



1. Definitions

In this Agreement:

"*The Customer*" refers to any party who has signed a proposal for the provision of support services (Bronze, Silver or Gold or Dedicated Resource)

"ITS" refers to IT Solutions 4 Business Ltd (company number: 5335147 VAT Number: 855 4726 96) also trading as ITS

"*Additional Charges*" means charges which arise over and above the stated fees, consisting of

- i. Additional charges from IT Solutions 4 Business Ltd's suppliers, which ITS pass on to the Customer.
- ii. Additional items for additional work and/or additional work undertaken on a time and materials basis for the Customer.

"*Agreement*" means this document, as amended from time to time in accordance with the amendment terms.

"*Proposal*" means the ITS proposal, which the Customer is deemed to have read and accepted by signature of this Agreement, including the contained pricing, conditions and program.

"*Documentation*" means any documentation describing any Software licensed here under or describing or relating to the use of the messaging Services provided by ITS to the Customer.

"*Service Period*" means the service duration which has been purchased by the Customer. (As set out in the Proposal)

"*Licensed Materials*" means any Software and/or Documentation licensed to the Customer under this Agreement. (As set out in the Proposal)

"*Service Commencement Date*" means the actual date ITS notifies the Customer that the Services are enabled.

"*Service Renewal Date*" means the actual date that ITS renews this Agreement so as to continue providing services to the customer.

"*Services*" means the ITS IT Services ordered by the Customer (As set out in the Proposal) .

"*Support*" means the provision of a helpdesk or support service by ITS to the Customer.

"ITS Network" means IT Solutions 4 Business Ltd's host computers and network switches.

"Legislation" means any act of UK Parliament or subordinate legislation and any enforceable community right within in the meaning of the European Communities Act 1972

2. Term of Agreement, Commencement of Service.

2.1 This Agreement shall commence on the Service Commencement Date and shall continue during the Service Period of 1 calendar year and thereafter for each subsequent year.

2.2 This Agreement will terminate if either ITS or the Customer gives to the other party not less than 90 days' prior notice in writing effective on the expiry of the Initial Period or on the expiration of any subsequent Year

2.3 ITS shall use all reasonable endeavours to provide the Services from the Service Commencement Date.

3. Licensed Materials

3.1 If ITS supplies software to enable the Customer to connect to the ITS Network, ITS. hereby grants to the Customer a non-exclusive license to use the Licensed Materials as permitted herein.

3.2 The Customer may use the software to connect to the ITS network and use in the manner for which it was designed and make copies of the software for the purpose of backup only. The Customer may not, sell, assign, transfer, lease, grant licenses or distribute the software to third parties without the written permission of ITS for which a fee maybe payable.

4. Service Provisions

4.1 ITS will use its reasonable endeavours to provide prompt and continuing Services but will not be liable for any loss of profit or loss of data resulting from ISP outages, or service interruptions caused by events beyond the control of ITS or outside the ITS Network, or to the extent of errors or omissions of the Customer. ITS specifically excludes any warranty as to the accuracy of information transmitted through the Service. ITS is not responsible for what occurs at the ISP, nor if an operator's telephone network is non-operational. ITS exercises no control over, and accepts no responsibility for, the content of the information passing through the ITS Network.

4.2 From time to time certain servers, or the whole or part of the Network used by ITS to provide the service may be closed down for routine repair or maintenance work. ITS or its authorised representative shall give as much notice as in the circumstances is reasonable (ideally a minimum of 48 hours) and ITS shall endeavour to carry out such works during the scheduled maintenance periods as published by ITS from time to time.

4.3 Improper Use and Liabilities

4.3.1 The Customer acknowledges that it may only use the Service for lawful purposes, and it shall observe all applicable Codes of Practice, and all rules of the Regulatory Body throughout the duration of this Agreement.

4.3.2 The Customer warrants that it shall not (nor shall it authorize or permit any other party to) use the Service or the ITS network to receive or transmit material which is in violation of any law, or which is obscene, threatening, menacing, offensive, defamatory, in breach of confidence, in breach of any intellectual property right (including copyright), or otherwise unlawful.

4.3.3 The Customer shall not knowingly or recklessly transmit any electronic material (including viruses) through the Service which shall cause or is likely to cause detriment or harm, in any degree, to computer or telephone systems owned by ITS or any breach of these obligations shall entitle ITS to immediately terminate the Service to the Customer without notice or refund.

4.3.4 The Customer acknowledges that ITS is unable to exercise control over the content of information passing over the ITS network or via the Service, and ITS hereby excludes all liability of any kind for the transmission or reception of infringing information of whatever nature.

