

# Standard Terms and Conditions for the Supply of Enhanced Computer Solutions Software, Third Party Software, Hardware and Support Services

1.1. In these Conditions the followings terms have the meanings stated in this clause:

<b>Additional Services</b>	means the services supplied by Enhanced to the Customer other than those included as part of the Support Services;
<b>Annual Support Charge</b>	means the annual charge for the provision of the Support Services specified in the Order Form;
<b>Conditions</b>	means the terms and conditions as set out herein;
<b>Contract</b>	means an Order Form signed by an authorised representative of each party together with these Conditions;
<b>Customer</b>	means the party whose details are set out in the Order Form;
<b>Customer's Premises</b>	means the premises specified in the Order Form;
<b>Daily Rate</b>	means the price of one day (of no more than 7.5 hours) of Training and/or Installation as specified in the Order Form;
<b>Enhanced</b>	means Enhanced Computer Solutions Limited, whose registered office is at 1 <sup>st</sup> Floor, 37 Commercial Road, Poole, Dorset BH14 0HU;
<b>Enhanced Software</b>	the software listed in the Order Form;
<b>End User Licence Agreement</b>	means an end user licence agreement supplied by any third party software author in respect of that third party software author's Operating System;
<b>Goods</b>	means the goods (including both Hardware, Enhanced Software and Third Party Software) to be supplied to the Customer and listed in an Order Form;
<b>Hardware</b>	means the Hardware to be supplied to the Customer and listed in an Order Form;
<b>Hardware Support Services</b>	means the services described in Condition 6.1.3;
<b>Installation</b>	means the installation of the Goods;
<b>Installation Date</b>	means a date as agreed in writing between Enhanced and the Customer;
<b>Operating System</b>	means the operating system identified in the Order Form;
<b>Order Form</b>	means an Order Form referencing these Conditions and signed by an authorised representative of the Customer;
<b>Software Support Services</b>	the software support services as described in Condition 6.1.2;
<b>Support Services</b>	Means the Software Support Services, the Hardware Support Services and Third Party Support Services;
<b>Support Term</b>	the term for which Support Services are to be provided specified in an Order Form commencing on the Installation Date;
<b>Terminal</b>	means any Hardware on which the Enhanced Software has been installed;
<b>Third Party Software</b>	means any third party software supplied to the Customer by Enhanced in respect of which Enhanced is not the owner of the intellectual property rights in such software;
<b>Third Party Software Support Services</b>	means the services detailed in Condition 6.1.2; and
<b>Training</b>	means the training to be provided to the Customer or its employees as specified in the Order Form.

1.2. A reference to a particular law is a reference to it as it is in force for the time being taking into account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.3. Words in the singular include the plural and in the plural include the singular.

