

ONESYS GROUP
STANDARD TERMS AND CONDITIONS
ANNUAL SERVICE AND ANNUAL LICENCE AGREEMENT

1 Interpretation

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

- 1.1 ‘Agreement’ means these terms and conditions together with any document specifying: the services to be provided by the Service Provider to the Customer, including the Invoice raised for the charges; details of the Customer and the relevant service provider; details of the fees; details of any service specification or other matters relating to the services.
- 1.2 ‘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, data management and processing, training and consultancy.
- 1.3 ‘Group Companies’ means in relation to a company, the company itself and all of its subsidiaries, sister companies and holding companies
- 1.4 ‘the Customer’ means the legal person operating the Software covered by this Agreement, and if a company any other of its Group Companies.
- 1.5 ‘the Service Provider’ the relevant onesys group company providing the services.
- 1.6 ‘the Software’ means software supplied as a reseller or author to the Customer by either the Service Provider or any of its Group Companies, as detailed in this agreement.
- 1.7 ‘the Hardware’ means the equipment approved by the Service Provider and used by the Customer to operate the Software.
- 1.8 ‘the Installation Address’ means the address at which the Software is installed on one or more elements of the Hardware or if not so installed the place or organisation licenced to use the Software.
- 1.9 ‘the Annual Service and licence’ means services provided by the Service Provider comprising:
 - 1.9.1 assistance in the usage of the Software at the Customer’s reasonable request by telephone, mail or e-mail
 - 1.9.2 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
 - 1.9.3 supplying at the Customer’s request, and at the discretion of the Service Provider upon payment of a nominal handling charge, new releases of the Software incorporating modifications or extensions together with updated documentation if appropriate. And the annual licence key.
 - 1.9.4 “Onesys Group Company” - means Onesys Limited, number 2736089 and its current subsidiaries and sister group companies including, The Northern Path Limited. Elite Business Services Limited. I.S.M Business Solutions Limited. Onesys Support Limited 2687119. Onesys Services Limited 2321807 Coretime Limited 7064239 and any other affiliated company from time to time, being any entity that directly or indirectly controls, is controlled by, or is under common control with any of the previously named companies.

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 and its Group Companies have been paid in full, 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, ensuring users are also adequately trained in the use of such software. 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 such reasonable time as is agreed between the parties, which in any case shall include the first two man-hours in any given calendar month.
- 2.4 The Annual Service will be available between the hours of 9.00am and 5.00pm 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 within 7 business hours of notification.
- 2.6 Other problems notified will be resolved within the Service Level Agreement response times published on the website of the Service Provider or as alternatively agreed between the Customer and the Service Provider from time to time.
- 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 fee payable for the Annual Service and licence shall be as advised by the Service Provider to the Customer from time to time. Fees payable 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/or on the date specified on the annual invoice issued by the Service Provider to the Customer. It shall continue in force for a period of one year and thereafter for minimum periods of one year 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. Unless terminated early as per clause 7.

5 Additional Provisions Relating to the Annual Service

- 5.1 The Service Provider undertakes that the Annual Service will be delivered by trained and competent staff.
- 5.2 The Service Provider may charge for any reasonable media and issuing 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 (i) the Service Provider being able to carry out diagnosis by remote access; or (ii) by recreating the error using the Customer’s data; or (iii) by recreating the error using standard sample data, and the Service Provider reserves the right to require the Customer to assist by providing appropriate printouts, sample data or other relevant information.
- 5.4 The Customer must install and use the Software in accordance with the instructions and procedures given in any published manuals or help screens.
- 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 hereby 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, subject to the provisions of the Data Protection Legislation as defined in clause 10 to this Agreement.

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 will be provided by the Service Provider at its sole discretion.
- 6.2 The Service Provider shall not be liable for any difficulties experienced by the Customer in installing or using the Software that arise from modification or additions to the Software 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 physical recording device operated by the Customer and the Customer is reminded of the need to take regular and effective back-ups of data and programs.
- 6.4 Data supplied to the Service Provider is at the Customer’s risk, but nothing in this clause shall absolve the Service Provider of its duties and obligations under Data Protection Legislation.
- 6.5 The Service Provider is not liable to the Customer for the functioning of the Software save as expressly provided in this Agreement.
 - 6.6.1 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, tortious act, or omission (including negligence) arising under or in connection with this Agreement shall be as follows:
 - 6.6.2 The Service Provider's liability to the Customer for death or injury resulting from its own negligence or the negligence or fraud of its employees shall not be limited nor shall any matter which cannot by law be limited or excluded.
 - 6.6.3 Subject to clause 6.6.2 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
 - 6.6.4 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 upon written notice given to the customer.
- 7.2 If the Service Provider fails to comply with any material provision of this Agreement and does not rectify such non-compliance within 28 days of written notice given by the Customer then the Customer may terminate this Agreement with immediate effect upon written notice being given to the service provider.
- 7.3 Non-enforcement of such rights by the Service Provider or Customer shall not be deemed a waiver of the rights of that party under this Agreement.