5. Fees and Payment

5.1 The Customer shall be liable to pay the fees and charges listed in the Proposal together with any Additional Charges.

5.2 Payment shall be made at the times and in the manner specified below:

a. Monthly charges are invoiced and payable within 30 calendar days of the invoice date without any set-off, unless by specific arrangement in writing between the Parties.

5.3 ITS also reserves the right to make agreed additional charges in writing if in the opinion of ITS there is a major change affecting this Agreement occasioned by statute or by government body.

5.4 Consultancy Fees, where applicable, will be due monthly in arrears, and will be at fixed price or at IT Solutions 4 Business Ltd's then current rates on a time and materials basis, as agreed for each project.

5.5 ITS may require that the Customer has entered into a direct debit arrangement before Service Commencement, and ITS may suspend Service provision without any liability on ITS if Customer refuses to enter into such an arrangement, or cancels that arrangement once commenced.

5.6 IT Solutions 4 Business Ltd's prices assume that the Customer settles all fees/invoices within the payment period. ITS reserves the right at its discretion to charge the higher of either the statutory rate of interest for late payments or interest at 2% per cent per month, above the base lending rate of the Bank of England on any sum not paid on the due date, together with all costs of recovery. Such interest shall run from day today and accrue until full payment has been made.

5.6.1 The Customer is required to notify ITS within ten (10) working days of its receipt of an invoice if it has any question, which would lead it to dispute an invoice or part thereof.

5.7 ITS reserve the right to withhold payment of premium rate monies in the event of outstanding fees/invoices or complaints which are investigated by the Regulatory Body until the complaint is resolved, and may retain money to pay fines and administrative costs associated with processing the complaint.

5.8 The prices given do not include Value Added Tax (or similar sales taxes as may be introduced from time to time), or delivery or carriage charges, which will, where appropriate, be added to the amount of all fees at the prevailing rate.

6. Changes

6.1 ITS shall provide the services which may be varied, modified or extended from time to time by IT Solutions 4 Business Ltd, advising the Customer of these changes as soon as it is able.

6.2 The Customer agrees to notify ITS of any changes to the IT infrastructure, systems and services covered under the terms of the contract that might affect the ability of ITS to meet its support obligations to the Customer.

6.3 The Customer acknowledges that the value of the Contract may not be reduced by more than 15% of the annual fee, regardless of cause, without the written consent of ITS.

6.4 Any changes to the services or scope of services provided under this contract must be agreed in writing prior to said changes becoming effective.

6.5 The Customer acknowledges that if the amount of hardware supported is increased by 15% or more, additional charges will be incurred regardless of cause, without the written consent of ITS.

7. Security

ITS reserves the right to alter security measures, including passwords, for the services at any time and advise the Customer of these changes as soon as it is able.

8. Data Protection

8.1 The Customer shall comply with the Data Protection Act 1998 and the Telecommunications Regulations 1999, and any amendments or replacements thereof, including any legislation implementing Directive 97/66/EC in relation to the services operated by the Customer.

8.2 The Customer agrees that ITS or its authorised representative may put the Customer's name and other information obtained about it from the Proposal and sales process into a computerised directory for internal use only, until ITS or its authorised representative receive specific written instructions to the contrary from the Customer.

8.3 IT Solutions 4 Business accepts no responsibility for the loss or damage of data, due to hardware failure, file degradation, file damage, Customer misuse or accidental deletion.

9. Confidentiality

9.1. The Customer shall treat as confidential all information obtained from IT Solutions 4 Business Ltd, Pursuant to this Agreement and shall not divulge such information to any person, without the prior written consent of IT Solutions 4 Business Ltd.

9.2 IT Solutions shall treat as confidential all information obtained from the customer Pursuant to this Agreement and shall not divulge such information to any person without the prior written consent of the Customer foregoing obligations as to confidentiality shall continue to apply notwithstanding the termination of this agreement.