1.4. A reference to one gender includes a reference to the other gender.

1.5. Headings do not affect the interpretation of these Conditions.

1.6. A reference to written or writing includes faxes and e-mail.

## 2. APPLICATION OF TERMS

- 2.1. These Conditions, together with the Order Form, constitute the Contract between the Customer and Enhanced and apply to the provision of the Goods, Installation and Support Services specified in the Order Form to the exclusion of all other terms and conditions (including any terms or conditions which the customer purports to apply under any purchase order, confirmation of order, specification or other document).
- 2.2. These Conditions apply to all Enhanced sales of all Goods, Installation, Training and Support Services and any variation to these Conditions shall have no effect unless expressly agreed in writing and signed by an authorised representative on behalf of each party.
- 2.3. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Enhanced which is not set out in the Contract for the relevant Goods, Installation or Support Services. Nothing in this Condition shall exclude or limit Enhanced's liability for fraudulent misrepresentation.
- 2.4. All orders from the Customer for Goods, Installation Training and/or Support Services shall be deemed to be an offer by the Customer to purchase the Goods, Installation and/or Support Services subject to these Conditions.
- 2.5. The acceptance of delivery of the Goods shall be deemed conclusive evidence of the Customers acceptance of these Conditions.
- 2.6. No Enhanced proposal or quotation is intended to be legally binding unless such written proposal or quotation forms part of the Order Form which has been duly executed by the parties through their duly authorised representatives and such Order Form is expressed to be subject to these Conditions.
- 2.7. In the event of a conflict between the provisions of these Conditions and the terms of an Order Form these Conditions shall apply, except as expressly agreed in writing by an authorised representative of each party.
- 2.8. Any typographical error, clerical or other error or other omission in any sales literature, quotation, price list, Order Form, invoice or other document or information issued by Enhanced shall be subject to correction without any liability on the part of Enhanced.
- 2.9. It is acknowledged that we may provide both the supply of goods and or services to you.
  - 2.9.1. Where we provide supply of goods to you, you acknowledge that each contract is divisible. Each delivery made hereunder shall be deemed to arise from a separate contract and shall be invoiced separately; any invoice for a delivery shall be payable in full in accordance with the terms of payment provided for herein, without reference to and notwithstanding any defect of default in delivery of any other instalment.
  - 2.9.2. Where we provide a supply of services to you, each contract is divisible. The work performed in each period during the currency of the contract shall be invoiced separately. Each invoice for work performed in any period shall be payable by you in full in accordance with the terms of payment provided for herein, without reference to and not withstanding any defect or default in the work performed or to be performed in any period.

## 3. TERMS APPLICABLE TO THE SUPPLY OF HARDWARE ONLY

All Goods are supplied subject to Enhanced's prior approval of the Buyer's credit, such approval to be entirely at the discretion of Enhanced.

### 3.1. Description

3.1.1. The quantity, description and specification of the Goods shall be as set out in the Order Form.

### 3.2. Delivery

- 3.2.1. Delivery shall be to the Customer's Premises or to such other address nominated by the Customer and notified to Enhanced in writing at least 7 days prior to the proposed delivery date;
- 3.2.2. Any time or date given by Enhanced for delivery is approximate only and Enhanced shall not be liable for delay in the time of delivery however caused or for failure to notify the Customer of any delay in the time for delivery. Time of delivery shall not be of the essence. The Customer acknowledges that changes to specifications or instructions may result in changes to proposed delivery times.
- 3.2.3. In the event of the Customer failing to accept delivery of Goods at the time and place specified in the Order Form, the Customer shall pay to Enhanced the sum of 25% of the value of the Goods detailed on the Order Form plus VAT, which represents the costs incurred by Enhanced in respect of storage and/or re-delivery.
- 3.2.4. Enhanced shall at its option replace or credit Goods proved to its satisfaction to have been lost or damaged in transit, provided that the Customer notifies Enhanced in writing within 7 days of the date of the invoice in respect of any Goods purportedly lost in transit or within 48 hours of the time of delivery in respect of any Goods purportedly damaged in transit and which have been delivered. Enhanced shall have no obligation to replace or credit goods where the Customer has signed a delivery note confirming their acceptance of the Goods on delivery and as set out on the delivery note.
- 3.2.5. If work is suspended at the request of the Customer or delayed through any default of the Customer Enhanced shall be entitled to payment for the work already carried out, materials specially ordered and other additional costs including storage.

### 3.3. **Installation and Training**

If the Contract includes Installation and/or Training, the Installation and/or Training shall be performed in accordance with and shall be subject to the provisions of this Condition 3.3.

- 3.3.1. Subject to Condition 3.3.2 below, where the Order Form specifies that Enhanced shall install the Goods, Enhanced shall use its reasonable endeavours to install the Goods on the Installation Date using reasonable skill and care. Time shall not be of the essence of a Contract.
- 3.3.2. The Customer shall co-operate with Enhanced in all matters relating to the Installation and provide Enhanced's representatives, agents or employees, upon request, access to the Customer's Premises, data and other facilities as may be required by Enhanced to carry out the Installation.
- 3.3.3. Enhanced shall provide the Training as requested by the Customer and specified in the Order Form.
- 3.3.4. Unless otherwise agreed in writing between Enhanced and the Customer, Installation and Training services provided by Enhanced shall be charged at Enhanced's Daily Rate.

