

SOFTWARE SUPPORT SUPPLEMENTAL TERMS AND CONDITIONS

1. Scope

- 1.1 These Software Support Supplemental Terms and Conditions supplement and (unless expressly stated otherwise) incorporate the terms and conditions set out in the General Terms and Conditions and the relevant Proposal in respect of the Software Support Services to be provided by ITPS to the Customer under a Contract. These Software Support Supplemental Terms and Conditions apply only to the supply by ITPS of the Software Support Services and the Customer's use of those Services. Any other Products supplied by ITPS to the Customer remain subject to the Contract Terms applicable to those Products.
- 1.2 The additional definitions set out in clause 4 shall apply in these Software Support Supplemental Terms and Conditions. Any defined terms in the General Terms and Conditions or the Proposal will have the same meaning in these Software Support Supplemental Terms and Conditions unless stated otherwise.

2. Software Support Services

- 2.1 If and to the extent that the relevant Services are expressly identified in the Proposal or otherwise agreed between the parties in writing, ITPS shall provide the Customer with the Software Support Services and the Additional Services (if any) in accordance with the Contract Terms.
- 2.2 ITPS shall perform the **Standard Support Service** by ensuring that support is available by telephone and email during the Designated Hours to remedy such Defects in the Supported Software as are notified to it by the Customer within a reasonable period of time.
- 2.3 If agreed between the parties in writing in advance and subject to the payment by the Customer of the relevant Additional Charges, ITPS shall provide to the Customer the **Enhanced Software Support Services** as follows:
- 2.3.1 the attempted remediation of a Defect by ITPS within a reasonable period of time where ITPS is notified by the Customer of that Defect outside of the Designated Hours;
 - 2.3.2 the performance of the relevant Software Support Services outside of the Designated Hours;
 - 2.3.3 the investigation of an excessive demand in respect of ISDN or any other internet or telephony charges where the Customer notifies ITPS of the issue; and/or
 - 2.3.4 the application of a Maintenance Release by ITPS or the provision of support to the Customer in circumstances where the Customer (or a third party) applies or has applied a Maintenance Release.
- 2.4 Additional Services shall be charged at the Additional Services Rates for each of ITPS's Personnel reasonably required to perform the relevant Additional Services. Additional Charges shall be calculated by reference to the relevant information set out in the Proposal or as otherwise notified to the Customer by ITPS in writing.
- 2.5 In performing the Software Support Services ITPS shall use reasonable endeavours to correct Defects notified to by the Customer in a timely manner appropriate to the seriousness of the circumstances.
- 2.6 ITPS is not obliged to perform any Excluded Services. Where ITPS performs the Software Support Services in circumstances where it is established by ITPS (acting reasonably) that the Defect arose directly or indirectly as a result of any of the Excluded Causes, ITPS may charge, and the Customer shall pay, the relevant Additional Services Fees in respect of that work.
- 2.7 ITPS shall not be responsible for providing, or liable in respect of, any Out-of-Scope Activities.

3. Customer's obligations

- 3.1 The Customer shall:
- 3.1.1 ensure that the Supported Software is in Good Working Order at the Commencement Date;
 - 3.1.2 take all reasonable measures to adequately protect the Supported Software against Malicious Software including by using the latest versions of anti-virus software available from an industry accepted anti-virus software vendor to check for and delete Malicious Software;

- 3.1.3 notify ITPS immediately as soon as the Customer is informed that any Maintenance Release is available and follow any directions or instructions issued by ITPS in relation to that Maintenance Release;
- 3.1.4 take all reasonable steps to ensure that the Supported Software is operated in a normal and proper manner and used only by competent and trained personnel;
- 3.1.5 ensure that there is an adequate power supply supplying the Supported Software which provides adequate protection against lightning strikes, power surges and other reasonably foreseeable external factors;
- 3.1.6 notify ITPS promptly in writing of any Defect and immediately cease to use the Supported Software unless and until ITPS confirms otherwise in writing;
- 3.1.7 at all reasonable times permit ITPS and the ITPS Personnel, with full and free access to the Customer's systems and the Location for the purpose of performing the Software Support Services and/or the Additional Services (if any) including by carrying out diagnostics and correction of Defects, provided that access to the Customer's systems may be direct or remote (at ITPS' option);
- 3.1.8 at any time that ITPS and the ITPS Personnel are attending the Location, provide them with adequate facilities and safe working space, and any cabling, power, telecommunications facilities and other such items as are reasonably required to enable ITPS to fulfil its obligations under the Contract;
- 3.1.9 keep ITPS fully informed of all material matters relating to the Supported Software and provide ITPS with any information that is reasonably requested in the performance of the Software Support Services and/or the Additional Services (as the case may be);
- 3.1.10 not maintain, alter, modify, adjust or in any way interfere with (or allow any person other than ITPS or the relevant Software Supplier (as the case may be) to maintain, alter, modify, adjust or in any way interfere with) the Supported Software without the prior written approval of ITPS; and
- 3.1.11 keep full backup copies of all of its data, applications and operating systems and (notwithstanding the foregoing) conform with Good Industry Practice in this regard.

