

TERMS AND CONDITIONS OF THE ANNUAL SERVICE AGREEMENT

1 INTERPRETATION

In this Agreement the following expressions shall have the following meanings:

- 1.1 'the Additional Services' means services provided by the Service Provider at the written request of the Customer which are outside the scope of the Annual Service (as defined below) including but not limited to site visits; software installation; initial set-up and configuration; transfer of programs and data; incorporation of minor amendments; recovery from data corruption; prolonged investigation of errors; training and consultancy
- 1.2 'the Customer' means the person operating the Software covered by this Agreement and if a company any of its subsidiaries, sister companies and holding companies
- 1.3 'the Service Provider' means Onesys Support Limited, a company registered in England whose registered office is at 3 Sceptre House, Hornbeam Park, Harrogate, HG2 8PB
- 1.4 'the Software' means software supplied to the Customer by either the Service Provider or any of its subsidiaries, sister companies or holding companies and not expressly stated by the Service Provider to be outside the scope of this Agreement
- 1.5 'the Hardware' – the equipment approved by the Service Provider and used by the Customer to operate the Software
- 1.6 'the Installation Address' – the address at which the Software is installed on one or more elements of the Hardware
- 1.7 'the Annual Service' – services provided by the Service Provider comprising:
- 1.7.1 assistance in the usage of the Software at the Customer's request by telephone, facsimile, mail or e-mail
- 1.7.2 supplying to the Customer corrections for any errors in the Software made known to the Service Provider by the issue of individually correcting programs if appropriate but normally by the issue of new versions of the Software from time to time
- 1.7.3 supplying at Customer's request and upon payment of a nominal handling charge new releases of the Software incorporating modifications or extensions together with updated documentation if appropriate

2 PROVISION OF ANNUAL SERVICE

- 2.1 the Annual Service will only be provided if:
- 2.1.1 the Customer is licenced to use the Software and is using it in full compliance with such licence
- 2.1.2 all charges due in respect of the Annual Service and all other sums due from the Customer to the Service Provider have been paid save and except for any amounts subject to claims made in writing by the Customer to the Service Provider relating to items in dispute such claims not to be unreasonably made
- 2.2 the Customer shall install and use the Software on the Hardware in accordance with the instructions and procedures given by the Service Provider and must keep the Hardware in sound working order and arrange maintenance of the Hardware to the reasonable satisfaction of the Service Provider
- 2.3 the Service Provider shall provide the Annual Service in respect of the Software operating on the Hardware at the Installation Address for up to two-man hours in any given calendar month
- 2.4 the Annual Service will be available between the hours of 9.00am and 5.30pm on Mondays to Fridays inclusive (but not on Bank and other Public Holidays)
- 2.5 if the problem notified is urgent or severe then the Service Provider will use its best endeavours to resolve the problem by the close of business on the working day following the day of notification
- 2.6 other problems notified will be resolved within a reasonable period of time agreed between the Service Provider and the Customer
- 2.7 the Customer is entitled to require the Service Provider to provide a new release of Software as soon as practicable after the announcement of its general availability

3 FEES AND PAYMENT

- 3.1 The fees payable for the Annual Service shall be as advised by the Service Provider to the Customer from time to time. These amounts will be stated exclusive of Value Added Tax, which is payable at the prevailing rate at the date of invoice
- 3.2 the fee payable for the Annual Service in respect of each year of this Agreement shall be paid in full prior to the commencement of the period to which the Annual Service relates
- 3.3 if the scope of the service required by the Customer changes compared with the scope of the service required by the Customer in the immediately preceding year then the Service Provider shall be entitled to increase the fee payable for the Annual Service by such amount as the Service Provider considers appropriate having regard to the increased level of service required
- 3.4 in any case the fees payable for the Annual Service and the Additional Services may be subject to annual review upon 30 days prior notice from the Service Provider. Such increase shall take effect on expiry of the period of notice

4 DURATION

This Agreement shall commence on the date hereof and shall continue in force for a period of one year and thereafter unless and until determined by not less than three month's prior notice in writing given by one party to the other such notice to expire on the first or any subsequent anniversary of the date of this Agreement

5 ADDITIONAL PROVISIONS RELATING TO THE ANNUAL SERVICE

- 5.1 the Service Provider undertakes that the Annual Service will be performed by trained and competent staff
- 5.2 the Service Provider may charge for any reasonable media and postage costs incurred by it in providing the Annual Service to the Customer
- 5.3 action on an error reported by the Customer to the Service Provider will depend on the Service Provider being able to carry out diagnosis by remote access or by recreating the error using the Customer's data or by recreating the error using standard sample data and the Service Provider may require the Customer to assist by providing appropriate printouts or other information
- 5.4 the Customer must install and use the Software in accordance with the instructions and procedures given in any published manuals
- 5.5 the Service Provider may make a charge for upgrades to any element of the Software provided by third parties in accordance with the policy of the authors or distributors of such software
- 5.6 the Customer agrees that the Service Provider is entitled to sub-contract any or all of its duties and obligations under this Agreement to whoever in its sole discretion it sees fit

6 LIABILITY

- 6.1 all materials and services provided by the Service Provider in its performance of the Annual Service will normally relate to the latest version of the Software and any material and services relating to earlier versions is provided by the Service Provider in its sole discretion
- 6.2 the Service Provider shall not be liable for any difficulties in installing or using the Software arising from modification or additions thereto which are not covered by this Agreement or from modifications or additions to the Hardware
- 6.3 the Service Provider shall not be liable for any loss of data on any recording device and the Customer is reminded of the need to take regular and effective back-ups of data and programs
- 6.4 the Service Provider is not liable to the Customer for the functioning of the Software save as expressly provided in this Agreement