### 3.4. **Risk/Title**

- 3.4.1. The Goods shall be kept at the Customer's risk from the time of delivery.
- 3.4.2. Ownership of the Goods shall not pass to the Customer until Enhanced has received in full (in cash or cleared funds) all sums due to it in respect of:
  - a. the Goods; and
  - b. all other sums which are or which become due to Enhanced from the Customer on any account.
- 3.4.3. Until ownership of the Goods has passed to the Customer, the Customer shall:
  - a. hold the Goods on a fiduciary basis as Enhanced's Bailee;
  - b. store the Goods (at the Customer's own cost and expense) separately from all other goods of the Customer in such a way that they remain readily identifiable as the property of Enhanced
  - c. not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
  - d. maintain the Goods in satisfactory condition and keep them insured on Enhanced's behalf for their full replacement value against all risks and to the reasonable satisfaction of Enhanced. On request, the Customer shall produce the policy of insurance to Enhanced as was as evidence that all policy premiums are paid and up to date. The Customer shall ensure that a note of interest in the Goods is entered on the policy of insurance in respect of Enhanced.
- 3.4.4. The Customer's right to possession of the Goods shall terminate immediately if:
  - a. the Customer convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Customer or notice of intention to appoint an administrator is given by the Customer or the directors of the Customer or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Customer or for the granting of an administration order in respect of the Customer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer; or
  - b. the Customer suffers or allows any execution, whether legal or equitable, to be levied on its property or obtained against it, or fails to observe or perform any of its obligations under the Contract or any other contract between Enhanced and the Customer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Customer ceases to trade; or
  - c. the Customer encumbers or in any way charges any of the Goods.
- 3.4.5. Enhanced shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from Enhanced.
- 3.4.6. The Customer grants to Enhanced, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Customer's right to possession has terminated, to recover them.
- 3.4.7. On termination of the Contract, howsoever caused, Enhanced (but not the Customer's) rights contained in this Condition 3.4 shall remain in effect.

### 3.5. **Price**

- 3.5.1. The price for the Goods, Installation and Training shall be the price set out in the Order Form.
- 3.5.2. The prices are quoted exclusive of VAT, insurance and delivery charges which the Customer shall pay in addition when it is due to pay for the Goods.
- 3.5.3. 40% of the total purchase price plus VAT as quoted on the Order Form, shall be due and payable on acceptance of the Order Form (as signed by the Customer) by Enhanced. The balance of the purchase price shall fall due for payment on delivery of the Goods.
- 3.5.4. Time for payment shall be of the essence.

### 3.6. **Cancellation**

The Customer may cancel an order by written notice to Enhanced at any time before delivery of the Goods. In the event that the Customer validly cancels its order the Customer shall be required to pay a cancellation fee of 25% of the entire order value plus VAT. This cancellation fee covers the following:

- (i) the price of Goods ordered which have at the time of cancellation been customised to the Customer's requirements;
- (ii) the price of Goods obtained solely for use in the Customer's order and that Enhanced is unable to resell or reuse;
- (iii) all costs and expenses that Enhanced has incurred in connection with performing the Contract such as labour, delivery and administration costs; and
- (iv) a sum in respect of loss of profits suffered by Enhanced as a consequence of the Customer's cancellation.