10. Limitation of Liability

a. Except as provided in this Agreement, no warranty, expressed or implied, is given or assumed by IT Solutions 4 Business Ltd.

b. Notwithstanding any other provision of this Agreement, in no event shall ITS be liable to the other for any loss of profit, business data, contracts, revenues, or anticipated savings or any indirect or consequential loss of whatever nature, howsoever caused, whether occurring in contract, tort, negligence, or otherwise.

c. Nothing in this Clause shall confer any right or remedy upon the Customer to which it would not otherwise be entitled.

d. The Customer will be entirely responsible for, and for indemnifying ITS in respect of, the content of any messages provided by the Customer in using services provided by IT Solutions 4 Business Ltd, and the Customer undertakes to ensure that all persons authorised by the Customer to use such services operate in an appropriate way.

e. The Customer acknowledges that content of messages must be strictly controlled so as not to give rise to legal consequences, and that from time to time ITS will issue notices in this regard.

f. The Customer is also responsible for, and will indemnify ITS against, any liability arising from:

i. The Customer failing to ensure that it is running services which fully comply with the Codes of Practice and the rules of the Regulatory Body and any relevant legal obligations

ii. The Customer failing to provide ITS with full descriptions of their service, including marketing details.

iii. Termination of the Agreement due to the Customer's breach of any obligation or clause of this Agreement.

11. Patents, Trademarks and Intellectual Property Rights

- a. The Customer acknowledges that any and all of the trademarks, trade names, copyrights, patents and all other intellectual property rights used or embodied in or in connection with the provision by ITS of the Licensed Materials, documentation and the Services are and shall remain the sole property of ITS and/or its licensors.
- b. In the event that new inventions, designs or processes evolve in performance or as a result of this Agreement, the Customer acknowledges that the same shall belong to ITS unless otherwise expressly agreed in writing by IT Solutions 4 Business Ltd.
- c. The Customer shall indemnify ITS fully against all liabilities of any nature whatsoever, including (without limitation) all costs and expenses which ITS may incur as a result of the Customer's infringement of any patent, trademark, trade names, copyright and all other intellectual property rights belong to ITS or other proprietary right of any third party (a) on activities or information provided by IT Solutions 4 Business Ltd; and/or (b) on following specifications of IT Solutions 4 Business Ltd.

12. Relationship of the Parties

In the performance of its obligations hereunder, each party hereto will at all times be an independent contractor, and this Agreement shall not constitute, or be deemed to constitute, either party as being the agent, partner or joint venture partner of the other.

13. Injunctive Relief

Because a party's breach of any of its obligations hereunder may irreparably harm the other and/or its licensors and substantially diminish the value of the proprietary rights of the other and/or its licensors, the parties hereto each agree that if they breach any of their obligations the other party shall, without limiting its other rights or remedies, be entitled to seek equitable relief (including but not limited to injunctive relief) to enforce the obligations of the party in breach hereunder and to protect the other's and/or its licensors' proprietary rights.

14. Force Majeure

Neither party shall be liable to the other for any breach of its obligations hereunder resulting from any cause beyond its reasonable control including but not limited to fire, strikes, delays in transportation, inability to obtain supplies, hostilities, regulations of any civil or military authority. The party whose performance is affected by force majeure shall use all reasonable efforts to avoid or overcome the causes affecting performance as soon as it becomes practical to do so.

15. Termination & Suspension of Service

15.1 This Agreement may be terminated:

- a. Forthwith by ITS by written notice to the Customer if the Customer fails to pay any sum due hereunder by the due date.
- b. Forthwith by ITS by written notice to the Customer if the Customer is in breach of Codes of Practice or the rules of the Regulatory Body.
- c. Forthwith by ITS by written notice to the Customer if the Customer commits any breach of any term of this agreement (other than one falling within a or b. above) and which (in the case of a breach capable of being remedied) shall not have been remedied within thirty (30) calendar days of a written request to remedy the same or within such other time as may be expressly provided herein; and
- d. Forthwith by either party by written notice to the other if the other shall convene a meeting of its creditors or if a proposal shall be made for a voluntary arrangement within Part I of the Insolvency Act 1986 or a proposal for any other composition scheme or arrangement with (or assignment for the benefit of) its creditors or if the other shall be unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (or by any amendment or replacement thereof which may be issued from time to time) or if a trustee receiver administrative receiver or similar officer is appointed in respect of all or any part of the other's business or assets or if a petition is present or a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding up of the other or for the making of an administration order (otherwise than for the purpose of an amalgamation or reconstruction).

15.2 Subject to the limitations of the liability of either party contained in any part of this document, any termination of this Agreement pursuant to this Clause 15. shall be without prejudice to any other rights or remedies a party may be entitled to hereunder or at law and shall not affect any accrued rights or liabilities of either party nor the coming into or continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.

15.3 Upon termination of this Agreement, howsoever caused, the Customer shall immediately stop all use of any Licensed Materials (if any) and use of Services owned by ITS and promptly return to ITS (or at IT Solutions 4 Business Ltd's option destroy and certify in writing to ITS that it has destroyed) the original and all copies of any Licensed Materials, documentation including but not limited to all archival copies, compilations, translations, partial copies, updates, and modifications, if any, and delete all copies of any such items from the Customer's computer hardware and any other hardware or storage facilities.