8 Additional Services

- 8.1 The Customer is entitled to request that the Service Provider provides 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 and 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 GDPR

- 10.1 In this section the term ‘Data Protection Legislation’ means (i) unless and until the General Data Protection Regulation ((EU) 2016/679) (‘the GDPR’) is no longer directly applicable in the UK, the GDPR and any national implementing laws regulations and secondary legislation as amended from time to time in the UK; and then (ii) any successor legislation to the GDPR or the Data Protection Act 1998.
- 10.2 In this section capitalised terms not defined elsewhere in this Agreement shall have the meanings ascribed to them in the Data Protection Legislation.
- 10.3 In relation to the GDPR the Customer is the Data Controller and the Service Provider is the Data Processor.
- 10.4 the Customer warrants that it has title over, or a license to process, the data its asks the Service Provider to process, and that the Customer is doing so legally and in accordance with the requirements of the Data Protection Legislation.
- 10.5 The Service Provider will process data provided by the Customer including Personal Data (i) as agreed in writing between the parties, such agreement to include adequate description of the purposes, nature and duration of processing and the types of data to be processed. The Service Provider will not further process the Customer’s data or process the data in any other way. The Customer hereby authorises the Service Provider to create temporary copies of the data in the course of its data processing.
- 10.6 The Service Provider will not transfer the Customer’s data to a third country or any organisation outside of the United Kingdom without either the Customer’s express written authority as Data Controller or as required by relevant law.
- 10.7 The Service Provider may sub-contract the processing of the Customer’s data to (i) any of the Service Provider’s Group Companies; or (ii) the licensor of the relevant Software; or (iii) a third party processor with the written authority of the Customer. The Customer hereby agrees to the Service Provider appointing as a Data Sub-Processor or otherwise (i) Microsoft Azure Cloud Services, within the EU or the UK, and (ii) where relevant, Sage Group plc Cloud Services in the UK. The Service Provider will provide further information relating to these providers on request.
- 10.8 The Service Provider shall ensure that any third party processor it appoints is subject to the same data protection obligations as the Service Provider and has taken the steps necessary to comply with Data Protection Legislation including providing sufficient guarantees to implement appropriate technical and organisational measures in such a manner that its data processing meets the requirements of the GDPR.
- 10.9 The Service Provider will (i) assist the Customer in ensuring its compliance with the obligations set out in Articles 32 to 36 of the GDPR, but because of the nature of the processing carried out by the Service Provider does not undertake to carry out these tasks on behalf of the Customer; and (ii) will make available to the Customer such information as is necessary to demonstrate compliance with the obligations set out within Article 28 of the GDPR; and (iii) allow and contribute to audits and inspections conducted by the Customer or any auditor appointed or mandated by the Customer.
- 10.10 On the written request of the Customer as Data Controller the Service Provider will delete or return all of the Customer’s data to the Customer following the provision of the Services and will delete all copies of that data unless required to retain them by law.

11 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 not 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.

12 Miscellaneous

- 12.1 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. The Customer acknowledges that it has placed no reliance on any representation made but not embodied in the Agreement.
- 12.2 The service provider may from time to time make amendments or changes to these terms and conditions which shall apply to continued provision of Services upon notification to the customer.

13 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.

14 Confidentiality

- 14.1 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.
- 14.2 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.

15 Assignment

- 15.1 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.
- 15.2 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.
- 15.3 The Service Provider may assign the benefit of this Agreement in whole or in part without the prior written consent of the Customer.

16 Notices

All notices which are required to be given under this Agreement shall be in writing and be sent by ‘signed for’ mail to the correspondence address of the recipient as used in day-to-day postal communications between the parties.

17 General

- 17.1 The Customer hereby accepts that these terms and conditions shall apply to the services and the agreement, to the exclusion of all other terms and conditions as may be purported to be incorporated into this Agreement, as may be set out on any Customer purchase order form shall not apply, and the terms set out herein shall prevail.
- 17.2 These terms and conditions shall be deemed accepted by the Customer by continuing to use the services provided by the Service Provider and or payment of the fees for the services.
- 17.3 The parties hereto agree that it is not their intention to violate any provisions of the laws of the United Kingdom 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 and the remainder of this Agreement shall remain binding on the parties.
- 17.4 This Agreement shall be governed by the laws of England and wales, and each of the parties hereby agrees to submit to the jurisdiction of the English courts.

March 2023