#### **4. LICENCE OF THIRD PARTY SOFTWARE**

- 4.1. All Third Party Software is supplied subject to the terms of the End User Licence Agreement applicable to such Third Party Software. The Customer undertakes to comply with the licence terms of any applicable End User Licence Agreement to be obtained directly from the licensor of the Third Party Software.
- 4.2. The Customer shall indemnify Enhanced from and against all costs, claims, damages and expenses arising out of or in connection with its failure or the failure of its employees, agents, consultants or sub-contractors to observe the terms of the End User Licence Agreement applicable to any Third Party Software.
- 4.3. The Customer's attention is specifically drawn to the fact that the Enhanced Software may only be used in connection with an Operating System and as the same may be recommended by Enhanced from time to time.
- 4.4. The Customer acknowledges that the Third Party Software is a proprietary product which has not been written to specifically satisfy the Customer's requirements. It is the responsibility of the Customer to ensure that any Third Party Software meets the Customer's requirements.
- 4.5. Enhanced does not warrant that the use of the Third Party Software shall be uninterrupted or error free and Enhanced shall have no liability to the Customer in respect of the Third Party Software save as set out in Condition 10 & 11 of these Conditions

#### **5. LICENCE TO USE ENHANCED SOFTWARE**

##### **5.1. Licence**

The Customer may install and use the Enhanced Software on such Terminals as specified on the Order Form or as may otherwise be approved by Enhanced in writing and which are located at the Customer's Premises only.

##### **5.2. Restrictions on Use**

- 5.2.1. Enhanced grants to the Customer a non-exclusive and non-transferable licence to use Enhanced Software and to make a reasonable number of copies of the Enhanced Software solely for backup and recovery purposes. Any such copies shall in all respects be subject to the terms of these Conditions.
- 5.2.2. The Customer shall not make copies of the Enhanced Software additional to those expressly permitted in these Conditions.
- 5.2.3. The Customer shall not make copies of any written documentation accompanying the Enhanced Software.
- 5.2.4. The Customer shall not remove or obscure any copyright and trade mark notices or other proprietary notices relating to the Enhanced Software. All notices must be duplicated as it appears on the Enhanced Software on all authorised copies.
- 5.2.5. The Customer shall not reverse engineer, decompile or disassemble or in any other way alter the Enhanced Software whatsoever.
- 5.2.6. The Customer shall not distribute the Enhanced Software or any portions of the Enhanced Software to any third party.
- 5.2.7. Enhanced does not warrant that use of the Enhanced Software shall be uninterrupted or error free and Enhanced shall have no liability to the Customer in respect of the Third Party Software save as set out in Condition 10 & 11 of these Conditions.

##### **5.3. Intellectual Property Rights**

The copyrights, patents, trademarks and all other intellectual property rights or similar rights in or relating to the Enhanced Software and related documentation are owned by and remain the property of Enhanced or its suppliers and are protected by national laws and international treaty provisions. The Customer shall not obtain any rights in the Enhanced Software other than those expressly granted in these Conditions.

##### **5.4. Termination**

- 5.4.1. This licence is effective until terminated in accordance with the provisions of Condition 14. This licence will automatically terminate if the Customer fails to comply with any provision of Conditions 3 and 4. Upon notice of termination from Enhanced the Customer shall return or destroy the documentation and shall delete all copies of the Enhanced Software promptly; and
- 5.4.2. Should the Customer breach any of the provisions of this Condition 5, Enhanced shall not be liable to the Customer for any warranties given by Enhanced under these Conditions in respect of the Enhanced Software, whether express or implied which shall become immediately invalid and Enhanced shall not be liable in anyway under the terms of the Contract for the supply of the Goods or the Support Services.

#### **6. TERMS APPLICABLE TO THE SUPPLY OF SUPPORT SERVICES**

##### **6.1. Services to be provided**

- 6.1.1. Where the Contract includes the provision of Support Services Enhanced shall provide the Support Services which consists of the Software Support Services, the Hardware Support Services and the Third Party Hardware Support Services as described in Conditions 6.1.2 and 6.1.3 below.

