

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

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

DEFINITIONS

"**Agreement**" means the contract between OGI and the Customer incorporating the following terms and conditions:

"**Consultancy Services**" may include pre-sales recommendations, site surveys, infrastructure solutions planning, project management, specialist technology and communications advice, strategic advice and any other IT or security consultancy services as detailed in the proposal and/or Order

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

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

"**Initial Term**" the initial term of the Agreement described in clause 6.1

"**Order**" the order for the provision of your IT Support which forms part of this Agreement

"**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 OGI from time to time

"**Services**" the services provided by OGI to the Customer under this Agreement, or combination thereof as set out in the Order

"**Start Date**" the start date of this Agreement as set out in the Order

"**System**" the Customer's IT infrastructure including hardware, software, data, equipment and operating system

1 Service

- 1.1 On request by the Customer OGI will provide curative support for the equipment and associated software detailed in the Schedule such support to include investigation, testing and diagnosing of any reported fault and the carrying out of such repair, replacement, software updating as it may judge necessary to remedy the fault.
- 1.2 OGI will provide support under clause 1.1 via telephone, remotely or at the equipment location between the hours of 9.00 am and 5.00 pm, Monday to Friday excluding public holidays.
NB: Remote support is only provided if the relevant service option is purchased.
- 1.3 The service provided by OGI under Clause 1.1 shall include all the costs of replacement of faulty parts, labour and travelling costs unless otherwise stated in the Schedule. All items considered by the original manufacturer as consumables shall be excluded from this service.
- 1.4 To facilitate the service OGI may at its absolute discretion remove for repair any part or whole of the Equipment and replace it with equipment equivalent or superior to that removed, subject to availability. This equipment may be deemed to be a permanent replacement, in which case the equipment removed will become the property of OGI and the replacement equipment issued by OGI will become the property of the Customer.
- 1.5 OGI will provide service patch/service pack updates, if provided free of charge by the software author, to overcome specified identified faults. This DOES NOT include regular service pack updates.
- 1.6 OGI will carry out preventive maintenance of the Equipment between the hours of 9.00 am and 5.00 pm Monday to Friday excluding Public Holidays where agreed with the Customer and as specified in the Schedule. Preventive maintenance will only be undertaken by OGI where expressly specified in the Schedule.
- 1.7 OGI reserves the right to make additional charges to the Customer based upon its current charging rates or price lists in respect of the following:
 - 1.7.1 Service or parts required due directly or indirectly to damage caused to the Equipment by accident, neglect, misuse, work performed or modifications by personnel other than OGI employees or authorised OGI sub-contractors.
 - 1.7.2 Any support carried out at the customer's request outside OGI's usual working hours detailed in Clause 1.2 unless extended hours are specified in the Schedule.

1.7.3 Without prejudice to Clause 1.7, where in OGI's reasonable opinion major sub-assembly work is required, such as necessary replacement laptop screens which cannot be repaired, OGI will replace such items at cost payable by the customer.

1.7.4 Any accident or disaster affecting the Equipment including without limitation fire, flood, water, wind, lightning, vandalism or burglary.

1.7.5 Without prejudice to Clause 6.1.2, where any service work is undertaken by OGI as a result of any failure by the Customer to comply with any of its obligations under Clause 2.

1.7.6 Service undertaken by OGI in circumstances where any competent trained operator would have judged the Customer's request to have been unnecessary.

1.8 If in the reasonable opinion of OGI any significant part of the Equipment cannot be made functional by the provision of a replacement spare part or if a major sub-assembly is required or substantially the whole of the Equipment is damaged beyond economical repair, then OGI reserves the right in its absolute discretion to remove that item of Equipment from the Schedule forthwith by serving immediate written notice on the Customer whereupon OGI shall refund any pro rata payment made by the Customer for that item of Equipment to the end of the relevant annual period.

1.9 OGI shall use all reasonable endeavours to restore the Equipment under the service to good working order in accordance with OGI's then current escalation procedures.

1.10 On request for technical assistance, OGI will make every reasonable endeavour to arrive at the Equipment Location within the response times specified in the Schedule.

1.11 Where Services include Consultancy Services the Customer agrees that:

1.11.1 The Customer shall provide OGI with all facilities that may reasonably be required to provide the Consultancy Services, such as access to the Customer's Location, Equipment and System, passwords, appropriate resources and staff, and additional charges may be payable, where OGI is delayed or prevented from performance due to events beyond its control.

1.11.2 All Intellectual Property Rights within deliverables such as reports, consultancy guidance and documentation will remain OGI's property or that of its licensors. The Customer accepts that all such reports, consultancy guidance and documentation provided for the Consultancy Services are accurate at the time of delivery, based upon the information provided by the Customer.

1.11.3 Where Consultancy Services have been provided by a third party, and OGI is requested to provide remediation work under the Agreement, OGI cannot be held responsible for any issues or faults occurring on the System as a result of following any third party advice, which OGI will deem to be accurate at the time of provision, or where there is any resulting downtime.