4. **Definitions and interpretation**

- 4.1 In these Software Support Supplemental Terms and Conditions, the following additional definitions apply:

Additional Services: means any Enhanced Software Support Services and/or any Excluded Services performed by ITPS pursuant to these Software Support Supplemental Terms and Conditions.

Additional Services Fees: means the fees payable in consideration of the provision of any Additional Services, which shall be calculated at the Additional Services Rates.

Additional Services Rates: means the rates set out in the Proposal or otherwise notified by ITPS to the Customer in writing, as those rates are amended from time to time in accordance with these Software Support Supplemental Terms and Conditions.

Defect: means an error in the Supported Software that causes it to fail to operate substantially in accordance with the relevant Documentation.

Designated Hours: means 8.30 am to 6.00 pm GMT/BST on Business Days.

Documentation: means the operating manuals, technical literature and all other related materials provided by the Software Supplier.

Enhanced Software Support Services: means the services to be provided by ITPS pursuant to clause 2.3.

Excluded Causes: means any of the following:

- (a) any breach by the Customer of its obligations under the Contract (including any breach of clause 3 of these Software Support Supplemental Terms and Conditions);

- (b) any failure of computer hardware;
- (c) work to or replacement of accessories, attachments or devices not approved in writing by or not installed by ITPS;
- (d) a Defect arising directly or indirectly in circumstances of wilful damage, negligence, abnormal storing or working conditions or as a result of or in connection with the deployment of Malicious Software;
- (e) the use of the Supported Software in breach of any of the provisions of the agreement under which the Supported Software (or any part of it) was supplied by the relevant Software Supplier;
- (f) a failure, interruption, fluctuation or surge in the electrical power or its related infrastructure affecting the Supported Software;
- (g) any accident (including but not limited to accidents involving water, fire, lightning), issue involving telephone line connections, theft, neglect or misuse affecting the Supported Software (or any part of it);
- (h) any issue affecting the Supported Software which constitutes an **Excluded Cause** in any other part of the Contract (including pursuant to the Supplemental Terms of Hardware Support).

Excluded Services: means any Software Support Services which ITPS (acting reasonably) determines (either before or after the provision of the relevant services) became necessary directly or indirectly as a result of any of the Excluded Causes.

General Terms and Conditions means the General Terms and Conditions of ITPS from time to time, as available at <https://www.itps.co.uk/contractual-terms-conditions/>.

Good Industry Practice: means the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector.

Good Working Order: means the Supported Software operates in accordance with the Documentation and is free from Defects.

Maintenance Release: a release of the Software which corrects faults, adds functionality or otherwise amends or upgrades the Software, but which does not constitute a New Version.

Malicious Software: means any software program or code intended to destroy, interfere with, corrupt or have a disruptive effect on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether such software program or code is introduced wilfully, negligently or without knowledge of its existence.

Modification: means any Maintenance Release which is acquired by the Customer but does not include a New Version.

New Version: means any new version of the Software which from time to time is publicly marketed and offered for purchase by the relevant software supplier.

Operating Manual: means all operating manuals, specifications and other manufacturer documentation relating to the Supported Software.

Out-of-Scope Activities: means any of the following:

- (i) any services (including reloading) in relation to software other than the Supported Software;
- (j) the application of any Maintenance Release in circumstances where ITPS considers the Customer to be in breach of its obligations in relation to data pursuant to 3.1.11;
- (k) making specification changes to the Supported Software.

Software Supplier: means in relation to the Supported Software (or any part of it), the supplier of that Supported Software.

Software Support Services: means the Standard Support Services and/or the Enhanced Software Support Services (as the case may be) provided always that the Out-of-Scope Activities shall in no circumstances comprise the Software Support Services.

Standard Support Services: means the support services to be provided by ITPS pursuant to clause 2.2.

Supported Software: means any software which ITPS and the Customer agree in writing should be Supported Software for the purposes of the Contract (including the software listed in the Proposal) together with any Modifications to that software but not (unless otherwise agreed in writing between the parties) any New Version of it.