##### **6.1.2. Software Support Services**

If the Contract includes the provision of Software Support Services, then Enhanced shall provide the following services subject to the following conditions:

- a. Enhanced shall provide a telephone support line consisting of advice and suggesting solutions between the hours of 8.30 a.m. to 5.30 p.m. Monday to Friday excluding all public holidays in England & Wales.
- b. The Customer will notify Enhanced of any fault that may arise in the Enhanced Software or the Third Party Software (as the case may be), or any assistance that may be required to enable the Customer to operate the Enhanced Software or Third Party Software. Upon receipt of such notification, Enhanced shall use all reasonable endeavours to provide a solution to such fault or require any licensor of the Third Party Software to provide a solution.
- c. The obligations on the part of Enhanced under this Condition 6.1.2 shall not apply where the Customer is not using the latest version of the Enhanced Software or Third Party Software (as made available by Enhanced) or where the fault is as a result of Hardware malfunction or is related to or arising as a result of the Customer using hardware or software not supplied and/or approved by Enhanced or where such problems arise as a result of the misuse of the Enhanced Software or Third Party Software, or through operator error.

##### **6.1.3. Hardware Support Services**

If the Contract includes the provision of Hardware Support Services, then Enhanced shall provide the following Hardware Support Services subject to the following terms and conditions:

- a. Enhanced shall provide a telephone support line consisting of advice and suggesting solutions between the hours of 8.30 a.m. to 6.00 p.m. Monday to Friday excluding all public holidays in England & Wales.
- b. The Customer shall notify Enhanced of any fault which may arise in the Hardware.
- c. Upon receipt of such notification, Enhanced shall use all reasonable endeavours to repair such fault;
- d. The obligations on Enhanced under this Condition 6.1.3 shall not apply where the Customer has moved the Hardware, where the Hardware is located other than in a suitable place or on the Customer's Premises, where the Hardware has been damaged as a result of some external cause or where the Hardware has been connected to equipment without obtaining the prior written consent of Enhanced, or where the fault arises as a result of misuse of the Hardware.

## 6.2. Commencement and Duration of Support Services

### THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF THIS CONDITION

- 6.2.1. The Support Term shall commence on the date specified in the Order Form and shall continue for a term of one year. Upon the expiration of the Support Term the Support Services may be terminated by either party by giving 3 calendar months' written notice to the other party to expire on the anniversary of the Support Term. Where the Support Term is not terminated it shall automatically continue for subsequent terms of one year commencing on each anniversary of the commencement date specified in the Order Form.
- 6.2.2. The Support Term may be terminated by Enhanced serving notice on the Customer with immediate effect if one of the following events should occur:
  - a. the Customer fails to pay the any sum due to Enhanced on any account for thirty days after the due date for payment;
  - b. the Customer commits a breach of a Contract and fails to remedy such breach within thirty days after written notice from the other party requiring it to do so; or
  - c. during the Support Term the Customer (if a company or corporation), enters into liquidation whether compulsory or voluntary (otherwise than for the purpose of amalgamation or reconstruction) or has a receiver or manager appointed whether or not pursuant to an order of any competent court or (if an individual) commits an act of bankruptcy or in any case enters into any composition with its creditors or otherwise suffers any execution or distress against any of its property.
- 6.2.3. Any termination of the Support Term shall be without prejudice to any right or liability of either party accrued to or upon the result of such termination. The Customer shall pay Enhanced on termination by way of agreed compensation all sums then due hereunder for the outstanding period of the Support Term.
- 6.2.4. In the event that the Customer terminates the Support Term prior to the expiry of that Support Term, no element of the Annual Support Charge shall be refunded by Enhanced

## 6.3. Service Exclusions

The Support Services shall only cover the Operating System and components (e-mail, remote access, network printing and anti-virus) where such Operating Systems and components have been installed by Enhanced or any third party systems and/or components which have been not been installed by Enhanced, but which have been first approved by Enhanced in writing before the commencement of the Support Term or thereafter by Enhanced in its absolute discretion.

