

TERMS AND CONDITIONS OF IT SUPPORT RETAINER AGREEMENT

AN AGREEMENT for the provision of telephone, on-site and remote IT support between:-

- (1) **OGL COMPUTER SUPPORT LIMITED**, Worcester Road, Stourport on Severn, Worcestershire, DY13 9AT (hereinafter referred to as "**OGL**") and
- (2) The party named in the Agreement (hereinafter referred to as "**the Customer**")

DEFINITIONS

"**Agreement**" means the contract between OGL and the Customer incorporating these terms and conditions

"**Equipment**" means the computer equipment detailed in the Schedule

"**Equipment Location**" means the relevant location of the Customer referred to in the Schedule

"**Schedule**" means the schedule detailing the Customer the Equipment and the Equipment Location attached to these terms and conditions including any replacement schedule issued by OGL from time to time

1. Service

- 1.1 Upon receipt of a request from the Customer OGL will provide curative support to the equipment and associated software. This will include the investigation, testing and diagnosing of any fault reported and the carrying out of such repair, replacement, software updating as it may judge necessary to remedy the fault.
- 1.2 Upon receipt of a request from the customer OGL will provide IT administration, preventive maintenance, software patching and service pack updating as is necessary for day to day running of the network infrastructure.
- 1.3 **Charges**
The following support and service provided by OGL will be charged to the Customer's Retainer Agreement:-
 - 1.3.1 All support provided under clauses 1.1 and 1.2
 - 1.3.2 All replacement parts and software updates if chargeable by the author
 - 1.3.3 All rental equipment
 - 1.3.4 All consumables provided with rental equipment
- 1.4 OGL shall use all reasonable endeavours to restore the Equipment under the service to good working order in accordance with OGL's then current escalation procedures.
- 1.5 Upon a request being placed by the Customer, OGL shall use all reasonable endeavours to arrive at the Equipment Location within the response times specified in the Schedule.

2. Customer Obligations

The Customer shall:-

- 2.1 Ensure the environmental and electrical conditions affecting the Equipment at the Equipment Location are maintained to the manufacturer's recommendations.
- 2.2 Ensure the Equipment is operated correctly and by competent trained and authorised members of its staff.
- 2.3 Notify OGL immediately upon Equipment failure (and in any event within 48 hours) and will allow OGL engineers full and free access to the Equipment as soon as they arrive on site.
- 2.4 Use media on the Equipment only of a type recommended or approved by the manufacturer or by OGL.
- 2.5 Notify OGL forthwith if the Equipment is re-located from the Equipment Location.
- 2.6 Make freely available to OGL requisite documentation and software and back-ups necessary for the maintenance of the Equipment such software to be legitimately licensed.
- 2.7 Sign a certificate of satisfaction after any service work under this Agreement has been carried out by or on behalf of OGL.
- 2.8 Be wholly responsible for the security of its proprietary and confidential information held on the equipment.
- 2.9 Be responsible for the safe keeping of any equipment rented to it by OGL and for insuring the same in its full reinstatement value against usual commercial risks.
- 2.10 Maintain up-to-date back-up copies of the configuration for software and hardware and the programs and data which may be affected by any breakdown of or fault in the equipment and ensure that such back-up copies are kept up to date and in order and available for use at all times.

3. Payment

Invoices will be rendered prior to commencement of the Retainer Agreement and are payable before the commencement date detailed in the schedule. If not paid within that period, OGL reserves the right to withdraw all support under this Agreement.

4. OGL's Warranty and Limitation of Liability

- 4.1 OGL warrants and undertakes to provide the Customer the service under this Agreement with due care and skill.
- 4.2 OGL does not warrant that the service will cause the Equipment to operate without interruption or error.
- 4.3 The following provisions set out OGL's entire liability (including any liability for the acts and omissions of its employees agents or sub-contractors) to the Customer in respect of:-
 - 4.3.1 Any breach of its contractual obligations arising under this Agreement; and
 - 4.3.2 Any representation statement or tortious act or omission including negligence arising under or in connection with this Agreement.

4.4 OGL's liability to the Customer for death or injury resulting from its own or that of its employees' agents' or sub-contractors' negligence and all damage suffered by the Customer as a result of any breach by OGL of the condition as to title or the warranty as to quiet possession implied by Section 2 of the Supply of Goods and Services Act 1982 shall not be limited.