- 6.5 the Service Provider's entire liability (including liability for the acts and omissions of its partners and employees) to the Customer in respect of any breach of its contractual obligations arising under this Agreement and for any representation statement or tortious act or omission including negligence arising under or in connection with this Agreement shall be as follows:

- 6.5.1 the Service Provider's liability to the Customer for death or injury resulting from its own or that of its employees' negligence shall not be limited
- 6.5.2 subject to clause 6.5.1 the Service Provider's entire liability to the Customer for any act or omission on the part of the Service Provider shall be the amount of the fees paid by the Customer to the Service Provider for the calendar year in which the act or omission giving rise to the liability commenced
- 6.5.3 the Service Provider shall not be liable to the Customer in respect of any loss of profits goodwill or any type of special indirect or consequential loss even if such loss was reasonably foreseeable or the Supplier had been advised of the possibility of the Customer incurring the same

7 TERMINATION

- 7.1 if the Customer fails to comply with any of the material provisions of this Agreement and does not rectify such non-compliance within 28 days of the Service Provider's written notice thereof or if the Customer shall have a petition presented or pass a resolution for winding up or have a receiver appointed over its assets or being an individual shall commit any act of bankruptcy or compound with his creditors then the Service Provider without prejudice to any other of its rights or remedies and without being liable to the Customer may terminate this Agreement with immediate effect
- 7.2 non-enforcement of such rights by the Service Provider shall not be deemed a waiver of its rights under this Agreement

8 ADDITIONAL SERVICES

- 8.1 the Customer is entitled to request that the Service Provider shall provide Additional Services, which the Service Provider can choose whether or not to agree to provide
- 8.2 the Service Provider shall invoice the Customer for such Additional Services as it agrees to deliver at the hourly or daily rate specified by the Service Provider from time to time, such rate being appropriate to the grade of staff involved in carrying out the Additional Services including travel time to and from the Installation Address or elsewhere together with any related travel subsistence expenses reasonably incurred by the Service Provider
- 8.3 if the resources required by the Service Provider to deliver the Additional Services requested by the Customer are expected to exceed one man-week then the Service Provider may request that the Customer pays a deposit of not more than 50% of the expected cost of delivering the Additional Services prior to commencing the delivery of the Additional Services

9 HARDWARE MAINTENANCE AGREEMENTS

- 9.1 the scope of this Agreement comprises only the delivery of the Annual Service in relation to the Software and the Additional Services
- 9.2 any agreement between the Customer and the Service Provider under which the Service Provider delivers hardware maintenance or other related services to the Customer shall be subject to the terms and conditions set out from time to time in such other agreement and shall not in any circumstances effect the duties, obligations, responsibilities and liabilities of the Service Provider under this Agreement

10 FORCE MAJEURE

The Service Provider shall be under no liability to the Customer in respect of anything which apart from this provision may constitute breach of this Agreement arising by reason of force majeure namely circumstances beyond the control of the Service Provider which shall include (but shall not be limited to) acts of God perils of the sea or air fire flood drought explosion sabotage accident embargo riot civil commotion or civil authority including acts of local government and parliamentary authority and labour disputes of whatever nature and for whatever cause arising

11 MISCELLANEOUS

- 11.1 this Agreement constitutes the entire agreement between the Service Provider and the Customer in relation to the Annual Service and the Additional Services and supersedes all previous communication representations and agreements either written or oral and the Customer acknowledges that no reliance is placed on any representation made but not embodied in the Agreement
- 11.2 any amendment to this Agreement shall be made only by the mutual written consent of the parties to it
- 12 ENGAGEMENT OF PERSONNEL
Should any employee of the Service Provider be engaged by the Customer as an employee, consultant or similar within the period covered by this Agreement or within the calendar year following the termination of this Agreement then the Customer shall pay to the Service Provider a fee of 25% of the total remuneration, including benefits, of that individual in the first year of that person's engagement by the Customer

13 CONFIDENTIALITY

- 13.1 the Customer shall keep confidential and not without prior consent in writing from the Service Provider disclose to any third party the Software and any other information whether of a commercial or technical nature acquired from the Service Provider pursuant to this Agreement and the Customer shall so instruct all employees and other persons having access to the Software and such other information
- 13.2 the Customer shall on determination of this Agreement return to the Service Provider any books papers or other media or property in its possession belonging to the Service Provider

14 ASSIGNMENT

- 14.1 the Customer shall not assign or otherwise transfer this Agreement or any of its rights and obligations hereunder whether in whole or in part without the prior written consent of the Service Provider
- 14.2 the consent of the Service Provider to a written request from the Customer to assign or otherwise transfer any of its rights and obligations hereunder whether in whole or in part shall not be unreasonably withheld
- 14.3 the Service Provider may assign the benefit of this Agreement in whole or in part without the prior written consent of the Customer

15 NOTICES

- 15.1 all notices which are required to be given hereunder shall be in writing and shall be sent to the correspondence address of the recipient as used in day-to-day postal communications between the parties
- 15.2 any such notice may be delivered personally or by first class pre-paid letter or facsimile transmission and shall be deemed to have been served as if by hand when delivered if by first class post 48 hours after posting and if by facsimile transmission when despatched

16 GENERAL

- 16.1 the Customer hereby accepts that any terms and conditions purported to be incorporated into this Agreement set out on any Customer purchase order form shall not apply to this Agreement
- 16.2 the parties hereto agree that it is their joint attention not to violate any provisions of the laws of England or of the European Community and that in the event that this Agreement or any part thereof shall become unenforceable through any such violation then such terms and conditions shall be deemed to be severed from this Agreement the remainder of which shall remain binding as aforesaid on the parties
- 16.3 this Agreement shall be governed by the laws of England and the parties hereto agree to submit to the jurisdiction of the English courts