## 6.4. Payment for Services

- 6.4.1. The Annual Support Charge is exclusive of VAT and is payable in advance.
- 6.4.2. Following a review by Enhanced of the Annual Support Charge, the parties agree that the Annual Support Charge may be increased as follows:
  - a. in line with the rate of inflation but provided that Enhanced shall first give the Customer not less than 1 months' written notice (to expire on an anniversary of the Support Term) of a proposed increase in the Annual Support Charge, such increase shall not exceed an amount greater than 5% above the rate of inflation. Such increase shall be binding on the Customer without further notice.
  - b. by an amount which is greater than 5% above the rate of inflation, provided that Enhanced shall first be required to give the Customer not less than 3 months' written notice (to expire on an anniversary of the Support Term) of the proposed increase in the Annual Support Charge, on receipt of which, the Customer shall be entitled to exercise its rights to terminate the Contract in accordance with the provisions of clause 6.2.1.
  - c. Failure by the Customer, on receipt of written notice from Enhanced, of a proposed increase in the Annual Support Charge as set out under clause 6.4.2 (b) above, to terminate the Contract in accordance with the provisions of clause 6.2.1, shall cause the proposed increase in the Annual Support Charge as set out in Enhanced's written notice, to be binding on the Customer.

## 6.5. Service Dependencies

- 6.5.1. The Customer shall co-operate with Enhanced fully to allow Enhanced to perform the Support Services. Enhanced shall only be obliged to perform the Support Services if the Customer complies with obligations set out in 6.5.2 below:
- 6.5.2. The Customer shall:
  - a. ensure the Operating System and all other software is operated correctly by competent and authorised members of staff;
  - b. notify Enhanced if the Operating System is re-located and will not modify or adjust it in any way without the prior consent of Enhanced;
  - c. make freely available to Enhanced documentation and software updates relating to the Operating System necessary for the maintenance of the Enhanced Software;
  - d. allow authorised Enhanced personnel access to the Operating System and the Customer's Premises specified in the Order Form for maintenance purposes, and co-operate with Enhanced in the diagnosis of any Operating System malfunction;
  - e. ensure that its data is adequately backed up;
  - f. make available a representative to be present at the Customer's Premises at all times whilst any on-site Support Services are being rendered;
  - g. use all reasonable endeavours to enable the Support Services to be provided by remote access in precedence to on-site support;
  - h. take all reasonable precautions to ensure the health and safety of Enhanced personnel whilst on the Customer's Premises;
  - i. provide notice of intention to change the Operating System; and
  - j. ensure that all support requests are made by authorised, qualified and trained personnel.

## 7. PAYMENT – GENERAL PROVISIONS

- 7.1. The Customer shall pay each invoice submitted to it by Enhanced, in full and in cleared funds, within 30 days of receipt (excluding invoices in respect of Support Contracts which are to be paid in full prior to the commencement of the Support Contract), unless otherwise notified to the Customer in writing.
- 7.2. All payments payable to Enhanced under a Contract shall become due immediately on its termination despite any other provision.

- 7.3. The Customer shall make all payments due under a Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Customer has a valid court order requiring an amount equal to such deduction to be paid by Enhanced to the Customer. Enhanced may, without prejudice to any other rights it may have, set off any liability of the Customer to Enhanced against any liability of Enhanced to the Customer.
- 7.4. Without prejudice to any other right or remedy that it may have, if the Customer fails to pay Enhanced on the due date, Enhanced may charge interest on such sum from the due date for payment at the annual rate of 8% above the base lending rate from time to time of the Lloyds TSB Bank Plc, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgement and Enhanced may claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

## **8. INTELLECTUAL PROPERTY RIGHTS**

8.1. All intellectual property rights and all other rights in the following shall be owned by Enhanced and shall remain in the property of Enhanced:

- a. the Enhanced Software; and
- b. all information and materials provided by Enhanced relating to the Support Services including computer programs, data, reports, scripts, specifications.

