, data, diagrams, reports and specifications (including drafts) delivered as a result of the Services provided by ACS-APT.
- **Third Party Software:** Software developed and licensed by a third party, which ACS-APT may have supplied, implemented and agreed to provide support, as detailed in the Scope of Service. And/or the customer may have directly engaged with other third-party software/service provider(s).
- **ACS-APT:** ACS-Apt Computer Systems Ltd (Registered in England with Co. Reg. No 02447522 and VAT Reg No: GB-541257853) or such other group company as may be notified to the Customer from time to time.
- **User Acceptance Sign Off:** A customer sign off form to be completed and signed by the Customer and delivered to ACS-APT pursuant to clause 3.7.1

**ACS-Apt Computer Systems Ltd**

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