4.5 Subject to the limit set out in Clause 4.7 OGL shall accept liability to the Customer in respect of damage to the tangible property of the Customer resulting from the negligence of OGL or its employees agents or sub-contractors.

4.6 The maximum aggregate liability of OGL for any loss or damage caused to the Customer for any act or omission on the part of OGL or its employees agents or sub-contractors occurring during any year whilst this Agreement remains in force shall be limited to damages of an amount equal to but not exceeding the aggregate of all payments made for the service and any additional charges paid by the Customer to OGL under this Agreement in the relevant year.

4.7 OGL shall not be liable to the Customer for loss of profit or revenue, anticipated savings, contract time or goodwill or any type of special indirect or consequential loss (including loss or damage suffered by the Customer as a result of any action brought by a third party) even if such loss was reasonably foreseeable or OGL had been advised of the possibility of the Customer incurring the same.

4.8 For the avoidance of doubt the Customer shall be solely responsible for maintaining the security of its data and ensuring that its data is adequately backed-up. OGL shall not be liable for loss of the Customer's data or that of any third party.

4.9 OGL will not be liable for any telephone or communication costs incurred by the Customer for connection to OGL for support purposes or connection between customer sites.

5. Duration and Termination

5.1 This Agreement is for a two year period commencing on the date detailed in the schedule and will be renewed automatically on the anniversary date in each year on the same terms herein appearing or as may be agreed from time to time between both parties UNLESS:

- 5.1.1 Either party has provided written notice of cancellation not less than 30 days prior to the anniversary date of the Agreement, OR
- 5.1.2 The contract value has been utilised in full prior to the anniversary date.

5.2 Monies not utilised under this Agreement during the current term thereof shall be forfeit.

5.3 OGL reserves the right to terminate this Agreement forthwith if the Customer commits any material breach of any term of this Agreement which (in the case of a breach capable of being remedied) shall not have been remedied within 14 days of a written notice by OGL to remedy the same.

5.4 This Agreement may be terminated forthwith by either party giving notice in writing to the other if the other party shall have a receiver or administrative receiver appointed of the whole or part of its property or assets or shall pass a resolution for winding up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or a Court of competent jurisdiction shall make an order to that effect or if the other party shall become subject to an administration order or shall enter or threaten to enter into any voluntary arrangement with its creditors or shall cease or threaten to cease to carry on business.

5.5 Any termination of this Agreement shall be without prejudice to any accrued rights or remedies available to either party. For the avoidance of doubt where this Agreement is terminated other than in accordance with Clause 5.1 OGL shall be entitled to retain the balance of any payment previously made by the Customer.

6. Force Majeure

OGL shall not be liable for any delay in or failure to perform its obligations under this Agreement if such delay or failure is caused by circumstances or events howsoever arising beyond its reasonable control.

7. General

7.1 OGL reserves the right to sub-contract all or part of its obligations under this Agreement.

7.2 The Customer shall not assign or otherwise transfer all or any part of its rights or obligations under this Agreement without the prior written consent of OGL.

7.3 The waiver by either party of a breach or default of any provision of this Agreement by the other shall not be construed as a waiver of any other provision of this Agreement.

7.4 This Agreement constitutes the entire understanding between OGL and the Customer for the provision of the service and supersedes and replaces all previous representations and communications between the parties whether made orally or in writing. Any terms and conditions in any purchase order or other document issued by the Customer shall not apply to the service provided by OGL which shall be governed exclusively by the terms and conditions of this Agreement.

7.6 Any notice required to be given hereunder shall be delivered or sent by registered post or by facsimile transmission to the address or to the facsimile number of the other party set out in the Schedule (or such other address or number as may have been notified for this purpose) and any such notice shall be deemed to have been served (if delivered) at the time of delivery, (if sent by registered post) upon the expiration of 48 hours after posting and (if sent by facsimile transmission) upon the expiration of twelve hours after despatch.

7.7 This Agreement shall be governed by and construed in accordance with English law and the parties hereto agree to submit any dispute arising between them to the exclusive jurisdiction of the English Courts.