## **9. CONFIDENTIALITY AND ENHANCED'S PROPERTY**

- 9.1. The Customer shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Customer by Enhanced, its employees, agents or sub-contractors and any other confidential information concerning Enhanced's business, the Goods and the Support Services which the Customer may obtain. The Customer shall restrict disclosure of such confidential material to such of the Customer's employees, agents or sub-contractors as need to know the same for the purpose of discharging the Customer's obligations to Enhanced, and shall ensure that the Customer's employees, agents or sub-contractors are subject to obligations of confidentiality corresponding to those which bind the Customer.
- 9.2. This Condition 9 shall survive termination of the Contract, however arising.

## **10. WARRANTY**

- 10.1. Enhanced will use its reasonable endeavours to pass on to the Customer the benefit of any manufacturers' warranty (to the extent such warranty is assignable) relevant to any Goods.
- 10.2. Subject to Condition 10.4 below, Enhanced warrants that the Goods shall correspond to their specification at the time of delivery;
- 10.3. Subject to Condition 10.4 below, Enhanced further warrants that the Support Services and the Additional Services shall be carried out with reasonable skill and care;
- 10.4. The warranties in Condition 10.2 and 10.3 above are subject to the following conditions:
- a. Enhanced shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow manufacturer's instructions, misuse or alteration or repair of the Goods without Enhanced's approval.
  - b. Enhanced shall be under no liability under the above warranty (or any other warranty or Condition) if the total price for the Goods has not been paid by the due date for payment.
  - c. In the event of a claim for breach of warranty in respect of the Goods, Enhanced shall be entitled to repair or replace the Goods (or the part in question) or, at Enhanced sole discretion, refund to the Customer the price of the Goods (or the proportionate part of the price), but Enhanced shall have no further liability to the Customer. The Customer acknowledges that the value of the Goods may fluctuate after the date of delivery and any refund or credit note awarded by Enhanced in respect of the Goods shall be made at Enhanced's sale price at the date of the return of the Goods.
- 10.5. All further warranties, conditions and other terms implied by statute or common law in respect of the sale of goods (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.
- 10.6. These Conditions do not limit Enhanced's liability in respect of death or personal injury arising out of its negligence.

## **11. LIMITATION OF LIABILITY**

### **THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF THIS CONDITION**

- 11.1. This Condition sets out the entire financial liability of Enhanced (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:
- a. any breach of a Contract;
  - b. any use made by the Customer of the Goods and/or Services and/or any part of them; and
  - c. any representation, statement or tortious act or omission (including negligence) arising under or in connection with a Contract.
- 11.2. All warranties (except the warranties in Condition 10 above) conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from all Contracts.
- 11.3. Nothing in these Conditions limits or excludes the liability of Enhanced:
- a. for death or personal injury resulting from negligence; or
  - b. for any damage or liability incurred by the Customer as a result of fraud; or
  - c. fraudulent misrepresentation by Enhanced; or
  - d. for any liability incurred by the Customer as a result of any breach by Enhanced of section 12 of the Sale of Goods Act 1979 or the warranty as to quiet possession implied by section 2 of the Supply of Goods and Services Act 1982.
- 11.4. Subject to Condition 11.3, Enhanced shall not be liable for:
- a. loss of profits; or
  - b. loss of business; or
  - c. depletion of goodwill and/or similar losses; or
  - d. loss of anticipated savings; or
  - e. loss of goods; or
  - f. loss of contract; or
  - g. loss of use; or
  - h. loss or corruption of data or information; or
  - i. any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.
- 11.5. Except as provided in Condition 11.3, Enhanced's total liability for all claims in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of the Contract shall be for direct costs and damages only (whether in the form of the additional cost of remedial services or otherwise) and shall be limited to a sum equivalent to the price paid to Enhanced for the Goods plus the Annual Support Charge.