15.4 The Customer accepts that ITS may suspend without incurring any liability to the Customer any service immediately at the request of the Regulatory Body, if a service is the subject of a complaint, or appears to be in breach of Codes of Practice.

15.5 ITS may, and at its sole discretion and without incurring any liability to the customer, elect to suspend any or all service forthwith in the event that:

The Customer fails to comply with any provision of this Agreement; or ITS is entitled to terminate this agreement; or such suspension is for the purpose of carrying out scheduled or emergency maintenance provided that prior reasonable notice is given to the customer

16. Notices

Any notice of termination, breach or other notice of a legal nature, or any other correspondence required to be given by either party under this Agreement shall be written and given by receipt requested email or facsimile followed by postal notification.

17. Invalidity and severability

If any provisions of this Agreement are found by any court or administrative body of competent jurisdiction to be invalid or unenforceable the invalidity or unenforceability of such provision shall not affect the other provisions of this Agreement and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect. The parties hereby agree to attempt to substitute for an invalid or unenforceable provision a valid or enforceable provision that achieves to the greatest extent possible the economic legal and commercial objectives of the invalid or unenforceable provision.

18. Entire agreement and Amendment

18.1 This Agreement between ITS and the Customer constitutes the entire agreement between the parties hereto as to the subject matter hereof and supersedes all prior communications, representations and agreements relating to the subject matter hereof, whether written or oral, and the parties hereby acknowledge that no reliance is placed on any communication, representation or agreement made but not embodied in this Agreement and waive any right they may have in respect of any misrepresentation not expressly contained in this Agreement unless such misrepresentation was made fraudulently and/or to rescind this Agreement. The operation of the Contracts (Rights of Third Parties) Act 1999 is expressly excluded from this Agreement.

18.2 ITS reserves the right from time to time, to issue to the Customer variations to these terms and conditions, which shall be binding on the Customer unless the Customer notifies ITS to the contrary in writing.

19. Successors

This Agreement shall be binding upon, and continue for the benefit of, the successors in title of the parties hereto in accordance with its terms.

20. Transfer of Rights

20.1 ITS may transfer all or any part of its rights under this Guarantee to any person at any time.

20.2 If ITS transfers all or any part of its rights under this Guarantee, your rights under this Guarantee will stay exactly the same.

20.3 You will be bound to any person to whom ITS transfers any such rights. That person will have ITS's powers and rights so far as the Bank transfers these to that person.

20.4 ITS will be released automatically from its obligations to you so far as that person assumes ITS's obligations.

20.5 You will, at the expense of ITS or the person to whom the rights are transferred, do anything reasonably requested by ITS to effect a transfer of all or any part of its rights under this Guarantee.

20.6 You will not transfer all or any part of your rights under the Guarantee without the prior written consent of ITS.

20.7 In these Transfer of Rights provisions above:

- a.** the term **transfer** means sale, assignment and/or transfer;
- b.** the term **rights** means rights, benefits and/or obligations; and
- c.** the term **person** means any person, trust, fund or other entity.

21. Assignment

The Customer shall not be entitled to assign this Agreement (or any part thereof) nor all or any of its rights and obligations hereunder nor sub-license the use (in whole or in part) of the Licensed Materials. ITS shall be entitled to subcontract any part of this Agreement but such shall in no way reduce IT Solutions 4 Business Ltd's liability to the Customer hereunder. Whilst ITS may assign this Agreement for purposes of internal reorganisation, any assignment will occur only after consultation and agreement with the Customer.

22. Press, Publicity and Public Announcements

Neither party shall make any press statement, publicity statement or announcement nor publish or actively participate in any article concerning the subject matter of this Agreement without advising the other party hereto and agreeing with the other the content of such. However, shortly after entering into this Agreement Customer consents to agreeing with ITS a brief statement, which ITS may issue on or shortly after the Service Commencement Date. ITS may later request Customer to agree to more detailed statements, but shall only produce such after the Customer's agreement thereto. The foregoing shall not prevent basic disclosure by either party in accordance with financial, investment or auditing disclosures required by law or regulatory authorities, nor disclosure by ITS of message content or sender details as may be required by law or regulatory authority.

23. Law

The construction, validity and performance of this Agreement shall be governed by English law and the parties hereto hereby submit to the non-exclusive jurisdiction of the English courts.

Payment of the proposed monthly sum inclusive of VAT is classed as agreement in full of these terms and conditions.