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 OGI immediately upon Equipment failure (and in any event within 48 hours) and will allow OGI engineers full and free access to the Equipment as soon as they arrive on site.
- 2.4 Provide OGI with at least two full working days' notice to cancel a booked site visit and the Customer accepts that failure to provide the required notice will result in the Customer being charged for the cancelled visit.
- 2.5 Use media on the Equipment only of a type recommended or approved by the manufacturer or by OGI.
- 2.6 Notify OGI forthwith if the Equipment is re-located from the Equipment Location.
- 2.7 Not modify or adjust the Equipment in any way without the prior written consent of OGI.

- 2.8 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.
- 2.9 Sign a certificate of satisfaction after any service work under this Agreement has been carried out by or on behalf of OGL.
- 2.10 Be wholly responsible for the security of its proprietary and confidential information held on the Equipment.
- 2.11 Be responsible for the safe keeping of any equipment loaned to it by OGL and for insuring the same in its full reinstatement value against usual commercial risks.
- 2.12 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.
- 2.13 Notify OGL in writing of any changes to the Schedule of equipment herein appearing at the time the said changes occur.
- 2.14 Inform OGL of service patch or service pack updates or connection of peripheral devices or associated software updates that may have resulted in the request for support. Such support to be provided at the discretion of OGL.

3 Payment

Invoices will be rendered yearly in advance and are payable prior to the commencement date detailed in the Schedule or each anniversary date thereafter and if not paid at the appropriate time OGL reserves the right to withdraw all support for the Equipment under service of this Agreement until such time as payment is received.

4 Schedule of Equipment

The Schedule of Equipment under service of this Agreement may be varied on the anniversary of the commencement date each year provided that any reduction to the Schedule does not exceed 10% of the value of the annual support charge for the relevant twelve-month period.

5 OGL's Warranty and Limitation of Liability

- 5.1 OGL warrants and undertakes to the Customer:
- 5.1.1 To provide the service under this Agreement with due care and skill;
- 5.1.2 That it shall have a free and unencumbered title to any replacement parts for the Equipment supplied under this Agreement; and
- 5.1.3 That the Customer will enjoy quiet possession of any such replacement parts and that the same will be of satisfactory quality.
- 5.2 OGL does not warrant that the service will cause the Equipment to operate without interruption or error.
- 5.3 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:
- 5.3.1 Any breach of its contractual obligations arising under this Agreement; and
- 5.3.2 Any representation statement or tortious act or omission including negligence arising under or in connection with this Agreement.
- 5.4 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.
- 5.5 Subject to the limit set out in Clause 5.6 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.
- 5.6 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.
- 5.7 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.

- 5.8 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.
- 5.9 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.

6 Duration and Termination

- 6.1 This Agreement shall begin on the Start Date and shall continue for an Initial Term as set out in the Order and may not be terminated by either party until this period has elapsed save in the event of the following:

6.1.1 This Agreement may be terminated forthwith by either party, if either party 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 written notice by either party one to the other to remedy same.

6.1.2 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.

- 6.2 Subject to clause 6.1 unless you give us not less than 30 days' prior written notice to terminate the Agreement at the end of the Initial Term, this Agreement shall automatically continue thereafter for one or more Renewal Periods of 12 months.

- 6.3 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 the terms of this Agreement OGL shall be entitled to retain the balance of any payment previously made by the Customer.

7 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.

8 Software Virus

Maintenance cover in respect of this Agreement does not include the provision for defect, error or any other problem resulting from a software virus whether attributable to internal or external sources.

9 General

- 9.1 OGL reserves the right to sub-contract all or part of its obligations under this Agreement.
- 9.2 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.
- 9.3 Additional items of equipment purchased by the Customer after commencement or renewal of this Agreement will not form part of the service obligation of Clause 1.
- 9.4 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.
- 9.5 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.
- 9.6 Any notice required to be given hereunder shall be delivered or sent by registered post to the address 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, or if sent by registered post upon the expiration of 48 hours after posting.

9.7 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.

10 Patch Management Service (if included on the Order)

10.1 Patch Management Service will be provided on either a standard or enhanced option on a pre-agreed schedule in accordance with the Order where the Customer has a current IT Support Agreement with OGL for Equipment.

10.2 Each piece of Equipment to be patched must be stated on the Equipment Schedule and be reviewed as part of our chargeable on-boarding process to determine the applications to update and patch, and to enable OGL to install its patch control software, prior to Patch Management Services being provided.

10.3 Patch control software must not be overridden by the Customer.

10.4 Patch Management Service provides patching of mainstream security vulnerabilities only, and does not cover feature or product enhancements, unless these also contain security patches. The following are specifically excluded from the Patch Management Services on Windows operating system based devices:

10.4.1 Firmware updates of Equipment

10.4.2 Modification of registry post patch to enable some elements of the patch

10.4.3 Updating out of date software products

10.4.4 Operating systems/applications no longer supported by the vendor

10.4.5 Any third-party managed routers/firewalls/equipment

10.4.6 Servers without OGL remote monitoring

10.4.7 Firewalls which do not have a current subscription, if required

10.4.8 prof.ITplus servers which will be covered under OGL's Software Services.

10.5 Patch Management Services will patch as scheduled but OGL cannot guarantee it is 100% effective as defects or errors can occur at any time.

10.6 OGL does not warrant that the Patch Management Service will cause the Equipment to operate without interruption or errors, and on rare occasions patching can introduce issues to Equipment.

10.7 Patching freezes may take place during the Christmas period and will be notified to customers via the Customer Centre in advance.