## 12. DEFAULT BY CUSTOMER

- 12.1. If Enhanced's performance of its obligations under a Contract is prevented or delayed by any act or omission of the Customer, its agents, sub-contractors or employees, Enhanced shall not be liable for any costs, charges or losses sustained or incurred by the Customer arising directly or indirectly from such prevention or delay.
- 12.2. The Customer shall be liable to pay to Enhanced, on demand, all reasonable costs, charges or losses sustained or incurred by Enhanced (including any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) arising directly or indirectly from the Customer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under the Contract, subject to Enhanced confirming such costs, charges and losses to the Customer in writing.

## 13. DATA PROTECTION

The Customer shall remain responsible as the 'data controller' as defined in the Data Protection Act 1998 in relation to any personal data it uses in connection with its use of the Goods.

## 14. TERMINATION

- 14.1. Support Services can be terminated in accordance with Condition 6.2.
- 14.2. Without prejudice to any other rights or remedies it may have, Enhanced may terminate a Contract without liability to the Customer immediately on giving written notice to the Customer if:
  - a. the Customer commits a material breach of any of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or
  - b. an order is made or a resolution is passed for the winding up of the Customer or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order of the Customer; or
  - c. an order is made for the appointment of an administrator to manage the affairs, business and property of the Customer, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the Customer, or notice of intention to appoint an administrator is given by the Customer or the directors of the Customer or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or
  - d. a receiver is appointed of any of the Customer's assets or undertaking, or circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the Customer, or if any other person takes possession of or sells the Customer's assets; or
  - e. the Customer makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way; or
  - f. the Customer ceases, or threatens to cease, to trade; or
  - g. there is a change of control of the Customer (as defined in section 574 of the Capital Allowances Act 2001); or
  - h. the Customer takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.
- 14.3. On termination of the Contract for any reason:
  - a. the Customer shall immediately pay to Enhanced all of Enhanced outstanding unpaid invoices and interest and, in respect of Goods and Services supplied but for which no invoice has been submitted, Enhanced may submit an invoice, which shall be payable immediately on receipt;
  - b. the Customer shall, within a reasonable time, return all equipment owned by Enhanced. If the Customer fails to do so, then Enhanced may enter the Customer's premises and take possession of such equipment. Until such equipment has been returned or repossessed, the Customer shall be solely responsible for its safe keeping; and
  - c. the accrued rights of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.

## 15. FORCE MAJEURE

Neither Party shall have any liability to the other under a Contract if it is prevented from or delayed in performing its obligations under a Contract or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including strikes, lock-outs or other industrial disputes (whether involving the workforce of the relevant Party or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, terrorist attack, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors.

## 16. COMMUNICATIONS

Any notice or communications about a Contract must be in writing and must be personally delivered or sent by expedited delivery service or certified or registered mail, return receipt requested, first-class postage prepaid, or sent by fax or email (provided that the sender confirms the fax or email by sending an original confirmation copy by certified or registered mail or expedited delivery service within 3 business days after transmission) to the recipient party at its registered office or such changed address as shall be notified by one party to the other for the purposes of this clause. Any notice shall be deemed to have been given at the time of personal delivery, or in the case of fax or email upon transmission provided confirmation is sent as described above, or in the case of expedited delivery service or registered or certified mail 3 business days after the date and time of mailing.

## 17. ASSIGNMENT

- 17.1. Enhanced may assign a Contract or any part of it to any person, firm or company.
- 17.2. The Customer shall not be entitled to assign a Contract or any part of it without the prior written consent of Enhanced.

## 18. GENERAL

- 18.1. Each right or remedy of Enhanced under a Contract is without prejudice to any other right or remedy of Enhanced whether under a Contract or not.
- 18.2. If any provision of a Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of a Contract and the remainder of such provision shall continue in full force and effect.
- 18.3. Failure or delay by Enhanced in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under a Contract.
- 18.4. Any waiver by Enhanced of any breach of, or any default under, any provision of a Contract by the Customer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of a Contract.
- 18.5. The parties to a Contract do not intend that any term of a Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 18.6. The formation, existence, construction, performance, validity and all aspects of a Contract shall be governed by English law and the parties submit to the non-exclusive jurisdiction